MICHIGAN COURTS NEWS RELEASE
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FOR IMMEDIATE RELEASE

Michigan Supreme Court to hear myriad issues in April oral arguments; medical malpractice, Persons with Disabilities Civil Rights Act, common work area doctrine, felony-firearm statute, Whistleblowers' Protection Act, and preliminary examination waivers among matters justices will consider

LANSING, MI, March 30, 2017 - The Michigan Supreme Court will hear oral arguments on April 12 and 13 beginning at 9:30 each day in the sixth-floor courtroom at the Hall of Justice.

The schedule of arguments is posted on the Supreme Court's oral arguments homepage. The Court broadcasts oral arguments and other hearings live via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench.

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These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Wednesday, April 12

Docket # 152916

PEOPLE OF THE STATE OF MICHIGAN, Michael A. Tesner
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Genesee – Neithercut, G.)

TMANDO ALLEN DENSON, Scott A. Grabel
Defendant-Appellant.

The defendant walked in on his daughter and her 17-year-old boyfriend Shamark in a compromising position. A fight ensued between the defendant and Shamark that resulted in Shamark going to the hospital emergency room. He required fifteen sutures and seven staples to close his wounds. Shamark testified that the defendant attacked him with a knife unprovoked, but the defendant claimed that his daughter cried for help and Shamark threatened him with a knife when he tried to protect her. The trial court allowed the prosecutor to present evidence that in 2002, the defendant broke out a person's car window and then shot him. The jury convicted the defendant of assault with intent to do great bodily harm less than murder, and the Court of Appeals affirmed. The defendant sought leave to appeal with the Supreme Court. The Supreme Court ordered oral argument on the application, asking the parties to address: (1) whether the trial court erred when it admitted evidence of the circumstances underlying the defendant's 2002 conviction for assault with intent to do great bodily harm and, if so, (2) whether the error was harmless.

Docket # 153723

JEFFREY HAKSLUOTO and CAROL HAKSLUOTO, Plaintiffs-Appellants, — Daniel W. Rucker

v (Appeal from Ct of Appeals) (Macomb – Maceroni, P.)

MT. CLEMENS REGIONAL MEDICAL CENTER, a/k/a McLAREN MACOMB GENERAL RADIOLOGY ASSOCIATES, P.C. and ELI SHAPIRO, D.O., Defendants-Appellees. — Jared M. Trust

In 2011, Jeffrey Haksluoto went to the emergency room for abdominal pain and other symptoms and was given a CT scan, which he alleges was misinterpreted, leading to a failure to recognize the severity of his ailment. Exactly two years after the alleged misreading of the CT scan, Haksluoto mailed the defendants a notice of intent (NOI) to sue for medical malpractice. He filed a complaint exactly 183 days later. The defendants argue that the suit is barred by the statute of limitations because Haksluoto's NOI was untimely, and even if it was timely, the complaint was untimely because it was filed one day too late. The trial court denied the motion to dismiss the complaint but the Court of Appeals reversed the trial court in a published opinion. Haksluoto filed an application for leave to appeal. The Supreme Court granted leave, directing the parties to address: (1) whether a notice of intent under MCL 600.2912b that is mailed on what would otherwise be the last day of the limitations period of MCL 600.5805(6) tolls the limitations period, as provided by MCL 600.5856(c); and (2) if the limitations period was tolled in this case, whether Haksluoto was required to file on the 182nd day of the notice period or the day after the 182nd day in order for the complaint to be timely.

Docket # 153651

PEOPLE OF THE STATE OF MICHIGAN, Brian L. Mackie
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Washtenaw – Burress, D.)

MELVIN EARL HOWARD, Christine A. Pagac
Defendant-Appellant.

The defendant was charged with criminal sexual conduct third degree for engaging in sexual intercourse with the victim when she was passed out from a combination of alcohol and marijuana. At the defendant's first trial, one of the prosecution witnesses testified in a manner that suggested she was untruthful. The trial court, after questioning counsel about the witness's testimony, sua sponte declared a mistrial. The defendant was tried a second time, and found guilty. The Court of Appeals affirmed his convictions. The defendant filed an application for leave to appeal with the Supreme Court, alleging, among other things, that double jeopardy precluded his second trial when there was no manifest necessity justifying the trial court's sua sponte declaration of a mistrial and no evidence that he consented to the grant of a mistrial. The Supreme Court ordered oral argument on the application, asking the parties to brief: (1) whether manifest necessity justified the grant of a mistrial at the defendant's first trial; (2) whether defense counsel implicitly consented to the grant of a mistrial; (3) whether defense counsel was ineffective for not moving to dismiss on double jeopardy grounds prior to retrial; and (4) whether the statement in a prior Supreme Court case to the effect that "mere silence or failure to object to the jury's discharge is not such consent," is an accurate statement of law.

Docket # 154159

TAMMY McNEILL-MARKS, Russell C. Babcock
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Gratiot – Tahvonen, R.)

MIDMICHIGAN MEDICAL CENTER-GRATIOT, Sarah K. Willey
Defendant-Appellant.

The plaintiff worked as a nurse for the defendant, MidMichigan Medical Center. The plaintiff had a personal protection order (PPO) against a woman named Marcia Field. When the plaintiff was at work, Field appeared in a hallway, being pushed in a wheelchair. Plaintiff contacted her lawyer, and while Field was still a patient in the hospital, a process server served her with the PPO. The defendant fired the plaintiff, concluding after an investigation that she had violated the Health Insurance and Portability Accountability Act of 1996 and the defendant's own privacy policy by telling her lawyer that Field was in the hospital. The plaintiff sued the defendant under the Whistleblowers' Protection Act (WPA), claiming that it illegally retaliated against her for engaging in a "protected activity." Protected activity includes reporting a violation of the law to

a public body. The plaintiff alleged that her attorney was a member of the State Bar of Michigan, and that the Bar is a public body. The trial court granted summary disposition to the defendant, but the Court of Appeals reversed in a published opinion, holding that the State Bar is a public body. The Supreme Court ordered oral argument on the application, asking the parties to address whether the plaintiff's communication with her attorney constitutes a report to a public body within the meaning of the WPA.

Thursday, April 13

Docket # 153830

RONNIE DANCER and ANNETTE DANCER, Donald M. Fulkerson
Plaintiffs-Appellees,

v (Appeal from Ct of Appeals)
Kalamazoo– Lightvoet, P.)

CLARK CONSTRUCTION COMPANY, INC., Nathan Peplinski
Defendant-Appellant,
and

BETTER BUILT CONSTRUCTION SERVICES, INC.,
Defendant-Appellee.

The plaintiff, Ronnie Dancer, was a masonry worker employed by Leidal & Hart Mason Contractors. He was injured while working on the construction of a large new building after he fell some 40 feet from scaffolding he had helped raise. Dancer sued the general contractor on the project, Better Built Construction Services (BBCS), as well as Clark Construction Company, which was teamed with BBCS as part of a federal mentorship program. Although general contractors are generally not liable for injuries suffered by employees of subcontractors, an exception to the general rule known as the "common work area" doctrine permits suits when injuries occur due to readily observable and avoidable dangers creating a high degree of risk to workers from multiple subcontractors in common work areas. The trial court granted summary disposition to BBCS and Clark Construction, finding that Dancer had failed to show facts supporting the exception to the rule against general contractor liability. In a 2-1 unpublished opinion, the Court of Appeals ruled that the trial court erroneously failed to recognize questions of material fact concerning whether the scaffolding from which plaintiff fell was a common work area, whether the conditions that caused plaintiff to fall posed a high degree of risk to a significant number of workers, and whether plaintiff's actions during the incident absolved defendants of liability. The Court reversed the order granting summary disposition to defendants and remanded the case to the trial court. The Supreme Court ordered oral argument on the application in the case against Clark Construction, directing the parties to address whether Dancer presented sufficient evidence to establish genuine issues of material fact with regard to the elements of the common work area doctrine requiring "a high degree of risk to a significant number of workmen, and . . . a common work area."

Docket # 154039

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, — Emil Semaan

v (Appeal from Ct of Appeals) (Macomb – Biernat, J.)

DWAYNE EDMUND WILSON, Defendant-Appellee. — Peter Jon VanHoek

The defendant in this case was convicted of unlawful imprisonment and felony-firearm (third offense). He was originally sentenced to the 10-year prison term required by MCL 750.227b(1) for third offense felony-firearm. The Court of Appeals ordered that the sentence for felony-firearm be reduced to 5 years, because a former Supreme Court case, People v Stewart, held that prior felony-firearm convictions arising from the same criminal transaction can only be counted once. The prosecutor filed an application for leave to appeal, arguing that the reasoning of People v Stewart was undermined by a different Supreme Court decision, People v Gardner, such that the defendant's 10-year sentence should be reinstated. The Supreme Court ordered oral argument on the application, asking the parties to address: (1) whether the felony-firearm statute requires two prior convictions under the statute to have arisen from separate criminal incidents in order for a third conviction under the statute to trigger the 10-year imprisonment penalty; and, if not (2) whether this Court should overrule People v Stewart.

Docket # 154396

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, — Amy M. Somers

v (Appeal from Ct of Appeals) (Wayne – Talon, L.)

GARY PATRICK LEWIS, Defendant-Appellee. — Chari K. Grove

At the defendant's preliminary exam, he refused to work with his appointed attorney and interrupted the proceedings while using profane language. The trial court eventually expelled the defendant from the courtroom. He was bound over for trial and convicted of four counts of third-degree arson and one count of second-degree arson. He was represented by counsel at trial. The defendant appealed, arguing, among other things, that a "structural error" occurred when the defendant and his attorney were excused from the preliminary examination without obtaining a valid waiver of the defendant's right to counsel. The Court of Appeals granted the defendant a new trial. In doing so, it stated that it was bound by prior court decisions, but if it had been writing on a clean slate it would have utilized a harmless error analysis and found that a new trial was not warranted. The prosecutor sought leave to appeal, and the defendant filed a cross-appeal. The Supreme Court ordered oral argument on the application, asking the parties to

address whether the denial of counsel to the defendant at his preliminary examination is an error requiring automatic reversal or whether harmless error analysis applies.

Docket # 152889

BETTINA WINKLER, by her Next Friends HELGA DAHM WINKLER and MARVIN WINKLER, Plaintiff-Appellant,	Nicholas Roumel
v (Appeal from Ct of Appeals) (Oakland– Nichols, R.)	
MARIST FATHERS OF DETROIT, INC., d/b/a NOTRE DAME PREPARATORY HIGH SCHOOL AND MARIST ACADEMY, Defendant-Appellee.	Thomas J. Rheaume, Jr.

The Marist Fathers of Detroit Inc. (the defendant) operates a Catholic high school along with an affiliated middle school. Bettina Winkler was a student at the middle school but she was denied admission to the high school. She sued the defendant under the Persons with Disabilities Civil Rights Act, alleging that the defendant wrongfully discriminated against her because she is learning disabled. The defendant moved to dismiss the complaint, arguing that civil courts do not have jurisdiction to review a religious school's admissions decisions. It relied on Dlaikan v Roodbeen, a Court of Appeals case holding that civil courts lack jurisdiction over claims for breach of contract against a religious school arising from a denial of admission, because those claims are "entangled in questions of religious doctrine and ecclesiastical polity." The trial court denied the defendant's motion, saying Dlaikan did not apply because it involved a contract claim, whereas this case involves a statutory claim of disability discrimination. The Court of Appeals reversed the trial court, and Winkler sought leave to appeal. The Supreme Court ordered argument on the application, asking the parties to address: (1) whether the doctrine of ecclesiastical abstention involves a question of a court's subject matter jurisdiction over a claim; (2) whether the Court of Appeals correctly concluded that consideration of Winkler's challenge to the defendant's admission decision would have impermissibly entangled the trial court "in questions of religious doctrine or ecclesiastical polity;" and (3) whether the Court should overrule Dlaikan v Roodbeen.