

COA Opinion: Court calls for special panel to resolve disagreement with precedent regarding application of law of the case

29. April 2010 By Jason Byrne

On April 27, 2009, the Court of Appeals published its opinion in [King v. McPherson Hospital, No. 284436](#). In this case, the Court was presented with a medical malpractice action involving the application of the relevant statute of limitations. Here, the trial court initially rejected defendant's motion to dismiss, but the Court of Appeals reversed finding that the plaintiff's complaint was untimely according to the then-existing precedent. The case was ultimately remanded, and the trial court granted the defense motion for entry of an order of dismissal based on the Court of Appeal's decision. Later, the Michigan Supreme Court decided another case involving the application of similar statute of limitations issues. The plaintiff filed a motion to set aside the dismissal order based on a change in the law. The defense disagreed that the relevant legal precedent had been reversed, and also argued the the law of the case doctrine required the court to uphold the dismissal that had been ordered by the Court of Appeals. The trial court agreed with the defendants and denied the motion pursuant to the law of the case. Plaintiff filed an application for leave to appeal to the Court of Appeals, which was denied. But the Supreme Court [remanded the case](#) to Court of Appeals for consideration as on leave granted. Now, the Court of Appeals noted that the recent Court of Appeals opinion in *Farley v. Carp* was directly on point, and required this panel of the Court of Appeals to affirm the trial court's decision uphold the earlier directive from the Court of Appeals to dismiss the case. Our prior post on the *Farley* decision can be found [here](#). This panel, however, disagreed with the result in *Farley* and called "for the convening of a special panel of this Court pursuant to MCR 7.215(J)(3)."