



THE SUMMONS

Saginaw County Bar Association



COVID-19 PANDEMIC 2020

MEETING DATES FOR 2020

(Go to 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 on the 2nd Wednesday of every month at 12:00 PM)

Law Day Events

CANCELLED due to Coronavirus 19

Soup Kitchen Volunteers needed

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

Saturday, May 29, 2020

Saturday, August 29, 2020

Saturday, October 31, 2020

Annual Meeting/Golf Outing

Thursday, June 25, 2020
Saginaw Country Club

Pro Bono Week

October 25 to October 31, 2020

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

(The monthly Board Meeting, Pro Bono Meeting and Law Day Committee Meeting are on hold until things get back to normal)

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



THE SUMMONS

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SCBA Website

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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.



PRESIDENT'S MESSAGE

By: Katherine M. Baluha

I hope everyone has been staying positive and healthy. As we enter May of a year that has so far proved to be one for the books – I think it is time that we reevaluate how we move forward. It is exciting to think about getting back to work in a somewhat normal capacity but it is also scary at the same time. My office will not be going back to the same policies and procedures that were in place prior to all of this. We will continue for the foreseeable future doing electronic meetings whether by phone or virtual conference. We will also be making appointments for drop-offs and pick-ups as well as for signing paperwork. I plan that for any Court hearings that must be attended I will be bringing along sanitizer and Clorox wipes, as well as avoiding handshakes and being in an area with a large group of people, if possible. The State Bar of Michigan has offered lots of information to try and help with being prepared and is recommending when Courts do open back up that electronic hearings be used as much as possible. Based on medical professionals information there is the likelihood that if we go right back to life as we knew it the disease could very well make a comeback during the summer

months. If we all commit to limiting exposure as much as possible we will get through this. I would love to hear from other firms on what your policies will be moving forward after the Stay Home Order is lifted – with more/better ideas we could put together a guide for healthy practice not only for this instance but situations in the future that may warrant such a plan. I would advise that if you, your clients, or witnesses are part of a high risk group, request accommodation from the Court, so far our local Courts have been extremely helpful.

May also brings Law Day on May 1 – although there wasn't a celebration like we normally do, I hope that you were able to commemorate this special day in some way. We hope to use the funds that were donated to Law Day 2020 to celebrate the students and community that support Law Day each year and make it the wonderful event that it has become. We are one of the few counties that put on such a large student mock trial event still and we want to make sure that the tradition continues. Thank you so much to all that volunteer and donate to Law Day – without you this event would not be possible. And Thank You to our Law

Day Committee – it is a lot of work putting together such a wonderful event, especially getting a new script ready each year and we appreciate the work you all do! We very much look forward to Law Day 2021!

I would like to wish any of you that are moms (even those that are fur-moms) – a very happy Mother's Day! I know I will be celebrating with my fur-

babies. And let's all hope that we can have some Memorial Day celebrations that include friends and family.

I wish you all the best and as always please reach out to anyone on the SCBA Board with questions/concerns as we navigate through the upcoming months. We will also keep you updated on the status of our annual golf outing/meeting.



In Memoriam

Our thoughts and prayers go out to all those who lost loved ones to Coronavirus.

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



SAGINAW COUNTY LAWYERS' AUXILIARY

By: Claudia J. Wallace

Special greetings from the SCLA

What a profound effect this pandemic is having on our world. Effecting so many and in so many ways. Too endless to count. Too tragic to ignore. In our homes, our workplaces, our hospitals, our schools and so many more places. We have never experienced the unknown like this before so don't quite know what to expect. Our children have questions and wonder why they see us only through their front windows. Why they can't go to school and graduates disappointed at not having commencements. The younger children don't understand the severity of this virus nor should they. We need

to protect them without scaring them. They will read about it in their history books someday. We need to continue to do the best we can do in a world that has turned us all upside down.

Heartfelt thoughts and prayers go out to everyone that have lost a loved one or can't be with theirs during this time. Also, to all the first responders that are risking their lives dedicating themselves to saving lives and caring for our loved ones.

On the upside, if we can see it at this time, families are bonding more, spending quality time together. Families, friends and acquaintances are reaching out to one another and those in need. People are being more cre-

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ative in ways to stay in touch and bring a little joy to others.

Not much news from the SCLA group. The spring luncheon has been cancelled and the May meeting will be cancelled as well. Any business taking place is being done via e-mail.

Please take a minute to read elsewhere in the Summons, a beautiful article written by Jenn Jaffe and her daughter that went to Washington this spring. The SCLA donated \$500.00 towards this trip.

As we continue to do our part to end this pandemic, keep in mind there is always more we may be able to do. Knowing where your money is going may help you decide. Donations are being accepted at the hospitals for food deliveries for the first respond-

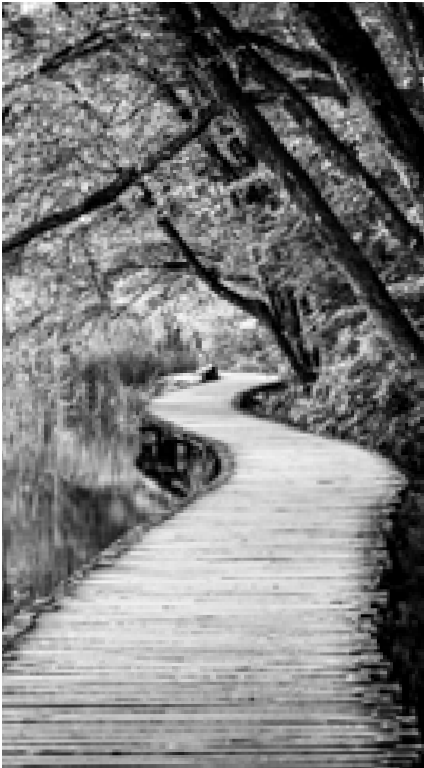
ers. This not only assists hospital staff but also eateries in the area. You can go on-line to Covenant Healthcare Foundation or St. Mary's Ascension to the Covid 19 fund, giving link and choose. Just a suggestion. The Saginaw County Police will also gladly take donations.

"Life Everchanging" quote found from Goodreads

"Sometimes in life, a sudden situation, a moment in time, alters your whole life, forever changes the road ahead."

As this has happened to most of us individually at some point, we are in THIS "life everchanging" together as a whole.

Stay safe and well.



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SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director



Many times, have I seen the flag in front of the Courthouse at half mass. It is a symbol of a loss, often for a fellow co-worker, boss, friend, and even my uncle. It is flying at half mass now. These are definitely sad days. Please stay safe.

We have been posting on the SCBA listserv any updates that the County or Chief Judge Jackson has issued. I am also trying to keep Saginaw Attorneys who are not SCBA members updated by sending to their last know email address.

The MABE team of County Executive Directors along with the State Bar Executive Director have been meeting on ZOOM to implement, organize and publish local and state opportunities and policies.

Your Board has been staying busy working at home! Please reach out to any of us with concerns that you may have.

One of the first hit committees was Law Day! As schools began cutting back with no after school activities and then finally closing their doors, we knew we could not go any further with our Law Day plans. So sadly, we cancelled all 2020 events. But Law Day 2020 will not be a total loss. On May 1st we will be honoring our County essential workers.

STAY HOME STAY SAFE if not for yourself for your loved ones.

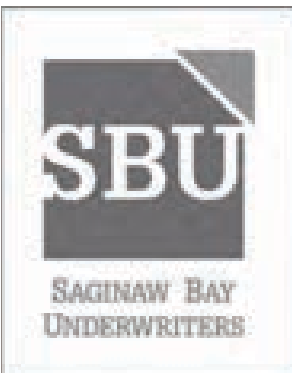


LAW DAY 2020 UPDATE

By: Millie Shek, Law Day Chairperson

For those who have not yet heard, Law Day 2020, which was to be held on April 30th, is cancelled. It was not an easy decision for the Law Day Committee, but it was the necessary thing to do. In March, the Governor declared a Public Health Emergency identifying COVID-19 as an imminent threat to the health and safety of the community, requiring emergency protective actions. Since then, life has changed as businesses, restaurants, schools, government offices, and churches closed. As such, it was impossible for attorney-advisors and their students to meet. As the situation continues to unfold, our best option is to move for-

ward and begin to plan ahead for Law Day 2021.



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BANKRUPTCY CASE NOTES

By: Jack Weinstein

The bankruptcy issue on how the government is going to treat and combat rising tuition debt has not been resolved. However, Marilyn Adamczyk of Thomas McDonald Jr.'s office has kindly brought to my attention a 2010 Federal Supreme Court decision in the case of United Student Aid Funds, Inc. v Espinosa, (559 U. S. 260 (2010)), decided on March 23rd, 2010. The following is the syllabus summary of that decision wherein debtor's attorney was able to eliminate the interest portion of debtor's school loan:

"A plan proposed under Bankruptcy Code (Code) Chapter 13 becomes effective upon confirmation, see 11 U. S. C. §1324, 1325, and will result in a discharge of the debts listed in the plan if the debtor completes the payments the plan requires, see §1328(a). A debtor may obtain a discharge of government-sponsored student loan debts only if failure to discharge that debt would impose an "undue hardship" on the debtor and his dependents. §§523(a)(8); 1328. Bankruptcy courts must make this undue hardship determination in an adversary proceeding, see

Fed. Rule Bkrtcy. Proc. 7001(6), which the party seeking the determination must initiate by serving a summons and complaint on his adversary, see Rules 7003, 7004, 7008. Respondent Espinosa's plan proposed repaying the principal on his student loan debt and discharging the interest once the principal was repaid, but he did not initiate the required adversary proceeding. The student loan creditor, petitioner United, received notice of the plan from the Bankruptcy Court and did not object to the plan or to Espinosa's failure to initiate the required proceeding. The Bankruptcy Court confirmed the plan without holding such a proceeding or making a finding of undue hardship. Once Espinosa paid his student loan principal, the court discharged the interest. A few years later, the Department of Education sought to collect that interest. In response, Espinosa asked the court to enforce the confirmation order by directing the Department and United to cease any collection efforts. United opposed the motion and

filed a cross-motion under Federal Rule of Civil Procedure 60(b)(4), seeking to set aside as void the confirmation order because the plan provision authorizing discharge of Espinosa's student loan interest was inconsistent with the Code and the Bankruptcy Rules, and because United's due process rights were violated when Espinosa failed to serve it with the required summons and complaint. Rejecting those arguments, the Bankruptcy Court granted Espinosa's motion in relevant part and denied the cross-motion. The District Court reversed, holding that United was denied due process when the confirmation order was issued without the required service. The Ninth Circuit ultimately reversed. It concluded that by confirming Espinosa's plan without first finding undue hardship in an adversary proceeding, the Bankruptcy Court at most committed a legal error that United might have successfully appealed, but that such error was no basis for setting aside the order as void under Rule 60(b)(4). It also held that Espinosa's failure to serve United was not a basis upon which to declare the judgment

void because United received actual notice of the plan and failed to object.

Held:

1. The Bankruptcy Court's confirmation order is not void under Rule 60(b)(4). Pp. 6–14.

(a) That order was a final judgment from which United did not appeal. Such finality ordinarily would “stan[d] in the way of challenging [the order's] enforceability,” *Travelers Indemnity Co. v. Bailey*, 557 U. S. ___, ___. However, Rule 60(b)(4) allows a party to seek relief from a final judgment that “is void,” but only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. United's alleged error falls in neither category. Conceding that the Bankruptcy Court had jurisdiction to enter the confirmation order, United contends that the judgment is void because United did not receive adequate notice of Espinosa's proposed discharge. Espinosa's failure to serve the summons

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and complaint as required by the Bankruptcy Rules deprived United of a right granted by a procedural rule. United could have timely objected to this deprivation and appealed from an adverse ruling on its objection. But this deprivation did not amount to a violation of due process, which requires notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314. Here, United’s actual notice of the filing and contents of Espinosa’s plan more than satisfied its due process rights. Thus, Espinosa’s failure to make the required service does not entitle United to relief under Rule 60(b)(4). Pp. 7–10.

(b) Contrary to United’s claim, the confirmation order is not void because the Bankruptcy Court lacked statutory authority to confirm Espinosa’s plan absent an undue hardship finding under §523(a)(8). Such failure is not on par with the jurisdictional and notice failings that define void judgments qualifying for Rule 60(b)(4) relief. Section 523(a)(8) does not limit a bankruptcy court’s jurisdiction over student loan debts or impose requirements that, if violated, would result in a denial of due process. Instead, it requires a court to make a certain findings before confirming a student loan debt’s discharge. ‘That this requirement is “ ‘self-executing,’ ” *Tennessee Student Assistance Corporation v. Hood*, 541 U. S. 440, 450, means only that the bankruptcy court

must make an undue hardship finding even if the creditor does not request one; it does not mean that a bankruptcy court’s failure to make the finding renders its subsequent confirmation order void for Rule 60(b)(4) purposes. Although the Bankruptcy Court’s failure to find undue hardship was a legal error, the confirmation order is enforceable and binding on United because it had actual notice of the error and failed to object or timely appeal. Pp. 10–14.

2. The Ninth Circuit erred in holding that bankruptcy courts must confirm a plan proposing the discharge of a student loan debt without an undue hardship determination in an adversary proceeding unless the creditor timely



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raises a specific objection. A Chapter 13 plan proposing such a discharge without the required determination violates §1328(a)(2) and 523(a)(8). Failure to comply with this self-executing requirement should prevent confirmation even if the creditor fails to object, or to appear in the proceeding at all, since a bankruptcy court may confirm only a plan that, inter alia, complies with the “applicable provisions” of the Code. §1325(a). Neither the Code nor the Rules prevent parties from stipulating to the underlying facts of undue hardship or prevent the creditor from waiving service of a summons and complaint. Pp. 14–16.

3. Expanding the availability of Rule 60(b)(4) relief is not an appropriate

prophylaxis for discouraging unscrupulous debtors from filing Chapter 13 plans proposing to dispense with the undue hardship requirement in hopes that the bankruptcy court will overlook the proposal and the creditor will not object. Such bad-faith efforts should be deterred by the specter of penalties that “[d]ebtors and their attorneys face . . . under various provisions for engaging in improper conduct in bankruptcy proceedings,” *Taylor v. Freeland & Kronz*, 503 U. S. 638, 644. And Congress may enact additional provisions to address any difficulties should existing sanctions prove inadequate. Pp. 16–17.

553 F. 3d 1193, affirmed.

THOMAS, J., delivered the opinion for a unanimous Court.”

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MUTUAL AID - SHARING H-1B HEALTH CARE PROVIDERS IN TIME OF CRISIS

By: Michael E. Wooley, Esq.
Warner Norcross + Judd LLP

The introduction of the COVID-19 virus into American society has severely stretched the resources of our health care facilities and providers. By the very nature of the epidemic, physicians and allied health care providers are not proportionately distributed among areas of greater and lesser need. Understandably, facilities have discussed sharing providers based on need as the crisis unfolds. Many of the providers who could help are H-1B foreign workers within the U.S. health care system.

In certain media, health care and even legal circles, there is a notion that H-1B physicians and allied health care workers' "hands are tied" by visa regulations and they cannot be quickly moved among health care facilities. While there is some truth to this, it is also true that federal administrative law is replete with exceptions to the rules.

Employers who file an H-1B petition with the U.S. Citizenship and Immigration Services (USCIS) for a foreign physician or allied health care worker must first file a Labor Condition Application (LCA) with the U.S. Department of Labor (USDOL). Among other things, the LCA lists all locations where H-1B employees are permitted

to work. At times, transferring an H-1B employee to a new location may require the filing of a new LCA with USDOL and then an amended H-1B petition with USCIS. However, in asserting that H-1B workers are tied to the LCA sites, some commentators seem to have overlooked the USDOL's definition of the "area of intended employment" and also the USDOL's special provisions for short-term placement of H-1B workers (see 20 CFR §655.715 and §655.735).

Regarding an LCA's area of intended employment where an H-1B worker is permitted to work, it should be noted this location is not restricted to the employer's originally stated jobsite. Rather, the allowable area of work for an H-1B health care provider is any location within normal commuting distance of the approved place of employment. The regulations acknowledge that the distance of a normal commute varies by place. For LCA purposes, this is often any location with a Metropolitan Statistical Area, a county or even a multicounty area. If an employer chooses to move an employee within such an area, neither a new LCA nor an amended H-1B petition is required as long as the original LCA is posted at the new jobsite. Normally, this posting

must be done on or before the date of the employee's move. However, under recent USDOL COVID-19 guidelines, the posting can now be made "as soon as practical and no later than 30 calendar days after the worker begins work at the new worksite location."

In addition, the USDOL's special provisions for short-term placement of H-1B workers allow health care employees to be placed at sites outside the area of intended employment that are not listed on the LCA for up to 60 days per year in the aggregate. There is no need to file a new LCA nor an amended H-1B petition.

Taking USCIS and USDOL regulations together, the following are examples of how H-1B health care providers may be immediately transferred between facilities based on medical need.

Example 1 – Transfer Within the Area of Intended Employment:

Hospital A and Hospital B are both located within the area of intended employment. Hospital A, the original H-1B employer, must remain the H-1B physician's employer at all times. Hospital B requests the assistance of the H-1B physician from Hospital A. Hospital A transfers the H-1B physician to Hospital B's worksite. Hospital B cannot compensate the H-1B physician. The LCA is posted at the new worksite per USDOL's COVID-19 guidance.

Example 2 – Transfer Outside the Area of Intended Employment:

Hospital A and Hospital B are not located within the same area of intended employment. Hospital B is located outside "normal commuting distance" from Hospital A. Hospital B requests the assis-

tance of the H-1B physician from Hospital A. Hospital A transfers the H-1B physician to Hospital B's worksite for up to 60 days. Hospital A, the original H-1B employer, must remain the H-1B physician's employer at all times. Hospital B cannot compensate the H-1B physician. If applicable, Hospital A must pay the H-1B physician's daily travel, lodging and incidental expenses, in addition to the H-1B physician's regular salary. The H-1B physician must maintain a dedicated workstation at Hospital A during the time spent at Hospital B's worksite. The physician must also maintain their residence used while working at Hospital A.

In a medical crisis, application of the above rules allows health care facilities to transfer H-1B physicians and allied health care providers at a moment's notice, as long as all parties agree. Should the crisis persist, the 60-day short-term placement period is sufficient to allow the filing of a new LCA and amended H-1B petition by the original employer. It is also sufficient to allow another hospital in need to file an LCA and concurrent employment H-1B petition should circumstances warrant.

The above is a general overview of legal solutions to a medical crisis that may require the sharing of H-1B health care personnel. There are other factors involved, such as credentialing or privilege issues, reciprocal services agreements between facilities and some ancillary immigration considerations. The transfer of H-1B employees should always be done in consultation with an immigration attorney. Finally, other rules apply to health care providers in TN or O-1 visa status.

MICHIGAN YOUTH IN GOVERNMENT

By: Jenn Jaffe

Michigan Youth in Government, co-ordinated by the YMCA, is a four day program in Lansing that teaches middle and high school students about different aspects of government by letting the students “be” the government. During the program, students are allowed inside the Capitol Building to use the Senate and House chambers, while they debate and vote upon student-created legislation. Role playing includes lobbyists, legislators, the governor, the governor’s cabinet, and, of course, lawyers and the press. Another aspect of the program, “National Issues Forum,” allows students to debate issues they select that affect the country. This year, 26 students from White Pine Middle School and 46 students from Heritage High School attended the conference. For the first time, Heritage placed someone in every program area. Thirty students participated in the legislative program, with two of the students’ bills moving all the way through the process and signed into law. Many Heritage stu-



HHS student on the floor of the House.

dents were elected to leadership positions such as Lt. Governor and Committee Chair. One student participated in the lobbyist program, and earned the title of Outstanding Lobbyist. Eight students participated in the Model Judiciary program, with one of the two teams winning the competition, and one student being named outstanding prosecutor. The model judiciary team would like to thank Judge Borrello, who mentored these students during their preparation. The students gained critical real-life trial knowledge, which contributed to their success!

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Here are the 2 photos, with the kids in black from White Pine Middle School, kids in light blue from Heritage.

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