

Negligence Law Section

Negligence Law Section Quarterly

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Government Affairs Update

“Pandemic Creates Unique Challenges for Legal Work”

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What a difference a month can make. Way back in early March, which feels like a year ago, our most pressing issues were addressing Michigan’s pharmaceutical products liability law and monitoring the implementation of no-fault auto reforms. Nearly 20,000 (and still growing) cases of cases of COVID-19 later, and those problems seem almost quaint.

The last three weeks has seen a statewide stay at home order, the early end of the 2019-2020 school year, a record number of unemployment claims, and an exponentially increasing number of patients who have contracted COVID-19. Meanwhile, the Legislature has been brought to a virtual standstill, and we are all mourning the death of State Representative Isaac Robinson who died from the COVID-19 virus. Things have been moving quickly, and all three branches of government have been scrambling to keep up.

Michigan policy makers are 100% focused on the Coronavirus pandemic, as officials are scrambling to deal with the rapid spread of the disease. Governor Whitmer has issued multiple executive orders ranging from school closures, prohibitions on price gouging, restrictions on public gatherings, and – most importantly – a Stay Home, Stay Safe order requiring all Michigan residents to shelter at home unless they are “essential employees” or are obtaining personal needs like food, supplies, medication or medical treatment. The Michigan Legislature responded with a \$125 million package aimed at increasing Michigan’s preparedness for the impact of the increasing spread of the illness. Most recently, the Legislature extended the state of emergency declaration until April 30.

The US has not dealt with an epidemic like this since the 1918 influenza outbreak, and nothing has impacted the entire nation so heavily and dramatically since World War II. Governor Whitmer describes the process of responding to the crisis as “building the airplane while flying.” It is expected that the benefits of social distancing and keeping people at home as much as possible will not be felt for another few weeks. Therefore, the number of positive cases are expected to continue to rise dramatically well into April. Hopefully they will then begin to subside, but it is possible our health care capacity will be stretched to the breaking point before then. Therefore it is hugely important to minimize the spread of the disease as much as possible.

One of the most pressing issues for attorneys brought about by this pandemic is how to proceed with legal work when the courts are closed. The Michigan Supreme Court has issued orders calling upon courts to utilize technology to the greatest extent possible to allow cases to be addressed remotely. Reports have been mixed as to how well that is working, and it may differ from one jurisdiction to the next.

Another issue for legal work created by this crisis is the question of how to notarize or witness legal documents during a time of quarantines and stay at home orders. This has become a particular issue for legal documents like patient advocate designations and wills that may need to be done for a patient in a locked-down hospital or nursing home. Several State Bar Sections, including the Negligence Law Section, have called for a temporary measure to allow for remote witnessing and notarization. The goal is to allow witnessing via video-conference technology, and greater flexibility on digital notarization. We are hopeful that an executive order addressing this issue will be issued very soon.

As for the Michigan Legislature, their work has largely been curtailed by the virus. The House and Senate convened for session on April 7, but only to pass a resolution extending the state of emergency by 23 days. Some work is still taking place, with work groups meeting online to discuss issues ranging from how to continue K-12 education when schools are closed, to creating a more precise list of what businesses may remain open and which ones must stay closed. Work continues on the 2021 budget as well, although many of those numbers are expected to change for the worse as the impact to the economy and state revenues becomes clearer over the next weeks and months. I'm afraid the rest of the 2019-2020 legislative session will be a bumpy ride.

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