

19-7065
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

CARRIE A. BRASPENICK — PETITIONER

vs.

JOHNSON LAW, PLC. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MICHIGAN COURT OF APPEALS

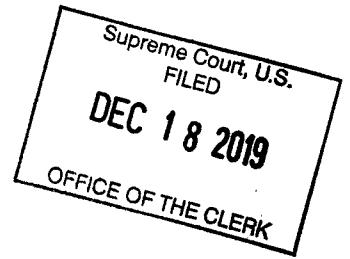
PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Can an attorney terminate the attorney-client relationship prior to the Circuit Court issuing a JUDGMENT/Order in the client's case?
2.
 - A. Did the lower courts err in ruling that an attorney can terminate their relationship with a client prior to the Court signing and entering a JUDGMENT/Order in the client's case?
 - B. Did the lower courts err in ruling that an attorney can terminate their relationship with a client without providing a copy of the Court's JUDGMENT/Order to the client in their case?
 - C. Could a contract for legal representation change the outcome of this ruling? Can an attorney terminate their relationship with a client prior to the Court signing and entering a JUDGMENT/Order in the client's case and without providing a copy of the Court's JUDGMENT/Order to the client if both parties signed a contract for legal representation?
3. Did the lower courts err by not interpreting the legal retainer agreement using the ordinary principals of contract law before determining the statute of limitations?
4. In determining the statute of limitations, does a disputed genuine issue of material facts exist if both parties disagree on when the attorney last provided legal services to the client and when evidence was provided to the court in support of the dates in question?

5. In determining the statute of limitations, does a disputed genuine issue of material facts exist if both termination dates in question relate to the same matter as described in their contract, the same case number, and the same court?
6. Is summary disposition appropriate when the parties disagree on the attorney's last day of legal representation?
7. Is summary disposition appropriate when the parties provided evidence that the attorney provided legal services in the same case as the attorney's filed court appearance?
8. Did the lower courts err in ruling that legal representation for relief from taxation of costs and case evaluation sanctions is new, separate and distinct representation and is considered a remedial effort concerning past representation when:
 - A. All the legal work provided to the client was in the same matter, the same case, and the same court.
 - B. In a civil case, Michigan Court Rules entitles the prevailing party (28) days after JUDGMENT to file for taxation of costs and case evaluation sanctions. MCR 2.625
 - C. According to MCR 7.202(6)(a)(iv): (a) In a civil case, (iv) a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule is a "final judgment" or "final order."

9. Does an attorney's last motion and order on the motion, in the same case as the attorney's filed appearance (in the underlying case), play a role in determining the statute of limitations in a future legal malpractice action?
10. If there is no court order and no client release of counsel, can a client reasonably assume that their attorney is acting on their behalf until the court's final order in their case?
11. Can a client reasonably assume that their attorney is acting on their behalf up until they receive notification from their attorney that they will be taking no further action in their case and will be closing their file?
12. If post-judgment matters involving costs constitute continuing representation as MCR 7.202(6)(a)(iv) provides and *Dr. Martin Trepel v Kohn, Milstein, Cohen and Hausfeld*, Michigan Court of Appeals July 14, 2000 case piggybacks MCR 7.202(6)(a)(iv), how come the post-judgment matters involving costs in the *Braspenick v Johnson Law, PLC* case are not considered continued representation?
13. If post-judgment matters involving costs constitute continuing representation, does a disputed material fact exist with Johnson Law, PLC. terminating the attorney-client relationship on August 21, 2014?
14. If post-judgment matters involving costs constitute continuing representation, was summary disposition appropriate?

15. If the ruling in this case stands, what would happen to the court system if every attorney could terminate the attorney-client relationship with a client prior to the court issuing a JUDGMENT/Order in the client's case?
16. If the ruling in this case stands, what would happen to the court system if every attorney could terminate their relationship with a client prior to providing the client with a copy of the Court's JUDGMENT/Order in the client's case?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: _____

RELATED CASES

James Easton v Neil Miller, P.C. Michigan Court of Appeals,

COA Case No: 298875 Judgment entered on August 2, 2011

Kloian v Schwartz, 272 Mich App 232, 237; 725 NW2d 671 (2006)

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Michigan Court of Appeals, COA Case No: 267033

Judgment entered on September 12, 2006

Dr. Martin Trepel v Kohn, Milstein, Cohen, and Hausfeld,

EXHIBIT M

Michigan Court of Appeals, COA Case No: 213708

Judgment entered on July 14, 2000

Maddox v Burlingame, 205 Mich App 446, 450; 517 NW2d 816 (1994),

Michigan Court of Appeals, COA Case No: 144770

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APPENDIX C: Michigan Circuit Court Gogebic County
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Summary Disposition, *GRANTED*:
March 13, 2017

APPENDIX D: Michigan Circuit Court Gogebic County
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May 10, 2017

APPENDIX E: Michigan Supreme Court
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[X] For cases from state courts:

The opinion of the Michigan Court of Appeals reviewing the merits appears at Appendix A to the petition and is

[] reported on _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished on April 19, 2018.
[X] A timely petition for reconsideration was thereafter denied on the following date: May 23, 2018, and a copy of the order denying reconsideration appears at Appendix B.

The opinion of the Michigan Circuit Court Gogebic County reviewing the merits appears at Appendix C to the petition and is

[X] ordered on March 13, 2017; or,
[] has been designated for publication but is not yet reported; or,

[] is unpublished.

[X] A timely petition for reconsideration was thereafter denied on the following date: May 10, 2017, and a copy of the order denying reconsideration appears at Appendix D.

JURISDICTION

[] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from state courts:

The date on which the Michigan Supreme Court decided my case was on June 19, 2019. A copy of that decision appears at Appendix E.

[X] A timely petition for reconsideration was thereafter denied on the following date: September 30, 2019, and a copy of the order denying reconsideration appears at Appendix F.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL RULES OF CIVIL PROCEDURE

Fed. Rule Civ. Proc. 56(a): (a) *MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.*

MICHIGAN STATUTES AND RULES

MICHIGAN COMPILED LAWS

MCL 600.5805(8): (8) *Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.*

MCL 600.5838: Sec. 5838. (1) *Except as otherwise provided in section 5838a or 5838b, a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.*(2) *Except as otherwise provided in section 5838a or 5838b, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. The plaintiff has the burden of proving that the plaintiff neither discovered nor should have discovered the existence of the claim at least 6 months before the expiration of the period otherwise applicable to the claim. A malpractice action that is not commenced within the time prescribed by this subsection is barred.*

MCL 600.5838b: *Sec. 5838b. (1) An action for legal malpractice against an attorney-at-law or a law firm shall not be commenced after whichever of the following is earlier:(a) The expiration of the applicable period of limitations under this chapter.(b) Six years after the date of the act or omission that is the basis for the claim. (2) A legal malpractice action that is not commenced within the time prescribed by subsection (1) is barred. (3) As used in this section: (a) "Attorney-at-law" means an individual licensed to practice law in this state or elsewhere. (b) "Law firm" means a person that is primarily engaged in the practice of law, regardless of whether organized as a sole proprietorship, partnership, limited liability partnership, professional limited liability company, professional corporation, or other business entity. Law firm includes a legal services organization.*

MICHIGAN COURT RULES

MCR 2.107 (B)(1): *(B) Service on Attorney or Party. (1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:(c) After a final judgment or final order has been entered and the time for an appeal of right has passed, documents must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;*

MCR 2.116(C)(7): *2.116 Summary Disposition (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: (7) Entry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.*

MCR 2.116(C)(8): *2.116 Summary Disposition (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: (8) The opposing party has failed to state a claim on which relief can be granted.*

MCR 2.116(C)(10): *2.116 Summary Disposition (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: (10) Except as to the amount of damages, there is no genuine issue as to any*

material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

MCR 2.116(G)(5): 2.116 Summary Disposition (G) Affidavits; Hearing. *(5) The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9).*

MCR 2.116(G)(6): 2.116 Summary Disposition (G) Affidavits; Hearing (6) *Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(1)-(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.*

MCR 2.116(I)(1): (I) Disposition by Court; Immediate Trial. *(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.*

MCR 2.116(I)(3): (I) Disposition by Court; Immediate Trial. *(3) A court may, under proper circumstances, order immediate trial to resolve any disputed issue of fact, and judgment may be entered forthwith if the proofs show that a party is entitled to judgment on the facts as determined by the court. An immediate trial may be ordered if the grounds asserted are based on subrules (C)(1) through (C)(6), or if the motion is based on subrule (C)(7) and a jury trial as of right has not been demanded on or before the date set for hearing. If the motion is based on subrule (C)(7) and a jury trial has been demanded, the court may order immediate trial, but must afford the parties a jury trial as to issues raised by the motion as to which there is a right to trial by jury.*

MCR 2.117 (B)(1): (B) Appearance by Attorney. *(1) In General. An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.*

MCR 2.117 (B)(3)(a): Appearance by Law Firm. (a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered, or a confirming notice of withdrawal of a notice of limited appearance is filed as provided by subrule (C)(3). This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

MCR 2.117(B)(3)(b): Appearance by Law Firm (b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

MCR 2.117(C)(1): (C) Duration of Appearance by Attorney. (1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment or final order is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment or final order by the trial court.

MCR 2.117(C)(2): (C) Duration of Appearance by Attorney. (2) Unless otherwise stated in this rule, an attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

MCR 2.403: Case Evaluation(A) Scope and Applicability of Rule.

(1) A court may submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property.

(2) Case evaluation of tort cases filed in circuit court is mandatory beginning with actions filed after the effective dates of Chapters 49 and 49A of the Revised Judicature Act, as added by 1986 PA 178.

(3) A court may exempt claims seeking equitable relief from case evaluation for good cause shown on motion or by stipulation of the parties if the court finds that case evaluation of such claims would be inappropriate.

(4) Cases filed in district court may be submitted to case evaluation under this rule. The time periods set forth in subrules (B)(1), (G)(1), (L)(1) and (L)(2) may be

shortened at the discretion of the district judge to whom the case is assigned.

MCR 2.625: (F) Procedure for Taxing Costs. (1) *Costs may be taxed by the court on signing the judgment, or may be taxed by the clerk as provided in this subrule.* (2) *When costs are to be taxed by the clerk, the party entitled to costs must present to the clerk, within 28 days after the judgment is signed, or within 28 days after entry of an order denying a motion for new trial, a motion to set aside the judgment, a motion for rehearing or reconsideration, or a motion for other postjudgment relief except a motion under MCR 2.612(C),*

MCR 7.202(6): “final judgment” or “final order”: (a) *In a civil case,*

- (i) *the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order*
- (ii) *an order designated as final under MCR 2.604(B);*
- (iii) *a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule*

MCR 7.210: Record on Appeal (A) Content of Record. Appeals to the Court of Appeals are heard on the original record. (1) *Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.*

MCR 7.210(C): Exhibits. *Within 21 days after the claim of appeal is filed, a party possessing any exhibits offered in evidence, whether admitted or not, shall file them with the trial court or tribunal clerk, unless by stipulation of the parties or order of the trial court or tribunal they are not to be sent, or copies, summaries, or excerpts are to be sent. Xerographic copies of exhibits may be filed in lieu of originals unless the trial court or tribunal orders otherwise. When the record is returned to the trial court or tribunal, the trial court or tribunal clerk shall return the exhibits to the parties who filed them.*

MICHIGAN RULES OF PROFESSIONAL CONDUCT "MRPC"

Michigan Rules of Professional Conduct "MRPC" Rule: 1.16 Declining or Terminating Representation (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged. (b) Except as stated in paragraph (c), after informing the client that the lawyer cannot do so without permission from the tribunal for the pending case, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if: (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; (2) the client has used the lawyer's services to perpetrate a crime or fraud; (3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent; (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (6) other good cause for withdrawal exists. (c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. (d) Upon termination of representation, a lawyer shall take reasonable steps to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law.

Michigan Rules of Professional Conduct "MRPC" Rule: 1.3 Diligence A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment: A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately. Perhaps no professional shortcoming is more widely

resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Michigan Rules of Professional Conduct "MRPC" Rule: 1.4 Communication (a) *A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.*

Comment: The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party, and take other reasonable steps that permit the client to make a decision regarding an offer from another party. A lawyer who receives an offer of settlement or a mediation evaluation in a civil controversy, or a proffered plea bargain in a criminal case, must promptly inform the client of its substance. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter. Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain

the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests and consistent with the client's overall requirements as to the character of representation. Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consultation. **WITHHOLDING INFORMATION** *In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.*

STATEMENT OF THE CASE

This petition for a writ of certiorari involves the legal malpractice action, G 16-190 NM which arises from the underlying medical malpractice action, G 13-80 NH.

On March 13, 2017, Defendant's Motion for Summary Disposition pursuant to MCR 2.116(C)(7), (8), and (10) was GRANTED in favor of the Defendants, Johnson Law, PLC. (APPENDIX C)

Both parties disagree on when Johnson Law last provided legal services in connection with the claim for delay diagnosing fungal infection, G 13-80 NH.

The Circuit Court determined that Johnson Law's letter dated May 14, 2014 terminated the attorney-client relationship with Ms. Braspenick. Ms. Braspenick's legal malpractice complaint was time-barred when she filed her complaint on August 9, 2016.

Petitioner argues that the Circuit Court had not issued a JUDGMENT/Order on the jury's verdict in Ms. Braspenick's action at the time the Circuit Court ruled that Johnson Law terminated their relationship with Ms. Braspenick on May 14, 2014. This letter states, "*I anticipate that a judgement will be entered on May 14 or 15. This will depend on when the judge actually signs the document. Once I have received the document, I will forward it to you by regular mail and email.*" (EXHIBIT B -C)

Petitioner argues that Johnson Law had not fully accomplished the task that they had been hired by Ms. Braspenick to perform on May 14, 2014 when:

- A. Johnson Law, PLC. was waiting for the Circuit Court to issue a JUDGMENT on the jury's verdict in Ms. Braspenick's action.
- B. Johnson Law, PLC. was waiting to receive a copy of the JUDGMENT/Order from the circuit court.
- C. Johnson Law, PLC. was going to provide a copy of the court's

JUDGMENT/Order to Ms. Braspenick once Johnson Law received the Judgment.

Johnson Law's letter dated May 14, 2014 does not clearly communicate Johnson Law terminating the attorney-client relationship with Ms. Braspenick if Johnson Law was to perform additional legal services in connection with the claim for delay diagnosing fungal infection, G 13-80 NH after the Court issued a JUDGMENT on the jury's verdict in Ms. Braspenick's action.

Petitioner disagrees and argues that August 21, 2014 was the last day Johnson Law, PLC. provided legal services in connection with the claim for delay diagnosing fungal infection, G 13-80 NH. (EXHIBITS A-K)

Therefore, this petitioner's legal malpractice action would have been timely filed on August 9, 2016.

A Motion for Reconsideration was DENIED by the Circuit Court on May 10, 2017. (APPENDIX D)

On April 19, 2018 the Court of Appeals also ruled that Johnson Law, PLC. terminated their services to Ms. Braspenick on May 14, 2014 prior to the Circuit Court issuing a JUDGMENT/Order on the jury's verdict. COA case no: 338556. (APPENDIX A) and (EXHIBITS B-C)

A Motion for Reconsideration was DENIED by the Court of Appeals on May 23, 2018. (APPENDIX B)

The Michigan Supreme Court DENIED the appellant's application for leave for appeal on June 19, 2019. MSC case no: 158003. (APPENDIX E)

A Motion for Reconsideration was DENIED by the Michigan Supreme Court on September 30, 2019. (APPENDIX F)

Plaintiff-Appellant-Petitioner now files this PETITION FOR A WRIT OF CERTIORARI.

FACTS IN THE UNDERLYING MEDICAL MALPRACTICE ACTION, G 13-80 NH

On April 23, 2013, Ms. Braspenick filed the underlying medical malpractice action, G 13-80 NH in *pro per* against Aspirus Grand View Hospital and Neal Schroeter, M.D., for allegedly failing to properly diagnose and treat fungal sinusitis, which resulted in her having to undergo multiple surgeries to her right facial area: mouth, nose, jawbone, palate, and teeth. (*Defendant's Motion for Summary Disposition- Exhibit A: Complaint*)

On September 17, 2013, the medical malpractice action, G 13-80 NH was evaluated and Ms. Braspenick received a \$5,000 Case Evaluation Award in her favor. On October 7, 2013, Ms. Braspenick rejected the \$5,000 award.

(Defendant's Motion for Summary Disposition- Exhibit B: Case Evaluation Award)

On December 11, 2013, Ms. Braspenick retained Johnson Law, PLC. to pursue the medical malpractice action, G 13-80 NH on her behalf. In doing so, Ms. Braspenick signed a Contract for legal representation in connection with the claim for delay diagnosing fungal infection. (EXHIBIT A)

On December 13, 2013, Johnson Law, PLC. filed their Appearance in the Gogebic County Circuit Court in the medical malpractice action, G 13-80 NH.

From April 28, 2014 through May 5, 2014, Johnson Law, PLC. represented Ms. Braspenick throughout her medical malpractice trial, G 13-80 NH. A verdict of no cause of action was rendered by the jury on May 5, 2014.

On May 14, 2014, Derek Brackon addressed a letter to Ms. Braspenick. *"I anticipate that a judgement will be entered on May 14 or 15. This will depend on when the judge actually signs the document. Once I have received the document, I will forward it to you by regular mail and email."* (*Defendant's Motion for Summary Disposition- Exhibit E: May 14, 2014, Brackon's correspondence*) (EXHIBIT B)

The Circuit Court and Court of Appeals ruled that Johnson Law, PLC's letter addressed to Ms. Braspenick on May 14, 2014 clearly terminated attorney-client relationship. (APPENDIX C), (APPENDIX A), and (EXHIBIT B)

On May 15, 2014, a JUDGMENT of No Cause of Action was ordered by the Circuit Court in the medical malpractice action, G 13-80 NH. (*Defendant's Motion for Summary Disposition- Exhibit F: JUDGMENT*)

On May 21, 2014, Derek Brackon sent a copy of the ordered JUDGMENT to Ms. Braspenick. (*Defendant's Motion for Summary Disposition- Exhibit F: May 21, 2014 Brackon's correspondence to Ms. Braspenick with enclosed JUDGMENT*) (EXHIBIT C)

On June 4, 2014, Ms. Braspenick filed a Motion for a New Trial. In accordance to the December 11, 2013 contract, appeals were excluded. Johnson Law, PLC. also reiterated this to Ms. Braspenick in their May 14, 2014 letter that they would not be filing an appeal on Ms. Braspenick's behalf.

On June 9, 2014, Derek Brackon addressed a letter to the Gogebic County Clerk and Susan MacGregor, the Defendant's attorney in the medical malpractice action, *"Please be advised that we are no longer representing Carrie Braspenick in her Motion for New Trial that she recently filed."* (*Defendant's Motion for Summary Disposition-Exhibit H: June 9, 2014 Brackon's correspondence*)

On June 11, 2014, the Defendant's in the underlying medical malpractice action, G 13-80 NH filed a Motion for Taxation of Costs and Case Evaluation Sanctions. (*REGISTER OF ACTIONS, G 13-80 NH, page 11*) Johnson Law, PLC., Derek Brackon, and Ven Johnson were listed as Ms. Braspenick's attorneys in this motion for taxation of costs and case evaluation sanctions.

The defendants, the prevailing party were entitled to tax costs and case evaluation sanctions according to Michigan Court Rules. The prevailing party had (28) days to file taxation of costs and case evaluation sanctions from the date of JUDGMENT, May 15, 2014. *MCR 2.625*

Johnson Law, PLC. did not communicate in any of their correspondence to Ms. Braspenick prior to June 11, 2014 that the defendants were entitled to file for taxation of costs and case evaluation sanctions according to Michigan Court Rules

and that the defendants had (28) days from JUDGMENT to do so. (EXHIBITS B-C)

On June 16, 2014, the Court received and filed Derek Brackon's letter dated June 9, 2014. (*REGISTER OF ACTIONS, G 13-80 NH page 12*) This letter was not addressed to Ms. Braspenick. Johnson Law specified that they would not be representing Ms. Braspenick in her Motion for a New Trial but did not withdraw from G 13-80 NH in accordance to MCR 2.117. There is no court order withdrawing Johnson Law, PLC. as Ms. Braspenick's counsel. *Note: This letter was received by the court after the defendant's filed their motion for taxation of costs and case evaluation sanctions which list Johnson Law, PLC., Derek Brackon, and Ven Johnson as Ms. Braspenick's attorney. This letter was not a proper withdrawal in accordance to MCR 2.117.*

On June 19, 2014 correspondence with Lynn Rose from Johnson Law, PLC via e-mail:

Lynn Rose, *"I returned the photos. Hopefully you received those. Attached is a Stipulation and Order to Withdraw as counsel. Can you please either mail or scan back a signature page to us? Thank you."*

Ms. Braspenick, *"Dear Lynn, I have not received the photos? When did you send them? Also, did you receive the Defendant's Motion for taxation of costs and case evaluation sanctions?"*

Lynn Rose, *"You should be receiving the photos soon. Let me know if you don't get them. No, we didn't get that motion."*
(EXHIBIT E)

On June 25, 2014, correspondence with Lynn Rose from Johnson Law, PLC. via e-mail:

Lynn Rose, *"I'm sorry Carrie but if you do not agree to the Stipulation and Order to Withdraw, we will have to file a Motion. Please let me know. Thank you."* (EXHIBIT E)

On June 26, 2014, correspondence with Lynn Rose/Johnson Law, PLC. via e-mail:

Lynn Rose, *"Can Derek call you this afternoon maybe around 2:00 p.m. to go over the Motion for Costs? There is no hearing date still right? Let me know. Thanks."*

Ms. Braspenick, *"Hi! Lynn, I have not received anything from the Courthouse yet on the dates for the Motions. I was expecting to receive it by now. I am not available at 2:00 pm which is 1:00 pm my time. I will be running errands for I am leaving out of town tomorrow. However, I can be available later today." (EXHIBIT F)*

On June 26, 2014, Judge Gotham granted Defendant's Motion for Taxation of Costs and Case Evaluation Sanctions in the amount of \$123,011.14. (*Defendant's Motion for Summary Disposition- Exhibit K: June 26, 2014 Order Taxing Costs and Case Evaluation Sanctions*) (EXHIBIT G)

On June 27, 2014, correspondence with Derek Brackon/Johnson Law, PLC. via e-mail:

Ms. Braspenick, *"I just received the judgement in the mail for the taxation of costs. Here is a copy. He can call me on my cell for I am out of town as well. 906-364-3245."*

Derek Brackon, *"This is an error by the court. They can't enter the case evaluation sanctions pursuant to the taxable costs court rule." (Ms. Braspenick's correspondence with Johnson Law, PLC. via e-mail) (EXHIBIT F)*

On June 30, 2014, Judge Gotham DENIED Ms. Braspenick's Motion for a New Trial. (*Defendant's Motion for Summary Disposition-Exhibit J: June 30, 2014 Order Denying Plaintiff's Motion for a New Trial*)

On July 7, 2014, correspondence from Lynn Rose/Johnson Law, PLC. via e-mail:

Lynn Rose, *"Would you have time to speak with Ven Johnson either Thursday or Friday afternoon? Please let me know. Thanks." (Ms. Braspenick's correspondence with Johnson Law PLC. via e-mail)*

On July 8, 2014, Derek Brackon addressed a letter to Ms. Braspenick stating, “*We also have recently received a full copy of the Motion for Costs and Case Evaluation Sanctions. We are in the process of filing a motion for relief from the Order granting over \$123,000 in costs and case evaluation sanctions. It will be our position that the Court does not have authority to enter an order for the approximately \$95,000 in case evaluation sanctions absent oral argument and our ability to file a response brief. We will email and mail you a copy of this motion once it is filed and make you aware of the Court date so you can attend. This motion to set aside the order will be the last action we take in your case. Again, we will not be filing any claim of appeal on your behalf but will be assisting you with regard to this final motion regarding case evaluation sanctions.*” (Defendant’s Motion for Summary Disposition- Exhibit C: Contract for Legal Representation) and (Defendant’s Motion for Summary Disposition- Exhibit L: July 8, 2014 Brackon’s correspondence) (EXHIBIT H)

The MI.Court of Appeals ruled that on July 9, 2014, “*Johnson Law formed a new agreement to represent Braspenick in connection with the order awarding case evaluation sanctions to the medical-malpractice defendants. That new representation was not a continuation of the prior representation; rather, it was a remedial effort concerning past representation, and as such it was insufficient to extend the accrual date for Braspenick’s legal-malpractice claim.*” (APPENDIX A, page 5, last paragraph)

On July 11, 2014, Johnson Law, PLC. filed a Motion for Relief from 06/26/14 Order Taxing Costs and Case Evaluation Sanctions.

On August 4, 2014, a phone hearing was held on the Motion with Judge Gotham, Derek Brackon and Susan MacGregor. (EXHIBIT I)

Judge Gotham,

“Mr. Brackon is your firm continued to be involved in the matter at this point?”

Derek Brackon,

“It is a difficult question. It would depend on what potential issues may arise. The only issue I see at this point would be an appellate issue to this particular decision. I would have to talk with Mr. Johnson and Ms. Braspenick about whether or not that is a viable option both economically as well as legally. It is hard to say.” (Defendant’s Motion for Summary Disposition- Exhibit N: August 2, 2014 Phone Motion)

On August 15, 2014, Judge Gotham DENIED Plaintiff's Motion for Relief from ORDER Taxing Costs and Case Evaluation Sanctions. This ORDER was the last action Johnson Law, PLC. represented Ms. Braspenick in the underlying medical malpractice action, G 13-80 NH in Circuit Court. (*Defendant's Motion for Summary Disposition- Exhibit M: August 15, 2014 ORDER and (REGISTER OF ACTIONS, G 13-80 NH page 12)*

The August 15, 2014 ORDER was the final order in Ms. Braspenick's medical malpractice action, G 13-80 NH.

On August 21, 2014, Johnson Law, PLC. addressed a letter to Ms. Braspenick stating, *"Now that this issue has been decided, our firm will take no further action on behalf of your case. We will be closing our file within seven days."* A copy of the August 15, 2014 ORDER was included with this letter. (*Defendant's Motion for Summary Disposition- Exhibit O: August 21, 2014 Brackon's correspondence*)
(EXHIBITS J-K)

Ms. Braspenick took the completion of this last action on August 21, 2014 (legal representation in connection to the claim for delay diagnosing fungal infection, G 13-80 NH) and applied the (2) year statute. (**EXHIBIT A**)

Therefore, on August 9, 2016, Ms. Braspenick filed the legal malpractice action, G 16-190 NM against Johnson Law, PLC. in Gogebic County Circuit Court.

Both parties disagree on Johnson Law's last day of legal representation in connection with the claim for delay diagnosing fungal infection, G 13-80 NH which is defined in the December 11, 2013 legal retainer agreement. (**EXHIBIT A**) Petitioner argues August 21, 2014 (**EXHIBIT K**) and Respondent argues May 14, 2014 (**EXHIBIT B**) in this petition.

REASONS FOR GRANTING THE PETITION

The Circuit Court and the Michigan Court of Appeals ruled that Johnson Law, PLC. terminated their legal services to Ms. Braspenick on May 14, 2014. Petitioner disagrees for these stated reasons:

1. First and most importantly, there is no Circuit Court JUDGMENT on the jury's verdict in G 13-80 NH on or before May 14, 2014. Can an attorney terminate their services before the court issues a JUDGMENT in the client's case?
2. Drawing special attention to this court, Johnson Law's letter to Ms. Braspenick dated May 14, 2014, second to the last paragraph, "*I anticipate that a judgment will be entered on May 14 or 15. This will depend on when the judge actually signs the document. Once I have received the document, I will forward it to you by regular mail and email.*" (EXHIBIT B)
3. Petitioner argues that Johnson Law, PLC. had not fully accomplished the task that they had been hired by Ms. Braspenick to perform on May 14, 2014. On May 14, 2014 Johnson Law, PLC. was:
 - A. waiting for the court to issue a JUDGMENT in G 13-80 NH.
 - B. waiting to receive a copy of the JUDGMENT from the court.
 - C. going to provide a copy of the court's JUDGMENT to Ms.

Braspenick once Johnson Law, PLC. received the Judgment from the court.

Was Ms. Braspenick blatantly wrong to conclude from this letter that Johnson Law had unfinished legal services to provide in connection with the claim for delay diagnosing fungal infection, G 13-80 NH on May 14, 2014?

4. Ms. Braspenick did not receive a copy of the May 15, 2014, JUDGMENT until Johnson Law, PLC. sent her a copy of the judgment which was included in the letter addressed to Ms. Braspenick on May 21, 2014. (EXHIBIT C)

5. Parties do not agree when Johnson Law, PLC. last provided legal services in connection with the claim for delay diagnosing fungal infection, G 13-80 NH.

- A. Petitioner argues that Johnson Law's letter, dated August 21, 2014 terminated the attorney-client relationship. (EXHIBIT K)
- B. Respondent argues that Johnson Law's letter, dated May 14, 2014 terminated the attorney-client relationship. (EXHIBIT B)

6. Do the letters on May 14, 2014 and August 21, 2014 raise a genuine issue of material fact regarding when the attorney-client relationship terminated?

When comparing the (2) documents, the JUDGMENT on May 15, 2014 which was included in the May 21, 2014 letter (EXHIBIT C) and the ORDER on August 15, 2014 which was included in the August 21, 2014 letter (EXHIBIT J-K), petitioner argues that both letters relate to the same matter, G 13-80 NH, the same attorney (Johnson Law, PLC.), the same client (Ms. Braspenick), and the same court.

7. If the letters on May 14, 2014 and August 21, 2014 raise a genuine issue of material fact of termination, did the trial court properly grant summary disposition to the defendant? (EXHIBIT B and EXHIBIT K)

8. Parties do not agree that this case involved (2) legal retainer agreements.

- A. Petitioner argues that there was only (1) legal retainer agreement dated December 11, 2013 in this case.

B. Respondents argue that Johnson Law, PLC. letter addressed to Ms. Braspenick on July 8, 2014 was new, distinct, and separate representation.

9. All legal representation Johnson Law, PLC. provided to Ms. Braspenick was in connection with the claim for delay diagnosing fungal infection, G 13-80 NH.

(EXHIBITS A-K)

Provision 1 of the December 11, 2013, retainer agreement reads, "*The firm is retained by the Client(s) for legal representation in connection with the claim for delay diagnosing fungal infection.*" **(EXHIBIT A)** In April 2013, the claim was identified in Gogebic County Circuit Court as G 13-80 NH.

10. If the legal work that Johnson Law, PLC. provided to Ms. Braspenick prior to July 8, 2014 thru August 21, 2014 was legal representation in connection with the claim for delay diagnosing fungal infection, G 13-80 NH was summary disposition appropriate? **(EXHIBITS H-L)**

11. ERROR OF THE COURT? Does the Michigan Court of Appeals decision terminating the attorney-client relationship before the Circuit Court's JUDGMENT on May 14, 2014 violate MCR 2.117, MCR 2.117(B), MCR 2.117(C), "MRPC" 1.3, "MRPC" 1.4, and "MRPC" 1.16?

MCR 2.117(C)(1):Duration of Appearance by Attorney. *(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment or final order is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment or final order by the trial court.*

MCR 2.117(C)(2): (C) Duration of Appearance by Attorney. *(2) Unless otherwise stated in this rule, an attorney who has entered an appearance*

may withdraw from the action or be substituted for only on order of the court. Michigan Rules of Professional Conduct: Rule 1.3 Diligence: Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client.

When deciding a motion for Summary Disposition brought pursuant to MCR 2.116(C)(7) the Court must consider the affidavits, pleadings, and other documentary evidence; must accept all well plead allegations as true and must construe the evidence in a light most favorable to the Plaintiffs as the non-moving party. Beauregard-Bezou v Pierce, 194 Mich App 388, 390-391; 487 NW2d 792 (1992); MCR 2.116(G)(5).

"Summary disposition under MCR 2.116(C)(7) is appropriate when the undisputed facts establish that the plaintiff's claim is barred under the applicable statute of limitations." Kincaid v Cardwell, 300 Mich App 513, 522; 834 NW2d 122 (2013). MCR 2.116(I)(3) A court may, under proper circumstances, order immediate trial to resolve any disputed issue of fact, and judgment may be entered forthwith if the proofs show that a party is entitled to judgment on the facts as determined by the court. An immediate trial may be ordered if the grounds asserted are based on subrules (C)(1) through (C)(6), or if the motion is based on subrule (C)(7) and a jury trial as of right has not been demanded on or before the date set for hearing. If the motion is based on subrule (C)(7) and a jury trial has been demanded, the court may order immediate trial, but must afford the parties a jury trial as to issues raised by the motion as to which there is a right to trial by jury.

12. It is imperative to interpret the legal retainer agreement(s) using ordinary principals of contract law to determine the statute of limitations in a legal malpractice action.

- A. In what matter was the attorney retained by the client?
- B. Does the contract exclude post-judgment matters?

C. Does a new matter require a separate contract?

13. *MCL 600.5838(1) and MCL 600.5805(8). MCL 600.5838(1): “A claim based on malpractice other than medical malpractice accrues at that time that the person (Johnson Law, PLC.) discontinues serving the plaintiff (Ms. Braspenick) in a professional or pseudo professional capacity as to the matters (in connection with a claim for delay diagnosing fungal infection, otherwise known in Gogebic Circuit court as medical malpractice action, G13-80 NH) out of which the claim for (legal) malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.”*

MCL 600.5805(8) provides that a person cannot bring or maintain a malpractice action unless it is filed within (2) years after the claim first accrued.

14. Then, when did Johnson Law, PLC. discontinue serving Ms. Braspenick in a professional or pseudo professional capacity as to the matters in connection with the claim for delay diagnosing fungal infection out of which the claim for legal malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim? May 14, 2014 or August 21, 2014?

Ms. Braspenick had (2) years from the attorney's termination in connection with the claim for delay diagnosing fungal infection to file her legal malpractice action.

On July 8, 2014, Derek Brackon addressed a letter to Ms. Braspenick stating, “*We also have recently received a full copy of the Motion for Costs and Case Evaluation Sanctions. We are in the process of filing a motion for relief from the Order granting over \$123,000 in costs and case evaluation sanctions. It will be our position that the Court does not have authority to enter an order for the approximately \$95,000 in case evaluation sanctions absent oral argument and our ability to file a response brief. We will email and mail you a copy of this motion once it is filed and make you aware of the Court date so you can attend. This motion to set aside the order will be the last action we take in your case.*”

In determining when to file her legal malpractice claim, was Ms. Braspenick blatantly wrong to apply the completion of this last action (the Motion for Relief from Order granting over \$123,000 in costs and case evaluation sanctions) to the (2) year statute? (EXHIBITS H-K)

15. ERROR OF THE COURT. MCR 2.116(G)(6). (*A "judge's function" in evaluating a motion for summary judgment is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."* *Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 249 (1986); see also First Nat. Bank of Ariz. v. Cities Service Co., 391 U. S. 253, 289 (1968) (the question at summary judgment is whether a jury should "resolve the parties' differing versions of the truth at trial"). In doing so, the court must "view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the . . . motion.'* *Scott v. Harris, 550 U. S. 372, 378 (2007) (quoting United States v. Diebold, Inc., 369 U. S. 654, 655 (1962) (per curiam)).*

The original date of termination being argued in Defendant's Motion for Summary Disposition was May 15, 2014. (EXHIBIT L)

16. Drawing the court's attention to Defendant's Motion for Summary Disposition, page 1, no: "2. *A Judgment of No Cause of Action was entered against Braspenick in the underlying medical malpractice action on May 15, 2014, which is the last day that Johnson Law represented Braspenick with regard to the matter out of which Johnson Law's alleged legal malpractice arises;*" (EXHIBIT L)

But, MCL 600.5838(1) states: *A claim based on malpractice other than medical malpractice "accrues at that time that the person (Johnson Law, PLC.) discontinues serving the plaintiff (Ms. Braspenick) in a professional or pseudo professional capacity as to the matters (in connection with a claim for delay diagnosing fungal infection, otherwise known in Gogebic Circuit court as medical malpractice action, G13-80 NH) out of which the claim for (legal) malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.*

MCL 600.5838(1) specifically provides that a malpractice claim accrues on the last day of professional service, "*regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.*"

17. "In construing § 5838(1), our Supreme Court in *Gebhardt v O'Rourke*, 444 Mich 535, 541-542; 510 NW2d 900 (1994), found the statute to be unambiguous, notwithstanding inconsistent application of its plain meaning by the courts" (EXHIBIT M, page 2)

18. ERROR OF THE COURT: The circuit court and the Court of Appeals decision in the Braspenick action was based on the *KLOIAN v SCHWARTZ*, 272 Mich App 232, 237; 725 NW2d 671 (2006) decision. However, the facts in each of these actions are not the same. In Ms. Braspenick's action, the case was not dismissed by final order at the time Johnson Law, PLC. sent the May 14, 2014 letter to Ms. Braspenick. In the *Kloian v Schwartz* case, the case was dismissed by final order at the time the letter was written to Kloian on May 13, 2003.

Ms. Braspenick's action, G 13-80 NH was dismissed by final order on August 15, 2014. (EXHIBIT J)

The Circuit Court jury's verdict JUDGMENT did not exist on May 14, 2014. Johnson Law was waiting for the Circuit Court to issue JUDGMENT in Ms. Braspenick's action on May 14, 2014. (EXHIBIT B) Johnson Law provided Ms. Braspenick a copy of the Court's JUDGMENT in their letter addressed on May 21, 2014. (EXHIBIT C)

On the bottom of page 4, of the *Kloian v Schwartz* official reported version, dated September 12, 2006, the very last sentence on the page reads, "*Plaintiff's legal malpractice claim accrued at the time of defendants' last act in the underlying matter--the May 13, 2003, letter.*"

Johnson Law, PLC. last act in connection with the claim for delay diagnosing fungal infection, G 13-80 NH is their letter addressed to Ms. Braspenick on August 21, 2014. "*Now that this issue has been decided, our firm will take no further action on behalf of your case. We will be closing our file within seven days.*" (EXHIBIT K)

19. **ERROR OF THE COURT.** It is clear from MCR 7.202(6)(a)(iv) in a civil case that a postjudgment order awarding or denying attorney fees and costs under MCR 2.403, 2.405, 2.625 or other law or court rule is defined as a “final judgment” or “final order” and is not a remedial effort concerning past representation as the Court of Appeals so ruled on April 19, 2018. *“That new representation was not a continuation of the prior representation; rather, it was a remedial effort concerning past representation, and as such insufficient to extend the accrual date for Braspenick’s legal malpractice claim.”* (*Court of Appeals, ruling April 19, 2018 last paragraph before Affirmed, page 5*)

Here, it is important to reference the December 11, 2013 legal retainer agreement. Were post-judgment matters excluded from this retainer agreement? If not, were the post-judgment matters provided under the December 11, 2013 agreement?

20. POST JUDGMENT MATTERS CONSTITUTE CONTINUING REPRESENTATION. Drawing the court’s attention to EXHIBIT M in this petition. *Dr. Martin Trepel v Kohn, Milstein, Cohen and Hausfeld*, Michigan Court of Appeals, Judgment on July 14, 2000.

“The law firm litigated the post-appeal matter of costs to judgment in March, 1990. The question presented in this case is whether this constituted continuing representation of plaintiff as to the antitrust matter from which plaintiff’s claim for malpractice arose. If it did, this action, filed in January, 1992, is not barred by MCL 600.5805(4); MSA 27A.5805(4).” Page 2, paragraph 2.

*“This Court held that the plaintiffs’ malpractice claim was not time-barred by the limitations period because the legal work performed by the defendant constituted continuing representation regarding the 1986 sale. *Id.* at 451.”* Page 2, paragraph 3.

“Applying Maddox here, we conclude that plaintiff’s claim was not barred by the statute of limitations. Clearly the cost issue that defendants continued to litigate on plaintiff’s behalf until March of 1990 arose out of the federal antitrust litigation which gave rise to plaintiff’s malpractice claim. Thus, for purposes of the

statute, plaintiff's claim against defendants did not accrue until defendants discontinued serving plaintiff as his attorneys with respect to this matter, in March of 1990.” Page 2, paragraph 4.

21. Clearly the cost issue that Johnson Law continued to litigate on Ms. Braspenick's behalf from the end of June through August 15, 2014 arose out of the medical malpractice action, G 13-80 NH which gave rise to Ms. Braspenick's legal malpractice claim. Thus, for purposes of the statute, Ms. Braspenick's claim against Johnson Law, PLC. did not accrue until Johnson Law discontinued serving Ms. Braspenick as her attorneys with respect to this cost matter.

22. Communication between the attorney and the client must be clear.

A. On July 8, 2014, Derek Brackon addressed a letter to Ms. Braspenick stating, *“It will be our position that the Court does not have authority to enter an order for the approximately \$95,000 in case evaluation sanctions absent oral argument and our ability to file a response brief. We will email and mail you a copy of this motion once it is filed and make you aware of the Court date so you can attend. This motion to set aside the order will be the last action we take in your case.”*

B. On August 21, 2014, Johnson Law, PLC. addressed a letter to Ms. Braspenick stating, *“Now that this issue has been decided, our firm will take no further action on behalf of your case. We will be closing our file within seven days.”*

Was Ms. Braspenick blatantly wrong to conclude from Johnson Law's letter addressed to Ms. Braspenick on July 8, 2014 that the motion to set aside order was the last action Johnson Law was going to take in connection with the claim for delay diagnosing fungal infection, G 13-80 NH?

If Johnson Law was no longer involved with Ms. Braspenick's case on July 8, 2014, why would Johnson Law argue, *“It will be our position that the Court does not have authority to enter an order for the approximately \$95,000 in case evaluation sanctions absent oral argument and our ability to file a response brief.”*

By the attorney's own admittance addressed in their July 8, 2014 letter, the motion to set aside order was going to be their **last action** in Ms. Braspenick's case.

How now, years later, after the fact, Johnson Law, PLC argues that this **last action** stated in the July 8, 2014 letter was not the last action but their first action.

Johnson Law's attorney, Mr. Ashcraft, "*A new separate and distinct engagement was formed when Ms. Braspenick asked Johnson Law to come back in and assist her with regard to trying to do something to secure relief in response of Judge Gotham's award of case evaluation sanctions.*" (*Hearing on Defendant's Motion for Summary Disposition Transcript, page 14, lines 23-25 and page 15, lines 1-2*)

How can an attorney's last action on July 8, 2014 now become the attorney's **first action after the fact in March of 2017?** (EXHIBIT H)

23. The Court of Appeals ruling, terminating the attorney-client relationship before the Court issues a **JUDGMENT** in the client's action is complicated and confusing to a client trying to determine when a legal malpractice complaint can be timely filed.

How can an attorney's legal work in the same case, in the same matter, in the same court, as their court appearance be considered a different matter after the fact?

How can an attorney terminate their relationship with a client before the court issues a **JUDGMENT/Order** in the client's case?

The attorney's last action on July 8, 2014 in the case is now the attorney's **first action** in Ms. Braspenick's case makes this Petitioner's head spin.

24. Ms. Braspenick filed (21) e-mails in accordance to MCR 7.210(C). The correspondence between Johnson Law, PLC. and Ms. Braspenick included evidence in support of the fact that there is no court order withdrawing Johnson Law, PLC.

as Ms. Braspenick's counsel prior to August 21, 2014.

The Court, Judge Michael Pope, "*There is no dispute here that there was no release of the Johnson Law firm by Ms. Braspenick, and there was no release of the law firm by the court.*" (*Hearing on Defendant's Motion for Summary Disposition Transcript, March 13, 2017, page 37, lines 22-23*)

On June 19, 2014 correspondence with Lynn Rose from Johnson Law, PLC via e-mail:

Lynn Rose, "*I returned the photos. Hopefully you received those. Attached is a Stipulation and Order to Withdraw as counsel. Can you please either mail or scan back a signature page to us? Thank you.*"

Johnson Law, PLC. asked Ms. Braspenick to sign a Stipulation and Order to Withdraw as counsel in G 13-80 NH on June 19, 2014, June 24, 2014, and then again, on June 25, 2014. (EXHIBIT E)

If Johnson Law, PLC. clearly communicated to Ms. Braspenick that the attorney-client relationship terminated on May 14, 2014, why then would Johnson Law, PLC. contact Ms. Braspenick to sign both a Stipulation and Order to withdraw as counsel over a month later? Not once, not twice, but (3) times.

Does an attorney re-terminating a previous terminated relationship make any common sense?

The bottom line is there is no court order releasing Johnson Law, PLC. as Ms. Braspenick's attorney in G 13-80 NH prior to August 21, 2014.

25. Ms. Braspenick also submitted evidence in support of Johnson Law having previous knowledge of the Defendant's motion for taxation of costs and case evaluation sanctions prior to the Judge granting the defendant's motion on June 26, 2014. These e-mails were also filed in accordance to MCR 7.210(C).

Ms. Braspenick, "*They never --supposedly MacGreg -- Susan MacGregor never sent the paperwork to Johnson Law, and when I contacted Johnson Law about it they said they never received it, and it was within the timeframe when it*

was being, um, addressed in the court, and, um, and then once the order was dated and ruled upon then Johnson Law, um -- I talked to Johnson Law and they actually sent the paperwork then trying to get those costs reduced, (Hearing on Defendant's Motion for Summary Disposition, page 24 lines 23-25, and page 25, lines 1-6)

On June 19, 2014, correspondence from Lynn Rose (Johnson Law, PLC.) to Ms. Braspenick via e-mail: (EXHIBIT E)

Lynn Rose, *"I returned the photos. Hopefully you received those. Attached is a Stipulation and Order to Withdraw as counsel. Can you please either mail or scan back a signature page to us? Thank you."*

Ms. Braspenick, *"I have not received the photos? When did you send them? Also, did you receive the Defendant's Motion for taxation of costs and case evaluation sanctions?"*

Lynn Rose, *"You should be receiving the photos soon. Let me know if you don't get them. No, we didn't get that motion."*

On June 26, 2014, correspondence with Lynn Rose from Johnson Law, PLC. via e-mail: (EXHIBIT F)

Lynn Rose, *"Can Derek call you this afternoon maybe around 2:00 p.m. to go over the Motion for Costs? There is no hearing date still right? Let me know. Thanks."*

On June 27, 2014, correspondence with Derek Brackon from Johnson Law, PLC. via e-mail: (EXHIBIT F)

Ms. Braspenick, *"I just received the judgement in the mail for the taxation of costs. Here is a copy. He can call me on my cell for I am out of town as well. 906-364-3245."*

Derek Brackon, *"This is an error by the court. They can't enter the case evaluation sanctions pursuant to the taxable costs court rule."*

By looking at the evidence provided to the court, Johnson Law, PLC. asked Ms. Braspenick if they could go over the defendant's motion for taxation of costs and case evaluation sanctions, not the other way around as Mr. Ashcraft testified in

court, “*but after hearing about it from Ms. Braspenick they did agree, at her request, to come back in and try to address that issue for her, which he did.*”
(*Hearing on Defendant’s Motion for Summary Disposition, page 28, lines 19-21*)

Court of Appeals ruling, April 19, 2018, page 5, last paragraph, “*Thereafter, on July 9, 2014 Johnson Law formed a new agreement to represent Braspenick in connection with the order awarding case evaluation sanctions to the medical-malpractice defendants.*”

Johnson Law, PLC. was aware of the Defendant’s Motion for taxation of costs and case evaluation sanctions on June 19, 2014 prior to Judge Gotham granting defendant’s motion on June 26, 2014. (EXHIBITS E-H)

26. The Michigan Court of Appeals ruled that the last step in the case on May 14, 2014 was an appeal. (APPENDIX A page 4) This statement is simply not true for these stated reasons:

- A. First and most importantly, the Circuit Court’s JUDGMENT of the jury’s verdict did not exist on May 14, 2014. (EXHIBIT B)
- B. On May 21, 2014, Johnson Law, PLC. forwarded the court’s JUDGMENT/ORDER on to Ms. Braspenick. (EXHIBIT C)
- C. Michigan Court Rules allows the prevailing party (28) days from the date of JUDGMENT to file for costs.
- D. Johnson Law, PLC. did not mention that the defendants were entitled to file for taxation of costs and case evaluation sanctions in either of their letters to Ms. Braspenick dated May 14, 2014 and/or May 21, 2014.
(EXHIBITS B-C)
- E. On June 11, 2014, the defendant’s filed a MOTION for taxation of costs and case evaluation sanctions.
- F. On June 11, 2014, defendants identified Johnson Law, PLC. as Ms. Braspenick’s attorney in their filed motion. Ms. Braspenick asked the Michigan Supreme Court to extend the record, G 13-80 NH to verify this

information, in the court record, which was denied on June 19, 2019.

(EXHIBIT D)

- G. On June 19, 2019, Ms. Braspenick asked Johnson Law, PLC. if they received Defendant's MOTION for taxation of costs. Lynn Rose responded, "*No, we didn't get that motion.*" **(EXHIBIT E)**
- H. On June 19, 2014, Lynn Rose asked Ms. Braspenick to sign a Stipulation and Order to Withdraw as counsel. **(EXHIBIT E)**
- I. On June 24, 2014, Lynn Rose asked Ms., Braspenick to sign a Stipulation and Order to Withdraw as counsel. **(EXHIBIT E)**
- J. On June 25, 2014, Lynn Rose asked Ms. Braspenick to sign the Stipulation and Order to Withdraw as counsel and if not threatened to file a MOTION. **(EXHIBIT E)**
- K. On June 26, 2014, Lynn Rose asked Ms. Braspenick if Derek could call to go over the Motion for Costs? **(EXHIBIT F)**
- L. On June 27, 2014 Ms. Braspenick received the ORDER for taxation of costs and case evaluation sanctions in the mail in the amount of \$123,011.14. **(EXHIBIT G)**
- M. On July 8, 2014, Ms. Braspenick received a letter from Johnson Law, PLC. stating, "*We are in the process of filing a motion for relief from the Order granting over \$123,000 in costs and case evaluation sanctions. It will be our position that the Court does not have authority to enter an order for the approximately \$95,000 in case evaluation sanctions absent oral argument and our ability to file a response brief.*" "*This motion to set aside the order will be the last action we take in your case. Again, we will not be filing any claim of appeal on your behalf but will be assisting you with regard to this final motion regarding case evaluation sanctions.*" **(EXHIBIT H)**
- N. On July 11, 2014, Johnson Law, PLC. filed a Motion for Relief from Order Taxing Costs and Case Evaluation Sanctions on Ms. Braspenick's behalf.

- O. On August 4, 2014, Johnson Law, PLC. attended the hearing by phone on the Motion. Judge Gotham, Derek Brackon and Susan MacGregor were in attendance. (EXHIBIT I)
- P. On August 15, 2014, Judge Gotham ORDERED and DENIED Plaintiff's Motion for Relief from ORDER Taxing Costs and Case Evaluation Sanctions. (EXHIBIT J)
- Q. On August 21, 2014, Johnson Law, PLC. addressed a letter to Ms. Braspenick providing a copy of the 08/15/14 ORDER and stating, *“Now that this issue has been decided, our firm will take no further action on behalf of your case. We will be closing our file within seven days.”* (EXHIBIT K)

27. CRUCIAL FACTS WERE ELIMINATED. It is of the upmost importance to examine each piece of evidence provided by both parties in their entirety. Key pieces of fact may be missed or eliminated if not read as whole. Why were these crucial key facts in this case not taken into consideration?

- A. Johnson Law, PLC.'s, May 14, 2014 letter addressed to Ms. Braspenick: *“I anticipate that a judgment will be entered on May 14 or 15. This will depend on when the judge actually signs the document. Once I receive the document, I will forward it to you ...”* (EXHIBIT B)
- B. Johnson Law, PLC. did not forward the JUDGMENT on to Ms. Braspenick until May 21, 2014. (EXHIBIT C)
- C. Ms. Braspenick provided (21) e-mails between Johnson Law, PLC. and Ms. Braspenick from June 19, 2014 through July 7, 2014 in accordance to MCR 7.210(C). (EXHIBITS E-F)
- D. Johnson Law's July 8, 2014 letter addressed to Ms. Braspenick, *“This motion to set aside the order will be the last action we take in your case.”* Johnson Law must have been involved in previous actions if this was their

last action. (EXHIBIT H)

E. There is no court order releasing Johnson Law, PLC as Ms. Braspenick's counsel prior to August 21, 2014 yet the Court of Appeals did not take Johnson Law, PLC.'s Stipulation and Order to Withdraw as counsel on June 19, 2014 and then again on June 25, 2014 into consideration.

(EXHIBIT E)

28. EVERY PARTY IS ENTITLED TO DUE PROCESS OF THE LAW. Just because a party is not represented by counsel does not mean their arguments are invalid and the evidence in support of their arguments should be ignored and overlooked.

29. If Johnson Law's letters on May 14, 2014 and August 21, 2014 are both termination letters addressed to Ms. Braspenick, why do they not read the same? The May 14, 2014 letter does not include a court order, the August 21, 2014 does include a court order. The August 21, 2014 letter states they are closing the file, the May 14, 2014 letter doesn't.

30. Since the December 11, 2013 retainer agreement matter is identified as *in connection with the claim for delay diagnosing fungal infection*, G 13-80 NH and post-judgment matters were not excluded from the contract, was Ms. Braspenick blatantly wrong to assume that all of Johnson Law's legal work from December 11, 2013 through August 21, 2014 was provided by this legal retainer agreement?

31. Johnson Law, PLC. did not mention the Defendant's right to file for taxation of costs and case evaluation sanctions and had (28) days to do so according to Michigan Court Rules on May 14, 2014 and/or May 21, 2014. (EXHIBITS B-C)

It is beyond comprehension that the taxation of costs and case evaluation sanctions could even be considered new, separate, and distinct from the very same action Johnson Law brought to trial. Defendant's filing for taxation of costs and case evaluation sanctions were a direct result of the plaintiff losing the case. \$123,011.14 is a tremendous amount of money for the Plaintiff to pay back for losing a medical malpractice action. (EXHIBIT G)

32. **IF THIS RULING STANDS**, every attorney could terminate the attorney-client relationship with their client prior to the court issuing a JUDGMENT/Order in the client's case?

33. **IF THIS RULING STANDS**, every attorney could terminate the attorney-client relationship without providing a copy of the court's JUDGMENT/Order to the client in their case.

34. If the May 14, 2014 termination is non-compliant with Michigan Court Rules 2.117 and the Michigan Rules of Professional Conduct, does a disputed genuine issue of material facts exist with the attorney-client relationship terminating on August 21, 2014?

35. In determining the statute of limitations in this case, it all boils down to the provisions in the December 11, 2013 contract and applying the (2) year statute.

36. If this petitioner's argument of August 21, 2014 is connected with the claim for delay diagnosing fungal infection, G 13-80 NH in anyway, summary disposition was inappropriate.

IN CONCLUSION

The dispositive question is when did Johnson Law, PLC. effectively and clearly terminate legal representation in connection with the claim for delay diagnosing fungal infection, G 13-80 NH?

Did the attorney-client termination occur on May 14, 2014 or on August 21, 2014?

The May 14, 2014 attorney-client termination ruling raises more questions than it does answers.

It is last day an attorney represents the client that determines the statute of limitations. *MCL 600.5838(1)*

Ms. Braspenick had (2) years from the last day Johnson Law, PLC. provided legal representation in connection with the claim for delay for diagnosing fungal infection, G 13-80 NH.

Clearly the cost issue that Johnson Law, PLC. continued to litigate on Ms. Braspenick's behalf from the end of June through August 15, 2014 arose out of the medical malpractice action, G 13-80 NH which gave rise to Ms. Braspenick's legal malpractice claim. Thus, for purposes of the statute, Ms. Braspenick's claim against Johnson Law, PLC. did not accrue until Johnson Law discontinued serving Ms. Braspenick as her attorneys with respect to this cost matter.

There are questions of material facts that must be resolved before determining whether this plaintiff's complaint filed on August 9, 2014 was time-barred by the statute of limitations.

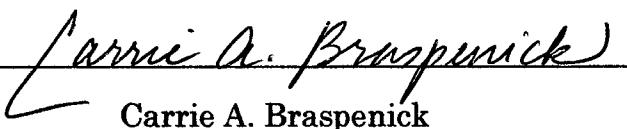
Thus, the determination of these legal questions regarding the timeliness of plaintiff's complaint depends on the resolution of these material facts.

The Court of Appeals did not address any other issues in the Appeal except for the statute of limitations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Carrie A. Braspenick

Dated: December 18, 2019