



THE SUMMONS

Saginaw County Bar Association



TERRY L. KLUCK

Retired Probate Register

MEETING DATES FOR 2022

(Go to 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)

Thursday, October 13, 2022
6:00 PM

Pro Bono Week

October 23 thru October 29, 2022

Pro Bono Committee Meeting

(All PB Meetings held via RING on the third Tuesday of every month at 12:00 PM)

Pro Bono Luncheon

Saginaw Club
Wednesday, October 26, 2022
12:00 PM
Speaker: Hon. Darnell Jackson

Social Hour

Saginaw Old Town Junction
Thursday, October 6, 2022
5:00 PM to 7:00 PM

Christmas Party

Horizons Conference Center
Friday, December 2, 2022
6:00 PM to 11:00 PM

SCBA Members Meeting

Trillium Banquet Center
Thursday, September 29, 2022
5:00 PM

Law Day

May 1, 2023

Red Mass

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



SCBA Field of Practice

Search online 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 Hautte, 4301 Fashion Square Boulevard, Saginaw, Michigan 48603 • (989) 498-2100.



PRESIDENT'S MESSAGE

By: Joseph M. Albosta

Another summer is behind us, and crisp fall days await. September means the return of football, being able to purchase anything with pumpkin spice, and kids heading back to school. Every month comes with a list of awareness days and advocacy topics. September is National Self-Care Awareness Month and it is something that we as attorneys probably need to take a little more to heart.

Being a lawyer is incredibly stressful, we all know that. Often, we take on our clients' problems and make them our own. Many lawyers suffer from depression, anxiety, substance use disorder and numerous other mental health conditions. But, there are a lot of small things you can do to improve your mental health. This month, take the opportunity to look inward and decide what you can do to improve your self-care. Here are a few suggestions: (1) Make time to do something you enjoy; (2) Forgive yourself when things go wrong; (3) Get

outdoors and be active; or (4) Meditate to clear your mind.

Personally, one of the things that I have difficulty with is making time to do something that I enjoy. I was never good at taking time off. When I left my employment with Saginaw County, I ended up cashing out hundreds of hours of vacation. Taking that time off would have kept me from feeling burned out and made me more productive in my career. Time off is a necessity, not a luxury.

Taking time off has been a little difficult over the last two years. Working virtually or from home has blurred the line between work and free time. Make sure you schedule your time off; put it on your calendar and respect it. That time is as important as any brief you will write or argument you will make.

See all of you soon.



In Memoriam

*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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Rebecca Millsap, CPA
Managing Principal
Estate Planning Services
Group Leader



John W. Haag Sr., CPA/ABV, CVA, CFF
Valuation & Litigation
Support Group Leader



SAGINAW COUNTY LAWYERS' AUXILIARY

By: Claudia J. Wallace

2022 Fall greetings from the Saginaw County Lawyers' Auxiliary.

We will be meeting in person this fall until otherwise noted. The September 6th meeting will be at the home of Sue McGraw at 6:30 p.m. Please contact her if you will be attending. All are welcome. Her number is 989-790-9324.

The fall luncheon is being planned by none other than three young ladies, two of which celebrated their 80th birthdays this summer and our newest past member, that is Ethel O'Neill, Sue Purcell, and Patti Doyle. It should be a delightful time, as they sure know how to entertain. Date TBA. Look for your invitation in the mail.

On October 4th, Jessie Prokop and Sue Burns will jointly conduct our second meeting in Jessie's new home at Apple Mountain. Please call 989-780-1006 for attendance and address.


Elissa Basil is our new membership/notification chair. Emails will come to you from her at etbasil@sbcglobal.net.

We have some new chairs along with the long-time ones for our 2022/23 committees, which will be noted in the upcoming roster. Please watch for all upcoming events.

Hope everyone had a fantastic summer.

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SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director



Labor Day September 5th Courthouse Closed

Membership Meeting

We are working hard on this membership meeting, and I believe we have good/helpful information for our members. Please plan on attending at the Trillium, September 29th, 5:00pm. \$30 per person.

Constitution Day/Law Day

In 2004, a bill was signed that made it law to teach the US Constitution in federally funded schools. It is the legal obligation of those schools to provide students with programs that open their eyes to the importance of the Constitution in their everyday lives. If it is taught properly, students can understand the true meaning of their rights and the vital constitutional amendments that protect those rights.

The United States depends on proper Constitution education in schools. Since 2004, the SCBA has tried to help our schools providing tools for the teachers that assist them with teaching the Constitution.

How free would we be without our Constitution? How would our government

operate without it? These questions should be answered with educational programs not only on Constitution Day, but every day of the school year.

Our Law Day Program, which kicks off on Constitution Day, is another way the SCBA tries to assist the schools. Today, our nation faces great challenges from within. Help bring the US Constitution back into the hearts and minds of young Americans. You can do that by agreeing to work with the Law Day Committee. The pandemic has taken the wind from our wings, as we are struggling to get our Law Day Committee back to the once award-winning Committee. We need our members to step up and help. There are many areas that you can help in. Direct contact with the schools is not the only area that we can use help. Please contact a Committee member and let us know you are interested.

The Law Day Chairpersons are:
Chair/VP - Brittany Dicken
brittany.a.dicken@gmail.com
Co-Chair/SCBA - William Cowdry
bcowdry@charter.net
Co-Chair/SCLA - MaryAnn Farris
fmaunique@aol.com

Kelli Scorsone
scba@saginawcounty.com
Hopefully the following will remain on the Committee for 2023:
Katie Baluha
kbaluha@katiemarielaw.com

Dan Straka
dstraka@saginawcounty.com
Kathy Houck
khouch@saginawcounty.com
Chris Enge
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Christina Walsh
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Alex Brady
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Beth McGrandy
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Eric Morris
erimor@braunkendrick.com
Eldor Herrmann
eherrmann@saginawdefenders.org
Scott Sawyer
eherrmann@saginawdefenders.org

Our last attorney-advisors team included Joe Harrison, Adam Flory, Katie Baluha, Kathy Houck, Travis Dafoe, Eric Dalek, Christopher Swartz, Tom Fancher, Alan Butler, Alex Bommarito, Lori Bommarito, William Pearson, James Hession, Millicent E. Shek, and Kelly Ellsworth.
Sign up for the Law Day Committee by emailing a Committee chair or Kelli at scba@saginawcounty.com.

★ ★ 17 SEPTEMBER ★ ★
CONSTITUTION
DAY 



Scan me for directions!

Come see us at our new location!

5171 Blackbeak Drive

Saginaw, MI 48604

989-799-0784 • ron@reimoldprinting.com





DISTRICT COURT UPDATE

By: Judge M. Randall Jurens

The admissibility of DataMaster inspection logs is the topic of this month's update.

In *People v Fontenot*, 333 Mich App 528; 963 NW2d 397 (2020), the Court of Appeals opined that DataMaster logs are nontestimonial and therefore their admissibility is not precluded by the Confrontation Clause, US Const., Am VI. Additionally, the Court of Appeals concluded that DataMaster logs are admissible under the business records exception to hearsay, MRE 803(6), regardless of accuracy or trustworthiness, with the question of whether the records should be believed being one of weight and credibility for the fact finder to decide.

However, in response to an application for leave to appeal, the Supreme Court summarily vacated the part of the Court of Appeals opinion regarding MRE 803(6), stating, “[t]he suggestion that a trial court may not consider whether there are reasons to doubt the trustworthiness of a particular purported business record is without support.” *People v Fontenot*, ___ Mich __; ___ NW2d __ (2022) (Docket No. 162211). Continuing, the Supreme Court made it clear that trustworthiness of DataMaster logs is “[not] merely a question of the weight that the fact-finder should give this evidence.” Rather, quoting *Solomon v Shuell*, 435 Mich 105 (1990), the

Court stated, “[a]s the rule and its theoretical underpinnings indicate, trustworthiness is, under MRE 803(6), an express condition of admissibility.”

So, when presented the question, proper application of MRE 803(6) requires that trial courts exercise their gatekeeper function and exclude otherwise admissible business records if “the source of information or the method or circumstances of preparation indicate lack of trustworthiness.”

Finally, while the majority denied leave on the companion question of whether DataMaster inspection logs are testimonial, Chief Justice McCormack wrote separately to express concern over unsettled jurisprudence on how to differentiate between testimonial and nontestimonial statements and the Court of Appeals’ conclusion that DataMaster logs were nontestimonial, in part, based on “reasoning rejected by a majority of the United States Supreme Court and never formally adopted by this Court.”

So, stay tuned for future developments.





RETIREMENT OF TERRY L. KLUCK

By: Hon. Patrick J. McGraw

Terry L. Kluck has provided over 48 years of dedicated service to Saginaw County. Terry began her career with the Saginaw County Probate Court on May 6, 1974. Terry was initially employed as a court clerk and then promoted to a deputy register in 1976. In 1999, Terry was appointed by the Honorable Fred L. Borchard as the Probate Court Registrar. In this role she supervised four to five employees, trained new employees, reviewed daily filings by the public and attorneys, collected data and submitted quarterly reports to the State Court Administrator's Office, held conferences with fiduciaries who were appointed as a conservator or personal representative by the Court to oversee a protected individual's finances or a decedent's estate to make sure reports, inventories and accountings were up to date and in compliance with the Estate Probate Individual Code (EPIC). Her position also gave her the authority to preside over certain, court hearings in the absence of the judge, such as minor guardianships, conservatorships, the appointment of personal representatives and determining heirs.

Terry is one of the longest serving employees of Saginaw County, with 48 years and three months to her credit. She has enjoyed working for the Saginaw County Probate Court and with other County employees and will miss the camaraderie she has experienced with everyone. Over the last 48 years, Terry has worked with several Probate Court Judges, beginning with the Honorable Glen E. Jordan, the Honorable Edmund M. Troester, the Honorable Fred L. Borchard, and for over 22 years the Honorable Patrick

J. McGraw, along with multiple visiting judges from other counties in Michigan.

Terry has a fun-loving personality and is always eager to meet people and try new experiences. In 2019, Terry and some girlfriends traveled to Dubai. She enjoys shopping, decorating, traveling, spending time with friends from grade school and high school and friends she's met along the way, and she looks forward to more golfing, pickleball, traveling and spending her retirement years seeking and participating in new activities and adventures.

The Saginaw County Probate Court congratulates and wishes the best to Terry on her retirement after 48 years of loyal and dedicated service.

We are also proud to announce that Latecia Cirillo is our new Probate Register. Latecia has been with the Saginaw County Probate Court for 26 years, serving as our Chief Deputy Register. Lisa Reagan has been promoted to our Chief Deputy Register. Lisa has served Saginaw County for over four years. In addition, we have added three new future Deputy Registers: Lori, Lesleigh, and Azalia. Please stop by and welcome our newest members of the Probate Court family. Of course, we still have Cheryl Alden, our J.A., Theresa Schmude our Court Reporter and Freddie Mata our Bailiff.





WOMEN LAWYERS ASSOCIATION

By: Emilie K.D. Lyday, President
Great Lakes Bay Region



Happy September!
I write to you as the newest President of The Women Lawyers Association of Michigan - Great

Lakes Bay Region.

I am so excited to take on this new role with my fantastic Executive Board: Chelsea Brown (Vice President), Rikki Mays-Reak (Secretary), McKenzie Stone (Treasurer), Makenzie Sipes (Membership Chair) and Kailen Piper (Regional Representative/Past President).

In the next year, WLAM GLBR will continue to engage in our community through volunteer opportunities, networking events, and other social activities in and around the Great Lakes Bay Region.

Please be on the lookout for our next social event and our next volunteer event!

Please continue to note that we have partnered with the Underground Railroad to maintain a listserv of local attorneys who would be willing to assist clients of the Underground Railroad on a pro bono basis.

WLAM is always accepting new members and seeking people to volunteer with us!

If you are interested in joining the listserv, joining WLAM GLBR as a member, or volunteering with us, please reach out to Emilie Lyday (ELyday@saginawdefenders.org) or to any of our Executive Board members.

I am honored to serve as the President of the GLBR and I look forward to the upcoming year!



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BANKRUPTCY CASE NOTES

By: Jack Weinstein

I came across the following article from the American Bankruptcy Institute that I would like to share.

A Tax Refund from Withheld Social Security Benefits Does Not Lose the Exemption

On a topic with sparse authority where the lower courts are divided, Bankruptcy Judge Caryl E. Delano of Ft. Myers, Fla., came down on the side of the debtor by holding that Social Security benefits withheld to pay income taxes do not lose their exempt status when refunded by the IRS.

The Chapter 7 debtor had some \$1,800 a month in Social Security benefits, plus about \$400 monthly in other income. After filing, he had a federal income tax refund of \$5,500. The debtor claimed \$3,700 to be exempt, but the trustee objected, wanting the debtor to turn over the entire refund.

Two federal statutes apply. The debtor claimed an exemption under 42 U.S.C. §407(a), which says that Social Security benefits shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process.

On the other hand, §3402(p)(1)(A) of the IRS Code. 26 U.S.C. §3402(p)(1)(A), allows someone to request that a federal payment . . . “be subject to withholding under this chapter, then

for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.”

The trustee contended that § 3402 meant that exempt Social Security benefits became the equivalent of wages and lost their exemption when withheld as taxes and later refunded to the debtor-taxpayer.

Bankruptcy courts have ruled both ways on similar objections. A bankruptcy judge in the Eastern District of New York decided in 2017 that the refund was not exempt because §3402 meant that the refund was equivalent to the payment of “wages.”

Judge Delano cited a bankruptcy judge in Indiana who had ruled eight years earlier that the protection under §407(a) was “exceptionally expansive” and only subject to modification by express statute. *In re Spolarich*, 2009 WL 10267351, at *4 (Bankr. N.D. Ind. Sept. 30, 2009).

Judge Delano also ruled that the characterization as “wages” in §3402 was only “for the purposes of” the IRS Code.

Siding with the Indiana decision in her July 20 opinion, Judge Delano reasoned that: social security benefits are protected under 42 U.S.C. §407 from the claims of the debtor’s general creditors - such as those served by

a Chapter 7 trustee - and a debtor's request that payments be withheld from his social security benefits for his tax debts does not affect the protection from other creditors provided by the statute. [Emphasis in original].

Judge Delano overruled the trustee's objection and held that the refund was exempt "to the extent that it is traceable to his social security benefits."

This Month's Fun Thoughts

A man walked into the local Chamber of Commerce of a small town, obviously desperate. Seeing a man at the counter, the stranger asks, "Is there a criminal attorney in town?" To which the man behind the counter immediately quipped, "Yeah, but we can't prove it yet!"

Mrs. Applebee, the 6th-grade teacher, posed the following problem to one of her classes: "A wealthy man dies and leaves ten million dollars. One-fifth is to go to his wife, one-fifth is to go to his son, one-sixth to his butler, and the rest to charity. Now, what does each get?" After a very long silence in the classroom, little Johnny raised his hand. The teacher called on little Johnny for his answer. With complete sincerity in his voice, little Johnny answered, "A lawyer!"



CELEBRATE

PRO BONO

www.celebrateprobono.org

SCBA PRO BONO LUNCHEON

October 26, 2022

12:00PM

Saginaw Club

Speaker: Hon. Darnell Jackson



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

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

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I have SCBA composites for 1947, 1966, 1980 and 1972-72.
I would like to send them to someone who might be interested.

Paul Purcell
W: 989-791-2454
C: 989-992-7355
attorneyppurcell@gmail.com

SAVE THE DATE

The Most Rev. Robert D. Gruss, Bishop of Saginaw and the
Thomas More Society

Cordially invites all members of the Legal Profession to attend the

35th Annual Red Mass

Thursday, October 13, 2022

6:00PM

Reception to follow

Cathedral of Mary of Assumption

615 Hoyt Avenue, Saginaw

Attorneys, Judges and their Families of all Faiths are Welcome!

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SCBA MEMBERSHIP MEETING



Thursday, September 29, 2022

Trillium Banquet Center

Dinner 5:00 pm

\$30.00 paid at door

Topic: **Practicing Wellness**

SPEAKERS:

Dr. Lou Constan M.D. on Physical Health

and

Gayla Cotten MSW, LLMSW on Mental Health

Saginaw Co. Jail Diversion Specialist

RSVP by Sept 15th - scba@saginawcounty.com or 989 790-5285



Saginaw County Bar Association
Saginaw County Bar Association
Executive Director Kelli Scorsone
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