ADMINISTRATIVE LAW

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I. INTRODUCTION

Michigan appellate courts rendered decisions on administrative law during the 2009 *Survey* period regarding application of the Freedom of

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Information Act and the seminal 2008 *Rovas* decision,[1] as well as on several other substantive law areas.

In two cases, the Michigan Supreme Court issued decisions on the privacy exemption found in the Freedom of Information Act.[2] The results were to prevent public disclosure of information of a private nature held in the possession of governmental entities.

In two other cases, the Michigan Court of Appeals issued opinions that applied the Supreme Court's landmark *Rovas* ruling to reverse an administrative agency decision that violated the plain language of a statute and to overturn a lower court's reversal of an agency's factual findings.[3]

II. THE MICHIGAN SUPREME COURT'S FREEDOM OF INFORMATION ACT CASES

During the *Survey* period, the Michigan Supreme Court considered two cases involving the Michigan Freedom of Information Act (FOIA).[4] Both cases related to FOIA's privacy exemption.[5]

A. The Michigan Supreme Court Broadly Construes the Phrase "Information of a Personal Nature" within FOIA's Privacy Exemption

In *Michigan Federation of Teachers and School Related Personnel v. University of Michigan*,[6] the Michigan Supreme Court expanded the definition of personal information contained in FOIA's privacy exemption.[7]

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1. *In re* Complaint of Rovas, 482 Mich. 90, 753 N.W.2d 259 (2008).

2. *See* Mich. Fed'n of Teachers & Sch. Related Pers. v. Univ. of Mich., 481 Mich. 657, 753 N.W.2d 28 (2008); State News v. Mich. State Univ., 481 Mich. 692, 753 N.W.2d 20 (2008).

3. *See* Petrelius v. Houghton-Portage Twp. Schs., 281 Mich. App. 520, 761 N.W.2d 395 (2008); Buckley v. Prof'l Plaza Clinic Corp., 281 Mich. App. 224, 761 N.W.2d 284 (2008).

4. *See Mich. Fed'n of Teachers*, 481 Mich. at 657, 753 N.W.2d at 28; *State News*, 481 Mich. at 692, 753 N.W.2d at 20.

5. *See id.*

6. 481 Mich. at 657, 753 N.W.2d at 28.

7. The FOIA privacy exemption states: "(1) A public body may exempt from disclosure as a public record under this act any of the following:
(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy."
MICH. COMP. LAWS ANN. § 15.243(1)(a) (West 2009).

The Michigan Federation of Teachers (MFT) filed a FOIA request for the names, job title, compensation rate, work address, telephone numbers, and home addresses and home telephone numbers of all University of Michigan employees.[8] The University provided much of the information requested.[9] Regarding addresses and home telephone numbers, the University provided the information of employees who had given the University permission to publish such information in the University's faculty and staff directory.[10] The University declined to provide "the home addresses and telephone numbers of the remaining 16,406 employees who had withheld permission to publish that information."[11] The University asserted that the release of the information "would constitute an unwarranted invasion of these employees' privacy."[12]

The MFT, seeking to compel the disclosure of the unpublished home addresses and home telephone numbers, commenced an action in Washtenaw Circuit Court.[13] On the University's motion for summary disposition, the court ruled that the privacy exemption covered the employees' home addresses and telephone numbers because they were "personal information" and because the information would not contribute "significantly to public understanding of the operations or activities of the government."[14]

Reversing, the Michigan Court of Appeals held that home addresses and home telephone numbers did not qualify as "information of a personal nature" as defined by the Michigan Supreme Court in *Bradley v. Saranac Community Schools Board of Education.*[15] *Bradley* narrowly construed the phrase "information of a personal nature" to mean information that "reveals intimate or embarrassing details of an individual's private life."[16]

The Michigan Supreme Court granted leave to appeal in order to reconsider its construction of the phrase "information of a personal nature."[17] Justice Young, writing for the court, held that the *Bradley* formulation was a correct, though incomplete, description of personal

8. *Mich. Fed'n of Teachers*, 481 Mich. at 661, 753 N.W.2d at 31.
9. *Id.* at 661, 753 N.W.2d at 31-32.
10. *Id.*
11. *Id.* at 661, 753 N.W.2d at 32.
12. *Id.*
13. *Id.* at 662, 753 N.W.2d at 32.
14. *Mich. Fed'n of Teachers*, 481 Mich. at 662, 753 N.W.2d at 32.
15. *Id.* at 662, 753 N.W.2d at 32.
16. Bradley v. Saranac Cmty. Sch. Bd. of Educ., 455 Mich. 285, 294, 565 N.W.2d 650, 655 (1997).
17. *Mich. Fed'n of Teachers*, 481 Mich. at 663 n.7, 753 N.W.2d at 33 n.7.

information.[18] His opinion held that private or confidential information also met the standard "of a personal nature."[19] He reasoned that the broader description "more accurately and fully describes the intended scope of the . . . privacy exemption."[20]

In applying the broader definition to the facts of the case, the court found that employee home address and telephone number information was covered by the privacy exemption regardless of whether the information was publicly available in some other form.[21] The court reasoned that:

An individual's home address and telephone number might be listed in the telephone book or available on an Internet website, but he might nevertheless understandably refuse to disclose this information, when asked, to a stranger, a co-worker, or even an acquaintance. The disclosure of information of a personal nature into the public sphere in certain instances does not automatically remove the protection of the privacy exemption . . . .[22]

Justice Kelly, joined by Justice Weaver, concurred as to the description of "information of a personal nature" but dissented as to the application to employee addresses.[23] The dissenters would have held that information individuals allowed to be published is not exempt.[24]

B. *When Reviewing the Denial of a FOIA Request Based on a Privacy Exemption, Courts May Only Consider the Information Available at the Time the Public Institution Invoked the Exemption*

The other FOIA case to come before the Michigan Supreme Court was *State News v. Michigan State University*.[25] The court addressed whether courts could consider new information when reviewing a public institution's denial of a FOIA request. The court held that courts could only consider the information available at the time of the denial.[26]

The State News, an independent student-run newspaper, filed a FOIA request for a police incident report regarding an assault that had

18. *Id.* at 675, 753 N.W.2d at 39.
19. *Id.* 676, 753 N.W.2d at 40.
20. *Id.*
21. *Id.* at 674, 753 N.W.2d at 42.
22. *Id.* at 680, 753 N.W.2d at 42.
23. *Mich. Fed'n of Teachers*, 481 Mich. at 683, 753 N.W.2d at 44 (Kelly, J., concurring in part and dissenting in part).
24. *Id.*
25. 481 Mich. at 692, 753 N.W.2d at 20.
26. *State News*, 481 Mich. at 695, 753 N.W.2d at 22.

taken place on the Michigan State University campus.[27] The University denied the request, claiming that the privacy exemption and the law-enforcement-purposes exemption covered the police incident report.[28]

The State News brought suit to compel Michigan State University to release the report.[29] The Ingham County Circuit Court held that the report qualified for the privacy and law-enforcement-purposes exemptions.[30] The State News appealed to the Michigan Court of Appeals, which remanded the case back to the circuit court.[31] Regarding the law-enforcement-purposes exemption, the court of appeals held that the lower court failed to offer "particularized reasons to justify its conclusion that the entire police incident report was exempt from disclosure."[32] In reviewing the privacy exemption, the court of appeals held that while the report may have qualified as "information of a personal nature" at the time that Michigan State University responded to the request, subsequent public revelations about the alleged assailants' identities resulted in the information no longer being of a personal nature.[33]

The Michigan Supreme Court granted Michigan State University leave to appeal the privacy exemption issue only.[34] The court, in a unanimous opinion written by Justice Young, held that "unless the FOIA exemption provides otherwise, the appropriate time to measure whether a public record is exempt under a particular FOIA exemption is the time

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27. *Id.*

28. For the privacy exemption, see *supra* note 7. The law enforcement exemption states:

> (1) A public body may exempt from disclosure as a public record under this act any of the following:
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> (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
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> (i) Interfere with law enforcement proceedings.
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> (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
>
> (iii) Constitute an unwarranted invasion of personal privacy.

MICH. COMP. LAWS ANN. § 15.243(1)(a) (West 2009).

29. *State News*, 481 Mich. at 694, 753 N.W.2d at 22.

30. *Id.* at 697, 753 N.W.2d at 23.

31. *Id.* at 698, 753 N.W.2d at 23-24.

32. *Id.* at 698, 753 N.W.2d at 24.

33. *Id.* at 699, 753 N.W.2d at 24. The names of the defendants were public information prior to Michigan State University denying the FOIA request. *Id.* at 701-02, 753 N.W.2d at 26. There was no information in the appellate record as to whether trial proceedings revealing additional information had been held subsequent to the denial of the FOIA request. *Id.*

34. *Id.* at 699, 753 N.W.2d at 24.

when the public body asserts the exemption."[35] The court reasoned that a public institution makes the legal judgment to deny a FOIA request by reviewing the "information available to it at that time,"[36] and FOIA does not require the public institution to revisit its decision if and when new information becomes available.[37] The court held that there is no statutory provision authorizing or directing a court to consider new information.[38]

The court also noted that "FOIA does not prevent a party that unsuccessfully requested a public record from submitting another FOIA request for that public record if it believes that, because of changed circumstances, the record can no longer be withheld from disclosure."[39]

III. APPLICATION OF *IN RE ROVAS:*[40] "RESPECTFUL CONSIDERATION" FOR AGENCY INTERPRETATION OF LAW

During the last *Survey* period, the Michigan Supreme Court held that courts should give a state agency's interpretation of law "respectful consideration"[41] rather than "unyielding deference."[42] The court also stated that an agency's findings of fact are subject to a clear error standard of review.[43] During this *Survey* period, the Michigan Court of Appeals invoked *Rovas* for the proposition that the statutory interpretations of an agency are subject only to "respectful consideration" and for the proposition that factual determinations should be reviewed under a clear error standard.

A. The Michigan Court of Appeals Rejected the Statutory Interpretation of the Employment Security Commission Board of Review

In *Petrelius v. Houghton-Portage Township Schools,* the Michigan Court of Appeals reversed a decision of the Employment Security Commission Board of Review (ESCBR).[44] The ESCBR ruled that

35. *State News,* 481 Mich. at 703, 753 N.W.2d at 26-27.
36. *Id.* at 703, 753 N.W.2d at 27.
37. *Id.*
38. *Id.* at 704; 753 N.W.2d at 27.
39. *Id.* at 704-05, 753 N.W.2d at 27.
40. *In re Rovas,* 482 Mich. at 90, 753 N.W.2d at 259.
41. *Id.* at 103, 754 N.W.2d at 267.
42. *Id.* at 111, 754 N.W.2d at 272.
43. *Id.* at 101, 754 N.W.2d at 266 ("Similar to the clear error standard of review for circuit courts, under the constitutional and statutory standards of review, a reviewing court must ensure that the finding is supported by record evidence; however, the reviewing court does not conduct a new evidentiary hearing and reach its own factual conclusions, nor does the reviewing court subject the evidence to review *de novo.*").
44. *Petrelius,* 281 Mich. App. at 520, 761 N.W.2d at 395.

Petrelius, a school custodian, was entitled to unemployment benefits for a six-week layoff during the school's summer vacation, and the circuit court affirmed.[45] The Houghton-Portage School District appealed by leave to the Michigan Court of Appeals, arguing that the ESCBR's interpretation of M.C.L.A. section 421.27(i)(2), also "known as the school denial period" provision, was contrary to the plain language of the statute.[46]

For matters of statutory interpretation, as here, the Michigan Court of Appeals relied on de novo review.[47] The court stated that "[w]hile appellate courts give respectful consideration to the construction of statutory provisions by any particular department of the government, the department's interpretation is not binding on the court and cannot be used to overcome a statute's plain meaning."[48]

The court reviewed the plain language of M.C.L.A. section 421.27(i)(2) and found that the custodian was not eligible for unemployment benefits "because the layoff period was during the summer break and [because the custodian] received "reasonable assurance that his duties would resume in the following academic year ..."[49] Rather than defer to the agency's decision, the court of appeals overturned the ESCBR's interpretation of the statute.[50]

B. Agencies' Findings of Fact Are Subject to a "Clear Error" Standard of Review

In *Buckley v. Professional Plaza Clinic Corp.*,[51] the Michigan Court of Appeals reaffirmed the "clear error" standard of review for factual determinations by administrative agencies.[52] The court of appeals found that the circuit court applied an incorrect standard of review to the factual

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45. *Id.* at 521, 761 N.W.2d at 397.

46. *Id.* The "school denial period" provision states:

With respect to service performed in other than an instructional, research, or principal administrative capacity for an . . . educational institution . . . benefits shall not be paid . . . for any week of unemployment . . . that commences during the period between 2 successive academic years . . . if there is a reasonable assurance that the individual will perform the service . . . in the second of the academic years . . . .

MICH. COMP. LAWS ANN. § 421.27(i)(2) (West 2009).

47. *Petrelius,* 281 Mich. App. at 521-22, 761 N.W.2d at 397 (citing Brown v. Detroit Mayor, 478 Mich. 589, 593, 734 N.W.2d 514 (2007)).

48. *Id.* at 523, 761 N.W.2d at 398 (citing *In re Rovas*, 482 Mich. at 103, 754 N.W.2d at 267).

49. *Id.* at 523, 761 N.W.2d at 398.

50. *Id.* at 231-32, 761 N.W.2d at 289.

51. *Buckley*, 281 Mich. App. at 224, 761 N.W.2d at 284.

52. *Id.* at 231-32, 761 N.W.2d at 289.

determinations of the Department of Labor and Economic Growth (DLEG).[53]

The case began when Buckley, a physician formerly employed at the Professional Plaza Clinic Corp., filed a claim for unpaid wages under the Payment of Wages and Fringe Benefits Act.[54] The DLEG reviewed the physician's claim and granted her back pay.[55] The Professional Plaza Clinic appealed to a hearing referee, claiming that the physician was an independent contractor rather than an employee, and that her employment contract was within the scope of the Act.[56] The hearing referee found that the employment contract was ambiguous as to whether the physician was an employee or independent contractor.[57] The referee therefore applied the "economic reality" test and determined that Buckley was an employee under that test.[58]

Professional Plaza clinic appealed again, this time to the Wayne County Circuit Court.[59] The circuit court held that the physician was an independent contractor, indicating that "I think all the evidence points to the fact that she was [an independent contractor]."[60]

The court of appeals reversed, holding that the circuit court did not apply the "clear error" standard of review for factual determinations.[61] The court of appeals held that "a reviewing court may not set aside factual findings supported by the evidence merely because alternative findings could also have been supported by evidence on the record or because the court might have reached a different result."[62] The court of appeals found that substantial evidence supported the decision of the

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53. *Id.* at 236, 761 N.W.2d at 291.

54. *Id.* at 225, 761 N.W.2d at 286. The Michigan Payment of Wages and Fringe Benefits Act (WFBA) is M.C.L.A. §§ 408.471-.90 (West 2009).

55. *Buckley*, 281 Mich. App. at 225, 761 N.W.2d at 286.

56. *Id.* at 227, 761 N.W.2d at 287.

57. *Id.* at 229, 761 N.W.2d at 288.

58. *Id.* "The economic reality test is the most common tool for discerning whether an employee-employer relationship exists." *Id.* at 234, 761 N.W.2d at 290. According to the court, the economic reality test:

> takes into account the totality of the circumstances around the work performed, with an emphasis on the following factors: (1) the control of a worker's duties, (2) the payment of wages, (3) the right to hire and fire and the right to discipline, and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal.

Id. at 234-35, 761 N.W.2d at 290 (internal citations omitted).

59. *Id.*, 761 N.W.2d at 292-93.

60. *Id.* at 237, 761 N.W.2d at 292.

61. *Buckley*, 281 Mich. App. at 236, 761 N.W.2d at 291.

62. *Id.* at 238, 761 N.W.2d at 292-93 (quoting Dep't of Cmty. Health v. Risch, 274 Mich. App. 365, 373, 733 N.W.2d 403, 409 (2007)).

hearing referee and that the circuit court erred in overturning the decision.[63]

IV. OTHER SIGNIFICANT CASES

A. A Utility Company's Use of an Equalization Mechanism Designed to Recover Uncollectible Expenses From Prior Years Is Not a Retroactive Rate

The Michigan Court of Appeals made a significant ruling regarding the ability of public utilities to recover expenses from previous years by applying an "equalization mechanism" to the bills of current customers in *In re Application of Michigan Consolidated Gas Co.*[64] This is one of several Michigan cases dealing with the doctrine against retroactive ratemaking.[65]

In *In re Application of Michigan Consolidated Gas Co.*, the Attorney General appealed an order of the Michigan Public Service Commission allowing the Michigan Consolidated Gas Company (MichCon) to add an equalization mechanism to bills for natural gas customers.[66] The equalization mechanism, termed the "uncollectible expense true-up mechanism" (UETM), would allow MichCon to recover up to 90% of its uncollectible expenses experienced during a prior year.[67] In every general rate case, "the PSC estimates an amount of uncollectible expenses to include in setting MichCon's rates . . ."[68] At the end of the year under the UETM, the Public Service Commission (PSC) compares the estimate to the actual uncollectible expenses.[69] If the PSC finds that "the actual expense is less than estimated, credits will be applied [to the customers]."[70] If the actual expense is more than estimated, UETM surcharges are imposed on ratepayers.[71]

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63. *Id.* at 239, 761 N.W.2d at 293.

64. 281 Mich. App. 545, 761 N.W.2d 482 (2008).

65. In *Michigan Bell Telephone Co. v. Public Service Commission*, the Michigan Supreme Court first announced the rule prohibiting retroactive ratemaking. The court held that "the [Public Service C]ommission's power to fix utility rates and charges is limited to orders which are prospectively effective." 315 Mich. 533, 554-55, 24 N.W.2d 200 (1946). *See also* Detroit Edison Co. v Mich. Pub. Serv. Comm'n., 416 Mich. 510, 522-23, 331 N.W.2d 159, 164 (1982).

66. *In re Application of Mich. Consol. Gas Co.*, 281 Mich. App. at 546, 761 N.W.2d at 483.

67. *Id.* at 546-47, 761 N.W.2d at 483.

68. *Id.*

69. *Id.* at 547, 761 N.W.2d at 483.

70. *Id.*

71. *Id.* at 546-47, 761 N.W.2d at 483.

The Attorney General argued that the UETM is unlawful because it exceeds the statutory authority of the PSC and because the UETM is an impermissible retroactive ratemaking mechanism.[72]

The court of appeals rejected both arguments. First, the court held that rates prescribed by the PSC "are presumed to be lawful and reasonable."[73] Additionally, the court held that the PSC "is not bound by any single rate making formula, and may make pragmatic adjustments when warranted by the circumstances of the particular matter before it."[74]

Second, the court found that the UETM did not violate the rule against retroactive ratemaking because the UETM was a prospective mechanism to collect deferred expenses.[75] The court reasoned that deferred expenses were not expenses of the year in which they were initially incurred but, rather, expenses of the year that they were deferred to.[76] Therefore, in this case, the UETM did not seek to recover expenses for 2005 because those unrecovered expenses had been deferred to 2007.[77] Rather, it was collecting *2007* expenses.[78] By characterizing the expenses as expenses of the year to which they are deferred, the court sought to reconcile the Commission's action with the long-standing retroactive ratemaking proscription.[79]

B. The Michigan Campaign Finance Act Prohibits a Public Body From Making Payroll Deductions for Political Action Committees, Even if the Public Body is Reimbursed in Advance for Its Administrative Expenses

Section 57 of the Michigan Campaign Finance Act prohibits a public institution from using public resources to support a Political Action Committee (PAC).[80] In *Michigan Educational Association v. Secretary*

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72. *In re Application of Mich. Consol. Gas Co.*, 281 Mich. App. at 547, 761 N.W.2d at 484.

73. *Id.* (citing *In re* Application of Detroit Edison Co., 276 Mich. App. 216, 224, 740 N.W.2d 685 (2007)).

74. *Id.* at 548, 761 N.W.2d at 484 (quoting *In re Application of Detroit Edison Co.*, 276 Mich. App. at 243, 740 N.W.2d at 702).

75. *Id.* at 549, 761 N.W.2d at 484-85.

76. *Id.*

77. *Id.* at 549-50, 761 N.W.2d at 485.

78. *In re Application of Mich. Consol. Gas Co.*, 281 Mich. App. at 549-50, 761 N.W.2d at 485.

79. *Id.* at 545, 761 N.W.2d 482; *see also* Att'y Gen. v. Pub. Serv. Comm'n, 262 Mich. App. 649, 686 N.W.2d 804 (2004) (explaining the origin of the prohibition on retroactive rates and also discussing the erosion of the doctrine through the concept of deferred expenses).

80. Section 57(1) provides:

of State,[81] the Michigan Court of Appeals held that section 57 did not include situations where the public institution was reimbursed in advance.[82]

The Michigan Educational Association (MEA), a union representing public school teachers, entered into collective bargaining agreements with public school districts whereby the districts agreed to administer a payroll deduction plan for MEA members.[83] A portion of the payroll deductions went to the MEA's PAC, a separately funded committee.[84] The MEA's PAC reimbursed the school districts in advance for the administrative expenses of the payroll deductions.[85]

The Secretary of State issued a declaratory ruling that the agreements violated the Michigan Campaign Finance Act because, regardless of the fact that the school districts were reimbursed, the districts still made expenditures to cover the administration of the payroll deductions.[86] The court of appeals affirmed, holding that "nothing in the plain language of the [Michigan Campaign Finance Act] . . . indicates reimbursement negates something that otherwise constitutes an expenditure."[87]

C. Employer May Request Severance of Union's Bargaining Units to Divide Employees that Are Eligible for Arbitration From Those Who Are Ineligible

In *Oakland County v. Oakland County Deputy Sheriff's Association*,[88] the Michigan Court of Appeals considered whether the Michigan Employment Relations Commission (MERC) committed an error by severing a union's bargaining unit when the request to sever came from the employer rather than an employee.[89] The court quoted

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> A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to *make a* contribution or *expenditure* or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a).

MICH. COMP. LAWS ANN. § 169.257(1) (West 2009) (emphasis added).

81. 280 Mich. App. at 477, 762 N.W.2d at 234.

82. *Id.* at 486, 761 N.W.2d at 239.

83. *Id.* at 480, 761 N.W.2d at 235-36.

84. *Id.*

85. *Id.* at 480-81, 761 N.W.2d at 236.

86. *Id.* at 482, 761 N.W.2d at 236-37.

87. *Mich. Educ. Ass'n*, 280 Mich. App. at 486, 761 N.W.2d at 239.

88. Oakland Cnty. v. Oakland Cnty. Deputy Sheriff's Ass'n, 282 Mich. App. 266, 765 N.W.2d 373 (2009).

89. *Id.* at 270, 765 N.W.2d at 376.

with approval from the MERC's opinion that "[t]here is no logical basis for precluding an employer from seeking clarification of a unit's coverage by Act 312 [mandating arbitration for unions not allowed to strike], where the statutory structure expressly allows [the] employer to petition for arbitration under the Act in . . . the same fashion as a union . . . ."[90] The court of appeals further found that the MERC did not make any factual errors in determining that severance was warranted in the case.[91]

V. CONCLUSION

During the 2009 *Survey* period, Michigan courts issued decisions on the privacy exemption found in the Freedom of Information Act and the standard of review utilized for an agency's interpretation of a statute. The Michigan Supreme Court broadened the pre-2009 interpretation of the phrase "information of a personal nature" within the privacy exemption. The Michigan Court of Appeals articulated a "clear error" standard of review for an agency's factual determinations and held that an agency's interpretation of a statute "cannot be used to overcome a statute's plain meaning." Finally, the Michigan Court of Appeals allowed public utilities to apply an "equalization mechanism" to recover expenses from previous years.[92]

90. *Id.* at 271, 765 N.W.2d at 376.

91. *Id.* at 271-72, 765 N.W.2d at 377.

92. Two other cases decided during this year's *Survey* period but not included in this Article are *Lewis v. Bridgman Public Schools*, 279 Mich. App. 488, 760 N.W.2d 242 (2008) and *Mericka v. Department of Community Health*, 283 Mich. App. 29, 770 N.W.2d 24 (2009). In *Lewis*, the Michigan Court of Appeals, on remand from the Michigan Supreme Court, upheld the Tenure Commission's decision to overturn a hearing referee's decision to terminate a teacher's employment. *Lewis*, 279 Mich. App. at 498, 760 N.W.2d at 248. According to the Michigan Supreme Court, the Teachers' Tenure Act did not impose a "clear error" standard of review for decisions of a hearing referee. *Id.* at 490, 760 N.W.2d at 244. Accordingly, it was permissible for the Tenure Commission to review the decision *de novo*. In *Mericka*, the Michigan Court of Appeals held that people who are physically incapacitated but mentally sound may qualify for special benefits because they are "developmentally disabled."