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Vol. CXVIII, No. 110

Monday, June 3, 2013

75 Cents

## DAILY BRIEFS

### Court names executive director for Board of Law Examiners

Attorney Jana L. Benjamin, a former admissions officer for the University of Michigan Law School, has been named executive director of the Board of Law Examiners, the Michigan Supreme Court announced Thursday.

As the BLE's first executive director, Benjamin will assist the BLE board to oversee and administer the bar examination, which is given twice a year.

Justice Brian K. Zahra, the Supreme Court's liaison to the BLE, said that Benjamin's experience "includes law school admissions, private law practice, public service, and a stellar academic background."

Zahra added, "The Board of Law Examiners exists to protect the public. The exam questions test proficiency in Michigan law - which is what the public has a right to expect of Michigan attorneys. Ms. Benjamin will be helping the BLE carry out this very critical responsibility."

Benjamin earned a B.A. degree with high honors from the University of Michigan. She graduated cum laude from the University of Michigan Law School, where she was executive editor of the University of Michigan Journal of International Law and research assistant to Dean Lee Bollinger. From 1991-92, she served as law clerk for Judge John Feikens of the U.S. District Court for the Eastern District of Michigan. She clerked for Michigan Supreme Court Justice Charles L. Levin from 1992-93.

From 1993-98, Benjamin was an associate attorney in the law firm of Dickinson Wright, PLLC; from 1995-96, she also served as an instructor for the American Institute of Paralegal Studies.

In 1999, Benjamin joined the University of Michigan Law School as assistant director of admissions, where she served until 2003. From 2003-12, she was a judicial law clerk and pre-hearing attorney for the Michigan Court of Appeals. In 2012, she joined the State Court Administrative Office, the administrative arm of the Michigan Supreme Court.

### Firm plans 'Taxation and Succession Planning Institute'

While Congress avoided the fiscal cliff at the eleventh hour, tax and financial planners need to keep up with changes that have occurred and how they affect their clients. The Butzel Long Taxation and Succession Planning Institute will offer the latest information and techniques to help tax and financial planners during a half-day seminar from 7:15 a.m. to 1:15 p.m. on Thursday, June 20, at the Troy Marriott located at 200 West Big Beaver Road in Troy.

The seminar is designed for Certified Public Accountants (CPA) and financial planners. The attendance fee is \$100 per person and includes a continental breakfast, lunch and seminar materials. Members of the Michigan Association of Certified Public Accountants (MACPA) are eligible to receive four Continuing Education Credits (CPE) for participating in the seminar. Financial planners are eligible for four Certified Financial Planner (CFP) credits, and two CE Insurance Credits in Life/Health (pending approval).

To register for this seminar, visit [www.butzel.com/tax2013/](http://www.butzel.com/tax2013/). For additional information, contact Jonathan Spencer at 313-983-6995 or [spencer@butzel.com](mailto:spencer@butzel.com).

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## External Affairs



Photo by John Meiu

On Saturday, May 18, U.S. District Court Judge Victoria Roberts (center), Eastern District of Michigan, led an all-day training for 20 law students from eight different law schools who will participate in the Wolverine Bar Foundation's Judicial Externship Program. Roberts started the program in 2001 to expand federal clerkship opportunities for minority students who will gain firsthand experience in federal practice, court proceedings, and conferences between judges and attorneys. They will also assist the judges to whom they are assigned with legal research and writing projects. Taking part in the training conducted at the Auburn Hills campus of Cooley Law School were (front row, l-r) La Toya Palmer, Adrean Taylor, Candice Coates, Krystal Player, U.S. District Court Judge Victoria Roberts, Sharika Robinson, Charity Dean, Alana Glass, and Mohamad Awan; (second row) Jessica Holmes, Mylika Johnson, Hope Campbell, Nagah Mahram, and Sasha Griffin; (third row) Deborah Johnson, Christopher Burtley, Arius Webb, Shannon King, and Jonathan Kirkland; and (back row) Devon Cox, Blake Edwards, Christopher Knight, Rabih Hamawi, and Mikiya Aaron.

## Wayne Law students experience more opportunities abroad than ever before

The opportunity for law students to work and study abroad has never been better at Wayne State University Law School, where the robust Program for International Legal Studies continues to expand and thrive.

Nine Wayne Law students will be traveling this summer to England, the Bahamas, the Netherlands, Mexico and three locations in India. They will advocate for human rights, intern at top international law firms, study with the world leading international law scholars and much more.

Four students earned International Public Interest Law Fellowships, and will spend their summers living in developing countries engaged in advocacy on a broad range of human rights issues. Fellows receive a \$5,000 stipend to cover travel and living expenses for up to two months of work.

IPILF recipient Joshua Aprile will work in Mexico City for Mexico Unido

Contra la Delincuencia. The organization seeks to strengthen the rule of law in Mexico and assist both police and victims in responding to the high level of criminal activity in certain parts of the country.

"This is the first time we've placed an IPILF student in Latin America, and we are thrilled that a well-respected organization like MUCD has agreed to take our students as interns," said Professor Gregory Fox, director of the Program for International Legal Studies.

Aprile, who grew up in Marine City, earned a bachelor's degree magna cum laude in political science from Grand Valley State University, and expects to earn his law degree next year. He hopes to practice international litigation and arbitration after graduation. Wayne Law's strong Program for International Legal Studies drew him to the school in the first place, he said.

"For me, this fellowship is an excellent opportunity to apply my legal education in a positive way that genuinely helps people, and to receive an amazing cultural experience that

will stay with me for the rest of my life," Aprile said.

IPILF recipient Yunjoo Goze, who is from Andong, Korea, is already in New Delhi, India, beginning her work with the Dalit Foundation, where other Wayne Law interns have worked in the past. The foundation works to end discrimination against Indian Dalits, often referred to as "untouchables." The group suffers from pervasive forms of discrimination, which the foun-

Taylor said he'll be writing reports about human rights violations and also be "out in the field" attending hearings and researching patterns of abuse.

"This fellowship will provide me with a hands-on, real world experience for how international law functions," he said. "I will get to see how international law copes with humans and the multitude of issues and viewpoints that we bring to the table. It will allow me to further grow as person by expanding my exposure to different cultures and philosophies."

And it will give him experience he hopes to apply after graduation next year toward a career working overseas "in a field that helps people from different nations work together toward business, environmental or human rights goals," he said.

Taylor holds a Michigan teaching certificate and a bachelor's degree from Eastern Michigan University in social studies and education. After graduation from EMU, he spent a year teaching English at a middle school in South Korea.

IPILF recipient Karinne Marcolini will work at the Crisis Centre in Nassau, Bahamas, another group that has hosted Wayne Law interns in the past. The Crisis Centre assists victims of domestic violence, a pervasive problem seldom noticed in a country dominated by tourist trade. The center provides legal assistance to victims and runs public campaigns to delegitimize spousal and child abuse and to empower victims to leave their abusers.

"I will get a lot of exposure to the Bahamian court system, and I hope to do some writing and research for the Crisis Centre, as well," Marcolini said. "This fellowship is an amazing opportunity and my first step toward a career in public interest law. I'm interested in environmental law, but I'm excited to see what other opportunities there are."

Like Aprile, she said she chose Wayne Law because of the Program for International Legal

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"For me, this fellowship is an excellent opportunity to apply my legal education in a positive way that genuinely helps people, and to receive an amazing cultural experience that will stay with me for the rest of my life."

— Joshua Aprile

tion seeks to end by using the courts and efforts to raise social awareness of the problem.

"I just arrived a few days ago, and it has been pretty hectic," Goze said via email. "I'd like to gain firsthand experience working with international human rights through the fellowship. I'll be working for empowerment of Dalit communities in India. Dalits are the lowest rung of the caste system."

She spent last summer working with Wayne Law's Transnational Environmental Law Clinic. She hopes to work in the field of international environmental law after graduation next year.

Law student Adam Taylor, who calls Monroe his hometown, is another IPILF recipient. He'll work with Peoples Watch in Madurai, India, where other fellowship winners have been placed in past years. Peoples Watch is one of the most respected human rights organizations in India, issuing reports on all aspects of Indian political and social practices, and serving as a liaison to international monitoring bodies at the United Nations and elsewhere

## Local Voice

NICK KYRIAKOPOULOS  
Foley and Lardner LLP

### Pay your own costs



Those familiar with responding to discovery requests seeking electronically stored information ("ESI") know there is a general presumption that the responding party bears the expense of complying with the discovery requests. This presumption may be overcome to allow cost-shifting when discovery requests impose an undue burden on the responding party. A recently issued opinion from the Federal District of New Jersey, in which the Court denied a cost-shifting request, underscores that courts require responding parties to bear a heavy burden before any costs will be shifted to the other side.

In the case of *Juster Acquisition Co., LLC v. N. Hudson Sewerage Auth.*, the District Court's opinion made it clear that cost-shifting is unlikely, even when discovery requests seek duplicative information already produced in hard copy. No. 12-3427, 2013 U.S. Dist. LEXIS 18372, at \*14 (D.N.J. Feb. 11, 2013). The Court reasoned that because litigants with significant resources absorb the cost of ESI discovery, projected discovery costs in the range of \$6,000 to \$16,000 are "not so substantial" as to warrant fee-shifting. Id. at \*15. The opinion is also noteworthy because the Court denied Defendant's request for a protective order with regard to 67 broad searches requested by Plaintiff. Id. at \*7.

The dispute in *Juster* arose after Plaintiff, an investment firm, and Defendant, a public utility authority, failed to consummate a business engagement for the purposes of refinancing and recapitalizing Defendant's debt obligations. The two parties negotiated and executed a term sheet containing a binding exclusivity provision that Plaintiff argued prevented Defendant from implementing a refinancing plan without the employment of Plaintiff. Id. at \*3. Plaintiff alleged that Defendant took its work-product and proceeded to close a deal without Plaintiff, in violation of the exclusivity provision contained in their initial term sheet. Id. at \*3. Plaintiff claimed damages in excess of \$41 million. Id.

Five months into the litigation, after Defendant had already produced approximately 8,000 pages of responsive documents and complied with 100 electronic word search terms, Plaintiff requested an additional 67 searches. Id. at \*5. The 67 requested searches included broad terms such as "SEC," "fee," "debt," and "tax!" Id. at \*7. Defendant argued that these search terms were too broad and that the searches would retrieve duplicative information already produced in hard copy. Id. at \*5-6. For these reasons, Defendant argued that it was entitled to a protective order; alternatively, should the court deny the request for a protective order and require the searches, Defendant requested an order requiring Plaintiff to pay the costs associated with conducting the searches. Id. at \*5-6.

The Court made short work of Defendant's request for a protective order: it was denied without much scrutiny as to the broadness of the search terms. Id. at \*8. Although the Court admitted that "at first blush," the 67 search terms appeared "somewhat broad," the Court determined that Defendant failed to show how they were unreasonably cumulative and therefore Defendant lacked good cause for a protective order. Id.

In its assessment of Defendant's cost-shifting requests the Court applied the test set forth in *Zubulake v. Warburg LLC*, 216 F.R.D. 280 (S.D.N.Y. 2003) to determine if Defendant was entitled to discovery fees. Under *Zubulake*, a court will determine whether discovery costs should be shifted based on a seven-factor test, which is weighted more or less in the following order:

(1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production, compared to the amount in controversy; (4) the total cost of production; (5) the relative ability of each party to control costs and its incentive

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## Legal View

RICHARD J. PELTZ-STEELE, THE DAILY RECORD NEWSWIRE

### In defense of student privacy

When tragedy strikes, rational judgment becomes vulnerable to passions of anger, sadness and fear. Any grade-schooler knows that an accused in the United States is innocent until proven guilty. But read the news after revelation of a horrific crime, and the ordering of American values seems fuzzy.

Criminal defense lawyers know this divergence well. They, and we the people, ultimately rely on the rule of law to bind us to our better selves.

Privacy is another American value we rush to sacrifice on the altar of accountability. In Ohio, reporters swarm the yards of liberated kidnapping victims. And in Massachusetts, news trucks besiege the campus at the University of Massachusetts Dartmouth, where I work, and where marathon bombing suspect Dzhokhar Tsarnaev was a student.

Media want to know everything about Tsarnaev and his college friends. The university, bound by federal privacy law, has refused access to student academic and financial aid records.

The demand for information makes sense. Public appetite for details about these cases is insatiable, and public interest is legitimate. Through transparency, we strive for justice.

In the history of our law, the public criminal process coincided with British emergence from the Middle Ages. A key consequence attained through public participation is community catharsis. As the public's eyes and ears, news media play an essential part in the justice system.

The freedom of information is not absolute, however, and it runs up against FERPA, the Family Educational Rights and Privacy Act of 1974. This conflict puts people such as me in a tough spot. I've long been an access advocate. I am on record stating, and I maintain, that public universities overreach with FERPA. Sometimes they mean well, to protect students; sometimes they mean to conceal misfeasance.

Like much of American privacy law, FERPA is about balance. Even the Student Press Law Center, whose advocates routinely battle FERPA privacy claims, acknowledges that student transcripts and test scores are appropriately shielded from disclosure.

FERPA regulations, promulgated by the U.S. Department of Education, plainly protect individuals' academic and financial aid records. There's plenty left to argue about. Contention is warranted over privacy in anonymized data compilations, in campus disciplinary hearings

and in athletics. For decades after its adoption, FERPA was known as "the Buckley amendment" for its sponsorship by New York Sen. James Buckley. Buckley had a distinguished career in Congress, in the Reagan administration, and on the bench for the D.C. Circuit. FERPA was co-sponsored by Rhode Island Sen. Claiborne Pell, whose Pell grant program made college accessible to millions annually.

Buckley and Pell were a bipartisan team. And no wonder; access and privacy are not partisan causes. Buckley favors limited government, a meaningful 10th Amendment, and private-sector problem-solving over public regulation. Pell was an internationalist on the side of labor, the arts and the public sector. Both were willing to impose statutory student privacy on schools and colleges, private and public, through the hook of federal aid.

FERPA is a straightforward privacy measure. From admission to graduation, schools and colleges collect volumes of information about students concerning, for example, their financial resources, medical problems and grades. As a society, we keep the information private through the likes of banking and health care regulations. We worry about tax fraud, but still we don't publicize individuals' W-2s. We worry about health care fraud, but still we don't publicize individuals' blood test results.

FERPA moreover is about access as much as privacy. Buckley and Pell recognized the dangerous potential of powerful educational institutions — some like small towns, with their own police forces — to leverage information to their advantage and to run roughshod over students and parents.

So FERPA, like the federal Privacy Act, guarantees college students access to their own records and the means to correct mistakes. FERPA does not afford a right to sue, but its privacy and access rules are backed up by the threat of losing federal money.

FERPA has been fine-tuned many times in its near 40-year history. It should be still. Statutory law should be responsive to changing norms of transparency, privacy and accountability. But measured reform should be the result of thoughtful and systematic review, not a feverish response to a singular heart-break.

*Professor Richard J. Peltz-Steele teaches freedom of information law at the University of Massachusetts School of Law.*

# In the Courts

Submit news & views to [bcoc@legalnews.com](mailto:bcoc@legalnews.com)

## CALIFORNIA

### Murder charged in dog pack mauling death

#### Criminal charges being filed more often against owners in dog-bite related fatalities

BY CHRISTOPHER WEBER  
Associated Press

LOS ANGELES (AP) — The owner of four pit bulls that killed a woman jogger in a gruesome mauling was charged with murder last week in a highly unusual case that strained the memories of law enforcement officials to find comparable uses of the felony murder law.

Alex Jackson, 29, was charged after DNA tests on his dogs found blood on their muzzles and coats that matched that of Pamela Devitt, 63, who died after being bitten 150 to 200 times by his four pit bulls.

"The DNA came back with

blood on the dogs that matched the victim's blood," said sheriff's spokesman Steve Whitmore. Whitmore and others said it was the first dog mauling case they could recall since the 2001 trial of a San Francisco couple convicted in the death of a neighbor who was mauled by their giant dog.

Marjorie Knoller received a 15-years-to-life sentence after a jury found her guilty of second-degree murder. In rejecting her appeal, the California Supreme Court ruled that Knoller acted with a conscious disregard for human life when her 140-pound Presa Canario escaped and killed Diane Whipple in an apartment building hallway.

Knoller's husband, Noel, was convicted of involuntary manslaughter.

The warrant against Jackson also charges him with owner negligence of an animal causing death, said Jane Robison, spokeswoman for the Los Angeles County District Attorney's office. He also faces charges of growing marijuana.

Jackson was originally arrested shortly after the May 9 death of Devitt but was released on bail pending DNA testing to determine if his dogs carried out the attack.

Dog bite-related fatalities are rare — anywhere from 30 to 35 each year — but there are more cases where criminal charges such as endangerment are being filed against owners, said Donald Cleary, a spokesman with the National Canine Research Council. Cleary could recall only three other instances, two in California and one in Georgia, where murder

charges were filed.

Since January, authorities received at least three other reports of Jackson's dogs attacking other people, according to Robison.

Sheriff's authorities said a driver who saw pit bulls attacking Devitt in the high desert community of Littlerock called 911 and honked her horn to try to get the dogs to stop.

An arriving deputy saw a single dog still attacking the runner and tried to chase it off, Lt. John Corina said. The dog ran off into the desert, then turned around and attacked the deputy, who took a shot at the animal before it ran off.

Hours later, sheriff's and animal control officials served a search warrant on Jackson's home near the site of the attack and took away eight dogs, six pit bulls and two mixed-breeds.

The dogs were kept under quarantine for rabies observation at a Lancaster shelter. Four of the pit

bulls seized were believed to have attacked Devitt.

Her husband told KCAL-TV he blamed the dogs' owner for what happened.

"I do not blame the dogs. I don't blame pit bulls," Ben Devitt said. "I blame people who don't take responsibility for their animals."

Not all of the dogs are licensed, spayed or neutered as required by county and state law, said Marcia Mayeda, the county's animal control director.

Cleary said in most cases the dogs involved in attacks are not family pets but animals who are often isolated and don't get positive human interaction.

"If a dog has seriously hurt or killed someone, you have to look to the owner and the owner should be held accountable on some level," he said. "There's no reason we have to tolerate that kind of behavior."

## COLORADO

### Saudi inmate sues to get files on denied transfer

DENVER (AP) — A Saudi man convicted of sexual assault has filed a lawsuit to get records on why his request to serve his sentence in his home country was denied.

The lawsuit filed Thursday alleges that Colorado's Department of Corrections denied Homaian al-Turki the right to inspect his files. It also claims that corrections officials gave the records to the El Paso County Sheriff's Department as part of an ongoing investigation.

El Paso County sheriff's officials are investigating the March 19 slaying of corrections chief Tom Clements. A week before he was killed, Clements denied al-Turki's request to serve out his sentence in his native Saudi Arabia.

Al-Turki's lawyers have previously claimed that Colorado officials improperly leaked word that investigators were probing whether

the killing was related to the denial.

In the lawsuit filed in El Paso County District Court, al-Turki's attorneys said: "That 'theory' has since been wholly discredited."

Evan Ebel, a parolee who had spent years in solitary confinement and who is described by authorities as a white supremacist gang member had the gun used to kill Clements in his possession. Ebel died in a shootout with Texas authorities two days after Clements' slaying. Authorities have said they continue to look at a number of angles in a broad investigation into Clements' death, including whether others were involved.

Al-Turki lost his latest bid for parole on Tuesday when Colorado State Board of Parole Chairman Anthony Young said al-Turki must undergo sexual offender rehabilitation before he's released from

prison. Clements denied al-Turki's request for a transfer for the same reason.

Authorities have said that al-Turki kept his Indonesian housekeeper a virtual slave and sexually assaulted her over four years. Al-Turki, a well-known member of Denver's Muslim community, has maintained his innocence and claimed the charges were a result of anti-Muslim sentiment following the 9/11 attacks.

He was convicted in state court in 2006 of unlawful sexual contact by use of force, theft and extortion — all felonies — as well as misdemeanor counts of false imprisonment and conspiracy to commit false imprisonment. He was sentenced to 28 years to life in prison, which was reduced to 8 years to life in 2011 on a legal technicality.

## MAINE

### Zumba instructor gets 10 months for prostitution

ALFRED, Maine (AP) — A high-profile prostitution scandal featuring sex videos, adultery, exhibitionism and more than 100 clients drew to a close Friday when a Zumba fitness instructor who turned her studio into a brothel was sentenced to 10 months in jail.

Alexis Wright was sentenced under a plea agreement to 20 counts including prostitution, conspiracy, tax evasion and theft by deception.

Wright's attorney said the defendant had a difficult childhood, witnessing domestic violence and suffering sexual abuse, before she met Mark Strong, her eventual business partner. She said Strong used her background to manipulate her.

Addressing the judge through tears, Wright said she felt relief when police raided her business on Feb. 12, 2012, because she wanted out. She said she intends to work when she's released to help other women in similar situations.

"In my eyes I'm free. I free from this. And I have an incredible amount of strength that I knew was in me somewhere. Now that I have the strength I want to encourage others to come forward. I want them to know that there's at least one person out there who'll believe their story, no matter how crazy it seems," she told the judge.

"It's my intention to stand up for what is right. When I'm out, I'm going to pursue helping people fight through situations that are similar to mine. I'm optimistic that something good will

come out of this."

Afterward, she was led from court to begin serving her sentence. The 30-year-old Wright was accused of conspiring with an insurance business owner to run a prostitution business in which she videotaped clients without their knowledge and kept detailed records over an 18-month period indicating she made \$150,000 tax-free. She also collected more than \$40,000 in public assistance.

The scandal in the seaside town of Kennebunk, known for its sea captain's mansions, beaches and New England charm, became a sensation following reports that Wright had at least 150 clients, some of them prominent. So far, those who have been charged include a former mayor, a high school hockey coach, a minister, a lawyer and a firefighter.

Wright was originally charged with 106 counts. All the counts in the plea agreement were misdemeanors, including three counts relating to welfare and tax fraud that were reduced from felonies.

Under the agreement, prosecutors will seek restitution of \$57,280.54. Prosecutors say Wright cooperated with prosecutors and spared the state an expensive trial.

Her business partner, Strong, 57, of Thomaston, was convicted of 13 counts related to promotion of prostitution and was sentenced to 20 days in jail. The married father of two, who has acknowledged having an affair with Wright, was originally charged with 59 counts.

## ICLE Calendar

**Setting Legal Fees: Michigan Trends and Your Bottom Line**, Tuesday, June 4, available from midnight to 11:59 p.m. via on-demand webcast only. To find out about CLE credits for this basic level course, call ICLE.

The general admission fee is \$99. ICLE partners should consult their partnership agreement for details.

**The Collection Case from Start to Finish**, Thursday, June 6, from 9 a.m. to noon at The Inn at St. John's in Plymouth. This basic/intermediate level course offers 2.75 CLE credits.

The general admission fee is \$165 and Michigan new lawyers pay \$95. ICLE partners should consult their partnership agreement for details.

**Creditors' Rights 2013**, Thursday, June 6, from 1:30 to 5:30 p.m. at The Inn at St. John's in Plymouth. This intermediate level course offers 3.75 CLE credits.

The general admission fee is \$165 and Michigan new lawyers pay \$95. ICLE partners should consult their partnership agreement for details.

**Deposition Skills Workshop**, Sunday through Tuesday, June 9-11, from 4 to 6:30 p.m. on Sunday, from 8:30 a.m. to 6:30 p.m. on Monday, and from 8:30 a.m. to 5 p.m. on Tuesday at The Inn at St. John's in Plymouth. This basic/intermediate level course is co-sponsored by the Litigation Section of the State Bar of Michigan and offers 15.75 CLE credits and 0.75 Ethics credits.

The general admission fee is \$745; members of the co-sponsoring section pay \$695; and new lawyers and ICLE partners pay \$645.

**53rd Annual Probate & Estate Planning Institute**, Friday and Saturday, June 14-15, from 7:30 a.m. to 7:15 p.m. on Friday and from 7:30 a.m. to 12:40 p.m. on Saturday. This basic/intermediate/advanced level course is co-sponsored by the Probate and Estate Planning Section of the State Bar of Michigan and offers 10.75 CLE credits and 0.5 Ethics credits.

The general admission fee is \$395; members of the co-sponsoring section pay \$365; Michigan new lawyers pay \$195, and ICLE partners pay \$345.

**Basics of Advising Elderly Clients & Those with Disabilities**, Tuesday, June 18, from 9 a.m. to 5 p.m. This basic level course is co-sponsored by the Probate and Estate Planning Section of the State Bar of Michigan and offers 6.5 CLE credits.

The general admission fee is \$195, members of the co-sponsoring section pay \$175, and Michigan new lawyers pay \$50. ICLE partners should consult their partnership agreement for details.

**The Hottest Technology Gadgets and Apps to Ignite Your Courtroom Performance**, Thursday, June 20, from 12 a.m. to 12 a.m. via webcast only. To find out CLE credits for this basic level course, contact the ICLE.

The general admission fee is \$99. ICLE partners should consult their partnership agreement for details.

**Hot Topics in Landlord-Tenant Law**, Thursday, June 20, from 12 a.m. to 12 a.m. via webcast only. To find out CLE credits for this intermediate level course co-sponsored by the Real Property Law Section of the State Bar of Michigan, contact the ICLE.

The general admission fee is \$99 and members of the co-sponsoring section pay \$79. ICLE partners should consult their partnership agreement for details.

Course books, audio CDs, and MP3s for most seminars are available if unable to attend program. Video replays for some programs are also offered. For additional information or to check reservations to VISA, MasterCard, or Discover, call (877) 229-4350. Fax reservations can be made to (877) 229-4351.

Visit ICLE's website at [www.icle.org](http://www.icle.org).

## VOICE:

### Court considers 7 factors in fee-shifting

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to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits to the parties of obtaining the information. *Juster*, 2013 U.S. Dist. LEXIS at \*14 (citing *Zubulake*, 216 F.R.D. at 284).

The Court proceeded to apply the seven factors and found that fee-shifting was not warranted.

First, the Court found that Plaintiff's ESI requests, despite employing broad search terms, were sufficiently tailored because they were restricted to the time period of 2011 to 2012. Id. at \*13. The Court also noted that the parties had previously agreed in writing that each would bear its own costs in connection with producing discovery. Id. Thus, this factor weighed in favor of Plaintiff.

Second, the Court stated that it was "irrelevant" that Defendant had already turned over 8,000 pages of documents because "production of information in 'hard copy' does not preclude a party from receiving that same information in computerized/electronic form." Id. at \*14. Furthermore, neither Plaintiff nor Defendant actually knew what the requested searches would turn up until Defendant actually performed the search. Id. at \*13.

Factors three through five concerned the financial dimensions of the discovery request. The Court's discussion of these factors proved the most interesting in terms of addressing fee-shifting requests in the context of commercial litigation. Defendant argued that it would cost \$6,000 to \$16,000 to process the word searches and eliminate duplicates; Plaintiff asserted that this was a \$41 million dollar case and that the discovery costs were "negligible" in comparison to Defendant's resources. Id. at \*15. The Court determined that factors three through five weighed in favor of Plaintiff. Id. Because the amount of damages at stake in the litigation was great and because of Defendant's ability to absorb the cost of the requested ESI discovery, discovery costs were not so substantial as to warrant fee-shifting. Id.

The Court stated that factors six and seven were less critical to the fee-shifting analysis in this case and, in short, that neither factor weighed one way or the other. Nevertheless, the Court, in concluding that the *Zubulake* factors weighed in favor of Plaintiff, also added that the principles of fundamental fairness further supported its denial of Defendant's fee-shifting requests. Id. at \*17. This was because the parties both previ-

ously agreed to pay their own costs in producing discovery. Id.

There are some key points to take away from this opinion. First, when litigation involves parties with significant resources, do not expect a court to grant a request to shift fees associated with responding to ESI requests. If a party can afford to pay, expect that the court will oblige it to do so. Second, do not expect a court to scrutinize proposed search terms as it may when a case involves litigants unable to foot the bills for ESI requests. The *Juster* opinion suggests that broad search terms limited to a specific one-year period are sufficiently tailored. Furthermore, if the amount of damages at stake in a case is great, this opinion suggests that a \$6,000 to \$16,000 cost for an ESI search is more or less a drop in the bucket. Finally, if a party is going to make a request to the court to shift fees associated with ESI, the request is more genuine when that same party has not previously promised in writing to pay its own costs.

*Nick Kyriakopoulos is an associate in Foley and Lardner LLP's Detroit office.*

## Detroit Legal News

Founded 1895

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Published Daily Except Saturday and Sunday by The Detroit Legal News Co.

Detroit Legal News, 2001 W. Lafayette, Detroit, MI 48216  
PHONE: (313) 961-3949, or toll-free: 1-800-875-5275. FAX: 248-577-6111

Postmaster: Send address changes to: The Detroit Legal News, 2001 W. Lafayette, Detroit, MI 48216

Subscription rates, payable in advance:  
One Year \$80.00  
Back copies after 30 days available at \$1.25 each.

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The Detroit Legal News is printed on recycled newspaper using soy based ink at the Inland Press in Detroit.

PERIODICALS POSTAGE PAID  
AT DETROIT, MICHIGAN.  
USPS 0155-580



Member  
Member of Associated Press (AP)

Member: American Court and Commercial Newspapers, Inc. Michigan Press Association

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Oakland County Legal News, Macomb County Legal News, Flint-Genesee County Legal News, Washtenaw County Legal News, Jackson County Legal News, Ingham County Legal News, Grand Rapids Legal News, Muskegon County Legal News.