



# THE SUMMONS

## Saginaw County Bar Association



### SAGINAW COUNTY LAW DAY CELEBRATION

#### Award Winners



F H MARTIN AWARD  
**Christopher A. Swartz**  
Swartz & Wilson PLC  
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Heritage High School



GOLDEN APPLE AWARD WINNER  
**Sheila Becker**  
Carrollton High School  
Teacher-Sponsor



LIBERTY BELL AWARD WINNER  
**M. Kelli Scorsone**  
Executive Director SCBA

# 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

## 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

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



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

# THE SUMMONS

## SAGINAW COUNTY BAR ASSOCIATION

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Bethany McGrandy

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Email: [kscorsone@saginawcounty.com](mailto:kscorsone@saginawcounty.com)

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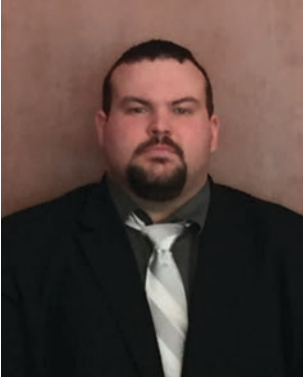
### **SCBA Website**

[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 members. I hope you all remembered administrative professionals day last month. If you did not, now would be the best time to consider giving your assistants a raise. I, for one, would be lost without all the support I get from the staff I work with all the time. So a late special thanks to: Kelli, Ann, Bethany, Britni, Kenda, Pam, Hannah, Barb, and Sue.

Speaking of administration, time is winding down on my administration of our bar, though I know I cannot look forward to retirement as I take over as treasurer (thanks Chris). Also, if you are interested in running for a position please let Kelli know. We are only a month and a half away from the elections.

First, the bad news we have lost several members over the last few months including my colleague

James Tiderington. The SCBA with Judge McGraw are also preparing memorials for John Wolf, Robert Stroebel, and Robert Currie. I know we will miss them all.

For the good news, Law Day is today so hopefully you joined us at Trillium for the festivities. If you did not and feel guilty, you can always make a donation ("indulgence") to the Law Day fund to ease your conscience.

In other good news, we are less than two months away from our golf outing. So that means for many of us we are hitting the driving range. Alas, I have a new job so I cannot take the time off of work to come play with you all, but I will be present for the dinner and eager to hear your war stories of the day's fun. Make sure you RSVP when we start sending the notices out so we can give the venue an accurate headcount.

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## IN MEMORIAM

**None**

*Please help the Memorial Committee make sure no member is forgotten. Contact SCBA office at 790-5285 or [Kscorsone@saginawcounty.com](mailto:Kscorsone@saginawcounty.com) regarding the passing of any Saginaw County Attorney.*



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## SAGINAW COUNTY LAWYERS' AUXILIARY

By: Jennie Jordan with Claudia Wallace

I wish I could truthfully say it is spring but looking at the weather forecast for the rest of April does not look promising. The calendar tells us otherwise and being optimistic in nature, I'm going with the calendar in hopes that Mother Nature is sleeping. It was a gruesome winter for everyone everywhere. Time for warmth and lots of sunshine.

I am happy to report that the 2019 Law Day Mock Trials was successful once again. All of the hard work behind the scenes by so many dedicated people paid off. Everyone should be commended for their time and talent that goes into making this event successful. Thank-you to everyone. It is a very enjoyable day for everyone.

May 1st is Law Day 2019 with a luncheon at The Trillium Banquet Center



Judge McGraw and his Probate Administrator Cheryl Alden

beginning at noon. Coordinator, Kelli Scorsone will be awarded the Liberty Bell this year. She so deserves this award for all she does and all the hats she wears. Her hat closet should be full! Congratulations Kelli.

The Saginaw County Lawyer's Auxiliary's final meeting for this year is May 7th at the home of Carrie Burns. Fol-

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lowing on May 15th is the Spring Luncheon and installation of officers at the Saginaw Country Club. Chairpersons, Terry Oeming and Ethel O'Neil will once again surprise us with a delightful meal.

A special "thank you" to all the donors to our Saginaw County Legal Endowment Fund. This fund enables the SCLA to continue their tradition of annually awarding a scholarship through the Saginaw Community Foundation to deserving Saginaw County High School students. Please remember to donate to our fund for memorials, anniversaries or special recognitions. Donations can be specified for the SCLA scholarship fund and checks can be made out to Saginaw County

Legal Endowment Fund and mailed to SCF, One Tuscola, Saginaw, MI 48601.

Have an enjoyable summer spending time with family and friends. Be well and safe travels to those that travel throughout the summer months.



Nouvel Catholic Central High School Prosecution team;  
Nouvel witnesses



Birch Run High School Defense Counselors



Volunteers: Bill Cowdry, Kelli Scorsone, Mary Ann Farris,  
Bob Farris, Claudia Wallace and Terry Oeming

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# SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

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## SAGINAW COUNTY BAR ASSOCIATION NOMINATING COMMITTEE

The 2019 members of the SCBA Nominating Committee will be announced this month. Please consider running for a position on the SCBA Board or nominating someone.

\* \* \*

BELOW is information regarding the Community Service Award given every year. PLEASE look it over, **Make a nomination**. We have so many qualified members and I want to hear from **you** who you think they are.

## SCBA COMMUNITY SERVICE AWARD

In 1992 the Saginaw County Bar Association Board of Directors established a Community Service Award. This award is presented to a member of SCBA who has demonstrated an outstanding commitment to volunteer services in his or her community. The award will be presented every year at the annual membership meetings of the SCBA.

### Award Criteria:

The recipient should demonstrate one or more of the following:

- A. The contribution of significant time and effort for one or more community organizations or projects.
- B. The organization of or participation in an activity which resulted in extending of a community service which was previously not met.
- C. The length of community service, as well as the quality of service performed, should be considered.

Please submit your nomination with a detailed statement of why this SCBA member should win the SCBA Community Service Award to: SCBA Board, 111 S. Michigan Ave., Saginaw, MI 48602 or [scba@saginawcounty.com](mailto:scba@saginawcounty.com) by June 1, 2019.



## *Thank You SCLA for assisting in the Law Day Program*

SCLA under the direction of Committee Co-Chairperson Mary Ann Farris, and Claudia Wallace, SCLA was responsible for preparing the Pizza Lunch served to all Mock Trial Participants, gathering Raters to rate the trials, and the contests. THANK YOU.

### **THANK YOU JUDGES and ACTING JUDGES**

Judge Elian Fichtner  
Judge Manvel Trice  
Judge Andre' Borrello

Judge James Borchard  
Judge McGraw  
Judge Jurrens

Magistrate Richard Alger  
Randy Price

### **THANK YOU ATTORNEY-ADVISORS**

Katie M. Baluha  
Lori Bommarito  
Alex Bommarito  
Alex Brady  
Bethany J. McGrandy  
William Cowdry  
Kelly D Ellsworth  
Christopher Enge

Thomas Fancher  
Joe Harrison  
James Hession  
Kathy Houck  
Francis Keating  
Eric Morris  
William Pearson  
Millicent E. Shek

Lee Sturtz  
Christopher Swartz  
Darrell Zolton  
Eric Dalek  
Travis Dafoe  
Eldor Herrmann

### **THANK YOU LAW DAY RATERS**

Mary Ann Ling  
Ms. Ruhlig  
Mary Stapleton  
Mary Ellen Tallon  
Mike Lewis  
Linda Lewis  
Susan McGraw

Pat Moore  
Wendy Jones  
Eva Jones  
Linda  
Carol Banas  
Diane Dudley  
Linda Taylor

David Oeming  
Valorie Gilfeather  
Jennie Jordan  
Lindsey Mead  
Joshua Cianek  
Marilyn Hackett  
Terry Oeming

### **THANK YOU LAW DAY COMMITTEE**

Thank you Co-Chairpersons Katie Baluha, Mary Ann Farris and William Cowdry. And thanks to the rest of the committee Dan Straka, Kathy Houck, Chris Enge, Christina Walsh, Beth McGrandy, Ali Brady, Frumeth Hirsh and, and Eric Morris.

Law Day reaches every grade level in the Saginaw County School District. Teachers tell us repeatedly how the students appreciate it. Thank you SCBA & SCLA for making it happen.

We will begin meeting for next year soon, please let me add your name to our committee list. WE NEED YOU!!! Please contact me and get involved.





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## DRUG TREATMENT COURT UPDATE

By: Judge Janet M. Boes  
and Coordinator Susan Smith

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### **Gena Amos receives Hero Award**

The Michigan Association of Treatment Court Professionals recognized Gena Amos as a Treatment Court Hero at the Association's annual state conference in March! Our Drug Treatment Court Team was present, along with Gena's mother, to congratulate her for the well-deserved recognition.

Gena has been the defense attorney for our Drug Treatment Court since we became operational in 2012. As defense attorney, she has the difficult task of protecting her client's rights and balancing advocacy with team participation. She began her preparation for this position by attending a week long national training in August of 2012, in San Diego (for which she received no compensation). From then on, she has worked tirelessly to represent the participants of our program. She regu-

larly meets with participants and often assists them even beyond their Drug Treatment Court appearances - helping them with issues like reinstating driver's licenses and child custody matters. Ms. Amos holds all of the participants, as well as the member of our Team, to a very high standard. We all do better because of her persistence.

Gena is fully committed to the philosophy of treatment courts as an alternative to incarceration for individuals battling a substance use disorder. She adheres to best practice standards and took the initiative in the first year of our program to attend (again on her own time and expense) a day long training so that she could better understand the science of drug testing. She has attended many meetings related to the Drug Treatment Court over the past 7 years, including each annual MATCP conference (bring-

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ing her now 92 year old mother with her to each conference - again at her own expense).

We are truly fortunate to have her as an integral part of our Team and feel that she is a true Hero!

**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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# NEW RULE FOR DETERMINING JOINT EMPLOYER STATUS PROPOSED BY DEPARTMENT OF LABOR

By: David Bryce  
Masud Labor Law Group

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On April 1, 2019, the Department of Labor (the “DOL”) issued a Notice of Proposed Rule Making (“NPRM”) to “revise and clarify the responsibilities of employers and joint employers to employees” with respect to the Fair Labor Standards Act (the “FLSA”). Under the FLSA covered employers must pay nonexempt employees at least the federal minimum wage for all hours worked and must pay overtime to a nonexempt employee who works more than 40 hours in a single workweek. Joint employers are jointly and severally liable for failing to pay non-exempt employees in accordance with the FLSA. The DOL’s current inter-

pretation of joint employment, issued in 1958, has proven difficult to consistently apply. By issuing its NPRM, the DOL is seeking to provide clear guidance on when a joint employment relationship exists giving rise to joint and several liability for FLSA violations.

Under the interpretation promulgated in 1958, two businesses could be joint employers if they were not “completely disassociated” with respect to a given worker. The new rule proposed by the DOL simplifies the 1958 guidance by proposing a clear four-factor test to determine joint employer status. Under the proposed test, determination of whether joint employer status exists

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would be based on a balancing test that considered whether the potential joint employer could:

1. Hire or fire the employee in question;
2. Supervise and control the employee's work schedule or conditions of employment;
3. Determine the employee's rate and method of payment; and
4. Maintain the employee's employment records.

Importantly, the proposed rule states that the touchstone for joint employment status is whether a potential joint employer *actually* exercises authority over the factors listed above, as opposed to whether it merely holds the

power to do so. In the NPRM, the DOL explained that the proposed rule's emphasis on the actual exercise of authority was consistent with the FLSA's definition of employer to include "any person acting directly or indirectly in the interest of an employer in relation to an employee."

In addition to narrowing joint employer status by requiring the actual exercise of authority over an employee's terms and conditions of employment, the NPRM also provides that other factors commonly taken into consideration when assessing joint employment status would not longer be relevant. For instance, according to the proposed rule, whether an employee invested in equipment to perform a job

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or had the opportunity for profit and loss sharing would have no bearing on a joint employment determination. Similarly, the type of business model would also be irrelevant under the proposed rule. For instance, the fact that the entities in question were a franchisor and franchisee would not be taken into consideration.

As proposed, the DOL's rule would greatly narrow the range of persons and entities that could be considered joint employers. Such an outcome would significantly benefit businesses, such as franchisors or staffing companies, that find themselves commonly exposed to the risk of joint and several liability under the FLSA. Employers should keep in mind, however, that the NPRM is only a proposed rule.

The public will have at least 60 days to comment on the proposal and the DOL may modify the proposal based on public feedback. Additionally, employers should take note of the fact that the proposed rule specifically applies in the context of the FLSA and does not affect joint employment status under other federal or state laws.



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07 Jun 2019 9:00 AM  
*Saginaw Valley State University*
- **CDAM Trial College: Advanced Case Development**  
18 Aug 2019 5:00 PM  
*Bay City Doubletree Hilton*
- **Evidence Boot Camp B**  
13 Sep 2019 9:00 AM  
*Saginaw Valley State University*

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**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

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*May a debtor exempt property after a trustee commenced legal action against debtor's former attorney for malpractice?* That was the issue in the case of *In re Michael and Patricia Dawson*, 29 CBN 173, 2008 WL 6492698 (Bankr. W.D. Mich 12/7/2018). Debtors' trustee filed a complaint against debtors' former bank-

ruptcy counsel alleging malpractice. The trustee claimed that debtors' attorney failed to file debtors' bankruptcy petition in a timely fashion to pursue a possible preference recovery. The trustee claimed that had debtors filed their bankruptcy petition within 90 days after debtors' judgment creditor garnished her credit union account, she could have recovered approximately \$6,047 as a preferential transfer and claimed those monies as exempt. Further, the complaint alleged that the attorney committed malpractice by negligently foreclosing the debtors' opportunity to recover the money by the late filing of debtors' bankruptcy. After the complaint was filed, debtors' amended their schedules to claim that cause of action as exempt.

The trustee objected claiming that §522(g) precluded debtors from exempting their malpractice claim because debtors' former counsel concealed the cause of action by not cooperating in the trustee's pre-suit investigation and that the debtor, as principal, was accountable for the acts of her former attorney.

Section 522(g) allows debtors to exempt property that the trustee recovers under §510(c)(2), 542, 543, 550, 551, or



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553 to the extent that debtor could have exempted such property if it had not been involuntarily transferred by the debtor and the debtor did not conceal such property or that debtor could have avoided such transfer under sub section 522(f)(1)(b).

Debtors and their trustee agreed that the cause of action was property of the estate. The only possible transfer however was from the debtor to the estate pursuant to §541(a)(1). Bankruptcy Judge Scott W. Dales for the Western District of Michigan stated “by identifying the transfer of property into the estate automatically effected upon the filing of a petition, the trustee ensures that no debtor in a voluntary case could ever satisfy §522(g) (1) which authorizes exemptions only if the transfer was not a voluntary transfer of the property to be exempted. The more natural view of the statute and the one the court adopts, is that the transfer referred to in §522(g) is the pre-petition transfer (either of title or possession) that made it necessary for the trustee to exercise the chapter 5 avoidance and recovery powers enumerated in that section and to reel the property back into the es-

tate, not the transfer that occurs upon the filing of a bankruptcy petition.”

The court rejected the trustee’s argument that he was exercising his turnover powers by suing on a state law cause of action. Finally, the court stated that it was not convinced that an attorney’s failure to cooperate with the trustee pursuit request for documents was concealment of the cause of action. Therefore, Judge Dales stated “the cause of action was obvious to this savvy trustee, probably as early as the first meeting of creditors, and it clearly prompted him to demand the documents. He was not on a fishing expedition, trolling for the unknown catch, but was seeking specific correspondence which he assumed existed and that would support the malpractice claim he had in mind at the time of the turnover demand and now, it is disingenuous to argue otherwise.” Therefore, after allowing the exemption the court ordered the trustee to abandon the cause of action back to the debtors because the ruling rendered the Trustee’s cause of action of inconsequential value or benefit to the debtors estate pursuant to §554.



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Keegan Schrems of Swan Valley High School  
Teacher Ken Bourbina

The billboard will be up April 22 - May 22 on Gratiot Road heading west right across from Crooked Creek Bowling Alley and on Michigan Avenue north of the Court House

An advertisement for AKTPEERLESS. At the top, it says "Serving Saginaw since 1987". Below this are four blue square icons with white text and images: "Site Assessments" with a tree and mountain icon; "Vapor Intrusion" with a wavy line icon; "Lead &amp; Asbestos" with a hard hat icon; and "Brownfield Redevelopment" with a circular arrow icon. Each icon is accompanied by a small photograph: a worker with a pump, a gavel, a demolition site, and a building. At the bottom, the AKTPEERLESS logo is shown with the tagline "We create a better environment for your business." Below the logo is the website "www.aktpeerless.com". A dark teal footer bar contains the locations: SAGINAW, LANSING, DETROIT, and GRAND RAPIDS.

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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 – Lt. Brian McComb  
from Michigan State Police Post #31



\$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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Executive Director Kelli Scorsone  
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