



# THE SUMMONS

## Saginaw County Bar Association

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“ORDER

November 22, 2019

ADM File No. 2019-24

### APPOINTMENT OF CHIEF JUDGES OF MICHIGAN COURTS

Pursuant to MCR 7.201, IT IS ORDERED that the Honorable Christopher M. Murray is appointed as chief judge of the Court of Appeals for the two-year period commencing January 1, 2020.

Pursuant to MCR 8.110, IT IS ORDERED that the following judges are appointed as chief judges of the courts indicated for the two-year period commencing January 1, 2020.”



*Congratulations newly appointed Chief Judge Darnell Jackson*

# MEETING DATES FOR 2020

*(Go to [www.saginawbar.org](http://www.saginawbar.org) for meeting updates)*

## **Board Meeting**

*(All Board Meetings will be held at Saginaw Country Club, 1st Wednesday of every month at 12:00 PM)*

## **Pro Bono Committee Meeting**

*(All PB Meetings will be held at Panda House, 3rd Tuesday of every month at 12:00 PM)*

## **Law Day Committee Meetings**

*(All LD Meetings will be held at Panda House 2nd Wednesday of every month at 12:00 PM)*

## **Everybody's IRISH Party By SCBA & WLAM of GLBR**

*March 17, 2020 • 5:00 PM*

*Woody O'Briens  
116 S. Hamilton St.*

## **Law Day Events**

### **Law Day Membership Meeting**

*Friday, May 1, 2020 • 12:00 PM  
Trillium Banquet Center*

### **Mock Trials & Pizza Lunch for participants**

*Thursday, April 30, 2020 • 9:00am*

## **Soup Kitchen Volunteers needed**

*(Call John Humphreys 989-401-2115 if you can serve)*

*Saturday, May 30, 2020*

*Saturday, August 29, 2020*

*Saturday, October 31, 2020*

## **Pro Bono Week**

*October 25-31, 2020*

## **Expungement Clinic**

*Speaker: State House Representative  
Vanessa Guerra*

*Friday, March 13, 2020 Bethel AME-Saginaw*

## **Ask the Lawyer**

*Thursday, June 4, 2020*

*Topic: Legalization of Marijuana*

*Speakers: Nate Collison & Adam Flory*

*Monday, July 20, 2020*

*Monday, October 19, 2020*

*Monday, December 7, 2020*

*(Other suggested topics from community members: Housing, Consumer, Estate Planning.)  
Let LSEM know if you would like to help.*

**Save the date for the 2020  
National Celebration of Pro Bono  
October 25-31, 2020**

*(If you want your committee meeting dates listed here, send them to Kelli Scorsone, Executive Director)*



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# THE SUMMONS

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### **SCBA Website**

[www.saginawbar.org](http://www.saginawbar.org)

### **Lawyer Referral Service**

1-800-968-0738

The articles in THE SUMMONS, unless clearly designated otherwise, are those of the author. They do not necessarily represent the opinion of the Saginaw County Bar Association or its members. Please direct your comments on THE SUMMONS, to its Assistant Editor, Ann R. Van Haute, 4301 Fashion Square Boulevard, Saginaw, Michigan 48603 • (989) 498-2100.



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## PRESIDENT'S MESSAGE

By: Katherine M. Baluha

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Happy Spring! I have been counting down the days until we can see some clearing of these grey skies and although we are sure to have many more cold days until summer, the sunshine is so missed. I hope your year has really begun to kick into a good groove – already the SCBA has had an exciting year with lots to look forward to as well.

I know many of you were able to attend the open house for the new location of Legal Services of Eastern Michigan. What an amazing upgrade from the previous location with so many opportunities for growth. If you didn't get a chance to check it out – it is located at 301 E. Genesee Avenue – and I am sure they would love to give you a tour and explain some of the exciting new ideas that the staff are discussing. I was so happy to hear that they had a record number of attorneys sign up for the legal advice clinics that are held on Friday mornings throughout the year. This wonderful office helps to provide services to an entire group of people that may not have had the opportunity for representation if it weren't for

the staff there. Although parking is difficult in the area – we have been told that there are things in the works to try and alleviate that as soon as possible.

I was also very happy to hear that Judge Jurrens' meeting on specialty courts was a huge success with barely enough room for everyone to fit. I would like to thank Judge Jurrens and all of the Judges that give their free time to help educate our Bar on really interesting and useful information. We will continue to try to provide educational meetings that are specific to each faction of the law and we encourage you to reach out with things that you may want to see in upcoming meetings.

We are excited to be nearing our annual St. Patrick's Day party and hope to have a great turnout as always. It will be held on Tuesday, March 17 – St. Patrick's Day – at Woody's on Hamilton St. at 5 pm. Pizza is provided and of course drinks are available for purchase. The SCBA partners with the Women Lawyers Association of Great Lakes Bay to bring you treats and fun accessories for the occasion.

As an update to some things going on around the Court – I would like to again say that we are looking into options for the Attorney/Client conference areas on the 4th floor. There has been some changes that are moving in the right direction, such as creating 3 cubicles in the old attorney lounge and moving the lounge with the computer across the hall to a smaller room, however, I know that many of you that practice civil/family law have voiced concerns that there is no way to meet with clients in a private area as you sometimes are forced to share the room with opposing counsel/party. I assure you that we are trying to come up with ideas that will meet the needs of all our members and their clients, whilst staying within a budget that is very strained. Also, if you practice family law, as of March 1 – all cases will be in front of Judge Borchard, so if you have questions about times for Motions, etc. please reach out to the Domestic Relations Committee and someone will be happy to help.

We will continue to have domestic relations committee meetings as we are given more information as to the changes, recent updates with the discovery rules, and FOC requirements.

Finally – there recently was an incident that involved one of our long-time devoted SCBA members and current board member, Bill Cowdry. I am sure many of you heard of the situation and I for one am extremely concerned about the safety of our members and all attorneys that are required to meet with clients at the jail. I am going to be following up with leadership to discuss ways to ensure that attorneys are safe as they meet with their clients, as I am sure this is not the first incident and I have heard from others of the discomfort that they have experienced as well. I want to send a very big Get Well Soon! to Bill and know that we are all here for you and appreciate all the hard work and thoughtfulness that you put into your work with the SCBA and your practice.

See you March 17!



## *In Memoriam*

**None**

*Please help the Memorial Committee make sure no member is forgotten. Contact SCBA office at 790-5285 or [scba@saginawcounty.com](mailto:scba@saginawcounty.com) regarding the passing of any Saginaw County Attorney.*





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## SAGINAW COUNTY LAWYERS' AUXILIARY

By: Claudia J. Wallace

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Here we are with January behind us and venturing into February with still mild temps. Hold onto your coats and boots though, in all likelihood Michigan has to get hit with winter weather. The almanac says so, right?

Only time will tell.

The SCLA along with Chef Josh Schaeding and family at the Maple Grille did an outstanding job at creating



and serving the 6 course meal for us on January 26th.

We were able to take home \$700.00 to put toward our scholarship fund. We were ecstatic at

both the evening event and the funds. Thank-you Terry Oeming for once again organizing this event. Over 40 people joined together in camaraderie, good laughs and great food.

On March 6th our next exciting event is "The Capitol Steps" show at the Temple Theatre. Hearty-Hors d'oeuvres with cash bar will be at the Saginaw

Club prior to the show at 6 p.m. Show is at 7:30. cost is \$40.00 per person.

Law Day Celebration kicks off April 30th at 9 a.m. with Mock Trials in the morning and lunch and awards at noon. Chairs are Mary Ann Farris and Claudia Wallace. Please call Claudia if you and/or any of your friends would like to volunteer as a rater or help serve lunch 245-4628. It is always a great time watching the young adults perform.



Law Day Awards Luncheon is May 1st with lunch at noon at the Trillium Banquet Center. Please call Kelli Scorsone to R.S.V.P. 274-1745.

The SCLA Spring Luncheon is May 13th at the Saginaw Country Club. Social time begins at 11:30 a.m.

with lunch at noon. Chairs are Ethel O'Neill and Terry Oeming. Please R.S.V.P. to Terry 692-0322.

Ongoing dates are Court House Tours scheduled by individual schools. Call Judy Weldy at 799-6545 if you know of a school class that would like a tour. 9:00-11:00 a.m.

We hope to see you at any or all of our events this year. You are always welcome to bring a friend or two!

Mark A. Grove, a Human Resource Executive, published a true story on LinkedIn titled "I wish you enough". If you haven't already read it, do so. It is meaningful!

Regards and best wishes to everyone and your families.





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## SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

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### Membership Dues

Again, gentle reminder! If you have not submitted your 2020 dues please do.

One of the perks of membership is the Field of Practice listing on the website. The website is viewed daily by hundreds of Saginaw County residents. It is certainly a cheap way to advertise your business (\$5.00 for three fields).

Another perk, is the listserv which goes to members only. It keeps you up-to-date on our events and interests.

The Summons is a definite perk to membership, thanks to Editor Thomas Luplow and Assistant Editor Ann Van Haute. It is delivered nine times a year through the listserv.

**Don't let your SCBA membership lapse!** We want all 440 Saginaw County Attorneys to be part of this organization, that includes Retirees, Emeritus, Professors, governmental employees, and even those that work for large businesses in Saginaw County. You all have so much you could add to this organization and we have a lot to offer you!

### New Civil Discovery Rules

The New Civil Discovery Rules are effective as of January 1, 2020. Educational resources are available at: [michbar.org/civildiscovery](http://michbar.org/civildiscovery)

### **Nominations for Liberty Bell**

**Due April 1, 2020**

**Submit nomination to [scba@saginawcounty.com](mailto:scba@saginawcounty.com)  
or 111 S. Michigan Ave., Saginaw, MI 48602**



**MOCK TRIALS  
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## NLRB RULES THAT EMPLOYERS MAY REQUIRE CONFIDENTIALITY IN WORKPLACE INVESTIGATIONS, CONTINUING TREND OF EMPLOYER FRIENDLY DECISIONS

By: David V. Bryce  
Masud Labor Law Group

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Continuing a positive trend, the National Labor Relations Board (the “NLRB” or the “Board”) issued another pro-employer decision on December 16, 2019, overturning an Obama-era ruling that limited an employer’s ability to confidentially conduct workplace investigations. In its decision, *Apogee Retail LLC d/b/a Unique Thrift Store*, 368 NLRB No. 144, the Board held that employer rules intended to protect confidentiality in the course of an ongoing workplace investigation are presumptively lawful.

An employer being able to maintain confidentiality during a workplace investigation may seem like a matter of common sense. The Board, however, took the opposite position in 2015 when it issued its decision in *Banner Estrella Medical Center*, 362 NLRB

1108. In *Banner Estrella*, an employee made a complaint about his performance review. The employer met with the employee and told him that it would investigate his concerns. At the close of the meeting, the employer asked the employee not to discuss the matter with his co-workers during the pendency of the investigation, consistent with the employer’s written policy. The employee filed an unfair labor practice charge with the Board, alleging that the employer’s rule regarding confidentiality violated his right to discuss his working conditions with fellow employees. The Board agreed with the employee, concluding that general concerns about maintaining confidentiality during an investigation could not override an employee’s rights under Section 7 of the National Labor Rela-

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tions Act to engage in protected activity. The Board thus held that even in the absence of any evidence that an employee's Section 7 rights were affected, an employer could not insist on confidentiality in a workplace investigation unless it made a determination on a case-by-case basis that the absence of confidentiality would compromise the investigation's integrity.

After it was decided, several commentators suggested that *Banner Estrella*, as a practical matter, made any requirement of confidentiality in a workplace investigation unlawful. Fortunately, the Board's decision in *Apogee Retail* expressly overrules *Banner Estrella*. In *Apogee Retail*, the Board held that *Banner Estrella*, by imposing a blanket rule requiring employers to show that an investigation required confidentiality, ran afoul of the balancing test for evaluating workplace rules set forth in *Boeing Company*, 365 NLRB 154 (2017). Under *Boeing*, a facially neutral workplace rule, such as one requiring confidentiality in investigations, must be assessed by weighing the likelihood of the rule interfering with an employee's Section 7 rights against an employer's legitimate expectations in enforcing the rule. The rule at issue in *Apogee Retail* provided that employees interviewed pursuant to a company

investigation were "expected to maintain confidentiality regarding [the] investigation." Applying the *Boeing* balancing test, the Board found that the rule was categorically lawful with respect to ongoing investigations. In reaching its decision, the Board noted that the rule in question did not restrict employees from discussing the incident giving rise to an investigation, or any resulting discipline, but instead restricted only the right to discuss ongoing investigations of such incidents or interviews that occurred during the course of the investigation.

Reversing *Banner Estrella*, *Apogee Retail* holds that confidentiality requirements during investigations "are lawful as a general matter." Employers should be aware, however, that the Board limited the presumption of lawfulness to ongoing investigations. With respect to completed investigations, whether continued confidentiality is lawful will continue to depend on the facts and circumstances of each case. The foregoing limitation aside, *Apogee Retail* restores common sense to the ability of employers to maintain confidentiality during an ongoing investigation. As always, employers with questions about rules involving confidentiality for workplace investigations should contact their labor lawyers.



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## BANKRUPTCY CASE NOTES

By: Jack Weinstein

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*Are parents tuition payments for adult children avoidable?* That was the issue in the case of *DeGriacomo, Chapter 7 Trustee v Sacred Heart University, Inc.* (In re: Palladino) 2019 WL 5883721 (5th Circuit 11/11/19). In the fall of 2012, debtors' 18 year old daughter enrolled in Sacred Heart University

(Sacred Heart) in Fairfield, Connecticut. Debtors' had no legal obligation to pay for her tuition. Between March 2012 and March 2014, the debtors paid \$64,656.22 in tuition payments to Sacred Heart. In April of 2014, the Palladino's filed for Chapter 7 relief.

In July of 2015, their Chapter 7 Trustee filed an Adversarial Complaint against Sacred Heart seeking to avoid the tuition payments pursuant to §548(a)(1). Two counts alleged that the transfers constituted actual fraud and two counts alleged that the transfers were constructively fraudulent because the debtors did not receive "reasonably equivalent value" in exchange for their payments.

Debtors' Bankruptcy Judge, Melvin L. Hoffman, in February of 2016, granted summary disposition in favor of the university. However, it was Judge Hoffman, acting sua sponte, that certified his own decision for direct appeal to the Fifth Circuit Court of Appeals pursuant to 28 USC §158(b)(2). Judge Hoffman's decision found that the debtors "believed that a financially self sufficient daughter offered them an economic benefit"; therefore, he found that



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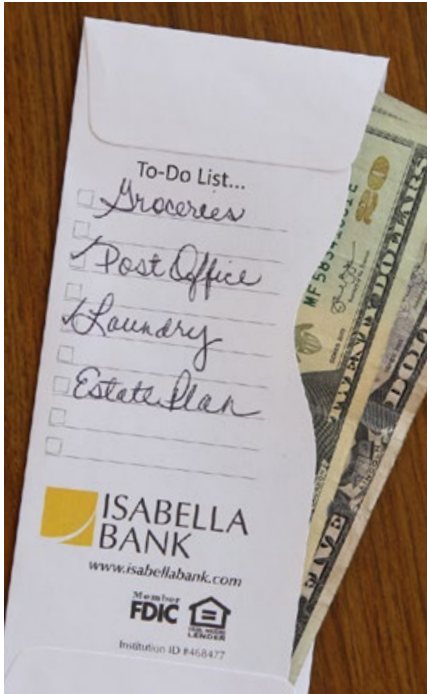
debtors' belief satisfied §548(a)(1)'s reasonably equivalent value standard.

The Court of Appeals, in its decision, noted that §548(a)(1) allows a trustee to avoid transfers made by insolvent debtors within two years preceding their bankruptcy, if the debtors did not receive "reasonably equivalent value" in return. The Appellate Court noted that Judge Hoffman's ruling presented a question of law and the Appellate Panel's review was de novo.

The Appellate Court noted that the bankruptcy code does not define "reasonably equivalent value", but Appellate Court Judge Howard said "it does not include intangible, emotional and non-economic benefits." The purpose of the fraudulent transfer law is to preserve debtor's estate for the benefit

of unsecured creditors, Courts are required to evaluate transfers from the creditor's perspective.

The Appellate Panel noted that the Bankruptcy Code recognizes classes of transactions that confer value pursuant to §548(d)(2)(A). Those classes are an exchange of property, payments of a current or prior debt, and, collateralization of a current or prior debt. The Bankruptcy Appellate Panel determined "none are present here nor are parents under any legal obligation to pay for college tuition for their adult children." Therefore, because tuition payments depleted the estate and furnished nothing of direct value to creditors, the trustee was entitled to avoid the transfers pursuant to §548(a)(1); and, because the transfers were



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When checking off your to-do list, don't forget about your estate plan. Even if you already have one, your estate plan documents should be reviewed at least every three to five years. Contact the financial professionals at Isabella Bank to schedule your complimentary trust or financial review.

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avoidable under federal law, the Panel did not consider whether the transfers were also avoidable under state law.

A California Federal Magistrate has held the Department of Education and Grand Rapids Educational Secretary, Betsy DeVos, in contempt and imposed a \$100,000 fine for repeatedly defying an injunction prohibiting the collection of loan payments from students defrauded by the Corinthian Colleges, Inc.

In the case of *Calvillo Manriquez et al v DeVos, et al*, 2019 WL 5460654 (N.D. Cal 10/24/19) US Magistrate, Sallie Kim, of the Northern District of California issued a sanction order on October 24, 2019, after concluding that the Department of Education (DOE) had improperly sent more than 16,000 overdue to Federal Student Loan Borrowers who had attended schools associated with the now-defunct for-profit company.

In May of 2018, Magistrate Kim, had temporarily halted all efforts by the DOE to collect federal loan payments from former Corinthian students and

concluded that disclosing their information to SSA violated federal privacy law. Despite the injunction, the DOE and its loan servicers continued seeking payment from the 16,000 former Corinthian students, nearly 3,300 of whom submitted payments, seized their tax refunds and garnished their wages from more than 1,800 former students. The DOE provided adverse reports to credit reporting agencies for almost 900 borrowers.

At an October 7, 2019, hearing Magistrate Kim called the government's conduct "gross negligence" and an "intentional flouting" of her preliminary injunction at worst... there has to be some consequences for the violation of my order 16,000 times" according to her.

Magistrate Kim then issued the sanction order saying that there was no question "that the DOE and DeVos violated the preliminary injunction and harmed the borrowers, who were forced to repay their loans and suffered from the adverse credit reporting."

### *Please Note...*

Judge Borrello will not be taking anymore new DO cases. Motions on post-judgment cases will be reassigned to Judge Borchard commencing March 1, 2020.

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**Topic: Jury Selection Part Two Presentation by MIDC Regional Manager Barbara Klimaszewski**







WELCOME NEW SCBA MEMBERS.

SOME OF YOU ARE NEW TO THE AREA, SOME ARE NEW ATTORNEYS AND SOME HAVE BEEN HERE AWHILE AND ARE JUST JOINING US FOR THE FIRST TIME.

Askew, Laren - Defender's Office

Brady, Sara - Prosecutor's Office

DiBerardino, Sheila Cooper - DiBerardino PLLC

Fedorak, Marc - Prosecutor's Office

Fillmore, Carmen - Prosecutor's Office

Harp, Carrie Beth - LSEM

Neal, Rico - Defender's Office

Nickson, Alphonso – East Lansing

Piper, Mitchell Garret - Braun Kendrick

Piper, Kailen Christine - O'Neill Wallace & Doyle

Pussehl, Krystal Kay - FOC

Slomski, Patricia - Defender's Office

Toaz, Mark Andrew - Gilbert & Smith

Utt, Chelsea - Braun Kendrick

Wickwire, Beth - Braun Kendrick

Williamson, Heidi - Prosecutor's Office

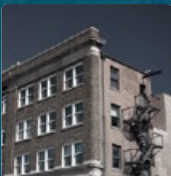
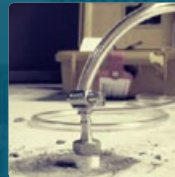
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Judge Jurren's BUSINESS COURT MEETING on Jan 22, 2020 included discovery of ESI. Presented by Ian Williamson of Mantese Honiman PC and Shaun Fitzpatrick, Colin Ritsema and Larry Fortz of Fortz Legal Support.



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