

STATE OF MICHIGAN
IN THE SUPREME COURT

LINDA RIVERA,

Plaintiff-Appellant,

-vs-

SVRC INDUSTRIES, INC.,

Defendant-Appellee.

MSC No. 159857
COA No. 341516
Trial Ct. No. 16-031756-NZ
Hon. Patrick J. McGraw

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**MICHIGAN ASSOCIATION FOR JUSTICE'S AMICUS CURIAE BRIEF IN SUPPORT
OF PLAINTIFF-APPELLANT**

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STATEMENT OF BASIS OF JURISDICTION

Michigan Association for Justice adopts the parties' statements regarding the basis of the jurisdiction of this Court. Further, on March 25, 2020, this Court directed the Clerk to schedule oral argument while considering Plaintiff's application. In that Order, this Court asked the parties to submit supplemental briefs addressing the following issues: 1) Whether the record supports a position that Plaintiff was about to report a violation of law; 2) Whether Plaintiff made a report for purposes of the Whistleblowers' Protection Act ("WPA") when he already knew of its content and initiated the conversation; 3) Whether Plaintiff's wrongful termination claim is preempted by her WPA claim; and 4) Whether Plaintiff can show causation between her protected activity and termination. MAJ submits this *amicus curiae* brief in response.¹

¹ No counsel for a party authored this *amicus* brief for the Michigan Association for Justice, in whole or in part, and no person other than the *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this *amicus* brief.

STATEMENT OF ISSUES PRESENTED

I. Where an attorney is a public body for purposes of the Whistleblowers' Protection Act, and Plaintiff reported a suspected violation of law at her workplace to an attorney, was it erroneous for the Court of Appeals to hold that she did not make a report to a public body?

Plaintiff answers: Yes.

Defendant answers: No.

Amicus Curiae answers: Yes.

II. Where Plaintiff repeatedly stressed the importance of filing a police report regarding an incident that occurred at her workplace despite being told more than once that she should not do so, was it erroneous for the Court of Appeals to hold that the record did not support a position that she was "about to report" a violation of law for purposes of the Whistleblowers' Protection Act?

Plaintiff answers: Yes.

Defendant answers: No.

Amicus Curiae answers: Yes.

III. Where Plaintiff pleaded claims for wrongful discharge in violation of public policy and violations of the Whistleblowers' Protection Act, and the Court of Appeals dismissed Plaintiff's claims under the Whistleblowers' Protection Act, does the claim under the Whistleblowers' Protection Act still preempt the wrongful discharge claim?

Plaintiff answers: No.

Defendant answers: Yes.

Amicus Curiae answers: No.

IV. Where Plaintiff was terminated 18 days after challenging her supervisor about reporting a violation of law, and within 11 days of reporting the violation to a public body, and Defendant repeatedly discouraged her from making such a report, is there a question of fact regarding whether there is a causal connection between her protected activity and her termination, such that summary disposition is inappropriate?

Plaintiff answers: Yes.

Defendant answers: No.

Amicus Curiae answers: Yes.

INTEREST OF AMICUS

The MAJ is an organization of Michigan lawyers engaged primarily in trial litigation work. MAJ consists of member attorneys dedicated to advocating for the interest of the public and protecting the integrity of the judicial system. The MAJ recognizes an obligation to assist this Court on significant issues of law that would substantially affect the orderly administration of justice in the trial courts of this state. In this matter, the MAJ supports Plaintiff in urging this Court to reverse the decision of the Court of Appeals and reinstate the decision of the trial court.

STATEMENT OF FACTS

The MAJ adopts Plaintiff's statement of facts.

LAW AND ARGUMENT

I. Plaintiff engaged in protected activity when she reported a violation of law to a public body. In holding otherwise, the Court of Appeals injected additional elements into the Whistleblowers' Protection Act that are not supported by statute or case law.

Plaintiff reported suspected illegal activity to a public body before she was terminated. That is all that she is required to do under the Whistleblowers' Protection Act ("WPA") to invoke its protection. The trial court agreed, and denied Defendant's motion for summary disposition. In reversing the trial court, the Court of Appeals ignored longstanding rules of statutory construction by inserting additional hurdles into the WPA. Specifically, the Court of Appeals imposed requirements that eliminate protection for would-be whistleblowers if 1) they do not initiate the report and 2) the public body already knew about the report's content.

The WPA provides:

"An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to the law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false..." MCL 15.362.

The fundamental goal of statutory construction is to give effect to the intent of the Legislature. *Weakland v Toledo Engineering Co, Inc.*, 467 Mich 344, 347 (2003) amended on other grounds at 468 Mich 1216 (2003). In doing so, there is a presumption that unambiguous language should be enforced as written. *Gladych v New Family Homes, Inc.*, 468 Mich 594, 597 (2003). As such, the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 160 (2002).

This Court has held that WPA is to be liberally construed. *Chandler v Dowell Schlumberger, Inc.*, 456 Mich 395, 406 (1998). The Court of Appeals in *Cadwell v City of Highland Park*, 324 Mich App 642 (2018), relying heavily on *Chandler*, succinctly summarized the applicable law:

In addition, because the WPA is remedial in nature, it must "be liberally construed to favor the persons the Legislature intended to benefit." *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 406 (1998). Accordingly, it "should be interpreted broadly to advance its purpose." *Leavitt*, 241 Mich App at 310. The WPA "was intended to benefit those employees engaged in 'protected activity' as defined by the act." *Chandler*, 456 Mich at 406. In addition, this Court has noted that "the WPA was enacted to remove barriers to an employee who seeks to report violations of the law, thereby protecting the integrity of the law and the public at large." *O'Neill*, 249 Mich App at 614.

Cadwell v City of Highland Park, 324 Mich App 642, 654-55 (2018).

The unambiguous language of the WPA leads to three well-established elements: 1) Plaintiff was engaged in protected activity as defined by the WPA; 2) Plaintiff was discharged; and 3) a causal connection existed between the protected activity and the discharge. *McNeill-Marks v MidMichigan Med. Center-Gratiot*, 316 Mich App 1, 16 (2016). An employee is engaged in protected activity when she has reported, or is about to report, a suspected violation of law to a public body. See MCL 15.362. Although Plaintiff did report the suspected violation of law to an attorney, the Court of Appeals held that Plaintiff did not engage in protected activity when she told Attorney Mair about the suspected violation of the law, because she did not initiate the report and because she provided Attorney Mair the same suspected violation of the law she told Emerson. Initiating the report and providing new information are not required by the WPA, and inserting new requirements is not a liberal construction that favors the persons that the Legislature intended to benefit. Rather, in interpreting a law whose very purpose is to "remove barriers to an employee who seeks to report violations of the law" the Court of Appeals does the opposite, adding additional

barriers that are not found in the statute and making it more difficult for employees to report violations of the law, protecting employers over the public. See, e.g. *Caldwell*, supra.

The Court of Appeals has attempted to add additional barriers before, such as injecting an “intent” requirement into the WPA before, in *Whitman v City of Burton*, 493 Mich 303 (2012). In that case, the Court of Appeals held that Whitman’s claim was not actionable because he acted out of his own best interests rather than for altruistic reasons. *Id.* at 310-311. This Court overturned that decision precisely because the statutory language and the purpose of the WPA did not support adding barriers. It reasoned that the WPA was enacted to “provide protection to employees who report a violation or suspected violation of state, local, or federal law,” and that this objective is furthered by “removing barriers that may interfere with employee efforts to report those violations or suspected violations...” *Id.* at 312.

The *Whitman* Court did not let the Court of Appeals’ added requirements stand. In reversing the Court of Appeals, this Court reasoned that “MCL 15.362 does not address an employee’s ‘primary motivation,’ nor does the statute’s plain language suggest or imply that *any* motivation must be proved as a prerequisite for bringing a claim. Further, the WPA does not suggest or imply, let alone mandate, that an employee’s protected conduct must be motivated by a desire to inform the public...” *Id.* at 313. It concluded that “because there is no statutory basis for imposing a motivation requirement, we will not judicially impose one. **To do so would violate the fundamental rule of statutory construction that precludes judicial construction or interpretation where, as here, the statute is clear and unambiguous.**” *Id.* (emphasis added).

Here, the Court of Appeals again attempts judicially rewrite the WPA by adding elements that are not in the statute. First, there is no requirement that Plaintiff’s report to Mair contain new information. Indeed, in *Whitman*, the plaintiff reported the same violation of an ordinance to

multiple individuals, and he reported this conduct to some of them more than once. *Id.* at 307. He spoke with the city attorney once and wrote him a letter again about the same issue. *Id.* at 307 - 308. He wrote two letters to the mayor. *Id.* All of these contacts were about the same issue: the city had failed to pay him for unused time off in violation of an ordinance. *Id.* This Court made no distinction among Whitman's multiple contacts in finding that he engaged in protected activity. It reasoned that "Whitman reported the Mayor's violation to the Mayor himself, city administrator Lowthian, and the city attorney, and that following Whitman's reporting of this violation, he was discharged...Accordingly, Whitman engaged in conduct protected by the WPA." *Id.*

Here, Plaintiff reported a suspected violation of law to both Emerson and Snyder. As a result of her initial reporting, she eventually had to make the same report to Mair. Mair, a licensed attorney, is a public body. *McNeill-Marks v Midmichigan Med. Center-Gratiot*, 316 Mich App 1, 23 (2016). That Mair already knew about the suspected violation of law because of Plaintiff's initial reporting has no bearing on whether Plaintiff's report is protected. Under the Court of Appeals' logic, if both Plaintiff and Flynn had reported L.S.'s threatening statements to a public body, only one of them would have job protection under the WPA.

If this Court does not reverse the Court of Appeals, employees could not rely on the protection of the WPA when they know about a violation of law in their workplaces. Consider the following scenario: Two employees witness illegal activity at work. Each employee, independent of the other, decides to report the violation to the police. Under the Court of Appeals' new rule, only the first employee is protected. To take this example a step further, if the law is that only the first employee to report is protected, it may serve as a deterrent for both employees. Neither employee can be sure that they are the first to report, and therefore neither can be sure that the

WPA will protect them. This does not remove barriers for workers who want to report illegal activity – it *creates* barriers. Both results are dangerous and frustrate the purpose of the statute.

“The Legislature intended the WPA to serve the far-reaching goal of the protection of the public by protecting *all* employees who have knowledge that is relevant to the protection of the public from some abuse or violation of law and who, for whatever reason, might fear that their employers would not wish them to divulge that information or otherwise participate in a public investigation.” *Kimmelman v Heather Downs Mgmt. Ltd.*, 278 Mich App 569, n. 2 (2008) (application for leave to appeal denied by 482 Mich 989 (2008)) (emphasis in original). The Legislature clearly intended to maximize employees’ involvement by removing as much doubt as possible regarding whether those employees will face negative consequences. *Id.* Requiring employees to report only new information to a public body puts them in a position of having to race to be the first to report, or discourages them from reporting because they may not be first, and are therefore not protected. This only creates *more* doubt regarding whether a reporting employee will face negative consequences. This new element must be struck down.

The WPA also does not require that Plaintiff initiate the conversation in order for it to be a report, and the plain and ordinary meaning of the word “report” does not dictate such a finding. There was no reason for the Court of Appeals to look to the dictionary to find a definition that required Plaintiff to initiate a report. Precedent does not dictate such a finding, either. In *Kimmelman v Heather Downs Mgmt. Ltd.*, 278 Mich App 569 (2008), the Michigan State Police were already conducting an investigation into an assault when Kimmelman agreed to give a statement. *Id.* at 571. When he was fired, he brought a claim alleging wrongful discharge in violation of public policy. The Court rejected this claim entirely because Kimmelman’s actions were protected by the WPA. *Id.* at 576. That is precisely what happened in this case – Mair was

conducting an investigation into L.S.'s conduct, and Plaintiff was asked to participate in it. Additionally, the reason that Mair was conducting an investigation was because Plaintiff had reported L.S.'s threats to Emerson and Flynn. Although there is no requirement that she do so to be protected by the WPA, Plaintiff *did* initiate the report because she was responsible for series of events that led to Mair conducting an investigation.

Finally, the Court of Appeals improperly imposed a requirement that whether Mair is a public body is dictated by who has retained him. This is inconsistent with the spirit of the Michigan Rules of Professional Conduct and *McNeill-Marks v Midmichigan Med. Center-Gratiot*, 316 Mich App 1 (2016). In *McNeill-Marks*, the plaintiff was terminated for reporting the violation of a personal protection order to her attorney. The Court held that the plaintiff's attorney was a public body for purposes of the WPA under the plain language of the WPA. *Id.* at 23. As a practicing attorney, the attorney's licensure and active membership in the bar were both mandatory. *Id.* at 22. This made him a member of a body "created by" state authority, which through the regulation of our Supreme Court, is also "primarily funded by or through" state authority. *Id.* The attorney's mandatory membership in the State Bar of Michigan, the Supreme Court's control of the State Bar of Michigan, and the state's funding of same were the only factors considered in a finding that he was a public body. There was no discussion about who the attorney represented and that did not factor into the decision.

The Court of Appeals attempted to distinguish this finding because Mair was retained by Defendant. But, this Court has already clarified that there is no need to report to a separate agency when an employee works for a public body. *Brown v Mayor of Detroit*, 478 Mich 589, 595 (2007). It does not matter if the public body to which the suspected violations were reported was also the employee's employer. *Id.*

Further, lawyers are regularly held to a higher standard of conduct simply by virtue of their licensure, regardless of who they represent. Indeed, the Preamble to the Michigan Rules of Professional Conduct states that “[a]s a public citizen, a lawyer should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law **beyond its use for clients**, employ that knowledge in reform of the law, and work to strengthen legal education.” Adherence to the Rules of Professional Conduct are required in order to maintain licensure as an attorney, and the Supreme Court is tasked with overseeing the conduct of members of the State Bar of Michigan in order to safeguard the reputation of the profession. *Grievance Administrator v Rostash*, 457 Mich 289, 297 (1998).

All parties agree that Attorney Mair was acting as an attorney at the time Plaintiff made her report to him; when he did so, he did so only by the authority to practice law given to him by the State Bar of Michigan. It is the duty of every attorney to conduct himself or herself **at all times** in conformity with standards imposed with on members of the bar as a condition of the privilege to practice law. MCR 9.103(A). (emphasis added). These standards are imposed upon lawyers “twenty-four hours a day, not eight hours, five days a week.” *In re Grimes*, 414 Mich 483, 495 (1982). This is underscored by MCR 9.104, which dictates that a violation of a criminal law of a state or the United States is grounds for discipline, **whether or not occurring in the course of an attorney-client relationship**. (emphasis added). Misdemeanors that have no bearing on a lawyer’s ability to practice law, such as drunk driving convictions, can result in sanctions against that lawyer’s professional license. *Grievance Adm’r v Deutch*, 455 Mich 149, 169-170 (1997). This illustrates that a lawyer’s responsibility to maintain the integrity of the profession and

improve the law as a public citizen are separate from a lawyer's obligations to his or her clients. Mair is a public body regardless of who his client is.

II. The record supports a finding that Plaintiff was about to report a violation of law.

The Court should be liberal in finding genuine issues of material fact. *Jimkoski v Shupe*, 282 Mich App 1, 5 (2008). While the employee bears the burden of establishing that being about to act on a belief that a report to a public body was warranted, the employee's proof need not consist of a concrete action to satisfy the "about to" report element. *Shallal v Catholic Soc. Servs.*, 455 Mich 604, 615 (1997). A plaintiff should not be required to say "magic words" in order to reap the protections of the statute. *Id.* at 616.

In *Shallal*, the plaintiff made a statement that she was going to report her supervisor for alcohol abuse and misuse of funds "if [he didn't] straighten up." *Id.* The Court held that such a threat should demonstrate that the employee has an actual intent to report the violation, even if the employee did not ultimately make the report. *Id.* at 619. It held that the threat to report him, coupled with her other actions, was "more than ample" to conclude that reasonable minds could find that she was about to report his actions to a public body. *Id.* at 621. Shallal's only "other actions" consisted of talking to other employees about reporting her supervisor. *Id.* at 614. Still, the Court held this was enough to show she was about to report the supervisor's violations.

Here, Plaintiff reported L.S.'s threats to a number of individuals. She consistently challenged Dean and Snyder when they told her not to file a police report. When she asked why, they gave her no answer. Plaintiff also told her then-boyfriend, the chairman of the board, that she wanted to file a police report. Plaintiff was worried that L.S. was a hostile employee, and she felt threatened. Snyder told her not to make a police report, and further stated that this was advised by Mair. Plaintiff pushed back and said that she felt uncomfortable not filing a police report. She

explained that she wanted the authorities to have a record of L.S.'s threats. She then asked why she was not allowed to contact the police. When she disclosed that she had already told Payne what happened, Snyder admonished her for "sharing confidential information about employees," and did not discuss the matter with her further.

Plaintiff continued to express that she wanted to make a police report. When she talked with Mair, she explained what happened and specifically stated that she wanted to file a police report. Mair reiterated that she should not file a police report. Additionally, Plaintiff actually *did* make a report to a public body (Mair) while pushing back against the directive not to make a police report, a different public body. All of this supports a finding that there is at least a question of fact concerning whether she was about to make a report.

The Court of Appeals held that Plaintiff's case was more analogous to that of the plaintiff in *Hays v Lutheran Soc. Servs. of Mich*, 300 Mich App 54 (2013). But the only thing that Plaintiff has in common with the plaintiff in *Hays* is that she did not actually end up making a police report. In holding that *Hays* was not "about to report" a violation of law, it reasoned that she did not provide any particulars or anything that could have assisted the police officer in actually investigating any wrongdoing. Rather, she was merely seeking to obtain advice. Further, she declined to make a report when asked. *Id.* at 60. That is not the case here. Plaintiff provided details about L.S.'s conduct to four separate individuals (Emerson, Snyder, Payne, and Mair) sufficient to allow for the investigation of wrongdoing. Each time that she talked to anyone associated with Defendant, including Mair, she stressed that she wanted to make a police report, and that she was not comfortable that Defendant would not allow her to. She was not seeking to obtain advice, she was seeking to protect herself and her co-workers from L.S. Finding that she was not about to report the violation because she was terminated before she could do so frustrates

the underlying purpose of the WPA, which is to protect the public and protect employees who seek to do so. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 378 (1997).

III. Plaintiff can show causation between her protected activity and her termination.

West v GMC, 469 Mich 177 (2003) is often cited for the proposition that temporal proximity, by itself, is not enough to show a causal connection between protected activity and an adverse action. But in *West*, there was a seven month gap between the plaintiff's protected activity and his termination. *Id.* at 180 – 181. The *West* court actually held that “such a temporal connection” (as *West*'s) does not demonstrate a causal connection. *Id.* at 186. Meaning, a *seven month* gap is not sufficient to demonstrate a causal connection on its own. The *West* court went on to say that there *are* cases in which a close temporal relationship supports a plaintiff's claim, and gave the example of *Henry v Detroit*, 234 Mich App 405 (1999). In *Henry*, the plaintiff was forced to retire within four months of engaging in protected activity. This suggests that even the *West* court opined that there would be instances when a causal connection is supported by a temporal relationship closer than seven months.

There is support for this position in the Sixth Circuit Court of Appeals, which has held that evidence that the adverse action was taken shortly after the plaintiff's exercise of protected rights is relevant to causation. *Singfield v Akron Metro Housing Authority*, 389 F3d 555, 563 (2004). Finally, *Debano-Griffin v Lake County Bd of Comm'rs*, 493 Mich 167 (2013) suggests that when the temporal proximity is so short that the legitimate business reason is unlikely, it can support a causal connection. In that case, the Court held it was reasonable to find that the plaintiff's position could not have gone from fully funded to nonexistent in the twelve days between the plaintiff's protected activity and her termination. *Id.* at 177.

But, even if this Court is not persuaded that a close temporal relationship can be enough, *West* and *Debano-Griffin* suggest that not much more is needed. In distinguishing *Henry* from the case before it, the *West* court reasoned that the plaintiff in *Henry* also presented evidence that his supervisors expressed clear displeasure at his protected activity. The *West* court reasoned that the four month timeframe in *Henry* in addition to the displeasure of his supervisors was enough to show a causal connection. *West* at 186 – 187.

In *Debano-Griffin*, the Court held that the twelve-day temporal relationship was more than “coincidence in time.” *Id.* at 177, citing *West* at 186. In addition to the unlikelihood that her position was eliminated during the twelve days that she was engaging in protected activity, the Court was compelled by the fact that the individuals who received the plaintiff’s complaint were the same individuals who chose to terminate her. *Id.* at 178. It reasoned that the more an employer is affected by a plaintiff’s whistleblowing activity, the stronger the causal link becomes. *Id.*

All of the elements from *Henry* and *Debano-Griffin* are present here. Plaintiff engaged in protected activity between 11 and 18 days before her termination. Both Mair and Snyder made it clear that Defendant did not want Plaintiff to push the reporting any further. Mair and Snyder are the same people who decided to terminate Plaintiff. Finally, Defendant has alleged that Plaintiff was terminated for budgetary reasons, despite expressing no financial concerns to either Plaintiff or Payne. Like the plaintiff in *Debano-Griffin*, it is unlikely that Defendant incurred such a financial dilemma during the 18 days when Plaintiff was engaging in protected activity that her position should thus be eliminated. It is reasonable to infer that Defendant could afford to fund Plaintiff’s position until she began to engage in protected activity. *Id.* at 177. And, in addition to these factors, Defendant has shown that it is predisposed to retaliate against employees for engaging in protected activity, as it instructed Plaintiff to suspend L.S. for engaging in protected

activity. Plaintiff can show a causal connection sufficient to make a prima facie showing that Defendant retaliated against her.

IV. Plaintiff's public policy claim cannot be preempted by her WPA claim.

Some grounds for discharging an employee are so contrary to public policy as to be actionable. *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692 (1982). As a general rule, the remedies provided by statute for violation of a right having no common law counterpart are exclusive, not cumulative. The remedies provided by the WPA, therefore, are exclusive and not cumulative. *Dudewicz v Norris Schmid, Inc.*, 443 Mich 68, 78 – 79 (1993). The existence of the specific prohibition against retaliatory discharge in the WPA is determinative of the viability of a public policy claim. *Id.* In cases where Michigan courts have sustained a public policy claim, the statutes involved did not specifically proscribe retaliatory discharge. *Id.* Public policy proscribing termination of at-will employment is most often used in three situations: 1) adverse treatment of employees who act in accordance with a statutory right or duty; 2) an employee's failure or refusal to violate a law in the course of employment; or 3) an employee's exercise of a right conferred by a well-established legislative enactment. *Kimmelman, supra* at 573.

Here, however, the Court of Appeals held that Plaintiff's conduct was not protected by the WPA. It held that she did not make a report and that there was no causal connection between her activity and her termination. If that is the case, then her public policy claim cannot be preempted by her WPA claim. The WPA provides the exclusive remedy for retaliatory discharge when an employee reports violations or suspected violations of the law. *Dolan, supra*, at 378-379. It preempts public policy common-law public-policy claims arising from the same activity. *Dudewicz v Norris-Schmid, Inc.*, 443 Mich 68, 70 (1993). However, if the WPA does not apply, it provides no remedy and there is no preemption. *Anzaldua v Neogen Corp*, 292 Mich App 626,

631 (2011). Where the Court finds that the WPA is not applicable to the facts regarding a plaintiff's discharge, it cannot provide a plaintiff's exclusive remedy. *Driver v Hanley (After Remand)*, 226 Mich App 558, 566 (1997).

Even if the WPA claim had not been dismissed, pleading practices in Michigan permit the assertion of inconsistent claims. A plaintiff may present two claims even where proof of one claim must defeat the existence of another. *Abel v Eli Lilly & Co*, 418 Mich 311 (1984). Inconsistent claims are not objectionable. MCR 2.111(A)(2). Plaintiff should have been permitted to proceed on both claims.

CONCLUSION

The Court of Appeals may not insert additional statutory requirements and create further barriers for individuals seeking protection under the WPA. Further, the particular additional requirements in this case frustrate the purpose of the WPA entirely, because they make it less likely that a plaintiff will report. Holding that an attorney is a public body only when they are representing their own clients minimizes the attorney's responsibilities under the MRPC. Finally, the WPA cannot pre-empt a common law public policy claim when it has been held not to apply.

For the reasons stated, the Court of Appeals' decision is erroneous. It must be reversed.

Respectfully submitted on June 16, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2020, I electronically filed the foregoing instrument with the Clerk of the Court using the Court's e-filing system which will send notification of such filing to all counsel of record.

/s/ Tara Adams
Tara Adams