



# THE SUMMONS

Saginaw County Bar Association

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# APRIL IS



# MEETING DATES FOR 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 on the third Tuesday of every month at 12:00 PM)*

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

Law Day falls on Sunday, May 1, 2022.  
Take the time to appreciate the law,  
on Law Day.

## **Golf Outing and Annual Meeting**

*Saginaw Country Club  
June 23, 2022*

## **Social Hour**

*Saginaw Old Town Junction  
5:00 PM to 7:00 PM  
Thursday,  
April 7, 2022  
June 2, 2022  
August 4, 2022  
October 6, 2022*

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

APRIL  
*april*

## **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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**April 14, 2022**



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. After a long winter, spring is finally here. April is National Volunteer month. While bar associations around the country celebrate pro bono services in October, this month is another great opportunity to talk about our Bar Association and its long, rich history of providing pro bono legal services to the less advantaged members of our county. After all, one of the best ways an attorney can volunteer is by utilizing their skills and knowledge to help people struggling with legal issues.

The State Bar of Michigan, as adopted by the Representative Assembly, endorses a Voluntary Pro Bono Standard. That standard is as follows:

All active members of the State Bar of Michigan should participate in the direct delivery of pro bono legal services to the poor by annually:

- Providing representation without charge to a minimum of three low-income individuals; or
- Providing a minimum of thirty hours of representation or services, without charge, to low-income individuals or organizations; or
- Providing a minimum of thirty hours of professional services at no fee or at a reduced fee to persons of

limited means or to public service or charitable groups or organizations; or

- Contributing a minimum of \$300 to not-for-profit programs organized for the purpose of delivering civil legal services to low-income individuals or organizations. The minimum recommended contribution level is \$500 per year for those lawyers whose income allows a higher contribution.

Like the State Bar, active members of the Saginaw County Bar are encouraged to support the delivery of pro bono legal services to low-income people or make financial contributions to the Access to Justice Fund to financially support legal aid programs that provide free civil legal assistance to low-income clients. I am proud to say that, each year, many of our attorneys do both.

Under the Voluntary Standard and other pro bono policies adopted by the State Bar, pro bono service is defined as "legal services (as opposed to general community service), provided for free or at a reduced fee (50 percent or below the current market value for similar legal services in your community), to low-income individuals (individuals and families at or below 200 percent of federal poverty guidelines) or to organizations providing direct

services to low-income individuals.”

Supporting the Access to Justice Fund is a great way to help promote pro bono services. The Access to Justice Campaign is a statewide effort to increase resources for civil legal aid. Civil legal aid gives people in poverty access to the justice system, which most of us can agree is a most basic human right. The civil legal aid programs in Michigan help people protect and preserve their rights, their livelihoods, their health, their homes, and their families. Recent statistics suggest that, “just under 2 million Michigan residents qualify for free civil legal aid because their annual income is below 125% of the federal poverty level (\$32,750 for a family of 4).” However, “currently, there is only one Michigan legal aid attorney for every 8,177 people living in poverty.” This number is alarming, to say the least, and shows that the need for civil legal services for the poor far outweighs the resources available.

As an additional reminder, please remember that Bar dues were due in January. We still have some members who have not renewed

their membership. Again, due to increasing printing and postage costs, and stagnant advertising revenue, in order to continue to provide this membership benefit, The Summons is in need of more advertisers. As an Association, we are very proud of this publication, the role it plays in our legal community, and its circulation to hundreds of lawyers and law firms. Therefore, we ask that you take a moment to reach out to your clients and business associates and let them know about this unique opportunity to reach a new pool of potential clients and customers. With your help we can ensure that the publication of The Summons continues for future generations of attorneys.

In honor of National Volunteer Month, I leave you with the words of the 18th century French Enlightenment writer, historian, and philosopher Voltaire, who became famous for his advocacy of freedom of speech, freedom of religion, and separation of church and state, “every [person] is guilty of all the good [they] did not do.” I hope you all have a safe and prosperous month.



**Gregory J. Ostrom** P50977  
Died February 17, 2022. He was born March 28, 1971 and was admitted to the State Bar of Michigan November 15, 1996.

*In Memoriam*



**Patricia L. Learman** P16485  
Died February 19, 2022. She was born June 28, 1927 and was admitted to the State Bar of Michigan July 15, 1952.

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



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## SAGINAW COUNTY LAWYERS' AUXILIARY

By: Claudia J. Wallace

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Saginaw County Lawyer's Auxiliary is feeling much more alive this month. By the calendar, there is something designated each day starting with April Fool's Day. From there, there is something for everyone. If you go to the April 2022 Calendar of the USA, you will find:

April 7 is Beer and Burrito Day;  
April 11 is Pet Day;  
April 16 is Husband Appreciation Day (haha);  
April 17 is Easter; and  
April 22 is Earth Day.

Go to the site and see which days suit you. There are 30 to choose from. Maybe it will take your mind off of the weather predicted! Although we are beyond winter, Michigan weather is sporadic, as we all know.

Members, Carrie Burns and Elissa Basil are really excited about their event planning for April. They have planned "Paint Your Winter Blues Away" at the Board & Brush on April 25, 2022. It will be from 6-8 p.m. They are providing heavy hors d'oeuvres, coffee and tea. BYO adult beverages. Invitations are in the making. Limited to 24. Please contact Elissa at 989-799-1604.

Jenn Jaffe and Carrie Burns are organizing the spring luncheon this year. It will be at the Saginaw Country Club held in May (date TBA).

Welcome to Amy Medd from the Defenders' Office, as a new SCLA member. We are happy to have you join us. I'm sure you will bring new and fresh

ideas to the SCLA.

We were awarded \$700.00 from the American Lawyers Alliance for our "outstanding program: Sewing machines and Sewing/knitting/Crocheting Supplies for Correctional Facilities." It is to be awarded at the Mid-Year meeting on Friday, April 8, 2022 during the ALA Board Meeting in San Antonio, Texas. Judy Weldy and MaryAnn Farris will accept the award via Zoom. Nice job, Terry Oeming!

The SCLA voted to award \$1000.00 to the Hemlock Public Schools 8th grade class for their trip to Washington DC this year.

We received a check from the Maple Grille for the January Scholarship Benefit Dinner. Those that could not attend and donated money, we thank you and missed you. It was a fantastic menu and social event. Thank you again, Terry.

Hope everyone enjoys their Easter Spring Celebration with family and friends.







# SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

## Committees

The SCBA Board created two new committees: A committee for Seniors to meet socially and a committee to help support the Saginaw County Animal Care and Control which is understaffed and overworked. We will be looking for names of these committees as well as activity ideas.

If you are interested in either group, call me at 989-790-5285 and leave a message. I am open to suggestions for both.

## Annual Meeting Elections

Reminder – the Annual Meeting is set for June 23rd. You will be electing two new board members and a Vice President. I have been hearing rumors that you want a more varied board. Well, that is totally up to you. Let's get judicial nominations and maybe a County Prosecutor. Let's get out of the COVID slump and get active again. Come forward and volunteer. Your fellow members need you!

## Membership

I have included the list of 2022 members. If you don't see the name of a fellow attorney on it, reach out to that person and ask them to join.

- Joseph M. Albosta
- David M. Alexander
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- Mandel I. Allweil
- Laren Askew
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- Nathan Jeffrey Collison
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- Marisa R. Copes
- Megan Cottington-Heath
- Sara Cottington-Heath
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- John J. Danielecki, Jr.
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- Robert P. Denton
- Emilie DeRemer
- Brittany Dicken
- Colin Dill
- Craig W. Dill
- David G. Dogger
- Patrick O. Duggan
- Tobin H. Dust
- Adam Eickholt
- Alan S. Ellis
- Kelly Daniel Ellsworth
- Christopher J. Enge
- Matthew Evans
- William J. Ewald
- Uduak Obong Eyo
- Thomas H. Fancher
- Marc Fedorak
- Steven J. Fenner
- James Ferency
- Hon. Elian E.H. Fichtner
- Charles F. Filipiak
- Warren B. Fink
- David J. Fisher
- Glenn L. Fitkin, III
- Adam D. Flory
- Michael J. Forster
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- Debra A. Freid
- Julie A. Gafkay
- John E. Gannon
- Howard Gave
- Jaymee Geneseo
- Jessica M. Gentile
- David M. Gilbert
- Donald A. Gilbert
- Magistrate Kent Greenfelder
- Patrick J. Greenfelder
- Mark Grierson
- Dennis M. Girmaldi
- Vanessa Guerra
- Heather A. Gust
- James F. Gust
- Cheryl A. Haack
- Robert A. Hahn
- Richard M. Handlon
- Danelle E. Harrington
- Hon. Faye M. Harrison
- Joseph S. Harrison
- Norman S. Harrison
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- Kurt P. Hauffe
- Eldor R. Herrmann
- James M. Hession
- Daniel C. Himmelspach
- Hon. David D. Hoffman
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- Craig W. Horn
- Katheryn A. Houck
- B. J. Humphreys



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 William Ivey  
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 Jennifer Ann Jones Van  
 - Benschoten  
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 William Keys  
 Richard P. King  
 Michael J. Kitson  
 Barbara A. Klimaszewski  
 Floyd Kloc  
 Brooke Nicole Kozlowski  
 James Krogsrud  
 Kevin L. Kula  
 Valerie Anne Kutz-Otway  
 Jonathan Lauderbach  
 Joshua M. Leadford  
 John F. Learman  
 Robert C. Leddy  
 Hugh R. LeFevre  
 Dwight Lewis  
 Judith A. Lincoln  
 Daniel Joseph LoBello  
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**Wednesday, April 27**



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# CIRCUIT COURT UPDATE

By: Judge Janet M. Boes

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## **Moving Forward**

### **In-Person in the Courthouse**

As we transition from Covid masking requirements and other restrictions, the Courts are opening up cautiously. Based upon Health Department guidance and data, the Courts began allowing more in-person hearings in February. Jury trials will be resuming for the District Court in the courthouse on May 3, 2022, assuming all health trends continue to show it is safe. The Circuit and Probate Court Judges intend to start scheduling jury trials in courthouse sometime after that date as well. The Court Administrator along with the Judges are working on a plan and dates to begin Circuit Court jury trials as safely as possible – likely beginning with some civil trials as they require fewer jurors and we can monitor health and safety concerns more readily in the space we have available. Once a plan is in place, we will move forward with scheduling for Circuit and Probate Court juries in a way that does not conflict with District Court trials.

As of March 1st, Circuit Court Judges began regular in-person hearings in the Courthouse courtrooms. Thus, you and your clients should expect to be present in the courthouse for Circuit Court pleas, sentences, motions, and evidentiary hearings, unless you are notified otherwise or receive approval to appear by Zoom. Jail inmates will be brought over to the courtrooms as well. If you have questions, please contact the clerk for the specific judge with whom you may have a hearing.

Health and safety precautions will remain in place as needed. At the very least, people who are not fully vaccinated and boosted for Covid19 may be required to wear masks in courtroom areas. Also you may notice large air purifiers in each courtroom to improve air quality and circulation. Any other precautions for the health and safety of everyone working and visiting the courts will be put in place whenever possible.

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A NOTCH.**

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CREDIT UNION



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# BANKRUPTCY COURT UPDATE

By: Jack Weinstein

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*Must a creditor who repossesses a debtor's vehicle return it to the debtor?* That issue was resolved by the Supreme Court in the case of *City of Chicago v. Fulton*, 141 S.Ct. 585 (2021). The issue was whether the automatic stay (§362(a)(3)) was violated when the City of Chicago retained possession of debtor's property after he/she filed for bankruptcy. The Supreme Court had to interpret the language of §362(a)(3) which requires an affirmative, not a passive act. That section states: "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" is a violation of the automatic stay. The Supreme Court decided that the City of Chicago could refuse to return automobiles that it impounded and were in its possession for unpaid fees when the debtor filed for bankruptcy.

Can the *Fulton* decision be applied to situations where a school refuses to provide a student with a transcript who owes the school money? Before the *Fulton* decision, previous cases deciding the issue held in favor of the students which permitted them to obtain their full student/school benefit i.e. transcript, without having to pay their tuition even if the debtors could pay. However, the *Fulton* decision should level the playing field for schools, if §362(a)(6), which states: "Any act

to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title" regarding debt collection is interpreted in the same manner as the *Fulton* decision interpreted §362(a)(3). *Fulton* interpreted §362(a)(3), school cases hinged on §362(a)(6). The language used in that subsection is virtually the same, and supports extending the *Fulton* decision to §362(a)(6) regarding the transcript issue.

*Fulton* dealt with retention of vehicles. The Supreme Court decided the City of Chicago did not violate the stay by refusing to return the vehicles after the owners filed for Chapter 13 Bankruptcy. The Supreme Court focused on §362(a)(3) which prohibits "any act to obtain possession of property of the estate".

Specifically, the Supreme Court addressed whether mere refusal to turn over the vehicles was an act that exercised control over the property of the estate. "Taken together the most natural reading of these terms– 'stay', 'act' and 'exercise control'" is that §362(a)(3) prohibits affirmative acts that would disturb the status quo of the estate property as of the time when the bankruptcy petition was filed". The Court further observed that "The combination of these terms is that §362(a)(3) halts any affirmative act that would alter the status quo as of the time of the filing of the bankruptcy petition".

The Court found that any ambiguity in §362(a)(3) is resolved by “the existence of a separate provision, §542 that expressly governs the turnover of estate property”. The Court explained that if “§362(a)(3) (were) to include an omission (that would) render §542 superfluous.” The Court also found that if read to include inaction, §362(a)(3) would contradict §542’s exception for property that is of “inconsequential value or benefit to the estate”.

The Court, in an analogous situation in the case of *Citizens Bank of MD v. Strumpf*, 516 U.S. 16 (1995), construing §362(a)(3) held that if that section was an affirmative turnover provision that would render such a right to adequate protections a nullity.

*Fulton’s* rationale raises the question why the term “act” as used in §362(a)(6), (stay action) on which findings of college stay violations were based, should be given any different meaning from §362(a)(3).

Could it be concluded that there is an implied executory contract that exists between a student and a school? Cases previously had awarded significant damages against the school’s refusal to provide a transcript. However, if

the contract is executory, then §365(c) gives the school certain rights and protections, such as requiring a student to pay his/her outstanding obligation i.e. payment as an executory contractual pre-condition. Rejection would excuse the school from further performance to the extent that the student’s breach would excuse performance.

There is nothing in the Bankruptcy Code that states that a school must perform when students breach their payment obligations. The *Fulton* decision should change future interpretations of the Code by providing schools with rights which they formerly did not have in prior cases.

#### **April's Chuckle**

A personal injury lawyer, while walking to his office, spotted a car that had just been involved in an accident. A large crowd had gathered. Going by instinct, the attorney was eager to get to the injured potential client, but he couldn’t get near the car. Being very clever, he started shouting loudly, “Let me through! Let me through! I am the son of the victim.” The crowd made way and parted for him. Lying in front of the car was a dead donkey.

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## WOMENS LAWYERS ASSOCIATION OF MICHIGAN

By: Emilie DeRemer, Vice President  
Great Lakes Bay Region Womens Lawyers

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Greetings from the WLAM Great Lakes Bay Region!

It is finally April, and the weather is warming up! This means more opportunities to get outside, relax and enjoy the people around you. If you didn't know, April 14 is international "Be Kind to Lawyers Day" – so use this month to spread kindness to yourself and those around you. We all could use a bit of extra kindness!

Coming up in April and the months following, WLAM GLBR has some exciting opportunities!

This month, we will have a great evening of socializing at our next Bar Review event near the Flint area – details TBD. Our annual event will

also be held June 30, 2022 at the Saginaw Club. At our annual event, dinner and drinks will be provided, we will be giving out two of our awards, and we will be swearing in our new board members for the upcoming year. We hope to have you all join us for this event. Ticket information will be coming soon!!

WLAM is always happy to accept new members or sponsorships for our events. If you or someone you know is interested in joining or sponsoring our organization, please visit our Facebook page or reach out to Emilie DeRemer at [Ederemer@saginawdefenders.org](mailto:Ederemer@saginawdefenders.org) (or any one of our other board members) for more information.

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JOIN US FOR  
***Social***  
**HOUR**

**SCBA Social Committee Invites You to:**  
**Social Hour**

*Saginaw Old Town Junction*

*410 Mackinaw Street, Saginaw, MI 48602*

*5:00 PM to 7:00 PM*

*Thursday,*

*April 7, 2022*

*June 2, 2022*

*August 4, 2022*

*October 6, 2022*

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## SAGINAW COUNTY LAWYERS' AUXILIARY

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

### Service Projects

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Christopher Swartz, Katheryn A. Houck & Tara Hofmeister. First "Ask the Lawyer" since Covid held March 2, 2022. Presented by LSEM, SCBA and WMCA

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