



# THE SUMMONS

## Saginaw County Bar Association

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**PETER G. RAMAH**  
Recipient of The Edward J. McArdle  
Memorial Tribute



**VANESSA GUERRA**  
Recipient of SCBA Holli Wallace  
Pro Bono Attorney of the Year

# MEETING DATES FOR 2021-2022

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

## **Board Meeting**

*(All Board Meetings will be held the first Wednesday of every month at 12:00 PM at the Saginaw Club)*

## **Pro Bono Committee Meeting**

*(All PB Meetings held via RING until further notice 3rd Tuesday of every month at 12:00 PM)*

## **Social Hour**

*Saginaw Old Town Junction  
November 18, 2021  
5:30 - 7:00 PM*

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

## **Holiday Party**

*Friday, December 3, 2021 –  
Horizons Center*

## **Law Day - May 1st**

*Law Day Committee Meeting  
The Panda House  
November 9, 2021 at 12:00 PM  
Law Day Mock Trials (TBD)*



## **SCBA Field of Practice**

Search online [www.saginawbar.org](http://www.saginawbar.org) for a local listing of subscribing attorneys and their area of practice.

## **State Bar of Michigan Lawyer Referral and Information**

Search online or call 1-800-968-0738 Monday through Friday 8:30 am - 4:45 pm. The State Bar of Michigan's Lawyer Referral and Information Service is designed to assist members of the public who want to hire an attorney and can afford to pay for legal services.

## **Michigan Legal Help**

<https://michiganlegalhelp.org>

The Michigan Legal Help website and affiliated local self-help centers are part of the Michigan Legal Help Program. The Program works with judges, courts, lawyers, bar associations, nonprofit legal aid agencies, legal self-help centers, libraries and many others to promote coordinated and quality assistance for persons representing themselves in civil legal matters in Michigan.

# THE SUMMONS

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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.



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## PRESIDENT'S MESSAGE

By: Nathan J. Collison

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Greetings fellow members. Thanksgiving will be here soon, and on behalf of your Bar Association, I would like to wish you a happy thanksgiving and hope that you are all able to enjoy this time of reflection. We have a number of events coming up over the next few months, so make sure to check your e-mail for details.

Since the enactment of the CDC order many attorneys in Saginaw County have been contacted by landlords looking for help regarding their properties. I have heard from several of our members looking for guidance on the new rules, and for other attorneys that are taking landlord referrals. With that in mind, below is a brief synopsis of the recent developments.

Back in September of 2020, the Centers for Disease Controlled and Prevention (CDC) issued an order temporarily halting residential evictions to prevent the further spread of COVID-19. Ultimately, on Thursday August 26, 2021, the U.S. Supreme Court ruled to end that moratorium. Along the way, the moratorium was extended multiple times. During that time, the U.S. Treasury paid \$25 billion to states and local governments for COVID Emergency Rental Assistance (CERA). According to the Michigan State Housing Devel-

opment Authority, in Michigan, a total of \$181,821,906 has been paid out to residents from May to August of 2021.

On July 2, 2021, the Michigan Supreme Court issued an Administrative Order 2021-17 (AO) which puts forth a number of rules related to evictions. Currently, if a tenant has an eviction case in any court, they are not required to file a written answer. The tenant could appear at the hearing instead to answer the complaint. Under the Order, courts cannot enter a default against a tenant for failing to file a written answer. Additionally, all district courts must treat the initial hearing as a pretrial hearing and give parties the following information and inform the tenant that they have a right to hire a lawyer; that there may be assistance available from a local Housing Assessment and Resource Agencies (HARA), the Michigan Department of Health and Human Services (MDHHS), and other community agencies to help a tenant pay for some of the rent owed; and for nonpayment of rent cases, the judge must stay the case if a tenant applies for CERA and lets the judge know.

There is also a mechanism by which the evction proceeding can be stayed. A judge will stay the case if the HARA determines that the tenant is

eligible for CERA within 30 days of the pretrial hearing; the tenant is eligible to receive rental assistance for all the rent that they owe; and if the landlord receives full payment from the CERA program within 45 days of the pretrial hearing. It is important to note that the tenant must satisfy all of these conditions to be eligible for the stay. If not, excluding delays by the landlord, the judge is required to lift the stay and continue with the case. However, the judge does have the right to adjourn the proceedings if a tenant is still waiting for a HARA to make an eligibility determination or payment.

There is good news for landlords in

the AO. Specifically, the AO suspended the 56 Day Enforcement Rule. As we know, MCR 4.201(L)(4)(a) prohibits an order of eviction from being issued later than 56 days after the judgment enters unless a hearing is held. The AO suspends this rule for cases subject to the CDC moratorium. The AO states that the 56-day period in that rule will now commence on the first day after the expiration of the CDC order for those cases. This means that even if more than 56 days have passed since the judge issued an eviction judgment against a tenant, a new hearing does not have to be scheduled before the judge can sign the writ or order of eviction.



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## *In Memoriam*



**Thomas Kaczmarek** P15640. Died October 1, 2021. He was born November 2, 1944 and was admitted to the State Bar of Michigan December 18, 1972.

*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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By calendar, the days are readily inching into fall and winter. There is no stopping time and we have no control over the weather so get out your fall and winter gear and put your fun summer attire away. We have good fortune to have holidays approaching and hopefully to be able to be with family and friends.

We regret to announce that we will not be having our **annual wreath and poinsettia sale** again this year. We were unable to secure a supplier, therefore we have cancelled it. This definitely disheartens us as this is our biggest fundraiser and we always look forward to making the bows and distributing the lovely wreaths and poinsettias.

Looking at 2022, with a hope and a prayer we will be having the **Maple**

**Grille Six Course Dinner** Friday, January 24th. This is always a “top notch” gathering of great food and friends. Please call Terry Oeming for details. 692-0322

The SCLA extends their deepest heartfelt condolences to Bill and Colleen Stertz at the loss of their young grandson, Henry William Stertz III. Our hearts and prayers are with you and your family.

We are reaching out to all members to come back into the folds of the organization and participate in a way of their choice. We welcome anyone to share some time volunteering in whatever way they feel comfortable. The old adage, “it takes a village”. We can’t do it with just a few.

Hope you get to enjoy the fall colors this year.



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# SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

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## LAW DAY 2021



The theme for Law Day 2022 commemorations has been announced by the American Bar Association: “Toward a More Perfect Union: The Constitution in Times of Change”. In announcing the theme, the ABA says, “The Constitution is a dynamic document, as it not only outlines a blueprint for government, but also delegates power, articulates rights, and offers mechanisms for change. It is neither perfect, nor exhaustive, as our nation’s history makes clear. Legislation, court rulings, amendments, lawyers, and ‘we the people’ have built upon those original words across generations to attempt to make the ‘more perfect Union’ more real. That effort continues today, as contemporary leaders and everyday citizens raise their voices as loud as ever to fulfill the promise of the Constitution. Defining and refining those words of the Constitution might be our oldest national tradition, and how each of us works — together — toward a more perfect Union.”

**Please contact me if you are willing to assist in the 2022 Law Day Program.** I reached out to the schools, and they are looking to us to provide

an activity of some sort, it may not be Mock Trials yet, so we are open for your ideas.

\* \* \*

## 2022 MEMBERSHIP DRIVE

SCBA Membership Dues – Due January 1st. You should be receiving your dues notice this month.

Thank you, loyal members, for sticking with us through 2020 & 2021! It is important to continue your membership. SCBA is a great local bar. It was founded in 1859 by dedicated lawyers that came before you and has continued to be a strong bar with the great leadership. Please help keep it strong.

Your payment can be either check or charge. Directions will be on the bottom of the dues form. Checks can be mailed to SCBA, 111 S. Michigan Ave., Saginaw, MI 48602. But REMEMBER, send your dues form to me as well, either by email or mail, I do need the information contained on it.

\* \* \*

## 2021 CHRISTMAS PARTY

COVID has cancelled work, court, and many of our events for the last two years. But we are still planning the Christmas Party. I hope everyone is comfortable enough to attend. Details will be in the December issue and posted on the listserv.



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## RED MASS 2021

By: Judge Patrick McGraw

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The 34th Annual Red Mass was held on Thursday, October 14, 2021, at 6:00 p.m. at the Cathedral of Mary of Assumption. The most Reverend Robert D. Gruss, Bishop of Saginaw, celebrated the mass and hosted a beautiful reception in the basement of the cathedral, which was catered by Horizons Conference Center. They provided heavy hors d'oeuvres and a well stocked bar that they had brought over from the Center.

Unfortunately, as you can see by the photographs, we had a very poor turn out. I am hoping next year we can make a better showing as it is quite embarrassing to have the Bishop celebrate a mass with so few people.

The most important part of this celebration, as indicated by the most Reverend Bishop Gruss, is that it was a time to reflect, without politics, without the craziness of the world going around us, but a time to reflect spiritually and get together and renew our oath as members of the State Bar of Michigan.

I want to thank the members of the Thomas Moore Society for arranging this beautiful mass and reception for all members of the Saginaw Diocese Bar Association.

I look forward to seeing all of you next year to reflect on the good that our profession does for society.

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**SCBA Christmas Party**  
Friday, December 3, 2021  
6:00 pm

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# EMPLOYMENT RAMIFICATIONS OF PRESIDENT BIDEN'S COVID-19 ACTION PLAN

By: Kevin L. Kula, JD  
Masud Labor Law Group

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On September 9, 2021, President Biden issued his “Path out of the Pandemic” COVID-19 Action Plan (hereinafter “the Plan”). The Plan outlines six general points of focus: 1) vaccinating the unvaccinated; 2) establishing further protections for the vaccinated; 3) keeping schools safely open; 4) increasing testing and requiring masking; 5) “protecting our economic recovery;” and 6) improving care for those with COVID-19. From a practical standpoint, however, the White House’s 6-pronged strategy really has two main thrusts. First, the Plan requires vaccinations for employees working for the federal government and/or on federal contracts. Second, the Plan mandates vaccination against COVID-19 or weekly testing for employees working for any employers with 100 or more employees.

Unfortunately, this unprecedented Plan is as silent on the particulars regarding these separate directives as it is broad. Like other sweeping policy rhetoric coming out of the Executive Branch, it has apparently been left to the administrative agencies to add flesh to the bones of the vaccine directives. The trouble is, the Plan itself appears to have been issued without much forewarning being given to the agencies and, as a result, they are

currently playing catch-up. This article provides an overview of what we know about the two directives thus far and what employers should do in the weeks and months ahead.

## **The Federal Vaccine Mandate**

Coinciding with the announcement of the Plan, President Biden issued two Executive Orders on September 9, 2021. These orders direct the executive departments and agencies to mandate vaccination against COVID-19 for all executive branch employees and employees of some federal contractors. Guidance issued by the Safer Federal Workforce Task Force on September 24, 2021, has shed some light on exactly who is covered and what covered employers must do to be in compliance with the Executive Order.

Initially, there are no employee size limitations for government contractors. In fact, subject only to very narrow exceptions, the federal mandate applies to all contractors whose contracts or subcontracts with the federal government include language incorporating the requirements of the Executive Order. All existing contracts with the federal government related to services, construction, or federal property must include the incorporation

language when extended or renewed after October 14, 2021. Moreover, all contracts awarded after November 14, 2021, must include the incorporating language.

It appears the federal vaccine mandate was crafted with the intent to have the broadest application possible. Indeed, it reaches and applies to all remote workers, administrative staff, support staff, etc., who are “working on or in connection with a covered contract” or at a “location controlled by a covered contractor.” Thus, it will cover employees working from home and those not working directly at or on a project for the government. Additionally, the mandate and the September 24 guidance supersede any state or local law prohibiting compliance with any of the protocols they establish. All things considered, the federal mandate is expected to cover over 4 million Americans.

For those contractors covered by the federal mandate, there are several requirements. Most notably, all their employees must be fully vaccinated by December 8, 2021, unless exempted. The mandate eliminates the testing option for unvaccinated employees unless they are approved for an exemption. Thus, most covered employees may no longer opt to be tested in lieu of getting the shot. Covered contractors must also follow the CDC’s guidance on mask wearing and social distancing, post signage at entrances regarding safety protocols, and collect and retain a copy of employee vaccination verification.

There is still a lot we don’t know about the federal contractor vaccine mandate. For example, questions linger over what happens if covered

employers refuse to comply and how will the government enforce the mandate. For now, the silence on these issues seems to indicate it will be left to covered employers to enforce the mandate or they could potentially be in breach of their contract with the government. Some experts are expecting the Office of Management and Budget to issue further guidance pertaining to the federal vaccine mandate. Covered employers should be on the lookout for that or any other guidance pertaining to the Plan.

### **The 100-Employees or More Vaccine Mandate**

While the public sector grapples with the federal mandate described above, the private sector waits with bated breath for the Department of La-



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bor's Occupational Safety and Health Administration ("OSHA") to issue its expected emergency temporary standard ("ETS"). OSHA's ETS is expected to require all employers with at least 100 employees to ensure their workforce is fully vaccinated or subjected to weekly COVID-19 testing. The ETS is also expected to require covered employers to provide paid time off to get vaccinated and to recover from any side effects of the shot. The White House has said it anticipates the ETS will apply to over 80 million private sector workers.

OSHA has been quiet about its expected ETS. However, current estimates suggest it will be issued by or around the end of November. There will be no advance opportunity for public comment on the ETS and OSHA has said informal feedback will not be considered. Once issued, the ETS will almost certainly become effective quickly, unless stayed by court action. OSHA will then have six months to take final action to make the temporary standard permanent. Employers with over 100 employees should continue to watch for OSHA's ETS or any guidance that may be issued ahead of its issuance.

### **Other Requirements of the Plan**

In addition to the vaccine mandates for certain public and private employer workforces, the Plan also places obligations on healthcare facilities, entertainment venues, and schools. Regarding the healthcare industry, the Plan provides that the Centers for Medicare and Medicaid Services will require hospital and other health-related facility employees to be vaccinated as a condition for continued federal funding. Similarly, the Plan calls on entertainment venues like arenas and concert halls to require

its guests to show proof of vaccination or a negative test to be admitted. Finally, the Plan requires staff in federal schools to be vaccinated and calls on the states to mandate vaccination for their own school employees.

Attorneys in the Saginaw Bar Association representing clients that fall within any of the above categories subject to a vaccine or testing mandate should feel free to contact any of the attorneys at Masud Labor Law Group to discuss the impact of the Plan. For those representing clients falling outside the above categories, you have nothing to worry about . . . yet. This is an ever-changing area of the law, and one never knows what new developments tomorrow may bring. Indeed, in the coming months many states will undoubtedly review OSHA's emergency standard and may even look to emulate it or any of the other Plan requirements.



## **SAGINAW COUNTY LAWYERS' AUXILIARY**

The Auxiliary was founded in 1955. Its purpose is to promote the interest of the Saginaw County Bar Association and to encourage law-related activities that contribute to community progress and improvements.

### **Service Projects**

Court House Tours, Law Day, SCLA Scholarship, A constitution in Every 5th Grader's Pocket.

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## BANKRUPTCY CASE NOTES

By: Jack Weinstein

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*May an attorney represent the debtor and debtor's daughter who was a defendant in the Trustee's fraudulent action suit?* That was the issue before the Sixth Circuit in the case of *Gold, Trustee v. Shelton (In re Patricia Ann Thompson)*, 31 CBN 228, 2021 WL 726070 (Bankr. E.D. Mich. 2/23/21). The facts were that a Chapter 7 debtor scheduled \$46,871 in assets and \$89,933 in liabilities. Twelve creditors filed Proofs of Claim totaling \$138,907. Debtor's Chapter 7 Trustee filed an adversarial complaint alleging that the debtor had transferred real property to her daughter approximately two years pre-petition, and transferred \$48,094 in cash both prior to and after filing for bankruptcy.

Debtor's Trustee sought a money judgment against debtor's daughter for the cash transfers and to either re-

ceive back the real property from her or a money judgment equal to the value of the real property. Debtor's daughter retained debtor's attorney who stated that he had obtained consent from the debtor, as well as, her daughter to engage in dual representation.

The Trustee moved to disqualify debtor's attorney from representing the daughter. The matter was decided by Eastern District Bankruptcy Judge, Mark A. Randon who determined that the debtor's consent was not valid because debtors' Chapter 7 Trustee controls her estate and refused to consent to the hiring of debtor's attorney.

Debtor's attorney argued that his representation of the debtor would not be adversarial effecting his representation of debtor's daughter because he was not representing both sides of



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the controversy. Further, that the representation was not prohibited by law and both parties would take the same position with respect to the issues before the court.

However, Bankruptcy Judge Randon disagreed determining that a review of debtor's schedules which her attorney prepared stating that debtor was insolvent on the date that she filed for bankruptcy. Therefore, debtor's attorney's position in representing the debtor is adverse to her daughter's position that debtor was not insolvent on the date that the transfers were made; therefore, any contrary belief that debtor's attorney may hold that his dual representation poses no conflict is unreasonable under the circumstances of the case.

### Question

Why do the summers get shorter as we get older?

### Fall Humor

I broke my mirror and got seven years of bad luck, but my attorney thinks he can get me five.

What did a lawyer name his daughter? Sue

What do you call a priest that became a lawyer? A father-in-law



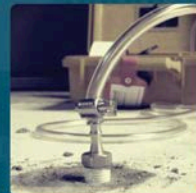
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The Love Your Lawyer Day is celebrated on the first Friday of November each year which began in 2001. This day was created by Nader Anise who formed the American Lawyers Public Image Association in 2000. He promoted having a day where people were not allowed to speak badly about lawyers or make jokes at their expense. This year it will be celebrated on Friday, November 5th.

For centuries, lawyers have been given a bad rap for the kind of work they do. This "Love Your Lawyer Day" is set aside to show the positive impact lawyers have in our society and how their job has a purpose of assisting and helping people. The spirit of this day is to show the gratitude for the good work that is done by many in the legal profession.

Through the years, there has been an evolution of laws. It is said that the most noted historical codification of law dates back to the 18th century, B.C., known as the Code of Hammurabi, created by King Hammurabi of Babylon.

The Hammurabi Code consisted of approximately 282 laws which affected everyday matters, including family, divorce, paternity, slavery and theft. The Code even enforced punishments for judges who were found to have made an error in their decision. The Code further provides a basis for the current code of conduct and rules to be followed in presenting cases.

Today's lawyers are hired to help provide a defense to those accused of crimes, fight for individuals' rights, assist in seeking resolutions, completing and filing paperwork, draft agreements, apply for permits and licenses, setting up companies and assist in building the businesses, etc. Lawyers help guide the common person in difficult and intricate matters wherein they seek the advice of those who are familiar with the laws and procedures.

This day is created to show appreciation for these civil servants and to remember that without them, people would not have a source to go to and seek advice and understand the appropriate steps to be taken in order to complete a task whether it be to set up a business, protect assets, navigate through the court system, and so on.

This special day should be used to promote positivity in the legal field. It further should provide an opportunity to remember the purpose of this occupation and note the good that is done.

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