



THE SUMMONS

Saginaw County Bar Association



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MEETING DATES FOR 2018-2019

(Go to 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)

Great Lakes Bay Region Women Lawyers

Annual Holiday Party

*Thursday, December 13, 2018
Frankenmuth Farmers Market*

SCBA Christmas Party

*Friday, December 14, 2018
6:00 – 11:00 PM
Horizons Conference Center*

50th Anniversary District Court

Thursday, January 3, 2019

Law Day Events

High School Mock Trials

Thursday, March 21, 2019

Law Day Membership Meeting

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

Soup Kitchen Volunteers needed

(Call John Humphreys 989-401-2115 if you can serve)
Saturday, December 29, 2018
Saturday, March 30, 2019
Saturday, June 29, 2019
Saturday, August 31, 2019
Saturday, November 30, 2019

Annual Meeting and Golf Outing

*Thursday, June 20, 2019
Saginaw Country Club*



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

CLASSIFIED ADS

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Katherine Marie Baluha

Treasurer

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Secretary

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Directors

One-Year Term

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Two-Year Term

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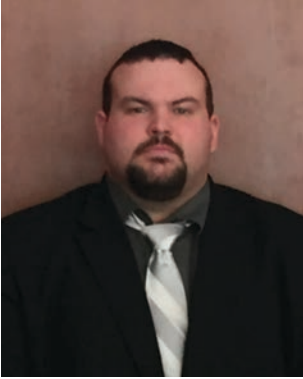
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PRESIDENT'S MESSAGE

By: Daniel J. Straka

Fellow SCBA members:

Happy December! I hope you all had a wonderful Thanksgiving. Can you believe that 2018 is nearly over? It seems like just last week was January (kidding). The Summons articles I have to do each much are a nice tally in my mind of another month gone by.

As of you seeing this, I have hopefully returned safely from NYC. The action packed trip was courtesy of my wife to celebrate our 5th wedding anniversary. It is hard to believe at 31 years of age I have spent 1/3 of my life with my wife (not because it is a significant proportion of my life, but because I am that annoying).

Finally, getting to SCBA news (that you care so deeply about), my Secretary Stephanie Halsey has had to step down from her position for health reasons. This was her first year as a member of the SCBA and the SCBA Board after joining Legal Services of Eastern Michigan and leaving her own Genesee County based practice. So I hope you will join me in sending her good thoughts and prayers. I also want to thank Vice President Baluha for temporarily taking on the duties of Secretary. I will be reporting on our new secretary soon.

On November 1, 2018 the SCBA hosted a beer and wine tasting at SVRC. The few of us who attended had a great time drinking, eating, and learning about wine and beer. The Michigan wines were particularly good and I managed to buy a re-sling at a nice discount (or at least I thought it was after the proprietor had given me enough samples to float an elephant).

While, I do not think every event the SCBA puts on needs to draw huge crowds. I do see the same rough group of people at each event. So to the rest of you who (hopefully) read this article if there is a different kind of event or way to get your attention besides several emails about an event, please let me know. I cry every article for input and I have yet to get any form any members. I am beginning to agree with that ancient maxim *qui tacet consentire videtur* (he who is silent is taken to agree), so you are all on notice.

By now Dues Notices should have gone out. After many years, SCBA has finally joined the 21st century and switched to partially electronic dues notices like the State Bar of Michigan. This was done because it

was about time and saves our dear executive director some time and energy from doing it entirely by hand. Since this is the first year with a new way of taking dues I expect there will be some complications and I appreciate your patience and understanding as we try to modernize the way our bar operates.

Speaking of the Dues Notices, you may have noticed a slight increase in the cost. This was done because the SCBA has for years been operating at a noticeable deficit. Each year the amount of cash in our general account has slowly reduced by the end of the year and this year we finally had to liquidate one of our CDs. Luckily, last year we divided the money up into multiple smaller CDs with rotating end dates so that in case of an emergency, like now, we did not need to wait six months, or pay a penalty, to gain access to the money.

This is only the second raise in dues in Kelli's long career as our executive director, the first was in the early 2000s. I think not raising dues in over a decade and even to the point of operating at a deficit shows our members that the SCBA board did not raise dues lightly. The increase will be used to offset the deficit and to keep event prices down for mem-

bers. The SCBA Dues are more than the Midland or Bay County Bar Associations, but our Bar is far more active and still about 3/5ths the price of Genesee County.

The Holiday Party is on December 14, 2018 at Horizon's Conference Center. I look forward to seeing you all there again and hoping to report another fantastic event in the next month's special edition of the Summons, celebrating 50 years of district court in Michigan.



IN MEMORIAM

None

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





SAGINAW COUNTY LAWYERS' AUXILIARY

By: Jennie Jordan

"It's beginning to look a lot like Christmas..." And the SCBA HOLIDAY PARTY will be here before you know it! (December 14) So hang in there everyone!!

We have already had many successful meetings and events this year, but we are certainly not done yet, we are just getting started. So, in the spirit of the holidays I would like to take a minute to tell everyone what we have been up to.

As tradition, we began with our successful Constitution Day on September 17, 2018, where Mary Ann Farris was able to distribute the pocket constitutions to the Saginaw County 5th graders.

Our "Tea Party", or Fall Luncheon, was so UNIQUE and beautiful. Thank you again Kathleen Horn and Sue McGraw for all your hard work.

"The 5 mother sauces" Demonstration, Eats, & Coffee, chaired by Terry Oeming I am told was a great success.

Red Mass was another first for me this year and it was a beautiful evening of reflection and peace.

PLEASE DON'T FORGET, if you ordered any items from our HOLIDAY WREATH & POINSETTIA SALE and did not have them delivered,

they can be picked up WEDNESDAY, DECEMBER 5, 2018 between 4 – 6:30pm at Case's Funeral Home/ Garage located at Adams and Hamilton.

The SCLA ANNUAL BOW PARTY is our version of a holiday party and it really is a delightful tradition. It was held at Claudia Wallace's home and she served a buffet of soups, breads, and butters that made it a true Michigan gathering complete with a gorgeous fire and great conversation.

If we are not able to see you at the SCBA HOLIDAY PARTY on December 14, we hope to see you at our benefit dinner SCHOLARSHIP FUND January 27, 2019. Our private SIX-COURSE DINNER at the MAPLE GRILLE. Contact Terry Oeming for more details and we will have more information in the next issue.

The Saginaw County Lawyers Auxiliary wishes each and everyone a Happy and Safe Holiday Season and wishes for an exciting new year in 2019.

OUR NEXT MEETING will be at Kathleen Horn's home at 7:00pm instead of 6:30pm. Her address is 4757 Sudbury, Saginaw, Michigan 48638.

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SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

PRO BONO/MEMBERSHIP LUNCHEON Thank you to all those that attended the Pro Bono/Membership Luncheon. Unfortunately our attendance was down. The committee May be looking at alternative ideas to celebrate Pro Bono Week. If you have any ideas please share.

Retired Judge Marilyn Atkins was such an excellent choice for speaker for this event. We learned she was locally raised and graduated high school with a number on our members.

REMINDER - THE MEMBERSHIP ENROLLMENT FORM and THE FIELD OF PRACTICE FORM are due January 1st.

SEE EVERYONE AT THE CHRISTMAS PARTY on Friday, December 14th.

Have a great holiday season.



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SAVE THE DATE



Thursday, January 3, 2019

50th Anniversary District Court

Open House



1:00 – 4:00 pm



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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DISTRICT COURT 50TH ANNIVERSARY

By: Judge Elian E. H. Fichtner



SAVE THE DATE, Thursday, January 3, 2019 celebrating the 50th Anniversary of the District Court. Please join us in celebrating the 50th anniversary of the establishment of district courts. There will be an open house in Room 315 (third floor of court house) from 1:00pm to 4:30pm concluding with a presentation at 3:30pm.

As required by the 1963 Michigan Constitution, legislation passed in 1968 to create the district court system. Almost all of the state's municipal courts were consolidated into a system of districts where full-time judges, elected by the citizens, could serve the local needs of their communities. The effective date was June 17, 1968, and most courts began operation on January 1, 1969. The district court is often referred to as "*The People's Court*", because the public has more contact with the district court than with any other court in the state, and, because many people go to district court without an attorney.

Here in Saginaw County, the following individuals served as the original 70th district court judges:

Hon. Joseph P. Friske (1-1-1969 to 5-7-1975)

Hon. Joseph L. Scorsone (1-1-1969 to 9-13-1979)

Hon. Harold W. Martin (1-1-1969 to 12-31-1982)

Hon. Bruce J. Scorsone (1-1-1969 to 11-1-2000)

Hon. Maurice L. van Benschoten (1-1-1969 to 12-31-1980)

The district court has exclusive jurisdiction over all civil claims for damages up to \$25,000, including small claims matters, landlord-tenant disputes, land contract disputes, and civil infractions. The court may also conduct marriages in a civil ceremony. The district court's small claims division handles cases in which the total amount in controversy is \$6,000 or less. The most common civil

infractions are traffic matters, such as speeding, failure to stop or yield, careless driving, as well as equipment and parking violations. They also include local ordinance violations.

District courts also handle a wide range of criminal proceedings, including misdemeanor offenses for which the maximum penalty does not exceed one year in jail. District court judges also authorize warrants and handle arraignments including setting bond. District court judges also preside over misdemeanor and civil trials (both jury trials and bench trials) as well as impose any resulting judgment or sentence. In addition, district court judges hold preliminary examinations in felony cases, after which, if the prosecution provides sufficient proofs to meet their burden, the felony case is transferred to circuit court for further proceedings.

For more information about the 50th Anniversary of the District Courts including a more detailed history of the district court system, or, about the 70th District Court, please visit:

<https://courts.michigan.gov/courts/trialcourts/pages/district-court-50th-anniversary.aspx>

<http://www.saginawcounty.com/DistrictCourt/GeneralInfo.aspx>.

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BUSINESS COURT UPDATE

By: Judge M. Randall Jurens

The Michigan Supreme Court recently granted all Saginaw County trial courts, including Business Court, permission to conduct summary jury trials in accordance with Administrative Order No. 2015-1 (effective January 7, 2019).

Although any civil case is eligible, AO 2015-1 specifically identifies “business proceedings [(as well as tort and no-fault cases)] that do not involve complex facts or numerous witnesses” as appropriate candidates for summary jury trial treatment; but, importantly, cases can be set for summary jury trial only with the parties’ consent.

Summary jury trials differ from full-scale jury trials in several ways:

- jury venire is limited to 10, with each party having two peremptory challenges (none for cause)

to end up with a jury of 6

- trials are expected to be completed in one day with time limits on each phase of trial, effectively limiting the number and length of witnesses and exhibits
- no need to authenticate documents for purposes of admissibility, and parties may otherwise stipulate to modify rules of evidence (e.g. agree to admissibility of video or written depositions, affidavits, written reports, etc.)
- parties can stipulate to high/low verdict parameters (not disclosed to jury)
- parties can agree on who presides over trial (i.e. the assigned trial judge, a retired judge appointed to preside over the pro-

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ceeding, or a special hearing of-
ficer)

- judgment is to be paid within 28 days after jury verdict, with an Order of Dismissal with Prejudice then entered by court
- no taxation of costs or sanctions (except in case of fraud)
- post-trial motions limited to motion for new trial
- no appeal rights (except in case of fraud)

Various other matters are addressed in AO 2015-1, including scheduling, pretrial witness/exhibit submission requirements, and pretrial conference agenda items.

Benefits of summary jury trials include cost-savings resulting from a one day trial (including shorter trial preparation), avoidance of involuntary mediation and case evaluation, reduction of witness expenses (particularly experts) through stipulating to admissibility of evidence, limitation on post-trial motions, and avoidance of appellate delay and expenses. In addition to saving money, summary jury trials allow parties their [abbreviated] day in court, typically on an accelerated basis, with a resulting verdict by a jury (not just a



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judge), the ability to even [somewhat] control the process and outcome, and presumed prompt payment in exchange for a dismissal with prejudice.

In short, summary jury trials are an intriguing new option available to consenting parties who desire to have their non-complex civil case tried before a jury on an expedited basis.



IN THE NEWS

Katie Marie Baluha has been named to the 2018 Michigan Super Lawyers Rising Star List. She was selected based on her work with family law.

HIGH TIMES IN THE MITTEN STATE

By: David Bryce
Masud Labor Law Group

On November 6, Michigan voters approved Proposal 1, a ballot initiative providing for the legalization of recreational marijuana. Legalization is expected to take effect sometime in December 2018, giving employers less than two-months to sort out how the legal use of marijuana will affect their workplace policies and procedures. Unfortunately, at least in the short term, the approval of Proposal 1 is likely to create more questions than answers.

Supporters of Proposal 1 contend that it expressly addresses employers' concerns about the legalization of marijuana and allows employers to maintain workplace drug policies that restrict marijuana use. They note that under Proposal 1:

- Employers are not required to permit or accommodate marijuana

use or possession in the workplace;

- Employers can discipline employees for violating a workplace drug policy or working while under the influence of marijuana; and
- Employers can refuse to hire, discharge, or discipline applicants or employees because of their violation of a workplace drug policy or for working under the influence of marijuana.

At first glance, it would seem that Proposal 1 does make it easy for an employer to maintain a drug free workplace, even with recreational marijuana now being legal. But things could be a bit more complicated than they seem, and employers will need to take extra care to make sure they are not

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inadvertently violating Michigan law.

For instance, employers could have a hard time proving that an employee is in fact under the influence of marijuana. This is because unlike the case with alcohol, there is no reliable test available to show whether someone is high on marijuana. In fact, according to the Michigan Supreme Court, just because marijuana is found in an individual's system does not mean that the individual is actually under the influence of marijuana. Thus, simply producing a positive drug screen may not be enough to "prove" an employee was under the influence.

Proposal 1's recent approval could also lead to complicated and unexpected legal questions. For instance, Michigan's Persons with Disabilities Civil Rights Act (the "PWDCRA") states that an employer can establish policies and procedures concerning alcohol and *illegal drugs* yet also states employers cannot give employees physical exams unless they are directly related to a job's requirements. Taking these provisions together, the PWDCRA appears to expressly allow an employer to test for the presence of illegal drugs. With recreational mar-

ijuana use now being legal, does this mean that an employer can only test for marijuana if it can show a direct relation to a job's requirements (DOT testing, reasonable suspicion, etc.)? Only time will tell, as this is but one of the legal issues which will likely be tested in court.

Until these legal issues are resolved, concerned employers may choose to take a conservative approach. For example, employers might modify their drug testing policies such that marijuana usage is not automatically tested. Instead, testing for marijuana would be required where the test can be shown to be "directly related" to the workplace. Such a direct relationship would seem clear where testing for marijuana is required by applicable law or where an employer possesses credible evidence an employee was under the influence of marijuana while working.

If you have questions how the approval of Proposal 1 may affect your workplace, or need assistance reviewing your options with respect to how to respond to it, please contact Masud Labor Law Group at 989.792.4499.

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BANKRUPTCY CASE NOTES

By: Jack Weinstein

An article in the Wall Street Journal, noted that Bankruptcy filings tripled since 1991 among Americans who were age 65 or older. A study was made by academics at the University of Idaho and the University of Illinois entitled “Graying of U.S. Bankruptcy: Fall Out from Life in a Risk Society”. The study concluded that between 2013 and 2016 the average percentage of elderly Americans age 65 to 74 who filed for Bankruptcy increased to 3.6 out of every elderly 1,000 individuals compared to a rate of 1.2 per 1,000 in 1991. Of all individual age groups who filed for Bankruptcy the rate between 2013 – 2016 was 12.2% for those age 65 to 74 versus the same age group in 1991 which was 2.1%!

The study’s authors believed that even though there was an increase in people age 65 and over which comprised approximately 17% of the population in

1991 versus 19.3% in 2015. The authors believed that the problem was due to a reduction in governmental programs including Social Security and Medicare. The age at which full Social Security benefits are available has been rising to 67 for those born in 1960 or later which is up from age 65 for those born in 1937 or earlier. Further there has been a shift from the old fashion pension plans which guaranteed retirees a set amount of income for life to a 401(k) retirement plan which left it up to workers to decide how much to save and invest. In addition, the percentage of households with debts headed by people 55 or older has risen steadily to 68% in 2016 from 54% in 1992. Americans have to change their way of thinking from live for today to don’t forget about tomorrows retirement.

The Consumer Bankruptcy Project

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Study which collects data based on age, race, education and marital status among other things from Bankruptcy Court records, as well as, those that were willing to participate in the study, concluded that the median debt for seniors who file for Bankruptcy is \$101,600 or three times those filer's average income. People aged 65 or older seeking Bankruptcy have median net worths of -\$17,390.

The United States Court of Appeals for the Sixth Circuit consolidated two cases that presented the same issue which was whether or not penalties assessed by governmental units against a debtor due to fraud are dischargeable in a Chapter 13 Bankruptcy. That was the issue in the combined cases of Priscilla A. Andrews (16-2383); and, Stanley R. Kozlowski, III (16-2680) which two cases were consolidated for oral argument. Debtors, in both cases, had fraudulently obtained unemployment benefits from the State of Michigan which determined that those benefits had been wrongfully paid to debtors. Michigan assessed penalties in addition to seeking reimbursement. Both debtors have argued that the penalties assessed were dischargeable; however, the district courts in both cases disagreed finding that the penalties were non-dischargeable pursuant to 11 USC §523(a)(2) (money obtained by fraud).

Debtors argued that the penalties fell under §523(a)(7) (fines and penalties) because that section was not listed as part of §1328(a) (Chapter 13 discharge provision); therefore, debtors claimed that the penalty debt should be dischargeable.

The Supreme Court had addressed a similar issue when it had analyzed how to classify treble damages, attorney fees and costs arising from fraud

in a Chapter 7 Bankruptcy. In the case of *Cohen v De La Cruz*, 523 U.S. 213 (1998) which decision discussed the history and interpretation of §523(a)(2) ultimately concluding that “when construed in the context of the statute as a whole, §523(a)(2)(A) is best read to prohibit the discharge of any liability arising from a debtors fraudulent acquisition of money, property, etc., including an award of treble damages for the fraud”. That decision demonstrated that the penalties associated with fraud should be regarded as essentially the same as the fraud itself in order to be included in §523(a)(2)'s exceptions from discharge as a debt arising from fraud.

Debtors cited two additional cases regarding restitution orders and criminal proceeding in a Chapter 7 and Chapter 13 cases. However, neither of those cases analyzed the relationship between §523(a)(2) and (a)(7); however, both of the cases cited by appellants were decided before the *Cohen* decision clarified that §523(a)(2) applied to all debts involving fraud. Debtors next relied on the principle that “exceptions to discharge are to strictly construed against the creditor.” Citing the case of *In re Pazdzierz*, 718 F.3d 582 (6th Cir. 2013); however, the court determined that appellants' arguments were not persuasive because that presumption was intended to operate for the benefit of honest but unfortunate debtors and not those that commit fraud. Section 523(a)(2) debts are excepted from discharge under §1328(a) which reflects a congressional decision that those who commit fraud are not to be given the same fresh start as honest but unfortunate debtors.

As held in the *Cohen* case, debtors' debt is properly included under §523(a)(2) because the debt is related to a gov-

ernmental penalty; therefore, arguably falls under §523(a)(7). The court was left to determine whether the same debt may be covered by both subsections; and, if so, whether the agency is correct in arguing that once the debt is classified under §523(a)(2) it can also file an adversarial complaint that the debt is non-dischargeable. Debtors argued that §523(a)(7) is the more specific of the relevant §523(a) subsections; and, therefore the debt must be considered as contained solely in that subsection, thus making it dischargeable pursuant to §523(a)(7) which was not enumerated in §1328(a). However, the court held that aside from the general proposition that non-dischargeability provisions should be construed against creditors, debtors cite no authority for the proposition that a particular debt may be cov-

ered by only one of §523(a)'s subsections. The court cited the case of *Husky International Electronics, Inc. v Ritz*, 136 S. Ct. 1581 (2016), which made it clear that the various subsections of §523(a) are not mutually exclusive. In *Husky*, the court held that certain conduct covered by §523(a)(2) could also be covered by §523(a)(6) (willful and malicious injury). The court also found similar overlap between §523(a)(2) and §727(a)(2) which generally prevents discharge in cases involving fraudulent conveyances. Further, since both §523(a)(2) (fraud) and §523(a)(4) (larceny) would have both applied had the state petitioned the court to find the debt non-dischargeable under §523(c)(1). Therefore, pursuant to *Husky* and *Kelly*, the court concluded that the debt in issue was covered by both §523(a)(2) and §523(a)(7).

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I will be sending this email multiple times to the listserv until January 1st, the due date. So please don't get impatient if you receive after you have paid your dues. When I get notice that your dues have been paid, I will send an email to you indicating payment received.

I hope you find this process easy to work with. Feedback is always welcome! And remember to email ME make sure your 'Email To' is addressed to scba@saginawcounty.com.

Ho! Ho! Ho!

Merry Christmas!

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Sweets and Treats

Friday, December 14th

6 o'clock - 11 pm

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