



# THE SUMMONS

Saginaw County Bar Association

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April 24th



Ann Van Houtte, Assistant Editor



# MEETING DATES FOR 2019

(Go to [www.saginawbar.org](http://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 2nd Thursday of every month at 12:00 PM)

## Law Day Events

### Law Day Membership Meeting

Wednesday, May 1, 2019  
12:00 PM  
Trillium Banquet Center

### 'Lawyers out for Blood' Drive

Tuesday, April 2, 2019  
10:00 AM - 3:00 PM  
Garber 5330 Bay Road

## Domestic Relations Committee Meeting

Monday, April 1, 2019  
5:15 PM  
Dill Law Office, 4855 State St. #4.

## Soup Kitchen Volunteers needed

(Call John Humphreys 989-401-2115 if you can serve)  
Saturday, June 29, 2019  
Saturday, August 31, 2019  
Saturday, November 30, 2019

## Pro Bono Week

October 20 to October 26, 2019

## Ask the Lawyer

Thursday, April 11, 2019  
5:30 – 7:30 PM

Topic: Consumer issues  
Monday, June 24, 2019  
5:30 – 7:30 PM

Topic: Legalization of Marijuana  
Monday, October 21, 2019  
5:30 – 7:30 PM  
Topic: Juvenile Expungement

## Annual Meeting and Golf Outing

Thursday, June 20, 2019  
Saginaw Country Club

## SCBA Christmas Party

Friday, December 6, 2019  
6:00 – 11:00 PM  
Horizons Conference Center



April 24<sup>th</sup>

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

# THE SUMMONS

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### **SCBA Website**

[www.saginawbar.org](http://www.saginawbar.org)

### **Lawyer Referral Service**

1-800-968-0738

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: Daniel J. Straka

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Greetings fellow practitioners. I hope you all had as lovely a March 2019 as I did. It was the month of trials at juvenile. It's time like that make me thankful for our St. Patrick's day party, which I hope you all attended, had fun (and remember the event).

The mock trials were another hit. I want to thank all the judges, attorneys, SCLA members, teachers, and students it takes to put the event on. Particularly the Law Day Committee whose work is still not done as the Bar's Law Day Luncheon is May 1st!

We had the happy/sad news of the resignation of fellow board member Matthew Tarrant as he changed ca-

reers from civilian work to Air Force JAG and then promptly left the state for Arizona. We wish him well and he will be missed. Since he was only on his second year of his term, there will be an extra spot on our board for voting at the summer meeting. So begin to think about if you wish to put your name out to be on the board or put your name in for the coveted VP position.

After many years on the board, Chris Radke is also stepping down as past president/treasurer this summer. I have offered to take his place continuing a horrible tradition of merging the two positions (I am also

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## IN MEMORIAM

**Robert Bruce Currie** – P12405 died March 15, 2019. He was born October 13, 1923, and was sworn into SBM March 18, 1952.

**James E Tiderington** – P29838 died March 15, 2019. He was born December 10, 1948, and was sworn into SBM May 21, 1979.



*Please help the Memorial Committee make sure no member is forgotten. Contact SCBA office at 790-8488 regarding the passing of any Saginaw County Attorney.*

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bad at math, never trust a dyslexic to do figures). So if there are any other volunteers please contact me or speak to the next president.

Continuing to speak of membership, some of you did not renew this year. If you don't renew soon you will

stop receiving my silly articles and the actual good reads in The Summons. Kelli also may be putting your name on a list...so if you had trouble renewing your dues or just forgot let us know (and send us a check)!



**'Lawyers out for Blood' Drive**  
**Tuesday, April 2, 2019**  
**10:00 am – 3:00 pm**  
**Garber 5330 Bay Road**



Call 790-5285 to schedule an appointment



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## SAGINAW COUNTY LAWYERS' AUXILIARY

By: Jennie Jordan with Claudia Wallace

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On March 21, 2019 the SCBA held our 51st annual Law Day Mock Trials. Fourteen Saginaw County HS were represented bringing more than 150 students to the court house. The theme for this year was "texting while driving". This is the largest annual event for the SCBA and SCLA and always a huge success. Saginaw County celebrated its first Law Day back in 1968. This event could and would not take place if not for all the "behind the scenes" participants; the law day committee, attorney advisers, teacher supervisors, and other SCBA and SCLA members. They work diligently throughout the year to make this event the biggest and the best. Kudos to all those dedicated to the law and this event. A pizza, salad, and desert luncheon was served to approx. 250 people at the First Presby-

terian Church following the Mock Trials. Look for the winners of the Mock Trials, essay and coloring contest in the next issue of The Summons.

It's a well-known saying that April showers bring May flowers. For the SCLA, April will be bringing new ideas and an exciting lead in to the National Celebration of LAW DAY 2019. The Law Day luncheon is being held on May 1, 2019, which is the actual National Law Day. The luncheon will be at the Trillium Banquet Center at 12:00 p.m. For more information, please contact Kelli Scorsone. It is not too late to participate in the celebration!

April 2nd is the Annual Blood Drive 'Lawyers out for Blood' which is being sponsored by Garber Chrysler, SCBA and Michigan Blood. It takes place at Garber Chrysler at 5330 Bay Road.

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Courthouse tours are still available and continuing to be very successful under the watchful eye of Judy Weldy. We are extremely excited to have a large group coming with Stu Sweigert from the Saginaw Career Complex for a tour in May! There are many available dates left for this unique opportunity to hear the history and see the daily workings of the Saginaw County Courthouse so schedule a visit with Judy Weldy today.

April is a great time to educate and incorporate legal education into as many areas in Saginaw as possible. The ALA and ABA also have many helpful resources for information and ideas.

ALA (American Lawyers Auxiliary) with the help of SETV of Saginaw, Michigan have produced a 12-minute video called "Laws, Rights and Responsibilities". The video is also used with the ALA Elementary teaching unit "Laws, Rights and Responsibilities", available in pdf format link on the ALA website <https://www.facebook.com/>

AmericanLawyersAuxiliary?sk=wall #!/AmericanLawyersAuxiliary?sk=app\_2392950137; or [https://www.youtube.com/watch?v=cB5t\\_Mlprc8](https://www.youtube.com/watch?v=cB5t_Mlprc8). We also have 2 mock trial videos to distribute to the schools. They are available as links from the ALA website: <https://www.americanlawyersalliance.org> (click on Law Related Projects and Materials).

ALA/LRE projects can be downloaded at: <https://www.americanlawyeralliance.org/law-related-educational-materials>. This includes scripts for Mock Trials, LRE Elementary Teaching Unit called "Laws, Rights and Responsibilities" and an LRE Coloring Book.

The American Bar Association Division for Public Education promotes public understanding of law and the legal system. To fulfill this mission, we work with schools and teachers, bar associations and civic groups, lawyers and law firms, judges and courts, journalists and media, to inform a wide range of public audiences on issues related to law and justice. To learn more about the programs, publications, and other resources, please visit: [www.americanbar.org/publiced](http://www.americanbar.org/publiced) or call them at (312)988.5735 or email at [publiceducation@americanbar.org](mailto:publiceducation@americanbar.org).

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activities, please contact Mary Ann Farris or visit the following web links for more information. And, please feel free to share this information with your community leaders and schools.

This has been a transition year for SCLA, and we hope to be able to continue supporting the SCBA (along with ALA and ABA). We would like to thank all of our supporters. Whether it is paying dues, rating at Mock Trial, participating in our fundraisers or simply giving donations, none of this would be possible without you. It is YOUR support that allowed us to answer and allot financial help to Saginaw Township Schools, Emmaus House, Nouvel Catholic Schools, Mustard Seed, Swan Valley Schools and 10th District Felony Court, along with many other events and programs. Thank you again to everyone involved for making this entire year a great success for Saginaw County and the SCLA.

As we approach our spring luncheon, May 15, 2019, at the Saginaw Country Club, we invite all members to bring prospective members or guests along. The luncheon is a great way to show how incredible the organization is and how very important it is to continue to grow and em-

brace change. We hope to see many smiling faces. For more information please contact Sue McGraw.

Our next SCLA meeting will be April 2, 2019, hosted by Sue McGraw. We love to see new faces as well as the very dedicated Board and Committee members whom I cannot thank enough for all of your hard work.

From everyone at SCLA, please have a safe and Happy Easter.



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## SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

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### **SCBA Membership**

The Michigan State Bar membership count for Saginaw County is 433. This includes all attorneys that use a Saginaw County address including Retirees, Emeritus, Corporate, Sole Practitioners, and large law firms. We welcome all these attorneys to join SCBA. And we encourage all these groups to make suggestions as to what this bar can do to encourage the different groups to stay involved, to JOIN!

### **Law Day Donations**

Thank you to the following for your Law Day Donations.

Braun Kendrick; Lamson Humphreys Law Firm; Alexander Law Office; Hon. Joseph DeFrancesco; William Jung-erheld; Katie Baluha; William Cowdry; Tobin Dust; Judge Harrison; Joseph

Harrison; Frumeth Hirsh; David Oeming; Vanessa Guerra, and James Shinnars.

Law Day is one of SCBA's biggest community events. It is funded mainly through your donations and some community donations, all of which are held in an account with the Saginaw Community Foundation. Having an account with SCF makes all donations to SCBA Law Day Program a tax deductible contribution. You can contribute by mailing your donation to SCBA, 111 S. Michigan Ave., Saginaw, MI 48602. Your donation goes toward the contests which are open to all Saginaw County students without an entry fee.

### **Law Day Mock Trials, March 21st**

The Law Day Mock Trial scripts are the hard work of a small committee that

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sets aside time each year to develop a case for high school students to present to a jury. This year's script was written by Genesee County Bar Association and donate to SCBA. Thanks to Dan Straka, William Cowdry and Eric Morris for updating the script.

Teacher-sponsors and attorney-advisors work with the teams, teaching them to understand and enjoy the law. Also free to the schools.

**Law Day Membership Luncheon, May 1st**

Remember to sign up for the Law Day Membership Luncheon, May 1st, flyer with detail will be included in this issue.

Our speakers are Randy Pfau, Director 911, and a representative from Michigan State Police. We will be presenting the Liberty Bell Award and the FH Martin Award at this meeting.

**Blood Drive**

'Lawyers out for Blood' blood drive will be hosted by MI Blood and Garber Chrysler 5330 Bay Rd. Still time to sign up- call 790-5285.



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## DRUG TREATMENT COURT UPDATE

By: Judge Janet M. Boes

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### **New Resources**

The Saginaw County Drug Treatment Court Team recently met with several physicians from Central Michigan University–Covenant about psychiatric assistance for our program participants. Mary Jo Wagner, MD, the Chief Academic Officer and Professor of Emergency Medicine at CMU, along with Doctors Kayle Balai and Furhut Jansen, spoke with our team about how the psychiatric residents may be available to assist with assessments and treatment for defendant-participants in the Drug Court program. This is a very welcome and encouraging prospect since many of our participants have mental health and trauma issues that need to be ad-

ressed to fully recover and deal with their addiction. The education partnership that CMU has entered into with Covenant and St. Mary’s has made this possible. Saginaw already has several new psychiatrists in the community due to their experience here through CMU.

### **Referrals and Questions**

Please continue to make referrals as soon as possible in the course of a case – online referrals can be made very quickly on the referral form on the county website under the Drug Court tab at [saginawcounty.com](http://saginawcounty.com). As always, if you have any questions or concerns please contact our Coordinator Sue Smith: [ssmith@saginawcounty.com](mailto:ssmith@saginawcounty.com).



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# LAW★DAY 2019

*Saginaw County Bar Association*

## **Membership Meeting & Law Day Luncheon**

Wednesday, May 1, 2018  
12:00 noon

Trillium Banquet Center  
6415 State St.

Speaker – Randy Pfau, 911 Director & Representative  
from Michigan State Police



\$15.00 SCBA/SCLA members

\$20.00 non members

RSVP: by April 22nd 790-5285 or [scba@saginawcounty.com](mailto:scba@saginawcounty.com)

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## MICHIGAN COURT OF APPEALS HOLDS THAT PUBLIC EMPLOYERS MAY ENFORCE ZERO-TOLERANCE WORKPLACE DRUG POLICIES AGAINST REGISTERED MEDICAL MARIJUANA CARDHOLDERS

By: David Bryce  
Masud Labor Law Group

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In an unpublished *per curiam* opinion issued on February 19, 2019, the Michigan Court of Appeals held that a public employer can deny at-will employment to a medical marijuana cardholder who tests positive for marijuana in violation of a zero-tolerance drug policy. The case provides further support for the position that

the Michigan Medical Marijuana Act (“MMMA”) does not provide a cause of action against employers offering at-will employment because denying one an at-will position is not a “penalty” under the MMMA.

In the case, *Eplee v. City of Lansing et al.*, Eplee applied for a position with the Lansing Board of Water and Light (the “BWL”). The BWL made her a conditional offer of at-will employment, subject to her passing a drug test. Prior to taking the test, Eplee informed BWL that she was a qualifying patient under the MMMA and held a valid registry identification card allowing her to obtain and use medical marijuana. When Eplee tested positive for tetrahydrocannabinol, indicating marijuana use, the BWL rescinded her job offer and Eplee brought suit alleging, among other things, that the BWL’s rescission of her offer of employment violated the MMMA.

Eplee based her claim that the BWL violated the MMMA on § 4 of the statute. That section provides that:

A qualifying patient who has been issued and possesses a registry identification card is not subject to



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According to Eplee, the BWL is a “business or occupational or professional licensing board or bureau” and it violated her alleged § 4 rights by denying her the right or privilege of employment. The Court of Appeals roundly rejected Eplee’s claim, holding that § 4 of the MMMA “is an immunity provision that does not create affirmative rights.” The Court further held that because at-will employees lack any right to their jobs, and hold no property interest in continued employment, the BWL did not deny Eplee any right or privilege to which she was otherwise entitled when it re-

scinded her offer of employment.

Although it is an unpublished opinion, the holding in *Eplee* is one worth noting for employment lawyers whose government clients are facing issues concerning medical marijuana in the workplace. Previously, although not binding on Michigan courts, the Sixth Circuit Court of Appeals held in *Casias v. Wal-Mart Stores* that the MMMA did protect medical marijuana users who tested positive for marijuana from being discharged by private employers. *Eplee* now provides that public employers too may enforce a zero-tolerance drug policy with respect to medical marijuana cardholders. Practitioners should bear in mind, however, that the Court of Appeals did not address whether the outcome would have been different if Eplee held an employment contract that provided for employment other than at-will.



SAVE THE DATE



***Not too early to mark your calendar***

June 20, 2019

SCBA Golf Outing and Annual Meeting  
and ELECTION OF OFFICERS



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## BANKRUPTCY CASE NOTES

By: Jack Weinstein

---

*Does the bankruptcy court have jurisdiction to determine the legal validity and effect of an inheritance disclaimer?*

That was the issue in the case of Hayduk, Trustee v Burke, et al (*In re Philip C. and Nekolia S. Burke*, 29 CBN 142, 2018 WL 5472002 (Bankr. E. D. Tenn 10/26/18)). The mother of the Chapter 7 debtor, Nekolia Burke, died on March 4, 2013. She bequeathed the residue of her probate estate to her children. However, on December 2, 2013, debtor irrevocably disclaimed her entire interest in the residue of her mother's probate estate. The disclaimer provided that any expectation that she may have had in her mother's estate would pass directly to debtor's three (3) siblings. Subsequently, after debtor and her husband filed for bankruptcy, the trustee commenced an adversarial proceeding against the debtor's children, the

administrator of the probate estate and the attorney for the probate estate.

The trustee claimed that the disclaimer was avoidable as a fraudulent transfer. The trustee asserted that the disclaimer was invalid under Tennessee law. Debtors responded that there could be no fraudulent transfer because debtor never had an interest in the inheritance from her mother's estate upon the filing of her disclaimer. The bankruptcy court agreed with the debtor because under state law a valid disclaimer relates back to the time of the testator's death so that none of the testator's estate assets vested in the disclaiming heir, rather the estate assets passed directly to the other heirs of the decedent's estate. Further, the court determined that it did not have jurisdiction due to the "probate exception" to federal jurisdiction.



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Bankruptcy Judge Nicholas W. Whittenburg for the Eastern District of Tennessee stated “The probate exception is a judicially created limitation on the jurisdiction of federal courts, including the bankruptcy court.” (Marshall v Marshall, 547 U.S. 293 (2006)). Judge Whittenburg went on to state “the disclaimer of interest is valid, the plaintiff trustee in her complaint prayed that the court prohibit the administrator of the probate estate from transferring any further funds to any of the other heirs pending a hearing on a permanent injunction prohibiting such transfer.”

Plaintiff trustee was essentially requesting that the court exercise control over and determine the disposition of property under the control of a state probate court. Therefore, the relief requested in the trustee’s complaint falls

within the probate court exception. To the extent that some of the assets had already been dispersed and were being held by the movant’s law firm, the trustee’s action would not cause the bankruptcy court to intrude on the probate court’s in rem jurisdiction. Judge Whittenburg stated “a determination regarding the validity of the disclaimer of interest may be tantamount to the administration of Ms. Swoope’s probate estate by this court.” Therefore, the court concluded that the trustee’s attempt to invalidate the disclaimer of interest fell within the probate exception to the bankruptcy court’s jurisdiction. Judge Whittenburg dismissed plaintiff’s claim to invalidate the disclaimer of interest pursuant to Tennessee’s Probate Code as the bankruptcy court lacked jurisdiction.

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The advertisement features a grid of six service icons: Site Assessments (trees and mountain), Vapor Intrusion (wavy lines), Lead & Asbestos (hard hat), Brownfield Redevelopment (circular arrows), and two images showing environmental remediation work (a worker with a pump and a demolition site).



The SCBA Board is losing a member this month. Thank you Matthew Tarrant for your service to SCBA. Matt and his family will be moving to Luke Air Force Base in Phoenix, Arizona. He has been selected to become an Officer in the United States Air Force JAG Corps. Good Luck to the Tarrant family you will be missed.



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When spring cleaning, don't forget about your estate plan. Even if you already have one, your estate plan documents should be reviewed at least every three to five years. Contact the financial professionals at Isabella Bank to schedule your complimentary trust or financial review.

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Katie Baluha, Alex Brady, Beth McGrandy with their guests

David & Terry Oeming, Bill & Colleen Stertz, Kosta D. Povich



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