STATE OF MICHIGAN
DISTRICT COURT FOR THE 6TH JUDICIAL CIRCUIT
OAKLAND COUNTY

IN RE SEARCH WARRANT OF 300 NORTH WASHINGTON SQUARE, LANSING MI 48933	CASE NO. 2025-216215-AR HON. JACOB J. CUNNINGHAM

_____/

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STATEMENT OF JURISDICTION

MEDC's statement of jurisdiction is accurate.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Under Michigan's attorney-client privilege standard, did MEDC make a cognizable privilege claim when MEDC failed to provide any details regarding any specific document, MEDC's counsel admits he has not reviewed the documents, and the affiant attorney claimed privilege over "everything"?

   Appellant's answer: Yes.

   Appellee's answer: No.

   Lower court's answer: No.

2. Has the Michigan Court of Appeals followed the emerging national trend to recognize taint review teams as a viable option for addressing legal seizure of potentially-privileged materials?

   Appellant's answer: No.

   Appellee's answer: Yes.

   Lower court's answer: Yes.

3. Did MEDC establish that the warrant authorizing the seizure of a state-owned "loaner" laptop computer, which employees are not authorized to store personal information on, lacked sufficient particularity to comply with constitutional protections?

   Appellant's answer: Yes.

   Appellee'ss' answer: No.

   Lower court's answer: Did not address as the claim was not raised.

INTRODUCTION

The Department of Attorney General is investigating possible wrongdoing by officials within the Michigan Economic Development Corporation (MEDC) in the use of state grants for specific projects, seeking to determine whether some of these funds were diverted for personal purchases. The Department executed a search warrant on June 18, 2025 after being repeatedly stonewalled by the MEDC. The MEDC brings this appeal to recover boxes of documents and a laptop seized during the execution of that search warrant. The MEDC raises three arguments, none of which is availing.

In its primary argument, MEDC claims that the boxes of documents and the laptop are privileged as including attorney-client privileged materials. But the attorney-client privilege does not protect entire boxes or computers. The law requires a line-by-line, document-by-document review of any privilege claim. The district court correctly rejected this claim because MEDC failed to prove that even a single page of the disputed documents is privileged. Indeed, MEDC's counsel admitted he had not reviewed *any* of the documents, and that he relied on MEDC general counsel Linda Asciutto's unsworn declaration. (MEDC's Ex 8, pp 11–12.) So MEDC's only evidence of privilege is Ms. Asciutto's declaration. Yet, Ms. Asciutto makes an improper blanket privilege claim; she fails to provide any specific details, never mentions a specific document, fails to address confidentiality, and never deals with the distinctions between business and legal advice as an in-house lawyer. (MEDC's Ex 2.) Ms. Asciutto's understanding of attorney-client privilege is: "I'm an attorney. Everything I'm working on." (Ex 8, p 32.) In short, Ms. Asciutto relies on the "mistaken belief that all documents containing any communications between a client and attorney are privileged." *Warner Norcross & Judd,*

LLP v Police & Fire Ret Sys of City of Detroit, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2012 (Docket No. 300866) (Attached as Ex E**)**. There is no document-specific evidence of privilege in the record, and so MEDC's argument fails.

MEDC's other claims are secondary. The MEDC complains that the Attorney General's taint team to review for possible attorney-client privileged materials is inadequate and improper as a matter of law. But Michigan law approves of taint teams. And the district court did not expressly approve or reject the Attorney General's review team policy, or the concept of a taint team itself in any event. (MEDC's Exs 4, 12.) Because there is no evidence of privilege in the record, the review team issue is not yet ripe for judicial review. Finally, MEDC's unpreserved challenge to the search warrant's particularity fails because the warrant appropriately limited the search.

As a final point, the issue here extends beyond just this investigation and reflects the specter of other important organizations including an attorney on all communications regarding important decisions and then claiming the mere inclusion of that attorney to be a basis for using the attorney-client privilege as a shield against any future investigation. The Department of Attorney General encountered this tactic during its investigation of Michigan State University and Larry Nassar. Such an effort distorts the law and should not succeed in frustrating important criminal investigations. This Court should deny MEDC's appeal.

COUNTER-STATEMENT OF FACTS

MEDC is quasi-public agency created to administer economic development loans and grants provided through the Michigan Strategic Fund (MSF) and some other sources; this includes legislative earmarks called "grants" that are truly direct appropriations to chosen individuals. In 2022, MEDC signed a contract for one of these "grants" intended to fund a "international business accelerator" under the control of MEDC executive board member Fay Beydoun. Two years later, whistleblowers reported to the Detroit News that Beydoun was misusing grant money on personal items, like a $4,500 coffee machine.

A. MEDC's lack of cooperation required a search warrant.

The Attorney General began investigating this "grant" in April 2024. Investigators requested information and documents from MEDC then, and repeatedly over the next year. MEDC provided a few scattered documents and a copy of a FOIA response to the Detroit News. But as new articles appeared in the News and other sources, it became clear that reporters had far more information and documents than MEDC provided to the Attorney General.

MEDC's Exhibit 1[1] is a timeline of the interactions between MEDC and the Attorney General that led to the search warrant. The salient fact is that – after two years of asking for documents – all the Attorney General received were copies of MEDC

[1] MEDC is correct that there is an error in the timeline. MEDC's Brief, p 2 n 1. The second entry – dated April 22, 2024 – is a copy of Brad Hefner's response email dated April 25, 2025, which appears correctly dated on page 4. MEDC's Ex 1, p 6. Other than that, the timeline is accurate in all other respects.

responses to four FOIA requests. (AG Ex 1 generally; MEDC's Ex 2, ¶5.) While MEDC responded to many other FOIA requests during that time without providing those responses to the Attorney General.

While attempting to conduct its investigation through counsel, in May 2025, after several weeks of asking and setting deadlines, MEDC counsel Brad Heffner still refused to name a *single* witness for Attorney General investigators to interview. (Ex 1, pp 8–9.) This stonewalling – and the pending House Subpoena which would inevitably result in reorganization of the files – led to the search warrant at issue here.

B. The search warrant is executed on June 18, 2025.

MEDC's Exhibit 8 is an audio transcript of the entire search that occurred on June 18, 2025. Within the first few minutes, rather than cooperate with the execution of the court's order, Ms. Ascuitto demanded to "go back to [her] office" alone:

> OFFICER KOLKA: You need to stay down here in the lobby.
>
> LINDA: I don't need to stay (inaudible)
>
> OFFICER KOLKA: Yes, you do.
>
> LINDA: What are you gonna do, arrest me?
>
> OFFICER KOLKA: Yes. We have a search warrant for the building and you need to stay down here --
>
> LINDA: Yeah, I'm going back to my office to --
>
> OFFICER KOLKA: You're not going --
>
> LINDA: -- talk to my counsel.
>
> OFFICER KOLKA: You're not going back to

your office.

LINDA: (inaudible)

OFFICER KOLKA: Linda. You're not going back --

LINDA: I'm going back to my office --

OFFICER KOLKA: You're not going back to your office.

LINDA: Then you need to get away from me when I talk to my counsel.

OFFICER KOLKA: That's fine, but you're not going back to your office.

[MEDC's Ex 8, pp 3-4; Ex A, S/A Kolka's Aff, ¶¶ 8-10.]

The warrant authorized the officers to search MEDC's offices for materials limited to one of three identifiers: "Fay Beydoun and/or Global Link International; 2022 PA 166; and/or MEDC Case #377080." (Ex B, S/A Morse's Aff, ¶ 13.) Initially, the Assistant Attorney General in charge of the case agreed with MEDC's outside counsel that any potentially-privileged material could be set aside for review by lawyers.

During this time, Ms. Ascuitto argued that entire boxes of documents intended for the Legislature were privileged but refused to give reasons. (AG Ex B, ¶¶ 14.) Then Ms. Ascuitto tried to stop an officer from taking photos by saying "You're not taking pictures of my stuff." (MEDC's Ex 4, p 35.)

C. **"I'm an attorney. Everything I'm working on is privileged. Everything."**

Ms. Ascuitto's suspicious behavior – and continued privilege claims without explanation – led to the Attorney General's staff concluding that it could not trust MEDC to honor any agreement.

Around this time, the Attorney General's Criminal Bureau Chief instructed the agents to segregate and take the allegedly privileged documents under seal. (MEDC's Ex 8, p 26.) So Special Agent Morse told Ms. Ascuitto: "you identify what you are going to be claiming as privilege[ed], put it in a box . . . [a]nd we'll tape it up right now. And then that way it will go to the [taint] team." (MEDC's Ex 8, pp 30–31.) The investigators seized and sealed these boxes but *did not* search them.

But Ms. Ascuitto was unable to identify anything that was *not* privileged. According to her, "anything I'm working on" was "privileged":

> OFFICER STEVE: Including your office. I've tried to explain to you that we will let you pull the documents out that you claim our privilege.
>
> LINDA: Everything in here is privileged and I'm working on everything. I'm an attorney. Everything I'm working on is privilege. Everything.
>
> OFFICER STEVE: Okay. I'm being told --
>
> LINDA: And there's non-disclosure agreements with companies and all that. So, really?
>
> OFFICER STEVE: Okay. But if they don't have anything to do with this search warrant in this case, then we're not going to take it.
>
> LINDA: You're not taking it at all. Any of it.

[MEDC's Ex 8, pp 30–31.**]**

Notably, MEDC describes Ms. Ascuitto's behavior here as "assisting" with the search. (MEDC's Brief, p 6.)[2]

D. "That's all of it . . .," except there's more.

Ms. Ascuitto then told the agents "as an officer of the court" that one box had "all" the relevant documents, only for agents to immediately see that Ms. Ascuitto had a folder open on her desk specific to this investigation that she did not intend to disclose, and then *another* binder of relevant materials:

> 11. Next, Asciutto pushed a box across the floor and said, "That's all of it. Those are my attorney-client privileged documents. . . . This is everything."
> 12. I explained to Asciutto that the AG uses the same taint team process "all the time," and she replied, "I don't care what you do all the time." She reiterated "That's it, that's all of it."
> 13. As I looked around the office, Asciutto said "I imagine that it doesn't matter to you that I'm an officer of the court, and I'm telling you there's nothing else."
> 14. A cursory scan of Asciutto's desk then revealed a purple file open on top that was marked "AG Investigation Update." When confronted, Asciutto admitted that the file was related to GLI, and I put it in one of the boxes to be sealed.

[2] MEDC claims that "Ms. Asciutto – without waiving the attorney-client privilege – *assisted* the agents in identifying the materials as privileged." (MEDC's Brief, p 6; emphasis added.)

She also then provided a three-ring binder that – despite her earlier comments to the contrary – was also related to GLI.

15. At no time did Asciutto ever explain how any document she mentioned was attorney-client privileged, who the clients were, whether the communications were confidential, or whether they contained legal advice. She just continued to make blanket statements about large groups of documents.

16. Even though MEDC had been preparing a subpoena production for the Legislature that had been redacted, Asciutto never mentioned a privilege log, nor did we find such a log.

[AG Ex B, ¶¶ 11–15; MEDC's Ex 8, pp 34–38.]

E. The AG has *not* searched any of the allegedly-privileged materials.

The agents ultimately removed five boxes of documents – three of them marked "Attorney-Client Privileged" – and one "loaner laptop" provided by an IT employee. (MEDC's Ex 9.) The agents did not take any computer that any employee was using, did not take any phones, and did not take any items that did not match one of the three search terms. The seized materials and the laptop were sealed and delivered to the review team. (Ex A, ¶¶ 16–20.)

On June 23, 2025, the Attorney General agreed to honor MEDC's objections and not to unseal or search any of the allegedly-privileged materials or the laptop pending MEDC's motion. (AG Ex C.)[3] On July 14, 2025, the trial court issued an order that

[3] Exs C and D are *not* part of the record below. MEDC's Exs 3 and 5 were also not part of the record below but attached and used to make specific points in MEDC's brief. In this instance, the AG attaches Exs C and D to show its continuing agreement not to unseal the items in dispute. They address MEDC's inaccurate portrayal of the Attorney General as intentionally violating privileges.

reflected the parties' agreement that the Attorney General would continue to keep the materials sealed pending MEDC's decision to file this appeal. (MEDC's Ex 13.) And the Attorney General confirmed that it would continue to honor the agreement not to search the materials until the appeal was resolved. (Ex D.)[4]

F. MEDC itself is not a target, but MEDC CEO Quentin Messer may be.

Throughout its brief, MEDC repeatedly claims that this search did not involve a "target" of the investigation. This is a misunderstanding of this investigation. MEDC as an organization is not a target, nor are any MEDC employees who are not executive decisionmakers. But the warrant itself expressly mentions seizure of MEDC CEO Quentin Messer's mobile devices. (MEDC's Ex 6, p 7.) The Attorney General informed MEDC that Messer was a potential target, as well possibly Josh Hundt, on June 23, 2025. (Ex C.) So MEDC's repeated statements that the search did not involve any targets are mistaken.

[4] See n 4 for the basis of attaching this exhibit, which was not introduced in the district court.

PROCEEDINGS BELOW

There are two points to emphasize from the proceedings below.

First, MEDC counsel admitted below that he never reviewed the seized documents for privilege, but relied solely on Ms. Ascuitto's declaration:

> THE COURT: Should I assume that once they came in and grabbed everything that your client does not have copies somewhere—backup copies of those documents?
>
> MR. GLEESON: We have backup copies of—I-most of the documents I assume we have something.
>
> THE COURT: Okay, have you looked at those documents?
>
> MR. GLEESON: I have not.
>
> THE COURT: So, you can't stand here and tell me that yes, Document A should be subject to privilege. Document B should be redacted in certain portions. Document C is full privilege.
>
> MR. GLEESON: I can because—
>
> THE COURT: See, that's one of the problem's I have here because I'm kind of operating in the dark. There's some boxes I have no idea what's in them, okay?
>
> MR. GLEESON: I have an affidavit from Linda Asciutto attached to our motion which outlines what's in those boxes.

MEDC's Ex 4, pp 11-12.

Second, MEDC never challenged the search warrant's particularity before the district court, and so that issue is unpreserved in this appeal. (MEDC's Ex 10.)

STANDARDS OF REVIEW

Only one of MEDC's three claims is preserved for review.

Regarding the first claim, MEDC filed a "motion to quash" the search warrant in this case, and is appealing the district court's denial of that motion. (MEDC's Ex 10.) The correct standard of review for a trial court's decision on a motion to quash is abuse of discretion. *People v Herrick*, 277 Mich App 255, 256 (2007). "A trial court abuses its discretion [only] when its decision falls outside the range of reasonable and principled outcomes." *People v Waterstone*, 296 Mich App 121, 131–132 (2012).

Regarding the second claim, it is unpreserved because the trial court never addressed the validity of a review team issue directly. Instead, the Court ruled that allowing the Attorney General's review team process would be most efficient and that the Court would review and resolve any claims:

> The arguments that you've made here this morning on both sides are good arguments. But I think for the sake of expediency at this point in time you guys have already got the documents. Put the taint team on it. Prepare a log. Make sure there's a firewall up or an isolation wall up. Get the log to Mr. Gleeson, meet and confer, if you have problems come back and see me at that point in time.
>
> We'll do an in-camera review at that point in time if the two sides can't together—can't get together on it. How long do you anticipate that it will take for your taint team to take a look at the documents and get the log to Mr. Gleeson?

[MEDC's Exhibit 4, p 38.]

Appellate courts do not independently consider claims and defenses, but only review trial court's decisions. *Vugterveen Systems, Inc v Olde Millpond Corp*, 210 Mich App 34, 38 (1995) ("This Court cannot address issues not decided by the trial court."),

affirmed in part and vacated in part on other grounds, 454 Mich 119 (1997). The normal process is to review the issues actually decided and leave open those unanswered question for the trial court upon remand. *People v Martin*, 199 Mich App 124, 126 (1993) ("We will not act the part of a trial court..."). So if this Court holds that any of the items at issue are privileged, the best response would be to remand this matter to the trial court for a ruling on the review team's validity.

Regarding the third claim, MEDC never raised the issue below, and so it is unpreserved. An issue is preserved for appellate review when objections are raised "at a time when the trial court has an opportunity to correct the error." *People v Pipes*, 475 Mich 267, 277 (2006). An objection based on one ground does not preserve a claim of error based on a different ground. *People v Stimage*, 202 Mich App 28, 30 (1993). Since MEDC did not raise this claim in its motion to quash in the district court, it is not preserved for appellate review. Unpreserved claims of error are reviewed for plain error affecting substantial rights. *People v Spaulding*, 332 Mich App 638, 652–653 (2020). To avoid forfeiture of this unpreserved claim, the defendant has the burden to establish that, "(1) error . . . occurred, (2) the error was plain, i.e., clear or obvious, (3) and that the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763 (1999), citing *United States v Olano*, 507 US 725, 731–734 (1993). The third element requires defendant to establish prejudice – "that the error affected the outcome of the lower court proceedings." *Id*. A decision is "clearly erroneous if, after review of the entire record, [the Court is] left with a definite and firm conviction that a mistake has been made." *People v Everard*, 225 Mich App 455, 458 (1997).

ARGUMENT

I. MEDC's failure to provide any proof satisfying the elements of attorney-client privilege for any specific document is fatal to this appeal.

As noted, MEDC's counsel admitted he did not review any of the documents at issue. (MEDC's Ex 4, pp 11–12.) In fact, the only "proof" of privilege in the record is Ms. Asciutto's declaration, whose legal standard for privilege is "everything." (*Id.*) So MEDC has failed the minimum requirements for a prima facie privilege claim.

A. MEDC has no evidence in the record to sustain any privilege claim.

MEDC had the burden of proving every element of its privilege claim. See *Reed Dairy Farm v Consumers Power Company*, 227 Mich App 614, 620 (1998) ("at this juncture, defendant has not explained how the information would violate the privilege"). And it appears to be the universal law that the one claiming the privilege must prove the privilege exists, as reflected by the various federal circuits. See, e.g., *In re Keeper of Records*, 348 F3d 16, 22 (CA 1, 2003) ("[T]he party who invokes the privilege bears the burden of establishing that it applies to the communications at issue and that it has not been waived."). Like the First Circuit, the other ten circuits have similarly ruled that the burden rests on the party pressing the privilege.[5] MEDC's contention to the contrary –

[5] *In re Katz*, 623 F2d 122, 125 (CA 2, 1980) ("the burden of establishing the existence of the attorney-client relationship and its applicability to the particular circumstances presented is upon the party claiming the privilege. We agree and this court has so held."); *In re Grand Jury Empanelled Feb. 14, 1978*, 603 F2d 469, 474 (CA 3, 1979) ("The burden of proving that the (attorney-client) privilege applies is placed upon the party asserting the privilege."); *Hawkins v Stables*, 148 F3d 379, 381 (CA 4, 1998) ("The law of attorney-client privilege places the burden of proof on the proponent of the privilege."); *EEOC v BDO USA, LLP*, 876 F3d 690, 698 (CA 5, 2017) ("For these reasons, courts have stated that simply describing a lawyer's advice as 'legal,' without more, is conclusory and insufficient to carry out the proponent's burden of establishing attorney-client privilege."); *In re Columbia/HCA Healthcare Corp Billing Practices Litig*, 293 F3d 289,

relying on a Minnesota Supreme Court decision – is unpersuasive, because this ruling does not appear to have been applied anywhere outside of Minnesota.[6]

Proving the privilege also requires detail and specification; writing "privileged" on a box is insufficient. On the contrary:

> This burden, to sustain a claim of privilege, is heavy because privileges are "not lightly created nor expansively construed, for they are in derogation of the search for the truth." They must be strictly construed and accepted "only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." [*Bridgewater v Carnival Corp*, 286 FRD 636, 639 (2011) (case citations omitted).[7]]

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294 (CA 6, 2002) (" The party asserting attorney-client privilege bears the burden of establishing its existence."); *US v Evans*, 113 F3d 1457, 1461 (CA 7, 1997)("The party asserting the privilege bears the burden of showing that the privilege applies and that it has not been waived."); *Bouschor v United States*, 316 F2d 451, 456 (CA 8, 1963) ("As the party seeking to assert the privilege, Ivers has the burden of showing that the privilege applies."); *United States v Bauer*, 132 F3d 504, 507 (CA 9, 1997) ("After all, '[a] party asserting the attorney-client privilege has the burden of establishing the relationship and the privileged nature of the communication.'"); *Motley v Marathon Oil Co*, 71 F3d 1547, 1550 (CA 10, 1995) ("The party seeking to assert the attorney-client privilege has the burden of establishing its applicability."); *United States v Schaltenbrand*, 930 F2d 1554, 1562 (CA 11, 1991).

[6] MEDC's "Hail Mary" attempt to overcome its lack of proof is citing *State v McNeilly*, 6 NW3d 161 (2024), decided by the Minnesota Supreme Court. No court outside Minnesota has cited *McNeilly* to date, and there are only four internal citations – none of which discuss or extend the unique burden-shifting discussion. *McNeilly* holds that documents "obtained from a search of a law office are presumed to be privileged," and that "when the police search an attorney's law office, the initial burden to show the documents are not privileged rests with the State." *Id.* at 194–195.

Even if *McNeilly* were persuasive against every other American jurisdiction, the facts are not comparable. MEDC is *not* a law office; it's a business where some lawyers work. So *McNeilly*'s initial conclusion that "[a]ll documents obtained from a search of a law office are presumed to be privileged" does not apply, and the subsequent burden-shift based on that presumption is equally inapplicable.

[7] Because of the vast expanse of cases covering so many aspects of the topic, Michigan courts "look[]to federal precedent for guidance in determining the scope of the attorney-client privilege when a particular issue has been addressed by a federal court." *Estate of Nash v City of Grand Haven*, 321 Mich App 587, 594 (2017).

For these reasons, the proof standard is stringent. "A failure of proof as to any element causes the claim of privilege to fail." *North Carolina Elec Membership Corp v Carolina Power & Light Co*, 110 FRD 511, 515 (1986). "An improperly asserted claim of privilege is no claim of privilege at all." *International Paper Co v Fibreboard Corp*, 63 FRD 88, 94 (1974). And so with no other proof in the record, Ms. Asciutto's declaration cannot meet that burden, as the Sixth Circuit recognized in *US v Dakota*, 197 F3d 821, 825 (CA 6, 1999).

1. Ms. Asciutto's declaration was insufficient to prove attorney-client privilege under *US v Dakota*

The *Dakota* defendant was a tribal officer convicted of taking kickbacks from a slot machine maker. On appeal, the *Dakota* defendant argued the government violated the attorney-client privilege by taking testimony and documents from the tribal attorney. *Dakota*, 197 F3d at 825. The only evidence in the record to establish the privilege was the tribal attorney's affidavit. *Id*. The *Dakota* defendant failed to identify any specific documents that were allegedly privileged. *Id*. at 826.

The Sixth Circuit initially noted that the privilege did not necessarily exist between the tribal lawyer and the *Dakota* defendant because the lawyer's "client" was the organization. *Id*. at 825.[8] So the Sixth Circuit ruled that the lawyer's affidavit was not sufficient to establish the privilege:

> The only evidence Dakota submitted in support of his claim of privilege was the affidavit of [the tribal attorney], which is insufficient to support the claim of attorney-client privilege. [The attorney] was counsel for [the

[8] Citing *In re Grand Jury Proceedings, Detroit Michigan, August 1977*, 434 F Supp 648, 650 (ED Mich, 1977), aff'd 570 F2d 562, 563 (CA 6, 1978).

> tribe], and his affidavit does not establish that Dakota contacted [the attorney] for legal advice as an individual as opposed to seeking advice from [the attorney] in his position as tribal attorney. The district court correctly ruled that Dakota's conversations with [the attorney] were not protected by the attorney-client privilege. [*Id*.]

Then, in discussing the potential waiver of the privilege, the Sixth Circuit recognized that, "[p]erhaps most importantly, Dakota does not state on appeal which, if any, of the controversial [documents from the tribe] were placed into evidence . . . Without [such a showing], this court cannot determine whether the documents were improperly disclosed in violation of [the tribe's] privilege." *Id*. at 826.

Dakota establishes how MEDC's evidentiary failures are fatal to its claim. Like *Dakota*, the only evidence of privilege here is Ms. Asciutto's declaration. The declaration has no details, identifies no specific documents, and fails to even allege confidentiality. (MEDC Ex 2, ¶¶ 8-15.) The declaration is insufficient to meet any of the four privilege elements for even a single document. *Estate of Nash v City of New Haven*, 321 Mich App 587, 595 (2017). This Court should follow *Dakota*'s example and rule that Ms. Asciutto's declaration is insufficient evidence of privilege.

2. Courts reject blanket privilege claims and require document-specific evidence, especially when the lawyer represents an organization, and business advice by lawyers is also not privileged.

Dakota recognizes that a claimant cannot prove the privilege without identifying specific documents and providing details for each. *Dakota*, 197 F3d at 825. This appears to be the universal rule: ("It is axiomatic that the burden is on a party claiming the protection of a privilege to establish those facts that are the essential elements of the privileged relationship, a burden not discharged by mere conclusory or *ipse dixit*

assertions." *In re Grand Jury Subpoena Dated Jan. 4, 1984*, 750 F2d 223, 224–225 (CA 2, 1984).[9] See also *In re Search Warrant Executed at Law Offices of Stephen Garea*, No. 97-4112, 1999 US App LEXIS 3861, at *7 (CA 6, March 5, 1999) ("[T]hose seeking to invoke the privilege must provide the reviewing court with enough information for it to make a determination that the document in question was, in fact, a confidential communication involving legal advice.") "That burden is not, of course, discharged by mere conclusory or *ipse dixit* assertions, for any such rule would foreclose meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed." *In re Bonanno*, 344 F 2d 830, 833 (CA 2, 1965).

Document-specific evidence is even more crucial when the attorney is in-house counsel at an organization, instead of retained by an individual. "When a client is an organization, the privilege extends only to the organization's agents and employees authorized to speak on behalf of the organization regarding the subject matter of the communication." *Reed Dairy Farm*, 227 Mich App at 619. Identifying the recipient of any legal advice is necessary to prove the privilege. *In re Fundamental Long Term Care, Inc*, 509 BR 387 (2014).

Courts also recognize that "in-house counsel often serve dual roles as legal advisors and business consultants." *Complex Systems, Inc v ABN Amro Bank NV*, 279 FRD 140, 150 (SD NY, 2011). "Business communications are not protected merely

[9] Accord 81 Am Jur 2d Witnesses § 323 ("Blanket assertions of the attorney-client privilege are extremely disfavored; rather, the privilege must ordinarily be raised as to each record sought to allow a court to rule with specificity."); 35A C.J.S. Federal Civil Procedure § 697 ("Generally, a blanket assertion of attorney-client privilege, without showing that the privilege attaches to any particular document or item, is insufficient to render the material privileged.").

because they are directed to an attorney, and communications at meetings attended or directed by attorneys are not automatically privileged as a result of the attorney's presence." *Kramer v Raymond Corp*, 1992 WL 122856, at *1 (ED PA, 1992). In addition, "[c]orporate documents prepared for simultaneous review by legal and nonlegal personnel are often . . . not privileged because they are not shown to be communications made for the primary purpose of seeking legal advice." *N Carolina Elec Membership Corp v Carolina Power & Light Co*, 110 FRD 511, 514 (1986).[10]

Our Court of Appeals explained how a lack of detailed proof can be fatal to a privilege claim in *Warner Norcross & Judd, LLP v Police & Fire Ret Sys of City of Detroit (WNJ),* unpublished opinion per curiam of the Court of Appeals, issued February 23, 2012 (Docket No. 300866) (attached as AG Ex E). In *WNJ*, the defendants refused "to provide a [privilege] log specifically explaining, in sufficient detail, why each withheld document is privileged such that the court and plaintiff may independently verify defendants' claim." WNJ, unpub op, 2 (Ex E**)**. Despite this refusal to comply with this legal requirement, the trial court denied the plaintiff's motion to compel the defendants to provide these details. Relying on *Augustine v Allstate Ins* Co, 292 Mich App 408, 419 (2011) and *Ostoin v Waterford Twp Police Dep't*, 189 Mich App 334, 339 (1991), the *WNJ* Court held that "the trial court's blanket refusal to require defendants to justify their asserted privilege constituted an abuse of discretion." *Id.* at 3.

Specifically, the trial court:

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[10] See also *Carhartt, Inc v Innovative Textiles, Inc*, 333 FRD 113, 117 (ED Mich, 2019) ("[i]f an attorney serves a non-legal function that could as well be performed by a non-lawyer, and acts in the ordinary course of business, his or her communications in that capacity would likely not be protected by the attorney-client privilege.")

> did not have sufficient information regarding the documents to determine whether they were privileged. Without information regarding a particular document's author, recipients, and subject matter, the court was unable to assess the applicability of the attorney-client privilege or work-product doctrine in a principled way. The information provided fails to show, for each withheld document, that the parties intended the document to remain confidential, or that the purpose of the document was to obtain or provide legal advice. [*Id.* at 3–4.]

Because the record had no document-specific details of the four privilege elements, the *WNJ* Court held that the trial court was wrong to conclude that the privilege existed.

The *WNJ* Court next held that the defendants also had the burden to provide document-specific details addressing the organizational representation elements as well. In ruling that the privilege log was insufficient to meet privilege standards, the Court noted that the log "merely listed broad subject-matter categories" that "largely relate to business matters, and the documents sought may not contain legal advice. Further, the entries do not identify to whom defendants have disclosed the documents, effectively precluding plaintiff from establishing that defendants waived the privilege through disclosure." *Id.* at 4. And the Court of Appeals also recognized that the privilege often applies to a few lines in a document rather than the document itself.

> [E]ven if the documents contain privileged or protected communications, the trial court could have ordered that redacted versions be provided to allow plaintiff to discover the nonprivileged material contained within the documents. Because the trial court appears to have based its ruling on the mistaken belief that all documents containing any communications between a client and attorney are privileged, its ruling constituted an abuse of discretion. [*Id.* at 4.]

WNJ thus held that even a privilege log with "broad subject-matter categories" was insufficient to prove the privilege existed over specific documents. MEDC failed to provide any log whatsoever. The record is devoid of *any* detail for *any* specific document. MEDC cannot overcome its lack of evidence here.

This is not the first time that lawyers have stated a blanket claim that whole swaths of documents were privileged material, only to find out that the privilege did not apply. During the course of the Attorney General's investigation into Michigan State University (MSU), lawyers for MSU withheld 6,000 documents claiming attorney client privilege.[11] Once MSU finally provided the 6,000 documents, many of them were found to be documents to which attorney client privilege did not apply. With some documents, even when the privilege was correctly applied in part, withholding the entire document was not justified. Only portions of documents that contain privileged information can be withheld, while the remainder of the document must be produced. This same principle applies here. MEDC has failed to identify any specific documents that are privileged, and even if it had, there is no indication that an entire document was legitimately subject to attorney-client privilege, such that its invocation would require the suppression of *all* information within that document. MEDC fundamentally fails to understand the privilege in the arguments it advances here.

3. MEDC's proofs cannot sustain its privilege claims.

"A failure of proof as to any element causes the claim of privilege to fail." *North Carolina Power & Light Co*, 110 FRD at 515. The sole proof here is Ms. Asciutto's declaration, which is based on her mistaken belief that anything a lawyer works on is privileged. (MEDC's Ex 8, p 32.) As the declaration cannot relieve MEDC's burden for the reasons stated above, MEDC's appeal should be dismissed.

[11] https://www.michiganpublic.org/news/2019-12-25/heres-why-msu-is-keeping-6-000-documents-from-nassar-investigators (last accessed September 2, 2025).

II. Because there is no proof of privilege, there is no reason to reach this issue, but if this Court does reach it, MEDC cannot overcome our Court of Appeals' recognition that review teams are viable under *Joly*.

Because MEDC failed to prove its privilege claims, this Court need not address any other issues. If there is no privilege shown, there is no need for a review team. Assuming that MEDC did prove some privilege, our Court of Appeals decision in *People v Joly*, 336 Mich App 388 (2021), still defeats MEDC's review team challenge.

A. The need for legal searches that may seize privileged documents needs to be balanced with personal privacy rights, and "the emergent answer to balancing these concerns" is the review – or taint – team process.

Because of the high volume of data and documents that now exists in our digitally-focused world, "courts have roundly rejected the general proposition that the court must engage in a page-by-page review of seized [data] for privilege." *United States v Ritchey,* 605 F Supp 3d 891, 900 (2022). "'If the court is required to directly screen collected evidence for attorney-client privilege[ ] ..., any search warrant issued for a location (corporate office) or device (smartphone) that could plausibly contain some attorney-client documents would also now require the court to first sift through the information recovered before investigators could review it.'" *Id.*, quoting *United States v Schwartz*, No. 1920451, 2021 WL 3909807, at *7 (ED Mich, Sept. 1, 2021).

The *Ritchey* Court noted that "the emergent answer to balancing these concerns is usage of a government filter team:

> A "filter team" generally consists "of FBI agents, an Assistant United States Attorney and other employees who are not involved in the investigation ..., and whose task is to identify potentially privileged documents and then segregate these documents from non-privileged material." *Heebe v United States*, No. CIV.A. 10-3452, 2012 WL 3065445, at *3 (E.D. La. July 27, 2012). "The use of a filter team is a common procedure in this ... [Circuit] and has

> been deemed adequate in numerous cases to protect attorney-client communications." . . .
>
> In sum, filter teams present a solution to a practical problem in cases where there is a high likelihood that a significant volume of privileged materials will be seized. . . . Still, courts necessarily view filter teams with a certain level of suspicion. . . . . To dispel this suspicion, the Government typically seeks court preapproval of its filter team protocol in an adversarial context or an informal, good faith resolution with the defendant. . . . Absent specific facts evidencing mishandling or other misconduct, courts have widely approved of filter team protocols formed through this process. *Warrants Executed on Apr. 28, 2021*, 2021 WL 2188150, at *2. Indeed, in such cases, the protocol is transparent, subject to adversarial review, and flexible to the needs of the case. [*Ritchey*, 605 F Supp 3d at 902 (emphasis added).]

MEDC's Exhibit 13 is the AG's current review team policy. The Attorney General provided it to the trial court and MEDC in this case, and the Department has followed the policy to date. MEDC does not *like* the review team policy, but the law is not beholden to MEDC's likes and dislikes.

B. If this Court considers the review team's validity, *Joly* provides that a review team is at least one of the valid options for handling privilege disputes.

If this Court somehow finds that MEDC has proved some privilege exists and might apply, MEDC's attack on review teams still cannot withstand the decision of the Court of Appeals in *People v Joly*, 336 Mich App 388 (2021).

The *Joly* Court suppressed evidence derived from a Michigan State Police officer's knowing and intentional use of an attorney-client privileged email. The decision focused on law enforcement's knowing use of the privileged email in *charging* the defendant, and not on the search that collected both privileged and non-privileged information. In noting the difficulties of filtering out privileged materials during the search itself, the

Joly Court noted with approval that federal courts often endorse "filter agents or taint teams" to sort the seized materials after the fact:

> In this day and age of electronic communications, it is not particularly surprising that law enforcement will occasionally come across a privileged communication that is mixed in with other, non-privileged materials. . . . In the case where a potentially privileged communication does get caught up in an otherwise lawful search, ***there are also steps that can be taken to identify and segregate privileged information from the rest, including filter agents or taint teams.*** [*Joly*, 336 Mich App at 405 (emphasis added).]

The real problem in *Joly* was not that a privileged email had been discovered but the prosecution team's *use* of a privileged email, according to the *Joly* Court. *Id*. The Court of Appeals suggested that if the email had been segregated and the detective removed from the case, the email's discovery could have been overcome, and the case validly prosecuted. *Id*.

Joly confirms the Attorney General's proper handling of potentially privileged materials in this case. The investigators told Ms. Ascuitto that "we will let you pull the documents out that you claim [are] privileged." (MEDC's Ex 8, p 30.) In response, Ms. Ascuitto simply continued to tell investigators that "everything" is privileged, which was obviously wrong. (Ex 8, pp 30–31.) Ms. Ascuitto also swore to the investigators "as an officer of the court" that she had given them "everything" while hiding other responsive documents – including a file on this specific case open on her desk at the time. (AG Ex B, ¶¶ 11–15; MEDC's Ex 8, pp 34–38.)

Despite this obvious obstruction, investigators sealed everything that Ms. Ascuitto objected to in three boxes. None have been unsealed or examined to date. (AG Exs C and D; MEDC's Ex 13.) None of the things the *Joly* Court found "particularly

troublesome" occurred here. Rather, the Attorney General has agreed to keep the material sealed while MEDC pursues its legal rights to litigate this issue.

Per *Joly*, the disputed items here have been identified, segregated and remain sealed. While MEDC dislikes the review team concept, review teams remain the "emergent answer" to balancing all parties' concerns. *Ritchey*, 605 F Supp 3d at 902. The record below is insufficient for this Court to distinguish *Joly* or balance the specific elements of the Attorney General's review policy with MEDC's interests in confidentiality – especially since there is *no* evidence of confidentiality in the record. As a result, this Court need not reach this issue and should remand this case for reconsideration below if this Court determines there is proof of privilege.

III. MEDC's unpreserved attack on the search warrant's particularity fails because limiting the search to three specific terms satisfies *Carson* as well as any other constitutional standard.

With a new claim, MEDC now asserts that the search warrant lacks particularity regarding the seized state-owned "loaner" laptop computer, relying on our Supreme Court's recent decision in *People v Carson*, __ Mich __, slip op 10–12, 16 (2025). (MEDC's Brief, pp 20–23.)[12] MEDC did not challenge the warrant's particularity below, so there is no record for this Court to review. Since the search warrant is sufficiently particular to

[12] MEDC also makes a vague claim regarding the sufficiency of the affidavit to support the search warrant. (MEDC's Brief, pp vii, 24–25.) This secondary claim is abandoned for two reasons. First, an issue is abandoned if it is not included in the issue statement under the questions presented and provides "little authority or analysis to support [the] assertion." *Maple BPA, Inc v Bloomfield Charter Twp*, 302 Mich App 505, 517 (2013), citing *Caldwell v Chapman*, 240 Mich App 124, 132 (2000). Second, MEDC's sufficiency claim is abandoned by failing to provide the factual basis for the claim, which would include obtaining and providing the affidavit that is currently suppressed under MCL 780.651(8) and MCL 780.654(3). *People v Acumby-Blair*, 335 Mich App 210, 235 (2020).

conform with constitutional requirements, *Carson* does not apply to laptops, and *Carson* does not support MEDC's position, this unpreserved argument is without merit.

A. The search language employed here, considered within the context of the warrant, is sufficiently particular.

A sufficiently particular warrant "must identify the specific offense for which the police have established probable cause," "describe the place to be searched," and "specify the items to be seized by their relation to designated crimes." *United State v Tompkins*, 118 F4th 280, 287 (CA 2, 2024); *People v Hughes*, 506 Mich 512, 538 (2020).

A warrant is sufficiently particular "if the description is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place intended." *Steele v United States*, 267 US 498, 503 (1925). In this prohibition-era decision, a search warrant was found to be particular enough when it directed the seizure of "cases of whisky" in a New York building and "any buildings or rooms connected or used in connection with the garage, or basement or subcellar beneath the same." *Id*., at 503, 505. This language, allowing a search of the "whole building" was deemed sufficiently particular. *Id*., at 505.

Decades later, the United State Supreme Court noted that context matters when considering warrant language. *Andreson v Maryland*, 427 US 463, 479–481 (1976). In this decision, the Court approved a categorical list of items "together with other fruits, instrumentalities and evidence of crime," as being particular enough to comply with the Fourth Amendment. *Id*. at 479. This was because the search terms were all limited by the crime that was being investigated, clarifying and giving direction to law enforcement when executing the warrant. *Id*. at 480–481.

Since criminals attempt to hide incriminating information from the eyes of law enforcement, courts recognize that broader language may be required to collect the "bits of evidence," necessary to piece together proof of criminal activity. *Hughes*, 506 Mich at 540–541; *Andresen*, 427 US at 480 n 10. As a result, warrants are not expected to have "absolute precision" in their language. *Tompkins*, 118 F4th, at 288.

B. The search warrant executed on June 18, 2025, is sufficiently particular.

The language of the search warrant authorizing the seizure and search of MEDC's "loaner" laptop is sufficiently particular.

In addition to a general search limitation for evidence of the felony crime of embezzlement, the search is limited in three additional ways to information related to: "Fay Beydoun and/or Global Link International, Public Act 166 of 2022, and MEDC Case #377080." (MEDC's Exhibit 6, p 3, subsection B.1.) There is no ambiguity here; the warrant informs MEDC that the Attorney General seeks information regarding those three related entities, regardless of where and how that information is stored. The warrant lists a litany of different storage locations and types to ensure that every possible location of that information is covered. But any search is limited to information related to these three limiting items. In addition, the warrant is further restricted by a temporal limitation allowing a search of only information dated November 2020 and more recent. (*Id.*, p 4–6, subsections B.6.a.–j.) With both a subject-matter and temporal limitation, this was not a "general warrant," which is shown by the fact that investigators only took four boxes of documents and one laptop during the warrant's execution. (MEDC's Ex 9.)

C. *Carson* does not apply to a state-owned "loaner" laptop computer.

MEDC's reliance on the recent Supreme Court decision of *Carson* is misplaced. The *Carson* Court's decision was tailored to the unique privacy concerns of searching a personal mobile device. __ Mich at slip op 10–12, 16. In its decision, the *Carson* majority noted that the United States Supreme Court had recognized the unique and extensive privacy interest contained in a cell phone by stating,

> [T]he magnitude of the privacy interests at stake, noting that a cell phone can carry "the sum of an individual's private life" and that "[a] cell phone search would typically expose the government to far more than the most exhaustive search of a house[.]" That is, "[m]odern cell phones are not just another technological convenience," rather, most "who own a cell phone keep on their person a digital record of nearly every aspect of their lives – from the mundane to the intimate." [*Id.*, at 10, quoting *Riley v California*, 573 US 373, 394–396, 403 (2014).]

In deciding the case previously, the Court of Appeals' majority highlighted its concern that a search warrant lacking appropriate particularity would not protect personal photographs and videos of an intimate and compromising nature. *People v Carson*, __ Mich App __, slip op 12 (2024). The majority also expressed concern that a search warrant lacking particularity could expose personal medical information to review. *Id.*, at 12–13.

With the extent of the personal information preserved and accessible by a modern cell phone and noting the importance of considering the "circumstances and the types of items involved," our Supreme Court considered the necessary particularity limitations required to prevent a search of a personal cell phone from being expanded into a general search warrant. *Carson*, __ Mich at 10–11, quoting *People v Brcic*, 342 Mich App 271, 278 (2022).

In a plurality decision, our Supreme Court agreed with the Court of Appeals' majority that the search warrant for Carson's cell phone lacked the particularity necessary to avoid allowing a general search of all the contents of the cell phone. *Carson*, __ Mich at 31; *People v Carson*, __ Mich __, slip op 1 (2025) (BOLDEN, J., concurring in part and dissenting in part). The Court determined that the only meaningful limitation on the *Carson* warrant was to "records or documents pertaining to the investigation of Larceny in a Building and Safe Breaking." *Carson*, __ Mich at 13. Since this is so broad as to cover anything, it was insufficient to prevent a search of "every nook and cranny of the cell-phone data." *Id.*, at 17–19.

But the Court stopped short of creating "a per se rule of specificity that applies to all cell-phone searches."[13] *Id.*, at 19. Instead, holding that "a search warrant should be as particular as the circumstances presented permit and consistent with the nature of the item to be searched." *Id.*, at 20. In fact, the Court approved time and categorical limitations, where the "types of data expected to be encountered and searched" would be defined. *Id.*, at 20–22. As a result, the necessary specificity of the search directions for a search warrant continue to be controlled by the reasonableness of the request and the crime being investigated. *Id.*, at 22–23.

D. *Carson* does not apply to MEDC's claim.

As noted above, the recent decision in *Carson* is limited in application to search warrants for personal cell phones due to the extent of personal information contained

[13] This was because the Court recognized that the privacy implications of a personal cell phone was a "rapidly evolv[ing]" area of the law. *Carson*, __ Mich at 29.

within or accessible through them. But in the search at issue, no cell phones, either state-owned or personally owned, were seized by investigators. (MEDC's Exhibit 9; MEDC's Exhibit 8, pp 68–69.) The only electronic device seized from MEDC's office was one state-owned "loaner" laptop. (AG Ex 8, pp 68–69.)

State-owned laptops are not for personal use, and state policy provides that there is no expectation of privacy when using such a computer. (State of Michigan Acceptable Use of Information Technology, pp 2, 6; Ex E.) Unlike *Carson*, in this case there is no danger of accessing a "digital record of nearly every aspect of [individuals'] lives – from the mundane to the intimate.'" *Carson*, __ Mich at 10. It follows that *Carson*'s heightened particularity requirements do not apply when no privacy interest is threatened.

As argued above, the search warrant directing the search of the state-owned "loaner" laptop is sufficiently particular to comply with the Fourth Amendment. *Steele*, 267 US at 503. This is true even under the heightened particularity limitations imposed under *Carson* because the search of the laptop was limited in time and to three specific topics, see slip op, pp 20–23, and therefore avoiding any reasonable allegation that the warrant was broad enough to be considered a "general warrant."

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CONCLUSION AND RELIEF REQUESTED

Accepting MEDC's argument would turn all existing attorney-client precedent on its head. Our Supreme Court has held that the attorney-client privilege "be strictly confined within the narrowest possible limits consistent with the logic of its principle." *People v Nash*, 418 Mich 196, 219 (1983), citing 8 Wigmore, Evidence § 2291, p 554. In other words, the privilege claimant needs evidence that the privilege applies, and MEDC has none. For those reasons, this Court should affirm the trial court's decision.

Respectfully submitted,

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Dated: September 2, 2025

EXHIBIT A

STATE OF MICHIGAN
DISTRICT COURT FOR THE 47TH JUDICIAL DISTRICT
OAKLAND COUNTY

IN RE SEARCH WARRANT OF 300 NORTH WASHINGTON SQUARE, LANSING MI 48933

CASE NO. 2025-244
AG REPORT NO. 2024-0400628

_____/

TIMELINE OF AG'S DOCUMENT AND WITNESS

REQUESTS AND MEDC'S RESPONSES

- **April 19, 2024** – On behalf of AG, S/A Steve Morse makes the initial document request:

From: Morse, Stephen (AG) <Morses1@michigan.gov>
Sent: Friday, April 19, 2024 3:00 PM
To: Bradley Heffner (MEDC) <heffnerb@michigan.org>
Subject: copy of grant

Mr. Heffner,

I am investigating Fay Beydoun and her company, Global Link International, LLC (DBA: Global Link International Accelerator) as it relates to her MEDC grant. She was awarded a MEDC grant sometime after July of 2022. I am requesting a copy of the grant application and any supporting documentation along with a copy of the approved grant. If you have any questions, please feel free to contact me.

Regards, Steve

- **April 22, 2024** – MEDC counsel Brad Heffner responds:

Steve, we will be putting together the invoices and receipts as requested and I will forward them to you as soon as they are available.

As for the legal remedies update, let's schedule a call which I can provide an update. I am available Monday and Tuesday from 9-noon. If neither of these timeframes work for your team, we can identify some additional times.

Thanks,

Brad

- **May 1, 2024** – S/A Morse follows up with phone call, and Heffner provides three documents initial documents (the application form, the grant contract, and the budget):

Steve, following up on our phone call, attached is the Legislative Application Form, the supplemental budget for the grant, and the grant agreement.

Please let me know if/when you might want additional documentation related to the materials submitted to us by the grantee during the grant term, such as financials and quarterly progress reports.

I have not heard anything from Tom Q related to the FOIA exemption for law enforcement investigations. Let me know if you have any additional information on that front. We have taken the 10 day extension in the meantime to give time to discuss that option further.

Brad

- **May 15, 2024** – Fay Beydoun sends letter to Governor stating that Beydoun wishes to wind down the grant.

- **May 15, 2024** – S/A Morse follows up with Heffner on the continuing need for documents showing MEDC's interactions with GLI:

Brad,

I believe you received the same letter from Fay Beydoun of Global Link International that we did, basically requesting to withdraw from the grant.

While that obviously impacts the grant itself I just wanted to convey that we still need any invoices, eGRams, receipts, quarterly reports or other documents she may have submitted to date.

If you have any questions please feel free to contact me.

Regards, Steve

- **May 16, 2024** – Heffner pledges continued cooperation on documents:

Thanks Steve, I just saw a copy of the letter late this afternoon. I concur, any action to terminate/withdraw the grant does not impact any investigation that you are conducting. We will continue to coordinate with you on the documents that we possess.

Brad

- **May 24, 2024** – S/A Morse follows up with Heffner, for the first time expressly requesting MEDC's entire file:

Brad,

We are still in need of the documents regarding Global Link International and Fay Beydoun. We are seeking all financials, such as invoices, eGRams, FSRs, meeting minutes or notes regarding meetings, calendars, correspondence, and any other material in the file. We did receive the grant contract and application. Please advise if you have any questions or concerns.

Regards, Steve

- **May 24, 2024** – Heffner responds but is silent regarding the request for the entire file:

Thanks Steve, I will be forwarding you the remaining reports and financials that we have in our possession, including the responses that we provided Beth LeBlanc for her FOIA.

Brad

- **May 24, 2024** – Heffner sends S/A Morse a copy of MEDC's FOIA response to Detroit News reporter Beth LeBlanc:

Steve, to keep things moving, here are a group of documents that we have gathered in relation to Global Link and the grant. I will be out of the office for meetings the remainder of today and back on Wednesday if you have any questions.

Let me know if you are available for a quick call between 1-2:30 today while I am traveling. I want to coordinate with you on our legal plan of terminating the grant, but reserving rights.

- **June 10, 2024** – Investigators receive evidence from a non-MEDC witness during an attorney proffer. Among those documents are multiple emails with MEDC personnel indicating that Fay Beydoun had a series of meetings with MEDC in the summer of 2021 seeking approval for her "global business accelerator" plan – long before the Legislature passed the appropriation itself. During this entire period of seeking the grant, Fay Beydoun was on the MEDC board that would be in charge of administering that grant. For example, Beydoun had the following WhatsApp exchange with the witness regarding MEDC asking for details but "not too much":

[5/7/21, 4:44:05 PM] Fay Beydoun: FYI
Chris Rizik stated that it was a very thought out concept and the paper was very well written and that medc staff or anyone else is welcome to contact him. He did check his schedule and he is slammed for Monday and cannot join us for the meeting.
[5/10/21, 12:52:48 PM] Fay Beydoun: They are still asking for the details
[5/10/21, 12:56:26 PM] Sharif: Yes but again not too much
[5/10/21, 12:56:36 PM] Sharif: Who is Trevor again
[5/10/21, 12:56:37 PM] Fay Beydoun: Ok
[5/10/21, 12:56:46 PM] Fay Beydoun: Head of mobility
[5/10/21, 12:56:57 PM] Fay Beydoun: For medc very respected
[5/10/21, 12:57:16 PM] Sharif: Of course – he's protecting his turf

The witness also provided proof that MEDC had several documents preceding the grant award that Heffner had never identified nor provided to investigators:

Subject: G Link International Accelerator Updated Documents for todays meeting
Date: Wednesday, August 18, 2021 at 10:39:29 AM Eastern Daylight Time
From: Fay Beydoun
To: Joshua Hundt (MEDC), Trevor Pawl (MEDC), Fredrick Molnar (MEDC), Sharif Hussein, Fay Beydoun
CC: *Lavonne Blonde (MEDC), Kate Partington (MEDC)*
Attachments: GLink International Accelerator Overview 08182021.pdf, G Link Ideal Client Profile Worksheet DRAFT.pdf, G-Link Accelerator VISAS FOR FOUNDERS.pdf, GLink Target Venture Capital Angel Groups.pdf, G-Link International Accelerator Staff Consultant Bios_.pdf

Good Morning

We are looking forward to our conversation this morning. In preparation I have attached an updated overview of the G-Link International Accelerator program along with 4 additional attachments referenced in the overview.

Fay Beydoun
313-510-7916

In another of the emails, Beydoun reports to Foster –the Governor's chief operating officer – that MEDC approved the appropriation, and that MEDC CEO Quentin Messer was "aware of this":

Trish
Sorry I missed you at Mackinac. I wanted to give you a quick update regarding the Global Link project. The MEDC has giving their nod of approval as the governor requested. Quentin Messer and Susan Corbin are aware of this. The project will be included in the supplemental budget. I will provide you with the wording as soon as I have it. Let me know if you have any questions.
Stay safe

Fay Beydoun
313-510-7916

- **<u>June 11, 2024</u>** – S/A Morse asks Heffner to answer some of the investigators' questions:

From: Morse, Stephen (AG)
Sent: Tuesday, June 11, 2024 9:37 AM
To: Bradley Heffner (MEDC) <heffnerb@michigan.org>
Subject: FW: Beydoun Questions

Good morning Brad,

Can you answer the questions below?

Steve

- **July 9, 2024** – Having received no documents other than the FOIA response to date and no answers to the questions sent June 11, AAG Payok gets involved in asking MEDC to cooperate:

Brad, our office has been waiting for almost a month to get the responses requested. The AG has placed emphasis on this case and has asked that we reach out to ask MEDC to comply as soon as possible. If there are any issues we need to discuss first or any problems, please let me know.

We look forward to your response. Thanks.

- **July 9, 2024** – Heffner responds to AAG Payok, and answers the questions but provides no documents:

Matt and Steve, below are the answers I have been able to obtain on the requested information. Matt, I did reach out to Steve a couple of weeks ago to let him know we received the request but due to some pending meeting travel and others' schedules, we had not been able to respond yet.

I trust that he shared that with you and that you weren't under the impression that the June 11th email he referenced in the email today was the only communication we have had. I believe that Steve and I have had a good line of communication to collaborate on information that we receive, including most recently discussions the MEDC has had with Global Link's counsel on

termination of the grant and recapture of funds. I hope to continue that method to assist your office in the investigation and our own inquiries.

- **July 9, 2024** – After confirming that they do have frequent phone conversations, S/A Morse reiterates that the AG still needs the documents requested. Heffner promises he will be in contact:

Sounds good Steve. We expect some additional documents from Global Link's counsel early next week to support some of their expenses. I will get with you after our review.

Brad

- **August 7, 2024** – Heffner sends S/A Morse a copy of a second FOIA response to independent journalist Tedda Hughes:

Steve,

Attached are responsive documents and the response letter to a FOIA request from a Tedda Hughes related to Global Link.

****Please note** that pages 224-290 are the most recent documentation that has not yet been released to the public.

In addition, Beth LeBlanc submitted a FOIA for the new information included in these responsive documents late last week (pgs 224-290).

We will be required to release these documents tomorrow, but I wanted to make you aware of the information being released to the public.

Thanks,

- **October 21, 2024** – Heffner and S/A Morse have a telephone conference, but no more documents are provided.

- **November 4, 2024** – Heffner sends S/A Morse a copy of the response to another FOIA request by Beth LeBlanc:

> Steve, I hope you had a good conference. Please let me know if you have any time Wednesday or Thursday for a catch-up call on the Global Link investigation. In the meantime, I am attaching the most recent FOIA request from Beth LeBlanc with the responsive documents that we are releasing.
>
> Thanks,

- **November 20, 2024** – AAG Payok requests a meeting with MEDC counsel to discuss the need for documents, among other issues, and asks to talk with MEDC personnel that are actually working with Global Link:

> Brad, the AG is making this case a priority now that it's clear Beydoun will not wind this down. Can we get a time to meet next week with you or anyone else that has been involved in the wind-down talks, please?

- **November 25, 2024** – Heffner responds but only offers a meeting with himself and another MEDC lawyer:

> Linda Asciutto, MEDC General Counsel, and I are available today (Monday) from 3-4:30 and tomorrow (Tuesday) from 10-11. Does your team have any availability during those timeframes?

- **November 25, 2024** – Heffner sends another copy of a FOIA response to S/A Morse:

> Steve, attached is a narrow FOIA request that we will be releasing responsive documents connected to emails to and from Clark Hill related to Global Link.
>
> Brad

- **March 3, 2025** – Four months later, Heffner tells S/A Morse that MEDC is declaring Global Link in breach of the grant agreement

- **April 24, 2025** – Exactly one year after the initial request, S/A Morse again asks Heffner for all invoices and receipts to date:

Brad,

We would like to request Global Link International invoices and receipts from March 2023 to current.

Also, the status of the civil lawsuit against Global Link.

Regards, Steve

- **April 25, 2025** – Heffner again says he will send the requested documents and asks for a phone conference:

Steve, we will be putting together the invoices and receipts as requested and I will forward them to you as soon as they are available.

As for the legal remedies update, let's schedule a call which I can provide an update. I am available Monday and Tuesday from 9-noon. If neither of these timeframes work for your team, we can identify some additional times.

Thanks,

- **April 29, 2025** – AAG Payok, S/A Morse, and Heffner have a phone conference. Payok and Morse again request an entire file copy and to interview the non-lawyer witnesses who approve Global Link expenses. Heffner assures that he will provide the file copy and names of witnesses.

- **May 9, 2025** – AAG Payok follows up with Heffner on interviews with the necessary witnesses:

Hi, Brad. Just checking on the potential meeting with the administrator folks that worked on expense review for MAMA and GLI. Please let me know. The AG is very focused on moving this along.

Has there been any contact from new attorneys on Beydoun's behalf?

Thanks.

- **May 13, 2025** – Having received no response, AAG Payok follows up again:

Hi, Brad. I am checking on this again. We have instructions to move forward with investigative subpoenas if we don't have some concrete in the next few days, and I would very much like to avoid taking that step. Please let me know ASAP. And thanks.

- **May 13, 2025** – Heffner responds that "he will continue to push to get the information requested" and asks for details about investigative subpoenas:

Thanks for your patience and willingness to help. Our team just had to respond to a very large FOIA (9000 documents) so that had to take the focus of their time. Next on the list is any expenses through receipts or invoices for your team.

We have heard zero from Faye or anyone from Global Link on new counsel.

What investigative subpoenas are you considering? We have been a close partner with your office on this matter and plan to continue to do so. Maybe I'm misreading your email, but is the investigation of the MEDC?

We will continue to push to get you the information requested. If you have any concerns, let's get on the phone soon.

Brad

- **May 13, 2025** – AAG Payok explains the investigative subpoenas are a tool used get witness statements from non-targets, and asks for a follow-up in two days:

No, not an investigation of the MEDC. It's a tool prosecutors have to get something similar to a deposition in a criminal case from non-targeted witnesses. And the witness has immunity for anything said in the proceedings.

If you can get back to me by COB Thursday with a date in the next week and names, we should be good. Thanks.

- **May 13, 2025** – Heffner promises to provide the information "by Thursday":

Thanks, that makes sense. I won't see a need for that tool for the MEDC. I will get back to you by Thursday.

Brad

- **May 15, 2025** – At 1:24PM on Thursday, AAG Payok again follows up asking for a response:

Hi, Brad. We have an update meeting with Executive at 3:30 today. Do you have any names or dates for meetings to go over expense audits I can share?

Thanks.

- **<u>May 15, 2025</u>** – Heffner responds that – despite promising to provide such information two days ago – MEDC will not provide a single name or facilitate a single meeting. Instead, Heffner provides a "process" document that was modified in the middle of the Global Link grant:

> Hoping to keep you on track with the Executive on helping with the Global Link settlement. We have not identified an individual, however I think that our attached process document may be of better assistance in understanding how expenses are reviewed, last updated on April 1, 2024. If this is insufficient, please let me know.
>
> Brad

- **<u>May 21, 2025</u>** – Heffner sends S/A Morse the "invoices and receipts" requested on April 24:

> Steve, attached are the invoices and receipts that we have on file from March, 2023 to present. Let me know if you need any further information on these.
>
> Brad

  The documents are incomplete; this production omits documents and time periods already publicly released in FOIA responses. In other words, MEDC is providing investigators with less information than it is providing to journalists.

- **<u>May 22, 2025</u>** – Investigators interview a Global Link employee who stated that the employee told MEDC CEO Quentin Messer that Fay Beydoun was operating with no oversight and misspending money. The employee told investigators that Messer said Beydoun was "a friend" and did nothing with her information.

- **<u>June 2, 2025</u>** – Despite now professing total surprise that anything might have been amiss before the search warrant, MEDC hired independent criminal counsel for its own "witnesses":

Mr. Payok:

I have been asked to represent witnesses in what I am led to believe is your investigation. They would be personnel at the MEDC and Joanne Huls from the Governor's office. The requests came in separately. I reached out to Danielle Hagaman-Clark and Scott Teter before the clients gave me your name. I wanted to check in and make sure you do not see any conflict in me representing these people.

Thanks

Gerry

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EXHIBIT B

STATE OF MICHIGAN
DISTRICT COURT FOR THE 47TH JUDICIAL DISTRICT
OAKLAND COUNTY

IN RE SEARCH WARRANT OF 300 NORTH WASHINGTON SQUARE, LANSING MI 48933

CASE NO. 2025-244
AG REPORT NO. 2024-0400628

/

AFFIDAVIT OF SPECIAL AGENT KYLE KOLKA

1. I have been employed as a Special Agent with the Michigan Department of Attorney General since October 2023 and am currently assigned to the Financial Crimes Division. During my tenure, I have been trained in the procedures in which investigations are conducted by the Michigan Department of Attorney General. I have been a sworn law enforcement officer since January 2009 beginning with the Capital Region International Airport Police Department, then with the Grand Haven Department of Public Safety from March 2009 to February 2012, and then with the DeWitt Charter Township Police Department from February 2012 to September 2023.
2. On June 18, 2025, I participated in the execution of a search warrant on the Michigan Economic Development Corporation's (MEDC) headquarters, located at 300 North Washington Square, Lansing, MI 48933.
3. I have reviewed the Timeline that is attached to this brief as **Exhibit A** and confirmed that it is accurate to the best of my knowledge. While investigators did talk with and interview Brad Heffner, who answered some questions, there was a total lack of cooperation by MEDC in providing requested documents or identifying actual witnesses within MEDC.

4. All documents the investigators received from MEDC were either FOIA responses to journalists, additional copies of documents *already* received as part of those FOIA responses, or the initial grant application and budget.
5. Investigators knew by late summer 2024 that MEDC had engaged in meetings with Fay Beydoun regarding the Global Link International grant before the Legislature passed the grant, and while Beydoun was on the MEDC executive committee. When asked about this, MEDC promised that Beydoun had signed a conflict-of-interest letter. Though requested, to date we have never received a copy of that letter.
6. By the time that Brad Heffner purported to produce all "invoices and receipts" to date on May 21, 2025 – and we learned that this production omitted receipts and invoices we had *already* received from the FOIA responses – the investigative team believed it could no longer trust MEDC to produce the necessary documents.
7. As noted, I participated in the execution of a search warrant on MEDC's headquarters, located at 300 North Washington Square in Lansing on June 18, 2025. I wore a recording device at the time that captured audio recordings of the search process, and my interaction with Linda Asciutto specifically.
8. At 9:11AM, Linda Asciutto called outside counsel as the officers arrived, and some of that conversation is captured on the recording. She can be heard telling the lawyer that "they're not gonna take my _____ for sure, and I

guess they can haul me in . . ." She claimed there were 10-12 officers at the site.

9. Asciutto can next be heard saying "I gotta get up to my office." I advised Asciutto that she needed to stay in the lobby. Asciutto responded, "I don't need to stay anywhere." I again advised she could not return to her office, and Asciutto stated she was going back.

10. Asciutto asked me to step away while she spoke to her attorney, and I obliged.

11. After some time, Asciutto began to speak to Special Agent Steve Morse and asked him to leave Asciutto's office alone. When S/A Morse told Asciutto that the investigators needed to look at her office, Asciutto called it "outrageous" and maintained that her office was "off limits." This back and forth continued for some time. She stated again that "You're not entitled to my stuff," and insisted that the officers had to take her word as to where the materials they were authorized were located. S/A Morse maintained that agents would not seize anything but GLI materials but did need to search Asciutto's office for those materials.

12. I stepped away to call Assistant Attorney General Matt Payok regarding searching Asciutto's office. AAG Payok advised that Payok would talk to MEDC's lawyers to sort it out as long as investigators could leave all the disputed material undisturbed in a locked room that MEDC had no access to for the interim. I advised that I didn't believe that was possible, as we could

not guarantee the security of any documents. AAG Payok advised that we should see if that could be done first.

13. Per the conversation with AAG Payok, S/A Morse gave Asciutto the three identifiers on the search warrant – Fay Beydoun and/or Global Link International; 2022 PA 166; and/or MEDC Case #377080 – and asked Asciutto to set any material in her office with those identifiers aside, and AAG Payok would work with MEDC's counsel on the privilege issues before anything was seized. Asciutto stated such materials "already have been set aside." Asciutto then advised that there were materials stored in an empty office that "were privileged as well" and needed to be set aside.

14. Asciutto appeared to be asserting that documents gathered in boxes to be sent to the Legislature per subpoena were also "privileged," though she did not explain what privilege applied or why the Legislature was entitled to documents that law enforcement was not entitled to.

15. The empty office contained "totes" that Asciutto told investigators were another attorney's possessions being moved to a new office. The investigators did not search or seize the "totes."

16. Around this time, S/A Morse spoke with Morse's supervisor, Aubrey Sargent. Criminal Investigations Division Chief Sargent told S/A Morse that the Attorney General's executives had instructed the agents to seize the materials which Asciutto was claiming were privileged. S/A Morse and I then proceeded to bag and seal any disputed material. The AG would then appoint

a "taint team" to review the material for privilege before investigators could examine it.

17. At this point, as an investigator tried to take a picture of a document, Asciutto stated "that's attorney-client privilege and you're not taking a picture of that." S/A Morse then advised Asciutto of the new instructions from Chief Sargent. An argument ensued. Asciutto then stated "I don't know what the problem is with Payok. He knows he's not entitled to take attorney-client privileged documents." Asciutto stated that she didn't know what a taint team "meant."

18. Asciutto called her counsel and conferred the new instructions. S/A Morse reiterated that "if [the material] is related to Beydoun, we're taking it." Asciutto told her attorney "They are taking my box," and that it was "unbelievable."

19. S/A Morse secured two banker's box of documents that was not marked as privileged and restricted in any way.

20. In Asciutto's office, we found a purple folder open on her desk that had "GLI" on the first page visible. Asciutto stated, "Oh yeah, that's privileged, too." Asciutto then gave us a three-ring binder marked "GLI" that was on the floor of her office, which she also said was "privileged." These materials were placed into a banker's box unexamined and sealed to be delivered to the taint team.

21. Given Asciutto's reluctance to open her office to a search plus to the fact that she clearly had relevant material open and in use in her office for the exact subject of the search warrant, my conclusion is that Asciutto acted to conceal evidence.

FURTHER, AFFIANT SAYETH NOT.

S/A Kyle Kolka

Subscribed and sworn to before me
this 24th day of June, 2025

, Notary Public
Livingston County, Michigan Acting in Ingham
Commission Expires: 12-5-2025

EXHIBIT C

Matthew K. Payok
Assistant Attorney General
Financial Crimes Division
Michigan Department of Attorney General
P.O. Box 30755
Lansing, MI 48909
Office Phone: (517) 335-7560
Mobile: (517) 449-0471

From: Payok, Matthew (AG) <PayokM@michigan.gov>
Sent: Monday, June 23, 2025 5:40 PM
To: Gleeson II, Gerald J. <gleeson@millercanfield.com>; Rouman, Lori <Rouman@millercanfield.com>; Morse, Stephen (AG) <Morses1@michigan.gov>; Kolka, Kyle (AG) <KolkaK1@michigan.gov>
Subject: Re: In Re: Search Warrant of 300 North Washington Square, Lansing, MI 48933 / Case No. 2025-244 - Notice of Hearing on Defendant's Motion to Quash Search Warrant [MCPS-ACTIVE.FID3609710]

My understanding is that they have started to look at the documents MEDC intended to send to the Legislature in response to the subpoena. Those were apparently segregated and already redacted, and there are no privileges that would preclude review by us and not the Legislature, to my knowledge. So those would be boxes 1 and 2 on the tab.

Nothing that was sealed or marked as privileged has been touched, nor has the laptop, and will not be until after the court rules.

I am asking Steve and/or Kyle to correct me if I'm wrong on the facts here.

Matthew K. Payok
Assistant Attorney General
Financial Crimes Division
Michigan Department of Attorney General
P.O. Box 30755
Lansing, MI 48909

Office Phone: (517) 335-7560
Mobile: (517) 449-0471

From: Gleeson II, Gerald J. <gleeson@millercanfield.com>
Sent: Monday, June 23, 2025 3:39 PM
To: Rouman, Lori <Rouman@millercanfield.com>; Payok, Matthew (AG) <PayokM@michigan.gov>
Subject: RE: In Re: Search Warrant of 300 North Washington Square, Lansing, MI 48933 / Case No. 2025-244 - Notice of Hearing on Defendant's Motion to Quash Search Warrant [MCPS-ACTIVE.FID3609710]

Matt:

I expect the AG will not search any seized materials until this motion is resolved. I would appreciate if you would confirm that.

Thanks

Gerry

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Miller Canfield
T: +1.248.267.3296 | **F**: +1.248.879.2001

From: Rouman, Lori <Rouman@millercanfield.com>
Sent: Monday, June 23, 2025 3:18 PM
To: Payok, Matthew (AG) <payokm@michigan.gov>
Cc: Gleeson II, Gerald J. <gleeson@millercanfield.com>
Subject: In Re: Search Warrant of 300 North Washington Square, Lansing, MI 48933 / Case No. 2025-244 - Notice of Hearing on Defendant's Motion to Quash Search Warrant [MCPS-ACTIVE.FID3609710]

Mr. Payok –

Attached please find a Notice of Hearing and Proof of Service which we just filed with the court in connection with the above-referenced matter. Please note a hard copy will follow via first class mail.

Lori Rouman | Legal Assistant to Gerald J. Gleeson, II
Miller Canfield
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EXHIBIT D

Matthew K. Payok
Assistant Attorney General
Financial Crimes Division
Michigan Department of Attorney General
P.O. Box 30755
Lansing, MI 48909
Office Phone: (517) 335-7560
Mobile: (517) 449-0471

From: Payok, Matthew (AG)
Sent: Friday, August 15, 2025 8:20 AM
To: Gleeson II, Gerald J. <gleeson@millercanfield.com>; Rohlicek, Sydney G. <Rohlicek@millercanfield.com>
Cc: Eldridge, Scott R. <eldridge@millercanfield.com>; Chutkow, Mark <mchutkow@dykema.com>; Furtaw, Alison <afurtaw@dykema.com>
Subject: RE: Proposed Stip to extend suppression of search warrant affidavit

Good news, thanks you. Confirming nothing seized from MEDC or Mr. Messer will be unsealed or examined until this issue is resolved by a court or an agreement.

Matthew K. Payok
Assistant Attorney General
Financial Crimes Division
Michigan Department of Attorney General
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Lansing, MI 48909
Office Phone: (517) 335-7560
Mobile: (517) 449-0471

From: Gleeson II, Gerald J. <gleeson@millercanfield.com>
Sent: Thursday, August 14, 2025 4:04 PM
To: Payok, Matthew (AG) <PayokM@michigan.gov>; Rohlicek, Sydney G. <Rohlicek@millercanfield.com>
Cc: Eldridge, Scott R. <eldridge@millercanfield.com>; Chutkow, Mark <mchutkow@dykema.com>; Furtaw, Alison <afurtaw@dykema.com>
Subject: Re: Proposed Stip to extend suppression of search warrant affidavit

Matt:

Mark, Ali and I are working on a joint proposal that we hope will allay all parties' concerns and "land the plane." We will try and get back to you tomorrow in this regard. Please, in the interim, also remember that MEDC objects to the review of any privileged information or files on the phone seized from Mark and All's client.

Thanks

Gerry

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From: Payok, Matthew (AG) <PayokM@michigan.gov>
Sent: Tuesday, August 12, 2025 3:24:21 PM
To: Gleeson II, Gerald J. <gleeson@millercanfield.com>; Rohlicek, Sydney G. <Rohlicek@millercanfield.com>
Cc: Eldridge, Scott R. <eldridge@millercanfield.com>
Subject: RE: Proposed Stip to extend suppression of search warrant affidavit

Thank you, Gerry. A couple of points:

- I would not object to an *in camera* review of anything if that will help resolve this issue; I am not sure how much it would cost or how long it would take. But if we had a way of just sending the disputed docs to in camera review via agreement, I would recommend that to my higher-ups. I can't guarantee their response, and I understand you have other cases where the taint team is an issue so you may need to get a decision here. But I am happy to discuss this as an option.

- I am not opposed to *your* firm reviewing the affidavit if we create something in writing making it a non-waiver agreement in furtherance of trying to resolve an ongoing dispute and ensuring non-disclosure to Messer's or any other potential defendant's counsel. I am happy to discuss this as well if you want.

- I realized a few hours ago that we needed to continue suppression on the Beydoun SW affidavit as well, so we did an *ex parte* motion instead. You replied before I had time to tell you, and I apologize for that.

- I very much appreciate MEDC continuing to produce documents. What I have reviewed from the two banker's boxes that were going to the Legislature establishes that MEDC was asking questions about Beydoun's expenses early on, which confirms to me that no one below the Hundt/Messer level did anything I am concerned about. But as far as the "cooperation" issue on appeal, I can tell you we maybe had 5% of the material in those boxes until you got involved. And honestly I have no idea why. We didn't even get close to what the folks filing FOIA requests got in aggregate, and most of the items that show up in the newspaper are new to me. I understand why you are appealing the privilege issue, but the lack of cooperation issue was definitely real. At this point, I can accept that it was unintentional or that there was some failure to communicate, and what I see so far is proof these folks were doing their jobs.

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Michigan Department of Attorney General
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Office Phone: (517) 335-7560
Mobile: (517) 449-0471

From: Gleeson II, Gerald J. <gleeson@millercanfield.com>
Sent: Tuesday, August 12, 2025 2:35 PM
To: Payok, Matthew (AG) <PayokM@michigan.gov>; Rohlicek, Sydney G. <Rohlicek@millercanfield.com>
Cc: Eldridge, Scott R. <eldridge@millercanfield.com>
Subject: RE: Proposed Stip to extend suppression of search warrant affidavit

Matt:

Contrary to Ms, Nessel's recent public remarks, the MEDC has and will cooperate with your investigation (subject to our effort to protect the attorney client privilege). While we have expressed a strong interest in reviewing the affidavit, we will agree to the additional 56 days as a good faith sign of the MEDC's cooperation. In doing so, we are not waiving our appellate argument that the affidavit was incorporated by reference in the search warrant. To the extent that Judge Cunningham would like to review the affidavit in camera, we would like to make sure our stipulation does not prevent that.

We also expect to have our first production of documents to you later this week. My suspicion is that you will have already seen most, if not all, of the documents already.

Thanks

Gerry

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T: +1.248.267.3296 | **F**: +1.248.879.2001

From: Payok, Matthew (AG) <PayokM@michigan.gov>
Sent: Monday, August 11, 2025 3:05 PM

To: Gleeson II, Gerald J. <gleeson@millercanfield.com>; Rohlicek, Sydney G. <rohlicek@millercanfield.com>
Subject: Proposed Stip to extend suppression of search warrant affidavit

Gerry, I think I asked you about this previously, although possibly not. The AG seeks to extend the suppression of the affidavit for an additional 56 days in this case. I have attached a stipulation along those lines. Please let me know if this is OK with you.

Thanks.

Matthew K. Payok
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Mobile: (517) 449-0471

EXHIBIT E

STATE OF MICHIGAN

COURT OF APPEALS

WARNER NORCROSS & JUDD, L.L.P.,

Plaintiff-Appellant,

v

POLICE & FIRE RETIREMENT SYSTEMS OF THE CITY OF DETROIT, RDD INVESTMENT CORPORATION, RONALD ZAJAC, P.C., F. LOGAN DAVIDSON, P.C., ROMULUS DEEP DISPOSAL LIMITED PARTNERSHIP, REMUS JOINT VENTURE and ENVIRONMENTAL DISPOSAL SYSTEMS, INC.,

Defendants-Appellees.

UNPUBLISHED
February 23, 2012

No. 300866
Wayne Circuit Court
LC No. 09-014899-CK

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order denying its motion to compel discovery in this breach of contract action. Because the trial court abused its discretion by determining, without sufficient basis and without conducting an in camera review, that the documents sought were privileged, we reverse and remand for further discovery consistent with this opinion.

This case arises out of an alleged breach of contract that Remus Joint Venture ("Remus") and Environmental Disposal Systems, Inc. ("EDS"), entered into with plaintiff law firm. Plaintiff claims that it represented Remus and EDS in obtaining environmental licenses and permits for a waste disposal project, and that all defendants remain liable for the fees incurred. Plaintiff asserts that defendants entered into a prohibited transfer of the property to defeat their fee claims. The merits of the case are not before us. This case involves several other entities, including: (1) Romulus Deep Disposal Limited Partnership, which provided capital and support for the waste disposal project; (2) Police and Fire Retirement Systems of the City of Detroit ("PFRS"), which provided over $40 million in capital to the project; and (3) RDD Investment Corporation ("RDD"), which now owns the property and permits related to the project.

The parties entered in response to plaintiff's interrogatories and notices to produce a voluntary process by which defendants would prepare a discovery privilege log of documents they would withhold from discovery. Plaintiff argues that the trial court abused its discretion by

denying its motion to compel defendants to demonstrate that the documents that they withheld from discovery are protected under either the attorney-client or work-product privileges. We review for an abuse of discretion a trial court's decision denying a discovery request. *Augustine v Allstate Ins Co*, 292 Mich App 408, 419; 807 NW2d 77 (2011). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). The applicability of the attorney-client or work-product privilege is a question of law that this Court reviews de novo. *Augustine*, 292 Mich App at 419.

After defendants provided a privilege log, plaintiffs narrowed their request for documents to a time frame of September 28, 2006 through November 7, 2006, a period of 41 days of documents. On a subsequent motion to compel discovery, the trial court then ordered compliance with a privilege log as outlined in the order. Thereafter, plaintiff moved for an order compelling defendants to provide a privilege log as previously ordered. Plaintiff argues that the trial court abused its discretion by refusing to compel defendants to provide a discovery log specifically explaining, in sufficient detail, why each withheld document is privileged such that the court and plaintiff may independently verify defendants' claim. Defendants, on the other hand, contend that the privilege log that they provided was sufficient under the circumstances of this case. Thus, the parties essentially disagree on what a party must show to establish that a privilege applies.

MCR 2.302(B)(1) provides the general standard regarding the scope of discovery:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things . . . . It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This Court has characterized this standard as "an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case." *Reed Dairy Farm v Consumers Powers Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998). As stated in the court rule, matters that are privileged are not discoverable.

The attorney-client privilege protects confidential communications between a client and attorney, as well as communications made through their agents, when the communications are made for the purpose of obtaining legal advice. *Augustine*, 292 Mich App at 420. The attorney-client privilege is narrow in scope and protects only communications; it does not protect the underlying facts from discovery, even if those facts are included in a communication. *Reed Dairy Farm*, 227 Mich App at 619-620. The client may waive the attorney-client privilege by disclosing the communication to a third-party. *Leibel v Gen Motors Corp*, 250 Mich App 229, 242; 646 NW2d 179 (2002). When a client is an organization, the privilege extends only to the organization's agents and employees authorized to speak on behalf of the organization regarding the subject matter of the communication. *Reed Dairy Farm*, 227 Mich App at 619. "Although

either the attorney or the client can assert the privilege, only the client may waive the privilege." *Augustine*, 292 Mich App at 420 (quotation marks, brackets, and citation omitted).

Similarly, the work-product doctrine protects notes, documents, and other tangible materials from discovery if prepared in anticipation of litigation. *Augustine*, 292 Mich App at 420. An exception exists if a party demonstrates a substantial need for the work product and shows that obtaining the information elsewhere would constitute an undue hardship. *Id*. at 421. This exception applies, however, only to factual, and not deliberative, work product. *Id.* "Like the attorney-client privilege, a party may waive work-product protections. *Id*.

In *Augustine*, 292 Mich App at 414, the trial court awarded the plaintiff attorney fees under the no-fault act. The defendant appealed, and this Court remanded to the trial court to apply the framework set forth in a Michigan Supreme Court case decided after the defendant filed its appeal. *Id*. at 414-415. On remand, the trial court granted the defendant's request for an evidentiary hearing regarding the amount of the attorney fees. *Id*. at 415. The defendant requested that the trial court allow its expert to examine the plaintiff's entire litigation file. *Id*. Although the defendant was willing to review a redacted version of the file, the court refused to consider the defendant's request because of its concern that the defendant's attorney might obtain strategy information that could be used against the plaintiff's attorneys in future cases. *Id*. at 416, 422. The expert, therefore, was unable to offer a complete assessment regarding the reasonableness of the plaintiff's attorney fees. *Id*. at 418, 422. Ultimately, the trial court awarded the plaintiff $250,000 in attorney fees. *Id*. at 418.

On appeal, this Court held that the trial court's blanket refusal to consider allowing the defendant to review a redacted version of the litigation file was highly unreasonable and amounted to an abuse of discretion. *Augustine*, 292 Mich App at 422. This Court reasoned that the defendant's expert was unable to offer a complete opinion "without some materials from which to extrapolate[,]" and that the testimony of the plaintiff's attorneys "was replete with speculation [and] conjecture" because the attorneys lacked any specific memory regarding the billable time spent on the plaintiff's case. *Id*. at 422-423. This Court stated that the plaintiff's attorneys could have provided logs, reports, summaries, and spreadsheets that corroborated their billing statements with all mental impressions, thoughts, and strategies completely redacted. *Id*. at 422.

Similarly, in *Ostoin v Waterford Twp Police Dep't*, 189 Mich App 334, 339; 471 NW2d 666 (1991), this Court held that the trial court abused its discretion by categorically denying the plaintiff's discovery request without conducting an in camera review of the personnel files "to determine whether they contain relevant, nonprivileged material subject to discovery[.]" This Court stated that factual material relevant to the plaintiff's failure-to-train claim "could be extracted from the files by an in camera inspection similar to the court's in camera review of the personnel files of the four involved officers." *Id.*

In accordance with this precedent, we hold that the trial court's blanket refusal to require defendants to justify their asserted privilege constituted an abuse of discretion. The trial court did not conduct an in camera review of the documents and did not have sufficient information regarding the documents to determine whether they were privileged. Without information regarding a particular document's author, recipients, and subject matter, the court was unable to

assess the applicability of the attorney-client privilege or work-product doctrine in a principled way. The information provided fails to show, for each withheld document, that the parties intended the document to remain confidential, or that the purpose of the document was to obtain or provide legal advice.

Contrary to defendants' argument, the privilege log provided to plaintiff did not establish that the documents sought were privileged. The log merely listed broad subject-matter categories, some of which do not appear to fall within any privilege or protective rule. For example, one entry covering numerous documents states that the documents contain notes and impressions regarding "drafting, negotiation and execution of loan, mortgage and other transactional documents related to PFRS's investment in the facility." This broad category appears to largely relate to business matters, and the documents sought may not contain legal advice. Further, the entries do not identify to whom defendants have disclosed the documents, effectively precluding plaintiff from establishing that defendants waived the privilege through disclosure. Additionally, while the work-product doctrine protects an attorney's notes and impressions in a document, it only does so if the document was prepared in anticipation of litigation. Some of the documents that defendants cite relate back to 1992, well before this litigation was anticipated. Moreover, even if the documents contain privileged or protected communications, the trial court could have ordered that redacted versions be provided to allow plaintiff to discover the nonprivileged material contained within the documents. Because the trial court appears to have based its ruling on the mistaken belief that all documents containing any communications between a client and attorney are privileged, its ruling constituted an abuse of discretion.

Further, we note that the documents may be highly relevant to plaintiff's claim. The trial court's ruling precluded plaintiff from discovering information pertinent to whether Remus and EDS breached their contract with plaintiff, whether defendants acted as a partnership or joint venture, and whether RDD was a successor entity. The documents may contain information indicative of whether defendants fraudulently approved the transfer of assets to RDD and whether attorneys Zajac and Davidson advised and assisted defendants in transferring all of the real and personal property related to the project to RDD for nominal value in violation of the Uniform Fraudulent Transfer Act ("UFTA"), MCL 566.31.

In addition, the ruling denied plaintiff the opportunity to argue that the crime-fraud exception to the attorney-client privilege applies. Defendants argue that, because the UFTA does not require a showing of EDS's intent, the documents are not relevant to establish the crime-fraud exception. This argument misinterprets the basic premise of the crime-fraud exception. The attorney-client privilege "does not protect communications made for the purpose of perpetrating a fraud." *Fassihi v Sommers, Schwartz, Silver, Schwartz & Tyler, PC*, 107 Mich App 509, 519; 309 NW2d 645 (1981). To establish the exception, the party seeking discovery "must show that there is a reasonable basis to (1) suspect the perpetration or attempted perpetration of a crime or fraud and (2) that the communications were in furtherance thereof." *People v Paasche*, 207 Mich App 698, 707; 525 NW2d 914 (1994). Thus, a communication is not privileged if the communication itself was made for the purpose of, or in furtherance of, a crime or fraud. The communication, however, need not actually prove an underlying crime or fraud, or any element thereof. So long as the communication is relevant, if its purpose was to perpetrate a crime or fraud, the attorney-client privilege does not protect the communication.

Thus, in this case, although the UFTA may not require a showing of intent, the communications made to further the alleged fraudulent transfer may aid plaintiff in proving that defendants are jointly liable under a joint partnership or successorship theory and that all defendants are therefore liable for the breach of contract. In sum, the party's purpose in making the communication is the relevant inquiry in determining the applicability of the exception.

Because the parties entered into a voluntary alternative method for identification of privileged documents that has not brought clarity to the determination as to which documents are privileged such that the merits of the case can be addressed, the process in the absence of an alternative agreement should be abandoned. Instead the court should order, in the absence of an alternative agreement by the parties, the 41 days of referenced documents produced to the court for in camera review as to privilege.

We reverse and remand for further discovery consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Patrick M. Meter
/s/ Pat M. Donofrio