

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

In re Search Warrant of 300 North Washington  
Square, Lansing MI 48933

Oakland County Circuit Court Case No.  
2025-216215-AR

47<sup>th</sup> District Court Case No. 2025-249

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**PLAINTIFF-APPELLANT MICHIGAN ECONOMIC DEVELOPMENT  
CORPORATION'S REPLY IN SUPPORT OF BRIEF ON APPEAL**

**\*\*\*ORAL ARGUMENT REQUESTED\*\*\***

## I. ARGUMENT

In the media and to this Court, the AG continues to suggest that Ms. Ascutto and other purported bad actors within the MEDC somehow committed malfeasance and wrongdoing in connection with its investigation into Global Link International. But behind closed doors, the boots on the ground in the investigation from the AG's office admit to a much different picture: there is "proof" that "folks [at the MEDC] were doing their jobs" and "that MEDC was asking questions about Beydoun's expenses early on." Appellee Ex. D at pg. 3. In response to MEDC's challenge as to the seizure of privileged materials authorized by an improperly broad search warrant, the AG raises a number of unconvincing procedural arguments (such as waiver and that the MEDC supposedly failed to properly bolster its claim of privilege) and invites this Court to approve the AG's unilateral creation and implementation of taint teams, no matter the constitutional concerns or egregious circumstances of seizure here, simply because the Michigan Court of Appeals recently referenced such procedures in passing. None of the AG's arguments is convincing.

In what appears to be the first circumstance in which a Michigan court has been asked to assess whether the government can rectify an intentional and deliberate violation of the attorney-client privilege by simply employing a taint team of its own agents, this Court should answer with a resounding no.

### **A. The MEDC Did Not Waive the Right to Challenge the Constitutionality of Taint Teams or the Impermissibly Broad Scope of the Search Warrant.**

Before turning to the merits, the AG contends MEDC forfeited its objections to the general use of taint teams and more specifically, the scope of the search warrant which purported to authorize the AG to use such procedures. These arguments are factually and legally meritless.

First, the AG suggests that the constitutional challenge to the use of taint team is "unpreserved because the trial court never addressed the validity of a review team issue directly."

(Appellee Brief at pg. 11). Even if true, the trial court approved the AG's taint team policies "for the sake of expediency" despite acknowledging "good arguments" to the contrary, (*see* Ex. 4 at pg. 38). The trial court's decision not to address the merits does not strip this appellate Court of its ability to do so. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227 (2020) ("It is sometimes erroneously believed that an issue must be raised in *and* decided by the trial court for that issue to be preserved for appeal") (emphasis in the original). Rather, the "Supreme Court has unequivocally explained that '[parties] should not be punished for the omission of the trial court,' and it squarely rejected 'the proposition that issues undecided by the trial court are not preserved for appeal.'" *Id.* (quoting *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183 (1994)).

Similarly, the AG asserts that MEDC did not challenge the search warrant's particularity below and is precluded from doing so now. *Cf.* (Ex. 10 pg. 1) (referencing the AG's "expansive warrant"). But the AG curiously fails to omit that it has refused, for the last three months, to furnish a copy of Special Agent Kolka's accompanying affidavit, which the MEDC explicitly highlighted to the trial court while requesting an *in camera* review to determine whether the affidavit supplied the requisite probable cause for the warrant's carte blanche authorization to search a lawyer's office. *Id.* at pg. 7 at n. 1. In doing so, the MEDC specifically reserved its right to "challenge other aspects of the warrant concerning non-privileged materials." *Id.* *See also* (Appellee Ex. D at pg. 4). It is uncontested that "a party is generally free to make a more sophisticated or fully developed argument on appeal than was made in the trial court." *Glasker-Davis*, 333 Mich App at 227.

Moreover, the "essential justification" for the preservation requirement is the general idea that parties "are best equipped to respond to alleged errors at the time they occur[.]" *People v Cain*, 498 Mich 108, 114 (2015). But here, the AG has continually stifled the MEDC's request for a full and complete copy of the search warrant being challenged. The warrant itself states that it

“incorporates by reference the attached affidavit” and instructs officers in relevant part “to refer to the attached affidavit for additional guidance as to particularity in describing the place to be searched, the items to be seized under the authority of the search warrant[.]” (Ex. 6, pg. 7).

The AG cannot now use its refusal as a sword and a shield, initially preventing the MEDC from fully developing a challenge to the scope of the warrant by withholding relevant portions and then subsequently arguing that a waiver occurred because the MEDC’s challenge to particularity was not presented in the form of an expose. “Manifest injustice” would certainly occur if law enforcement could strip a party of their ability to challenge its use of police powers by simply refusing to hand over the document which purportedly authorized them to take the action at issue in the first place. *Smith v Foerster–Bolser Constr, Inc*, 269 Mich App 424, 427 (2006) (trial courts can consider arguments, even those deemed waived, where “failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented”).

**B. The MEDC Did Not Assert a “Blanket” Privilege Over Seized Materials and Sufficiently Invoked the Privilege by Identifying the Materials as Protected During the Execution of the Warrant.**

The AG suggests Ms. Ascuitto’s declaration and her representations as to what documents contain her privileged communications or that of other lawyers in her office should be disbelieved because her “legal standard for privilege is ‘everything.’” (Appellee’s Brief at pg. 13). Not so. Again, the record and Assistant Attorney General Payok’s emails present a much different narrative on this point than that advanced publicly.

Ms. Ascuitto did not claim privilege over each and every document seized from MEDC, as reflected in the AG’s own tabulation. Those that she told investigators were off-limits and

expressly identified as privileged were “placed into a banker’s box unexamined and sealed to be delivered to the taint team.” (Appellee’s Ex. B at ¶ 18). But “two banker’s boxes of documents that was [sic] not marked as privileged and restricted in any way” were seized by Special Agent Morse. (Appellee’s Ex. B at ¶ 19). These documents, which “MEDC intended to send to the legislature in response to the subpoena[,]” were “segregated and already redacted” for privilege by MEDC’s counsel prior to seizure. (Appellee’s Ex. C at pg. 1). *See also* (Appellee’s Ex. D at pg. 3) (indicating said boxes were “1 and 2 on the [search warrant] tab[ulation]”); (Appellant’s Ex. 9) (listing two batches of “documents” seized from “office next to Linda Ascuitto’s office”). The AG’s office and its investigative team reviewed the materials and raised no concern that they were improperly redacted or that the attorney-client privilege was used to “sand down” such documents. Quite the opposite, Payok indicated “having reviewed the two banker’s boxes that were going to the Legislature” it was clear “that MEDC was asking questions about Beydoun’s expenses early on” and went so far as to say that it was “proof these folks were doing their job.” (Appellee’s Ex. D at pg. 3).

According to the AG, a sworn statement from an attorney affirmatively confirming the existence of privileged material is not somehow sufficient to invoke one of our justice system’s most fundamental protections. Citing to *United States v. Dakota*, the AG assures this Court that it would not create new law in holding so, representing that the Sixth Circuit has previously held that an affidavit from counsel is insufficient to establish a claim of privilege. 197 F.3d 821, 825 (6th Cir. 1999). But even a cursory review of this opinion demonstrates that it does not stand for such a general proposition. In *Dakota*, a defendant attempted to overturn his conviction for gambling kickbacks by claiming his attorney-client privilege was violated when the trial court allowed a tribal attorney to testify as to their conversation about the kickbacks. *Id.* at 825.

The Sixth Circuit upheld the conviction and found that no violation of the privilege occurred because the affidavit did not establish that Dakota had an attorney-client relationship with the tribal lawyer. *Id.* (holding the “affidavit does not establish that Dakota contacted O’Leary for legal advice as an individual as opposed to seeking advice from O’Leary in his position as tribal attorney” and therefore the trial court “correctly ruled that Dakota’s conversations with O’Leary were not protected by the attorney-client privilege”). Moreover, the Sixth Circuit indicated it could not determine whether a violation of the privilege had occurred based on the use of protected documents because “Dakota does not state on appeal which, if any, of the controversial [tribe] documents were placed into evidence and how that evidence harmed him at trial.” *Id.* at 826. But requiring a criminal defendant to identify privileged documents allegedly used against them at trial, when they are attempting to overturn their conviction based on a purported violation of the privilege, does not equate to the proposition “that a [non target of an investigation] cannot prove the privilege [in objecting to seizure of documents during the execution of a broad search warrant] without identifying specific documents and providing details for each.” (Appellee Brief at pg. 16).

The AG’s citation to *Warner Norcross & Judd, LLP v Police & Fire Ret Sys of City of Detroit*, requiring a party to identify and describe privileged documents with particularity to validate their refusal to produce the materials in response to a motion to compel, similarly fails to recognize that this is not a dispute over discovery in a civil case. Just like “the circumstances and the types of items involved” matters for purposes of evaluating the scope of a warrant, so too should the context for a party’s claim of attorney-client privilege. *People v Brcic*, 342 Mich App 271, 278, (2022). Here, the MEDC did not obligate itself to produce documents by participating in a lawsuit. The “open, broad discovery policy that permits liberal discovery of any matter”<sup>1</sup>

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<sup>1</sup> *Reed Dairy Farm v Consumers Powers Co*, 227 Mich App 614 (1998).

which underpins the *Warner Norcross* opinion and the “universal rule” that a party claiming privilege must justify it should not apply in situations where the AG sends armed agents to raid an entity with the purpose of seizing materials from an attorney’s office despite counsel’s explicit indication that they were protected. When the government’s use of its power evolves and expands, so too must the law to ensure adequate safeguards to those subject to the whims of the AG.

**C. Michigan Courts Have Not Authorized the Attorney General’s Use of Taint Teams.**

In the absence of any legislative or constitutional authorization for the creation of taint teams, the AG believes that *Joly* empowers the Department to unilaterally develop and employ such procedures. But the Court of Appeal’s passing reference to the use of taint teams in *Joly* does not constitute binding approval. *See, e.g., Pew v. Michigan State Univ.*, 307 Mich App 328 (2014) (dictum “is a judicial comment that is not necessary to the decision in the case” and it “does not constitute binding authority”). Furthermore, the AG’s deliberate choice not to respond to MEDC’s constitutional concerns as applied to its specific taint team policy, (*see* Appellant Brief at pg. 13-15), speaks volumes. This is especially telling when the Fourth Circuit recently held that a taint team policy like the AG’s, which gives the government the power to make privilege determinations rather than a court, was violative of the separation of powers. *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 176 (CA 4, 2019).

Nearly fifty years ago, the Michigan Supreme Court expressed “dismay” over searches of the offices and files of non-target attorneys. *People v Nash*, 418 Mich 196, 217 (1983). Noting regrettably that the case before it did not present the opportunity “to consider all the ramifications of third-party searches,” the Court indicated “hope that before such a case comes before this Court our Legislature examines the use of third-party search warrants, at least as they are directed at law offices” given the “multifarious and competing policy considerations[.]” *Id.* But the Legislature

has not acted, and in that absence the AG has nevertheless taken matters into her own hands unilaterally empowering herself to set the policies and procedures to be used when “rummaging through the files and papers of a nonsuspect lawyer’s office.” *Id.* As such, this Court is now presented with the opportunity to address the “troubling nature” of searches on law offices that the *Nash* court longed for years ago. *Id.*

**D. The Search Warrant Purports to Provide “Additional Guidance as to Particularity” but Neither the MEDC Nor This Court Can Ensure Compliance with the Fourth Amendment Due to the AG’s Refusal to Supply the Incorporated Affidavit.**

With its decision in *People v Carson*, the Michigan Supreme Court recognized the need for constitutional protections guaranteed under the Fourth Amendment to evolve with the rise of modern technology and reemphasized the import of search warrant affidavits in that regard. \_\_\_ Mich \_\_\_; \_\_\_NW3d \_\_\_; 2025 WL 2177501 (Mich. Sup. Ct., July 31, 2025) (uncertainty with respect to what officers might encounter during a search “does not, however, free them from the obligation to provide the most specific description possible and to support a request to search each category of data mentioned in a warrant affidavit.”). In *Carson*, the Court explained that those who own cell phones store “nearly every aspect of their lives—from the mundane to the intimate” therein such that “[a] cell phone search would typically expose the government to far more than the most exhaustive search of a house[.]” *Id.* slip op. at 5 (quoting *Riley v California*, 573 US 373, 394-395 (2014)). In this context, the Court warned, it “must jealously guard the requirements of the Fourth Amendment, including the particularity requirement.” *Id.* slip op. at 8. But just as modern technology has rendered “intimate” portions of an individual’s life more easily accessible during a search warrant, so too has it provided expanded access to privileged communications exchanged with counsel. This electronic data should be afforded the same zealous protection, if not more, as the “extensive privacy interests in cellular data.” *Id.* slip op. at 6. The right to secrecy in

communications with counsel is just as fundamental to American liberties as an individual's right to maintain privacy in their personal effects.

Here, there is certainly an equally concerning threat of privileged and protected information being turned over to investigators, particularly because agents raided MEDC's law office and knowingly snatched boxes filled with documents marked "privileged" *and* an MEDC laptop with potential electronic access to additional privileged material and communications. Indeed, the AG's office asserts it explicitly sought a warrant because it was supposedly concerned that MEDC's counsel was "going to sand [] documents down." (Ex. 4 at pg. 21-22). The AG has, of course, presented zero facts to support such a bald and baseless assertion.

Nevertheless, the possibility of encountering privileged material is heightened here because the AG's office seized boxes of materials marked privilege and an electronic portal to additional materials through the MEDC laptop it seized – all without divulging the affidavit upon which the search warrant was based, despite the MEDC's numerous requests for a copy. At bottom, the AG has ensured that the MEDC is without the ability to make a fulsome analysis of the search warrant by refusing to provide a complete copy. The search warrant explicitly instructs officers "to refer to the attached affidavit for additional guidance as to particularity in describing the place to be searched [and] the items to be seized under the authority of the search warrant[.]" (Ex. 6, pg. 7). The MEDC – and this Court – can now only speculate as to whether the referenced directions comport with the Fourth Amendment's particularity requirement or in fact contradict the "limit[ation] in time and to three specific topics" that the AG touts as sufficiently particular restrictions. (Appellee Brief at pg. 29).

## II. CONCLUSION

For these reasons, and those expressed in the Michigan Economic Development Corporation's principal appellate brief, the MEDC respectfully requests that this Court reverse the district court's decision, compel the Attorney General to immediately return MEDC's privileged materials, and award to the MEDC any other relief the Court deems appropriate under the circumstances.

Respectfully submitted,

Miller, Canfield, Paddock and Stone, P.L.C.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2025, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system, which will send notification of such filing to all counsel of record.

/s/ Gerald J. Gleeson, II  
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**CERTIFICATION OF COMPLIANCE**

Pursuant to Michigan Court Rule 7.212(B)(3), the undersigned certifies that this brief was typed using Microsoft Office Word 2010. That program has a function which calculates the total number of words contained in a document. According to that program function, there are 2,759 words in this brief.

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