State Court Administrative Office Update

Michigan Association of District Court Magistrates

September 20, 2019
Annual Conference
Crystal Mountain

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SCAO Update

Directives, Resources, and Information

- Circuit and district court record retention and disposal schedules are updated to address LEIN audit requirements for postjudgment warrants.
- Michigan Trial Court Records Management Standards have been established pursuant to MCR 8.119(C). These standards consolidate retention and disposal policies and the updated Michigan Trial Court Case Management Standards into a single source.
- An access security matrix has been designed to assist system providers with establishing user groups and access levels, and to assign an access level for each user group for direct access and authorized web-based application users. This is a counterpart to the updated Nonpublic and Limited-Access Court Records chart. For other information on access to electronic records, see Section 2 of the new Michigan Trial Court Records Management Standards.
- Criteria for mandating e-Filing pursuant to Administrative Order 2019-2 and information on the process for a filer to request an exemption from e-Filing. This includes a new model LAO for e-Filing Access Plan, a model MOU, a calculator, and a grievance form.
- The list of state civil infractions has been updated.
- Memo clarifying the process for contesting the abandonment of vehicle process or towing and storage fees of vehicles under MCL 257.252a, *et seq*.
- Memo addressing new public acts that were enacted prohibiting a police officer from taking a person's driver's license or any other monetary security to guarantee the nonresident's appearance in court.
- The Jury Management Best Practices Manual is now available.
- The Policy and Procedure Manual for Certification of Problem-Solving Courts is now available.
- The circuit, district, and probate court fee charts have been updated.
- Memo to clarify questions regarding court officer authority.
- Updated memo regarding technical amendments to MCR 2.002, Waiver of Fees for Indigent Persons.
- Courts can aid their transition to MiFILE by reviewing the information in Preparing for MiFILE in Your Court.
- Updates have been made to the Recommended Range of Fines and Costs for Civil Infractions.
- Notice to courts about MiFILE implementation and communications.
- Memo regarding amended restitution rules.
- New SCAO in Brief covers some frequently asked questions regarding court-ordered criminal restitution.
- Read about changes in the procedure for processing State Bar of Michigan dues for courts that have multiple judges and attorneys.
- Memo regarding Michigan Indigent Defense Commission Act Amendments.
- Memo regarding the Michigan Regulation and Taxation of Marijuana Act (MRTMA).

- Please note that arrest records and biometric data for certain offenses are now eligible for destruction after dismissal or nolle pros of the charge pursuant to recent changes to MCL 28.243. Please review the updated forms, which now include a checkbox for requesting and/or ordering MSP to destroy the record. Motion for Destruction of Biometric Data and Arrest Record (MC 235), Order Regarding Destruction of Biometric Data and Arrest Record (MC 392), Motion/Order of Nolle Prosequi (MC 263), Order of Acquittal/Dismissal or Remand (MC 262).

Court Rules and Administrative Orders

Proposed

MCR Cite: 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119, and Proposed Rescission of Rules 2.226 and 8.125
ADM File No: 2002-37
Comment Expires: September 1, 2019
Staff Comment: The proposed amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and proposed rescission of MCR 2.226 and 8.125 would continue the process for design and implementation of the statewide electronic-filing system. ***Pending public hearing 9-18-19.**

MCR Cite: 3.106
ADM File No: 2017-02
Comment Expires: September 1, 2019
Staff Comment: The proposed amendment of MCR 6.508 would enable a defendant to show actual prejudice in a motion for relief for judgment where defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel, and it was reasonably likely the defendant and court would have accepted the plea (which would have been less severe than the judgment or sentence issued after trial) but for the improper advice. ***Pending public hearing 9-18-19.**

MCR Cite: 3.106
ADM File No: 2018-18
Comment Expires: September 1, 2019
Staff Comment: The proposed amendment of MCR 3.106 would require trial courts to provide a copy of each court officer's bond to SCAO along with the list of court officers. ***Pending public hearing 9-18-19.**

MCR Cite: 6.610
ADM File No: 2018-23
Comment Expires: October 1, 2019
Staff Comment: The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant's duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

MCR Cite: 8.123
ADM File No: 2018-27
Comment Expires: July 1, 2019
Staff Comment: Because counsel appointment plan review and data collection regarding payments for appointed counsel is now, by statute, a requirement of the Michigan Indigent Defense Commission under MCL 780.989 and MCL 780.993, this proposed amendment would rescind MCR 8.123, which requires certain data be collected from courts and plans for appointment be approved by SCAO. ***Pending public hearing 9-18-19.**

MCR Cite: 8.115
ADM File No: 2018-30
Comment Expires: September 1, 2019
Staff Comment: The proposed amendment of MCR 8.115, submitted by the Michigan State Planning Body, would explicitly allow the use of cellular phones (as well as prohibit certain uses) in a courthouse. The proposal is intended to make cell phone and electronic device use policies more consistent from one court to another, and broaden the ability of litigants to use their devices in support of their court cases when possible.

MCR Cite: 8.110
ADM File No: 2019-03
Comment Expires: August 1, 2019
Staff Comment: The proposed amendment of MCR 8.110 would provide additional opportunity for input by judges in the process for chief judge selection in courts, would clarify that vacation leave time may be taken by notifying the chief judge, and would make vacation leave policies more uniform from one court to another. Under the proposed amendment, a chief judge could require a judge to forego vacation or judicial, education, or professional leave to ensure docket coordination and coverage. ***Pending public hearing 9-18-19.**

Adopted:

MCR Cite: 1.109 and Adoption of Administrative Order 2019-2
ADM File No: 2002-37
Effective Date: September 1, 2019
Staff Comment: The amendment of MCR 1.109 provides a single statewide process for requesting an exemption from the requirement to e-File, including both an automatic exemption for certain persons, and a list of factors for the court to consider when determining whether to exempt a person from the requirement to e-File.

MCR Cite: 2.513
ADM File No: 2016-05
Effective Date: May 1, 2019
Staff Comment: The amendment of MCR 2.513 explicitly provides that a court must orally recite its preliminary and final instructions for the jury (in addition to providing them in writing). The amendment clarifies that even though a juror is entitled to a written set of instructions, the judge must still orally instruct the jury. This amendment conforms the rule to the opinion issued by the Court in *People v Traver*.

MCR Cite: 6.001, 6.006, 6.425, 6.427, 6.610, and addition of rule 6.430.
ADM File No: 2017-17
Effective Date: September 1, 2019
Staff Comment: The amendments more explicitly require restitution to be ordered at the time of sentencing as required by statute, and establish a procedure for modifying restitution amounts.

MCR Cite: 6.425
ADM File No: 2017-27
Effective Date: September 1, 2019
Staff Comment: The amendment of MCR 6.425 makes the rule consistent that requests for counsel must be completed and filed with the court or submitted to MAACS within 42 days after sentencing and allows defendants the opportunity to tender a completed form at sentencing. It also removes the requirement for a sentencing judge to articulate substantial and compelling reasons to deviate from the guidelines range pursuant to People v Lockridge, 498 Mich 358 (2015).

MCR Cite: 1.109, 8.119, Rescission of AO 2006-2, and Amendment to AO 1999-4
ADM File No: 2017-28
Effective Date: January 1, 2021
Staff Comment: The amendments make certain personal identifying information nonpublic and clarify the process regarding redaction.

MCR Cite: 1.111 and 8.127
ADM File No: 2018-06
Effective Date: September 1, 2019
Staff Comment: The amendments of MCR 1.111 and 8.127 require additional testing for qualified interpreters and include a minor revision in the timing for recertification applications. The amendments, proposed by the Foreign Language Board of Review, promote greater confidence that a qualified foreign language interpreter is proficient in the language and reduce the possibility that renewals are delayed.

MCR Cite: 1.109, 2.113, 2.412, 3.203, 3.222, 3.223, 3.800, 3.903, 3.921, 3.923, 3.932, 3.935, 3.936, 3.943, 3.951, 3.963, 3.972, 3.977, 5.125, 5.402, 5.404, 5.801, 6.104, 7.210, 7.215, 7.305, 7.308, and 8.111
ADM File No: 2018-15
Effective Date: August 14, 2019
Staff Comment: These amendments update cross-references and make other nonsubstantive revisions to clarify the rules.

MCR Cite: 1.105, 2.301, 2.302, 2.305, 2.306, 2.307, 2.309, 2.310, 2.312, 2.313, 2.314, 2.316, 2.401, 2.410, 2.506, 3.201, 3.206, 3.922, 3.973, 3.975, 3.976, 3.977, 5.131 and addition of Rule 3.229.
ADM File No: 2018-19
Effective Date: January 1, 2020
Staff Comment: These amendments are based on a proposal created by a special committee of the State Bar of Michigan and approved for submission to the Court by the Bar's Representative Assembly. The rules require mandatory discovery disclosure in many cases, adopt a presumptive limit on interrogatories (20 in most cases, but 35 in domestic relations proceedings) and limit a deposition to 7 hours. The amendments also update the rules to more specifically address issues related to electronically stored information, and encourage early action on discovery issues during the discovery period.

The amendment of MCR 2.309(A)(2) sets a presumptive limit of 20 interrogatories for each separately represented party. Several commenters suggested that the term "discrete subpart" be more explicitly defined, but the rule's reference to "a discrete subpart" is intended to draw guidance from federal courts construing FR Civ P 30(a)(1). Generally, subparts are not separately counted if they are logically or factually subsumed within and necessarily related to the primary question. In upholding the limit, parties and courts should also pragmatically balance the overall goals of discovery and the admonition of MCR 1.105. Further, the intent of the provision at MCR 2.301(B)(4) is to ensure that parties responding to discovery requests have the full time period to do so as provided for under these rules prior to the expiration of the discovery period.

Adopted AO: **2019-01 Establishment of Court Security Committees**
ADM File No: 2018-21
Effective Date: March 13, 2019
Staff Comment: No later than September 1, 2019, each court shall submit to the State Court Administrative Office (SCAO) a local administrative order that establishes the courthouse security committee in accordance with the model local administrative order developed by SCAO. Courts with multiple chief judges in one location and courts that have multiple locations must follow the instructions provided by SCAO for establishing the standing courthouse security committee. In developing the security committee, courts are directed to work with local funding units and to collaborate with other entities in shared facilities, where appropriate.

Legislation

Statute Cite: **MCL 600.5744**
P.A. Number: 2019 PA 2
Effective Date: July 2, 2019
What it Does: Amends the Revised Judicature Act, concerning eviction proceedings, to revise the list of persons allowed to serve. The amendment allows the court to issue a writ to a court officer appointed by the court, a bailiff of the court, the sheriff or a deputy sheriff of the county where the court is located, or an officer of the law enforcement agency of the local unit of government where the court is located. Language was also added that, to restore full, peaceful possession of the premises, the officer, bailiff, sheriff, or deputy sheriff serving the writ must remove all occupants and personal property from the premises and do either of the following:

- Leave the property in an area open to the public or in the public right-of-way.
- Deliver the property to the sheriff as authorized by the sheriff.

Statute Cite: **MCL 722.642b and 722.642c**
P.A. Number: 2019 PA 17
Effective Date: September 2, 2019
What it Does: Amends the Youth Tobacco Act by adding section 2b and 2c. The amendments prohibit a person from selling a liquid nicotine container in Michigan unless it meets federal child-resistant effectiveness standards; doing so is a misdemeanor punishable by a fine of not more than $50 for each violation. It also prohibits a person selling vapor products or alternative nicotine products at retail from displaying for sale in Michigan a vapor product unless it is stored behind a counter in an area only accessible by employees or in a locked case. A person who violates this section is

responsible for a state civil infraction and shall be fined not more than $500.

Statute Cite: **MCL 722.641, 722.642, and 722.644**
P.A. Number: 2019 PA 18
Effective Date: September 2, 2019
What it Does: Amends the Youth Tobacco Act by adding language that prohibits a person from selling, giving, or furnishing a vapor product or alternative nicotine product to a minor, including through a vending machine or other means; this is in addition to what is already provided for in statute covering tobacco products. The penalty would be a misdemeanor punishable by not more than a $100 fine for the first offense, not more than $500 for a second offense, and not more than $2500 for a third or subsequent offense. The amendment also defines "alternative nicotine product" and "vapor product." Possession/attempt possession, purchase/attempt purchase, use/attempt use in public, or using false identification to purchase or possess a vapor product or alternative vapor product was added to the statute and has different penalties than possession of a tobacco product as follows:

- First violation: responsible for a state civil infraction with a fine of not more than $50. The court may order the individual to participate in a health promotion and risk reduction assessment program, if available. The court may also order not more than 16 hours of community service.
- Second violation: responsible for a state civil infraction with a fine of not more than $50. The court may order the individual to participate in a health promotion and risk reduction assessment program, if available. The court may also order not more than 32 hours of community service.
- Two or more prior judgments: guilty of a misdemeanor punishable by a fine of not more than $50 for each violation. Pursuant to a probation order, the court may also require the individual to participate in a health promotion and risk reduction assessment program, if available. The court may also order not more than 48 hours of community service.

The defendant is responsible for the cost of the health promotion and risk reduction assessment program, if ordered.

Statute Cite: **MCL 600.1993**
P.A. Number: 2019 PA 40
Effective Date: June 26, 2019
What it Does: Amends the Revised Judicature Act to extend the date in which the court clerk can collect the electronic filing system fee (EFS) to 2/28/2031.

Case Law

Tree City Props LLC v Perkey, ___ Mich App ___ (2019). Plaintiff owned and managed rental properties. Defendant leased one of plaintiff's rental properties. At the end of the lease, defendant moved out. However, plaintiff inspected the property and determined that it was entitled to retain the $2,150 security deposit because of physical damage to the rental unit, unpaid utility bills, late fees, multiple check charges, and nonsufficient fund charges. Plaintiff sent the required noticed and filed suit in the small claims court seeking a judgment for damages. The district court found in favor of the plaintiff (regarding some of the damages), but further found that because plaintiff wrongfully withheld $1,390 from the security deposit, it was subject to the double penalty provision of MCL 554.613(2). Plaintiff appealed to the circuit court, that affirmed, and also to the Court of Appeals. The Court of Appeals found that **there was no dispute that the plaintiff complied with the statutory notice requirement and filed its claim to retain the defendant's security deposit in the small claims court appropriately, therefore the double penalty provision did not apply**. Reversed and remanded back to the district court for an amended judgment.

People v Brinkey, ___ Mich App ___ (2019). Defendant plead guilty to OWI 3rd, DWLS 2nd, and unlawful use of a license plate. The court explained to him that if the court was not going to comply with the sentence recommendation in the presentence report, the defendant would be permitted to withdraw his plea. After informing the defendant that it could not go along with the sentencing recommendation, the defendant was allowed to withdraw his guilty plea. The parties came back on another date and agreed to a *Cobbs* agreement where the minimum sentence would not exceed two years. At the second plea hearing, the court asked the defendant if he wanted to reinstate his prior plea. The defendant agreed as long as he could get an updated presentence report. The parties came back for sentencing and the court sentenced him to 2-25 years of imprisonment. The defendant immediately requested withdrawal of his plea because the trial court didn't follow the sentence recommendation in the amended presentence report. The trial court denied defendant's motion to withdraw and this appeal followed. The Court of Appeals found that the defendant's confusion concerning the condition under which he plead guilty was apparent from a review of the record. **Because defendant's second guilty plea was not understandingly, knowingly, voluntarily, and accurately made, the trial court abused its discretion by denying defendant's motion to withdraw his guilty plea.**

Timbs v Indiana, 586 U.S. ___, ___ (2019). Defendant Timbs plead guilty in Indiana to dealing a controlled substance and conspiracy to commit theft. He was sentenced to one year in jail and five years of probation. He was also required to pay fees and costs totaling $1,203. However, at the time of defendant's arrest, the police had seized his vehicle, a Land Rover SUV with a value of $42,000. The state of Indiana sought civil forfeiture of the vehicle, arguing that the SUV had been used to transport heroin. The trial court denied the state's request, observing that the value of the vehicle was four times the maximum $10,000 monetary fine that could be assessed against the defendant for his drug conviction and therefore it was unconstitutional under the Eighth Amendment's Excessive Fines Clause. The state appealed. The Indiana Court of Appeals affirmed, but the Indiana Supreme Court reversed holding that the Excessive Fines Clause only constrains federal action and it did not apply to states. **The United States Supreme Court held that the**

Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the states under the Fourteenth Amendment's Due Process Clause. Vacated and remanded.

People v Olney, ___Mich App___ (2019). Defendant Olney was charged with first-degree home invasion and domestic violence. Although subpoenaed, the complainant did not appear for the preliminary examination. The prosecution moved forward with the examination on the basis of testimony from the officer who responded to the scene. The prosecutor indicated that his testimony was admissible under MCL 768.27c, the statutory hearsay exemption for statements to law enforcement officers made by victims of domestic violence. Defense counsel objected, indicated that the hearsay exception only applied to the charge of domestic violence. As the examination unfolded, the prosecutor decided to add additional charges of assault by strangulation and interfering with telephonic communications, based on the officer's testimony. Defendant filed a motion to quash in circuit court, arguing that the use of the officer's testimony to establish probable cause for crimes other than domestic violence violated the defendant's constitutional right to confront his accuser. The circuit court rejected the defendant's claim that the exception only applied to domestic violence offenses, but went on to state that when MCL 768.27c was enacted, the Legislature intended to carve out an additional hearsay exception when the complainant was unavailable, similar to the exception found in MRE 804(b). The circuit court indicated that the complainant must first be declared unavailable and then the exception to hearsay can be used. They granted the defendant's motion to quash and dismissed the charges. The prosecution appealed by right arguing that the circuit court erred in dismissing the charges against the defendant because, contrary to the circuit court's decision, MCL 768.27c contains no requirement that the complainant-declarant be unavailable in order to admit evidence of a statement that otherwise satisfies the statutory requirement; the Court of Appeals agreed. The prosecutor also argued that because the officer's testimony was admissible, the circuit court erred when it determined that the defendant's right of confrontation was violated, and they agreed. **Therefore, while the rules of evidence apply during a preliminary examination, the right of confrontation does not. In light of the relatively low burden of establishing probable cause that a crime has been committed and that the defendant was the one who likely committed it, the circuit court abused its discretion when it granted the defendant's motion to quash on the basis that the defendant's right of confrontation was violated.** Reversed and remanded with instruction to reinstate charges against the defendant.

People v Mead, ___ Mich ___ (2019). The defendant was a passenger in a vehicle that had been pulled over by a police officer for an expired license plate. The officer observed the defendant clutching a backpack on his lap. The officer obtained the driver's consent to search her person and the vehicle. The officer searched the passenger side of the vehicle, including the defendant's backpack, which contained a scale, pills, marijuana, and meth. In the circuit court, the defendant moved to suppress the evidence found in his backpack as the fruit of an illegal search. The circuit court denied the motion. The defendant appealed in the Court of Appeals. The COA affirmed the decision concluding that, based on *LaBelle*, the defendant lacked standing to contest the search of the backpack after the driver consented to the search. The defendant sought leave in the Supreme Court. In lieu of granting leave to appeal, the MSC remanded the case back to the COA and asked them to consider whether the *LaBelle* case was distinguishable. The COA affirmed the

defendant's conviction. Defendant again sought leave to appeal and the Supreme Court held that a passenger's personal property is not subsumed by the vehicle that carries it for Fourth Amendment purposes and that a person may challenge an alleged Fourth Amendment violation if that person can show under the totality of the circumstances that he or she had a legitimate expectation of privacy in the area searched. Although the defendant had no legitimate expectation of privacy in the interior of the driver's vehicle, the court concluded that he did have a legitimate expectation of privacy in his backpack. In this case, the driver's consent to search the car was voluntary; however, an objectively reasonable police officer would not have believed that the driver had actual or apparent authority over the defendant's backpack. **Because the driver lacked apparent authority to consent to the search of the backpack, the search of the backpack was not based on valid consent and was per se unreasonable.** The COA's opinion was reversed and the order denying the defendant's motion to suppress the evidence was vacated. The case was remand to the trial court for further proceedings.

Eplee v Lansing, ___ Mich App ___ (2019). Plaintiff applied for a job with the Lansing Board of Water and Light (BWL). The BWL made plaintiff a conditional offer of employment that included a condition that plaintiff comply with the BWL's drug testing policies. Plaintiff submitted to a drug screen and tested positive for THC. BWL informed plaintiff of the results and she provided documentation that she was a registered qualifying patient under the Michigan Medical Marihuana Act (MMMA). BWL rescinded the offer of employment and plaintiff sued. In her complaint, plaintiff argued that defendants had "no legitimate business reason" to rescind her conditional offer of employment and that the conditional offer was rescinded solely because of her status as a registered qualifying patient, thereby, according to plaintiff, in violation of the MMMA. In the trial court, defendants filed a motion for summary disposition arguing that plaintiff failed to state a claim on which relief could be granted. After a hearing, the trial court granted summary disposition and dismissed plaintiff's case. Plaintiff appealed. The Court of Appeals held that **Section 4(a) of the MMMA** did not prohibit the defendant from rescinding a conditional offer of employment to the plaintiff because § 4(a) **"does not create affirmative rights but instead provides *immunity from* penalties and the denial of rights or privileges based on the medical use of marijuana,**" and "[i]n this case, plaintiff cannot show that she incurred such a penalty or was denied such a right or privilege because the harm she suffered was the loss of an employment opportunity in which she held absolutely no right or property interest." **Section 4(a) "does not provide an independent *right* protecting the medical use of marijuana in all circumstances, nor does it create a protected class for users of medical marijuana."**

People v Bensch, ___ Mich App ___ (2019). Defendant was convicted of two separate drunk-driving convictions over the course of five months, each of which resulted in its own district court case. In both cases, defendant reached a plea agreement whereby he pleaded guilty to OWI 2nd. Defendant was sentenced for the two offenses on the same day. On the first OWI 2nd case, he received one year in the county jail. On the second OWI 2nd case, he received two years of probation with numerous conditions. Defense counsel immediately objected to the probationary sentence but the district court denied the objection. Defendant appealed to the circuit court. The circuit court held that the district court had erred and reversed and remanded for resentencing. The prosecutor then appealed to the Court of Appeals. The Court of Appeals held that **"a defendant may**

decline a sentence of probation and instead seek a sentence of incarceration," and because there are not "compelling reasons to depart from the long-standing interpretation of MCL 771.1 announced in [*People v Peterson*, 62 Mich App 258 (1975), permitting criminal defendants to refuse probation]," the circuit court correctly ruled "that defendant could decline probation and instead be sentenced to incarceration."

Mitchell v Wisconsin, 588 US ___ (2019). Defendant was arrested for operating a vehicle while intoxicated after a PBT registered a BAC that was triple Wisconsin's legal limit for driving. As is standard practice, the arresting officer drove Defendant to a police station for a more reliable breath test using evidence-grade equipment. By the time Defendant reached the station, he was too lethargic for a breath test, so the officer drove him to a nearby hospital for a blood test. Mitchell was unconscious by the time he arrived at the hospital, but his blood was drawn anyway under a state law that presumes that a person incapable of withdrawing implied consent to BAC testing has not done so. The blood analysis showed that Defendant's BAC was above the legal limit, and he was charged with violating two drunk-driving laws. Defendant moved to suppress the results of the blood test on the ground that it violated his Fourth Amendment right against "unreasonable searches" because it was conducted without a warrant. The trial court denied the motion, and Defendant was convicted. On certification from the intermediate appellate court, the Wisconsin Supreme Court affirmed the lawfulness of Defendant's blood test. In a plurality opinion, **the United States Supreme Court held that in cases in which "the driver is unconscious and therefore cannot be given a breath test," "the exigent circumstances rule almost always permits a blood test without a warrant."** "When a breath test is impossible, enforcement of the drunk-driving laws depends upon the administration of a blood test," "[a]nd when a police officer encounters an unconscious driver, it is very likely that the driver would be taken to an emergency room and that his blood would be drawn for diagnostic purposes even if the police were not seeking BAC information." *Id*. at ___. "In addition, police officers most frequently come upon unconscious drivers when they report to the scene of an accident, and under those circumstances, the officers' many responsibilities—such as attending to other injured drivers or passengers and preventing further accidents—may be incompatible with the procedures that would be required to obtain a warrant." *Id*. at ___. **Note: "[a] plurality opinion of the United States Supreme Court . . . is not binding precedent." *People v Beasley*, 239 Mich App 548, 559 (2000).** [If the majority of the justices cannot agree on the rationale for deciding which party should prevail, this results in a plurality opinion.]