

Asked and Answered (Sometimes): Certified Questions in the Michigan Supreme Court

By Neil E. Youngdahl

Lawsuits in non-Michigan courts can sometimes raise thorny, undecided questions of Michigan law. Instead of taking an educated guess on how the Michigan Supreme Court would decide a question of first impression, these courts are able to ask for help by certifying a question to the Michigan Supreme Court. Michigan Court Rule 7.308(A)(2)(a) provides that “[w]hen a federal court, another state’s appellate court, or a tribal court considers a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent, the court may on its own initiative or that of an interested party certify the question to the Court.” The Michigan Supreme Court then has the discretion to answer or not answer the question. MCR 7.308(A)(5).

Certified questions are relatively rare at the Michigan Supreme Court; since 2000, only about nineteen have been asked, an average of less than one per term.¹ This rarity may explain why the Court has not codified specific criteria for when certified questions are appropriate—unlike the well-known factors that inform whether a case justifies the Court’s scrutiny via an application for appeal, the Michigan Court Rules is largely silent on what makes a good certified question.²

Despite the relative elusiveness of certified-question proceedings, Supreme Court justices have expressed strong opinions about this procedural mechanism. In the early 2000s, some justices questioned whether the Court could even answer them in the first place. Justice Elizabeth Weaver and Justice Robert Young both believed that answering certified questions created “advisory opinions,” outside the power provided to the Court by Article 3, Section 8 of the Michigan Constitution.³ In their view, the Michigan Court Rules allowing for certified questions were unconstitutional. The Court rejected this view and, even though Justice Young ultimately conceded defeat on the constitutional issue, he adopted the belief that the Court should only accept and answer certified questions “sparingly” and only when (1) the Michigan legal issue is debatable and (2) the issue is pivotal to the case underlying the certified question.⁴ On the other hand, Justice Stephen J. Markman consistently

advocated for answering certified questions. In Justice Markman’s view, refusing to answer certified questions undermined Michigan citizens’ interest in having Michigan law decided by Michigan courts; eroded state sovereignty by ceding interpretation of state law to federal courts; weakened federalism by disrupting the deference federal courts owe to state-court interpretations; placed Michigan at odds with most states that routinely answer certified questions; and failed to demonstrate comity and cooperation with federal courts seeking authoritative state-law guidance.⁵

Over the past quarter-century, the Court’s interest in answering certified questions has waxed and waned. All totaled, since 2000, the Court has answered eight of the nineteen certified questions that have been asked of it.⁶ Although this 42.1% answer rate is exponentially higher than the 2-3% grant rate of applications for leave to appeal (perhaps due to the de facto gatekeeping function that the certifying court provides in weeding out insignificant or well-settled issues), it still demonstrates that the Court has historically tended toward non-answers. The period between 2007 and 2016 could be considered the “golden age” of certified questions—the Court answered an astounding five out of six questions.⁷ However, the Court’s current interest in certified questions appears to be on a downswing, with the Court having declined to answer the last four questions that its fellow courts have certified.⁸ The last time that the Court answered a certified question was in October 2020, when the Court examined the Governor’s emergency powers in the context of the COVID-19 pandemic.⁹

Although the Court is more than five years past its last answer to a certified question, its justices are still expressing an interest in defining the proper use of this procedural device. Recently, Chief Justice Megan Cavanaugh expressed her opinion on when the Court should wade into certified-question cases and what certifying courts should consider before they send their questions to Lansing.

Chief Justice Cavanaugh’s views come in the context of *Beaubien v Trivedi*, a case concerning the constitutionality of MCL 600.1483’s cap on noneconomic-damages in medical malpractice cases. The United States District Court for

the Eastern District of Michigan determined that, although the Michigan Supreme Court had previously upheld the constitutionality of this cap, other Supreme Court opinions were “in tension” with this conclusion and subsequent decisions from the Michigan Court of Appeals that questioned the Court’s precedent raised important questions about the issue.¹⁰ In the court’s view, this meant that constitutional question was “unsettled” and not clearly governed by Michigan precedent, so certification to the Michigan Supreme Court was appropriate.

The Supreme Court declined to provide an answer and, in the Chief Justice’s concurring opinion, she emphasized that “our certified-question process exists to resolve unsettled questions of state law, not to relitigate settled ones.”¹¹ The Chief Justice explained that the Court’s prior rejection of the constitutional challenges to the damages caps “constitutes controlling precedent . . . and thus equipped the federal district court with a reasonably clear and principled course on how to resolve the issues presented,” regardless of whether the prior case was “rightly or wrongly decided.”¹² The Chief Justice proceeded to observe that the Michigan Court of Appeals had “several times rejected the exact arguments raised in the present case.”¹³

Chief Justice Cavanaugh’s *Beubien* concurrence makes two notable contributions to the jurisprudence surrounding Michigan’s certified-question procedure. First, it posits that certifying courts should seek only to identify whether the Michigan Supreme Court has answered the question, not whether the Court’s prior answer is arguably incorrect given other or intervening case law. In her words, “if existing state law ought to be changed, that change must come through the proper state appellate channels[.]”¹⁴ Second, it argues that, despite MCR 7.308(A)(2)(a)’s reference to “control-

ling precedent from the ‘Michigan Supreme Court,’ . . . how [the] Court of Appeals has interpreted [the Supreme Court’s] precedent and applied it to the very issue in dispute certainly remains probative of whether such precedent controls a certified question under MCR 7.308(A)(2)(a).”¹⁵ Put differently, Chief Justice Cavanaugh appears to argue that intermediary court decisions should (or at least could) play a significant role deciding whether a certified question is appropriate.

Of course, as a one-justice concurrence, Chief Justice Cavanaugh’s opinion does not necessarily convey the Court’s view on this subject or establish an authoritative rule. But it raises interesting questions about the certification process. Chief Justice Cavanaugh appears to view the certification process as a means to provide new insight on Michigan law to non-Michigan courts, rather than an avenue to change Michigan law. Further, Chief Justice Cavanaugh appears to argue that intermediary court decisions could, under appropriate circumstances, play a significant role in deciding whether a certified question should be asked. If courts considering certification are persuaded by the *Beubien* concurrence, they may provide more weight to opinions issued by the Michigan Court of Appeals than they otherwise would have.

In any event, *Beubien* confirms that Michigan Supreme Court justices continue to have thoughtful, rigorous views on the certified-question procedure, even though these views often result in a decision that the procedure should not be used in a given case. 🏛️

About the Author

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Endnotes

- 1 Because certified-question proceedings are typically styled as *In re Certified Question*, I reached the number nineteen by searching the Supreme Court's online docket for variations of "certified" in the case title. Based on my best efforts to validate, that tactic appears to have captured most, if not all, certified-questions proceedings. I then limited my search to post-2000 cases on the premise that more recent decisions are more likely to reflect relevant doctrinal developments and current judicial thinking. Under normal citation rules, these proceedings would be universally captioned as *In re Certified Question*, but for the sake of clarity, I refer to them by the caption of the original proceeding: *Detroit Diesel Corp v Martinrea Honsel Mexico* (Docket No. 168330); *Beaubien v Trivedi* (Docket No. 167831); *Novak v Federspiel* (Docket No. 165282); *AFT Michigan v Project Veritas* (Docket No. 162121); *Midwest Institute of Health v Governor of Michigan* (Dkt. No. 161492); *Deacon v Pandora Media* (Docket No. 151104); *Mattison v Social Security Commissioner* (Docket No. 144385); *Lighthouse Neurological Rehabilitation Center, Inc, v Allstate Insurance Co* (Docket No. 143287); *In re Ford Motor Co E-360 Van Products Liability Litigation* ("Ford E-360 Van") (Docket No. 142041); *Waeschle v Oakland County Medical Examiner* (Docket No. 140263); *Kenneth Henes Special Projects Procurement, Marketing & Consulting Corporation v Continental Biomass Indus, Inc* (Docket No. 120110); *Miller v Ford Motor Company* (Docket No. 131517); *Gold v Interstate Financial Corporation* (Docket. No. 130966); *Veliz v Cintas Corp* (Docet No. 130190); *Melson v Prime Insurance* (Docket No. 127088); *US v Wayne County* (Docket No. 118387); *Elfelt v United States* (Docket No. 120428); *County of Wayne v Phillip Morris, Inc* (Docket No. 118261); *Sanford v Yukins* (Docket No. 117087).
- 2 Compare MCR 7.305(B) with MCR 7.308(A)(2).
- 3 *County of Wayne v Philip Morris, Inc*, 622 NW2d 518, 518 (2001) (Weaver, J., dissenting); *Melson v Prime Ins Syndicate, Inc*, 472 Mich 1225, 1226-27 (2005) (Young, J., concurring). Years earlier, Justice Charles Levin also concluded that certified questions are unconstitutional. *Bankey v Storer Broadcasting Co*, 432 Mich 438, 458-471 (1989) (Levin, J., separate opinion).
- 4 *Mattison v Social Security Commissioner*, 493 Mich 70, 83-84 (2012) (Young, J., dissenting).
- 5 *Ford E-360 Van*, 795 NW2d 815, 816 (Mich 2011) (J. Markman, dissenting).
- 6 *Midwest Institute of Health; Deacon; Mattison; Ford E-360 Van; Waeschle; Continental Biomass; Miller; and Phillip Morris*.
- 7 During this time, the Court answered *Deacon* (2016), *Mattison* (2012), *Ford E-360 Van* (2011), *Waeschle* (2010), and *Miller* (2007), and declined to answer *Lighthouse* (2011).
- 8 *Detroit Diesel* (2025); *Beaubien* (2025); *Novak* (2023); and *AFT Michigan* (2021).
- 9 *Midwest Institute of Health*, 506 Mich 332 (2020).
- 10 See *Beaubien v Trivedi*, Case No. 21-cv-11000, 2024 WL 4751578 (ED Mich November 8, 2024).
- 11 *Beaubien v Trivedi*, 21 NW3d 918, 921 (2025).
- 12 *Id.* at 920.
- 13 *Id.*
- 14 *Id.* at 921.
- 15 *Id.* at 920 n3.

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