



THE SUMMONS

Saginaw County Bar Association

**2023 SCBA COMPOSITE
COMING THIS YEAR**



WITH

RAYNEMAKER STUDIO

Appointments will begin in April.
More information will be provided.

MEETING DATES FOR 2023 – 2024

(Go to www.saginawbar.org for meeting updates)

Board Meeting

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

Pro Bono Committee Meeting

(All PB Meetings held via RING the 3rd Tuesday of every month at 12:00 PM)

Restoration Clinic with MDOS

Road to Restoration
Driver's License Clinic
Wednesday, March 8, 2023
Volunteer Attorneys needed. To volunteer go to <https://bit.ly/r2rattorney>.

Law Day Meeting

(Law Day Meeting is held the 2nd Tuesday of each month. Location to be determined monthly)
Please join us in preparing for the 2023 Law Day Mock Trials
Tuesday, March 14, 2023 at 12:00 PM
Panda House

Law Day

May 1, 2023

High School Mock Trials

Thursday, April 27, 2023
Courthouse

Law Day Membership Meeting

Thursday, May 4, 2023
Trillium Banquet Center

Golf Outing & Annual Meeting

Thursday, June 22, 2023
Saginaw Country Club

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



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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IN THIS ISSUE

President’s Message..... 2
 In Memoriam..... 2
 Saginaw County Lawyers’ Auxilary.....4
 SCBA Executive Director’s Report 6
 District Court Update..... 7
 Law Day Mock Trials Line Up..... 8
 Women Lawyers
 Association of Michigan..... 9
 Bankruptcy Case Notes..... 10
 Save the Date..... 12
 Pro Bono Attorneys Needed..... 12
 Classified Ads..... 13



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

On March 1, 1790, the United States Supreme Court convened for the first time. That makes March the perfect time to announce that the SCBA is trying to organize a swearing in ceremony for our members at the Court in Washington D.C. Currently, we are trying to determine if there is enough interest to arrange the event. The last time the Bar organized one of these ceremonies approximately 20 of our members made the trip. Please let us know if you would be interested in participating. If we have enough interest, we will begin making preparations to make the trip.

I want to extend a big “thank you” to all who took the time on January 29th to support the Lawyers’ Auxiliary Scholarship Dinner. The dinner was held at Bayne’s and was a wonderful experience. Kudos to all who helped organize this event. The event sold out this year and I anticipate that it will continue to do so in the future. So, make sure you get your RSVPs in early for next year’s dinner.

It is also time for us to do another composite photo of all the members of the Saginaw County Bar Association. Look for more details in the future about how to participate. This has been a time-honored tradition in Saginaw County, and we hope for a large turnout to make the 2023 composite photo our best yet.

Finally, I wanted to thank the members who took the time out of their schedules to voice concerns over the new Odyssey system that was installed in Saginaw County this past June. We have all experienced headaches and growing pains with the new system, but our Chief Judge Darnell Jackson has taken our concerns to the IT Department. The concerns are being addressed and hopefully soon we will see some significant changes to improve the system for not only us, but for our clients as well.





We wake up every morning thinking about the things that keep your clients up at night.

BUSINESS VALUATION

Analysis of factors that value your business or one in which you have interest. A third party with true perspective.

ESTATE PLANNING

Wealth building advisement with a full range of estate planning strategies and solutions. Matching your purpose with your legacy.

EXPERT WITNESS TESTIMONY

Our expertise brings reliable and relevant support for your cases. We're with you every step of the way.



SAGINAW COUNTY LAWYERS' AUXILIARY

By: Claudia J. Wallace

Welcome to March 2023, as it brings much anticipated return to life. The bitter cold eases and the ground begins to thaw, welcoming the renewal of spring. The Worm Moon, March Equinox, and Daylight Savings Time are all indicators that life is awakening, moving us toward summertime. We all welcome it, I am sure.

On January 29th, the SCLA entertained 72 friends and colleagues at Bayne's Apple Valley for a delicious dinner and gathering. It was our annual fundraiser for our scholarship fund. The dinner raised \$1,125.00, which will be used for a scholarship in a law-related field. Bayne's graciously donated a gift basket filled with beers, wines, ciders and many Michigan-made products which was raffled off, with the grand prize winner being Kosta Povich. We also profited \$225.00 from the ticket sales of the basket. Congrats, Kosta! Pat and Sue McGraw planned and hosted this event for us. It was an excellent choice of venue for this year's event. Thank you for hosting a lovely evening, Pat and Sue.




Our March 7th meeting will be at the home of Marty Triantafillou. Please let her know if you will be attending. All are welcome.

On April 4th, the SCLA meeting will be at Kathleen Horn's home.

We are excited to be once again involved and working along side the SCBA to celebrate Law Day 2023. Raters for the morning mock trials will be organized by Terry Oeming and Pat Moore. The schedule of raters should be in place early in March. If anyone wants to volunteer or knows of individuals that would consider volunteering, please call either Terry Oeming at 989-692-0322 or Pat Moore at 989-245-3545. The SCLA will also orchestrate the luncheon following the trials. We need volunteers to set-up at the church the day before and serve the day of. It is a very fun and rewarding event for all of us. Please consider sharing this event with us.



Happy St. Patrick's day to the Irish and all other's that enjoy celebrating the day. 

SCLA SCHOLARSHIP FUNDRAISER

January 29, 2023 at Bayne's Apply Valley



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

Courthouse Tours, Law Day, SCLA Scholarship, A Constitution in Every 5th Grader's Pocket.

Membership \$25



SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

TWO GREAT REASONS TO BE A MEMBER OF SCBA THIS YEAR

1. US Supreme Court Swearing In

We are looking for members that are interested in being sworn into the US Supreme Court. We are in the beginning stages of planning this event. The last group sworn in was in November of 2011, and we had 20 attorneys that went to Washington for a long weekend trip. Please email me at scba@saginawcounty.com if you are interested. If we get a nice sized group that would be interested, we will set up a meeting to go over details and select a date.

2. Bar Composite

We have reached out to Raynemaker Studio who will be assisted by Bob Paetz in photographing members and working on an updated composite for the courthouse halls. I will be sending out dates available for a sitting at the studio within the next couple weeks.

Of course, it is always a good reason to be a member of your local bar. SCBA offers great camaraderie amongst its members. The members listed on the SCBA website receive the latest updates from the courts. Members can also join Fields of Practice, attend great social events such as the golf outing, annual meeting, our spectacular Christmas party, with this year's party including a local artist performance, five membership meetings, and an opportunity to be part of our Pro Bono community. These are just a few of the benefits.

The deadline has passed but we will still accept members through February. If you need a form, please let me know, scba@saginawcounty.com. All Saginaw attorneys, including retirees, SBM Emeritus members, professors, and attorneys working for local businesses are welcome to join.

ADR/CASE EVALUATION AND MEDIATION

An article in the November 2022 issue of The Summons requested that attorneys interested in serving as a mediator and who have obtained the necessary qualifications to please resubmit their application to the Circuit Court ADR clerk. The same goes for Case Evaluation attorneys. We are still asking for anyone interested to submit their applications. Please also mail or email a copy to SCBA at scba@saginawcounty.com so we can keep track as well. Rules regarding both Mediation and Case Evaluation as well as where to find the state application forms can be found in your November issue of The Summons.





DISTRICT COURT UPDATE

By: Hon. M. Randall Jurens

The chasm between criminal offenses and civil infractions is the subject of this month's update.

Periodically, attorneys propose to resolve a criminal misdemeanor by amending the charge to a civil infraction. With due respect to counsels' creativity, this sort of plea agreement is not sustainable.

As a matter of law, civil infractions are not lesser included offenses of a criminal offense, *MCL 257.907(1)*, *MCL 600.8727(1)*, and *MCL 600.8827(1)*.

And as a practical matter, the court's case management system is programmed to preclude entering a civil infraction as a count in a misdemeanor case.

If you are nonetheless determined to resolve a misdemeanor with a responsible plea on a civil infraction, a separate citation will have to issue, *MCL 257.741 et seq.*, *MCL 600.8703 et seq.*, *MCL 600.8803*, and *MCR 4.101(A)*.

Your knowledge now refreshed, awkward moments with clients and/or courts will hopefully be avoided.



**LET'S
KICK IT UP
A NOTCH.**

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WELCOME TO THE 2023 LAW DAY TEAMS MOCK TRIALS APRIL 27TH

PROSECUTION	V	DEFENSE
Birch Run H.S. TS-Wendy Watson AA-Christopher Enge		Nouvel TS-Pete Bartels AA-Joe Harrison & Adam Flory
SCC TS-Matthew Berchert & Mike Wiltse AA-William Pearson		Heritage H.S. TS-Irene Sollner AA-Christopher Swartz
Frankenmuth H.S. TS-Rob Baker AA-Travis Dafoe		Hemlock H.S. TS-Bryan Sysak AA-Lee Sturtz
Carrollton H.S. TS-Sheila Becker AA-Katie Baluha & Kathy Houck		Merrill H.S. TS-Suzanna McGraw AA-Tom Fancher

Thank you to the volunteers, schools, teachers and especially our attorneys.
 Meet our Law Day award winners at our Membership Meeting May 4th.



Scan me for directions!

5171 Blackbeak Drive
 Saginaw, MI 48604
 989-799-0784 • ron@reimoldprinting.com





WOMEN LAWYERS ASSOCIATION

By: Kailen C. Piper, Regional Representative
Great Lakes Bay Region



According to the ABA, until 2016 a majority of all law school students were male. For most, I am sure this comes as no surprise. What may

be surprising for some is that in 2021, women held a whopping 55.3% majority in law schools. Despite the growing majority of female law students, only 38% of lawyers in 2022 were women. Though, this is still a dramatic increase from only 3% in the 1950s and 1960s. As Justice Ruth Bader Ginsburg once said, “[r]eal change, enduring change, happens one step at a time.”

I am sharing these statistics in honor of Women’s History Month. Women’s History Month is a celebration of contributions women have made to

history, culture, and society. It has been a nationally recognized holiday since 1987. We are all familiar with notable women such as Abigail Adams, Susan B. Anthony, Rosa Parks, and Ruth Bader Ginsburg, just to name a few. This month, WLAM GLBR tasks you with honoring the women in your life who are presently making contributions to our history, culture, and society. These are the women who may someday stand with the likes of Adams, Anthony, Parks, and Ginsburg.

WLAM members, please keep an eye out for emails about exciting upcoming events. Interested in joining? Contact President Emilie Lyday at elyday@saginawdefenders.org for more information.

WOMEN'S HISTORY MONTH

Videoconferencing Available & Complimentary Conference Rooms:



Detroit Bloomfield
Mt. Clemens Hills
Ann Arbor Livonia
Troy Novi
Southfield

& Throughout Michigan

**Contact us for all you Court Reporting and Conference Rooms Needs.
888-800-0876 info@hansonreporting.com**



BANKRUPTCY CASE NOTES

By: Jack Weinstein

In the case of Berry v. Fay Servicing, LLC (In re Berry) was a decision by the United States Bankruptcy Appellate Panel, Sixth Circuit, decided on September 9, 2022, wherein that panel discussed when a Creditor may be sanctioned for violating the discharge injunction. In that case, approximately two years after the Debtor received her discharge and relinquished her home to the Wells Fargo Home Mortgage (WFHM), WFHM transferred the Deed of Trust to a new owner. Five months after that WFHM sent the Debtor correspondence confirming that her account had been transferred to Fay Servicing, (Fay), taking over servicing her loan. WFHM sent the Debtor another letter in September of 2020 entitled “Final Escrow Review Statement.” Thereafter, the Debtor notified WFHM that she had been discharged from Bankruptcy and that the foreclosure of her home had been completed. In response, WFHM sent her a letter stating that the dispute was under review and a subsequent letter confirmed

that her mortgage was extinguished. Thereafter, WFHM stopped sending her correspondence.

However, Fay began in September of 2020 sending Debtor various letters with information about future mortgage payments concerning how to pay the mortgage, plus paying the loan insurance and providing loan information for collection purposes. WFHM also called the Debtor leaving messages threatening litigation on her voicemail. In October of 2020, WFHM informed the Debtor that she was in default of the mortgage. In response, Debtor repeatedly wrote to WFHM which finally acknowledged its error and ceased future contact with her.

The Bankruptcy Court found Fay in contempt and ordered it to pay Debtor \$10,750 in sanctions. However, it found that WFHM’s conduct did not violate the discharge injunction.

Debtor appealed that decision to the 6th Circuit Bankruptcy Appellate Panel. The panel noted that there was a distinction



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between USC §524(a) which prohibits the mortgage company from attempting to collect payments against the Debtor who has given away possession to the property and the “safe harbor” created by USC §524(f) which permits the mortgagee to continue to seek regular mortgage payments to protect its in rem rights where the Debtor’s personal liability has been discharged but where the Debtor continues to reside on the property. However, in this case, the Debtor had relinquished the house and that safe harbor offered no shelter to the Creditor.

The panel found that the communication from WFHM to the Debtor was merely notification that the original mortgagee had transferred the Deed of Trust and the loan servicing was transferred from WFHM. The panel agreed with the Bankruptcy Court that the Debtor failed to show that WFHM either transferred the Deed of Trust or could be held liable for the transaction as an agent of WFHM. As the Court stated, “an agent is not liable to a third party for the acts committed by the agent’s principal.”

More importantly, the panel found that the transfer of the Deed of Trust was not a violation of the discharge injunction. However, the mistake was the transfer of the servicing rights for an extinguished mortgage which the panel found that the mistake was attributable to the original mortgagee rather than WFHM.

Further, the panel found that the Debtor failed to sustain her burden by providing evidence that the letter WFHM sent to her concerning that transfer was an effort to collect a debt. The letter was for informational purposes and did not include an amount due or a pay off amount. Further, the panel found that a Bankruptcy Court, when addressing whether a letter from a creditor violates the discharge injunction is required to look only at the four corners of the letter that constitutes the collection effort. If the

document is in an effort to collect, then the fact that it includes a Bankruptcy disclaimer is not necessarily a remedy. However, the panel looked at the facts regarding an October 2020 phone call to Debtor threatening to sue her on the debt and letters thereafter sent to her regarding her notice of default with a threat for a deficiency judgment along with a mortgage statement setting forth an amount due and a payment due date.

The panel found that there were no grounds to excuse conduct considering the fact the Debtor informed WFHM and Fay at the same time of her discharge and foreclosure. WFHM acknowledged that the mortgage had been extinguished in correspondence with the Debtor. However, Fay continued to pursue the Debtor for payments ignoring letters of protest from her. The panel found that the Bankruptcy Court did not err in concluding that Fay’s conduct was objectively unreasonable and its belated letter acknowledging its errors did not rectify its actions.

The panel found that the Bankruptcy Court has broad discretion under USC §105 to award damages for violations a discharge injunction pursuant to USC §524. The panel determined that the award for damages consisted of \$550 and \$10,300 for punitive damages. In creating the punitive damage award, the Court assigned a value to each violation, but the panel drew a distinction between compensatory damages for emotional distress and non-compensatory sanctions for causing emotional distress. The award for \$1,000 for each communication was tied to and proportionate with the acts that were found to clearly violate the discharge order. Additionally, proportionality of the Bankruptcy Court’s \$100 per day award was viewed in light of Fay’s failure to take effective corrective action in response to the discharge order. It’s obligation under the Bankruptcy Code, along with clear

proof that the debt was discharged, was an egregious violation of the discharge order. That portion of the award was proportionate when considering Fay's failure to take affective corrective action when confronted with proof by the Debtor wherein she provided a copy of her discharge order along with the sale of the property.

March's Chuckle

To put a smile on your face and to warm your heart, I submit the following into evidence --

An elderly man, 82, was told by his doctors that he didn't have long to live. So he summoned the three most important people in his life, his Doctor, his Priest, and his Lawyer, and told them:

"Well, today I found out I don't have long to live. So I asked you three here because you're the most important people in my life. I need to ask a favor. Today I am going to give each of you an envelope containing \$50,000. When I die, I would ask that three of you throw the money in my grave."

A few days later the man passed on, and the doctor said, "I have to admit I kept \$10,000 of his money that he owed me for prior medical bills. But I threw the other \$40,000 in his grave." The Priest said, "I have to admit that I kept \$25,000 for the church. It's all going to a good cause. I threw the rest in his grave also." The Lawyer just could not believe what he was hearing, "I am surprised at you two. I wrote a check for the whole amount and threw it in his grave."



SAVE THE DATE



Thursday, June 22, 2023

SCBA Golf Outing and Annual Meeting
and ELECTION OF OFFICERS

Not too early to mark your calendar



ROAD to RESTORATION

Michigan Department of State
Driver's License Informational Clinics

Pro bono attorneys are needed to provide limited-scope consultations at the clinic, which include reviewing driving records, contacting the courts, and helping guide individuals through the steps they need to take to restore their licenses. You can volunteer for a half day or all day and training is provided.

Saginaw



Wednesday, March 8, 2023
Clinic: 10 a.m. to 6 p.m.
Training begins @ 9 a.m. & 1 p.m.



SURC Marketplace
203 S. Washington St.
Saginaw, MI 48607

🕒 To register: bit.ly/2023r2attorney
For information: Michigan.gov/RoadtoRestoration

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Saginaw County Bar Association
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