



# THE SUMMONS

## Saginaw County Bar Association

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**KATHERINE MARIE BALUHA**

Saginaw County Bar Association

President 2019 – 2020

# 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)*

**Summer Break - We will be starting up again in August**

## **Law Day Committee Blood Drive**

*July 18, 2019*

*10:00 AM to 3:00 PM*

*Saginaw County Courthouse*

## **Soup Kitchen Volunteers needed**

*(Call John Humphreys 989-401-2115 if you can serve)*

*Saturday, August 31, 2019*

*Saturday, November 30, 2019*

## **Pro Bono Week**

*October 20 to October 26, 2019*

## **Ask the Lawyer**

*Monday, October 21, 2019*

*5:30 – 7:30 PM*

*Topic: Juvenile Expungement*

*Monday, October 21, 2019*

*5:30 – 7:30 PM*

*Topic: Juvenile Expungement*

## **SCBA Christmas Party**

*Friday, December 6, 2019*

*6:00 – 11:00 PM*

*Horizons Conference Center*



## **Courthouse Closed**

**Thursday July 4th &  
Friday, July 5th, 2019**

*(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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**IN THIS ISSUE**

President's Message..... 2

In Memoriam ..... 2

Portrait of Lawyer  
Katherine M. Baluha ..... 6

Saginaw County Lawyers' Auxiliary..... 8

Portrait of Lawyer  
Robert J. Stroeber ..... 11

Portrait of Lawyer  
John W. Wolf, Jr. .... 12

SCBA Executive Director's Report ..... 14

Department of Labor Alters the FLSA  
Regular Rate of Pay to Reflect the  
Reality of Contemporary  
Employment Relations..... 16

Bankruptcy Case Notes..... 19

**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: Katherine M. Baluha

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Hello fellow members of the Saginaw County Bar Association, I am honored and a bit nervous to be starting out my year as President and would like to begin by thanking those that helped me get involved with this wonderful organization. About four years ago I was asked by then President, Alex Bommarito, if I wanted to be nominated as a board member. Little did I know that this group, its leaders, affiliates, and members would become some of my favorite things about being an attorney in Saginaw County.

For those that I have not yet had the pleasure of getting to know, my name is Katherine M. Baluha Dedafoe, although I practice under and am known by most as Katie Baluha. I started my

firm, Katie Marie Law, PC, in Freeland almost six years ago. I began as many new private sector attorneys just hanging their shingle, by taking any work I could get, including real estate, estate planning, family law, and any issue that may come my way. I am so happy to have the opportunity to now be practicing almost exclusively family law, which has been my passion from the beginning.

The past four years of involvement on this board has given me time to truly contemplate what it is that I want to accomplish as President. As I am sure you would all agree, one year is not a long time and is even shorter when you are trying to make significant changes and improvements that will leave a

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## IN MEMORIAM

**Matthew A Dambro** – P32571 died Wednesday, April 24, 2019.  
He was born August 2, 1951 and was sworn into SBM May 29, 1981.

*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.*



lasting legacy and impression for those to follow. With that in mind, I have already begun to work on setting in motion the first and most exciting, in my opinion, of my goals – parking permits! I would be very interested to know if you all agree, but the idea of not worrying about the \$20 parking ticket on my windshield waiting for me after a hearing ran over the amount of change I could scrounge up to put in a meter is something I am very hopeful for. Not only do I believe that this would add another perk to the already long list of benefits of membership, but I also hope that this benefit would attract new members as this would be, if all goes to plan, a permit only offered to SCBA paid members. It is very early on in the planning stages and I will be conducting research with your help, about how to best implement this idea, but I hope to have this accomplished by the time I pass on the torch.

I also would really like to get our membership more involved in our meetings and events this year. I think almost every President in recent history has set this goal and so I know this task will be difficult. It would be so wonderful to hear from you all about your thoughts and ideas on what would make events more appealing. We truly do have great events that, even with the sometimes small numbers, end up being so much fun and well worth the time put into going. Just as a reminder of events – we have our monthly meetings that usually focus on a specific type of law or issue, which I would challenge you to attend even if it isn't your practice focus, I assure you the networking and meeting of attorneys that you normally wouldn't

cross paths with is wonderful and who knows you might learn something while you're at it. We have a holiday party that is always a great time and so nice to have our significant others attend as well. We throw an annual St. Patrick's Day party at Woody's that the Women Lawyers Association of MI Great Lakes Bay Region is now co-sponsoring and I am proud to say was started by Nathan Collison and myself a few years ago. We have an annual blood drive that was recently started and this year we will have another on July 18, mark your calendars. We have Law Day mock trials, luncheon and contests that are run with the help of so many, especially the Lawyers Auxiliary. I hope you can all attend our annual meeting and golf outing rescheduled for August 29 and for those that couldn't attend the prior date we still have room for you to join now! We, of course, have many others throughout the year, but if there are events that you feel we should try to implement please reach out to a board member, committee chair or myself, we are always looking for new meeting ideas or changes to our existing ones.

Another goal that we as a board have for this year is to finally tackle and nail down a fiscal budget. This is a much bigger task than I could have imagined and I am so grateful that we will have a great team to work on this important and vital issue.

Finally, we have just recently voted to start the process of getting our website updated, which will include so many benefits to our members including bios and search directories as well as a law pay feature that will allow us to pay our dues and event costs right on the

website. Although you may be thinking that the website is not very old as our Executive Director, Kelli Scorsone, did a wonderful job on it just a few years ago, it has proved to be extremely difficult to operate and does not offer the type of benefits that we hope to offer in the very near future (not to mention the added costs that we are cutting from our upcoming budget).

This past year was a great one and I want to thank President Dan Straka for his successful leadership and hard work put in. Also, we had to say good bye to many board members this past year that have either set off on new paths or completed their terms, Judge Barbara Meter, Trevis Ruffin, Matt Tarrant, and Chris Radke, as well as our remaining Board – Bill Cowdry, Val Kutz-Otway, Andy Collison and Beth McGrandy-Hoag, thank you so much for your dedication to this association and your friendships that I am so thankful to have built. And a special thank you to our Executive Director and the glue that holds this entire operation

together, Kelli Scorsone. As many of you know, Kelli was presented with the Liberty Bell Award this past year and it was my honor to be able to present that to her as she has been such a wonderful part of being involved in the SCBA. Our group would not be the same without her as she literally makes sure every single piece is in place and every event successfully planned. Kelli, we owe you so much and thank you for all that you do.

I will close with saying that it is a privilege and an honor to be a part of the Saginaw County legal community and it is because of the professionals that make it up. I so look forward to building more friendships this year, leading this group in another successful year, and making you proud.

Please don't hesitate to contact me with any questions, concerns or just to chat – [kbaluha@katiemarielaw.com](mailto:kbaluha@katiemarielaw.com); also send me exciting news that you would like posted on our SCBA Facebook page!



**'Lawyers out for Blood' Drive**  
**Thursday, July 18, 2019**  
**10:00 am – 3:00 pm**  
**Saginaw County Courthouse**

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## PORTRAIT OF A LAWYER KATHERINE (KATIE) M. BALUHA

By: Greg Dedafoe

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It is with great honor, I introduce my wife, Katherine (Katie) Marie Baluha Dedafoe, as the next President of the Saginaw County Bar Association, for 2019-2020.

Katie is the daughter of Mark and Renee Baluha and sister to Mario Baluha. She grew up and attended High school in Freeland where she graduated in 2004. From an early age she knew she wanted to do 2 things; be a Spartan and become a Lawyer. She took the first steps to accomplishing the first goal after being accepted into Michigan State University where she majored in English and graduated in 2009 with a Bachelors in English. During her time at Michigan State she studied abroad in London for a summer, where she hopes to return at some point.

Shortly after graduating from Michigan State, Katie was accepted into Thomas M. Cooley Law School where she would begin the second goal she had set out to accomplish. Although law school tested her will and patience, she successfully graduated in the fall of 2012. The final step towards making her dream of becoming a lawyer was passing the Bar exam, which she did in the spring of 2013.

If you didn't already know, Katie is the owner and sole practitioner of Katie Marie Law in Freeland. She first opened her doors in the fall of 2013 in the old Subway building on Midland Rd. She quickly found her workload to be too much for this small building, and was presented with an opportunity to build a new office next to the Freeland Sports Zone. In the fall of 2014, the current location of Katie Marie Law opened its doors. Her law practice focuses primarily on family law, but has been involved with the juvenile court and other areas as well.

Katie is a huge advocate for the legal community and local communities in so many different ways. She is a member of the Women Lawyers Association, American Bar Association, Freeland Chamber of Commerce, an active volunteer for the Freeland Athletic Association, volunteered for Habitat for Humanity, donates blood when she can (even though she is scared of needles), volunteers at the Legal Advice Clinic at Eastern Michigan Legal Services, and an attorney advisor for Law Day with high schools around the area. She is also always willing to help me out with my endeavors with the



Freeland Lions Club and before opening her practice, used to spend time volunteering at the Saginaw Animal Shelter as she is a avid dog lover. Most people don't know that she also became ordained to perform marriages, which she loves to do for close friends and family. I believe the community has seen her efforts and commitment as she has been honored as one of the Greatest of the Great Lakes Bay Attorneys for 2018 and now 2019 as well. Katie has also received the distinction of Super Lawyers Rising Star – which she so deserves.

As I mentioned, Katie is a dog lover, we have two Puggles (pug/beagle), Chloe and Cassius, who have as vibrant of personalities as Katie does. We rescued Chloe from the Capitol Area Humane Society back when Katie

was attending law school, and I know Chloe was a huge reason that she was able to get through that time. In her spare time she enjoys watching too many romantic comedies, boating, going to concerts, watching her Michigan State Spartans, traveling, and spending time with friends and family with an adult beverage or two. 😊

Katie is a bit nervous but very excited to become your President this coming year. She understands the hard work and responsibility it will take to leave a good impression on all of you after her term is over. She always puts 100% into whatever she does and that's why I know she will succeed. I am very proud to call her my wife and best friend and know she will do an amazing job as President of the Saginaw County Bar Association.

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## SAGINAW COUNTY LAWYERS' AUXILIARY

By: Jennie Jordan

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Summer is officially here!!! With all that sunshine and Michigan fun, I'm actually looking forward to a short break after what has been a wonderful year as SCLA president. DON'T WORRY – I'll be returning to my post as president again this year and we will still provide our valuable support, but we hope to see some new faces and exciting changes.



### *Court House tours with Judy Weldy:*

We had the pleasure of giving two courthouse tours this month one to the fifth-grade classes from Nouvel Catholic Central, Accompanied by teachers Pam Sowatsky & Carolyn Acciaioli. Susan Brennan was also present to assist and was extremely helpful. The other group was from the Saginaw Career Complex accompanied by Stu Swagger. Judy does an exceptional job with these tours covering each office and service provided anywhere in the building. Her dedication to these tours has carried this portion of our program and we thank her very much.

A special thank you to Hon. David Hoffman and Hon. Terry L. Clark who allowed the fifth graders to see justice in action and witness an actual pre-trial. Also, thank you to, Assistant Prosecutor, Melissa Hoover for taking time to explain her duties and answer multiple questions from the kids.



Law Day Award Presentations with Mary Ann Farris:

Mary Ann Farris also presented awards personally to the winners of the LAW DAY coloring, poster, and billboard contests. Each year she organizes these three events completely. She carefully oversees each detail from the materials being created and distributed to the collecting and judging. Not only does she present the awards, but she gives an honorable mention for each individual who participates. She also gives the teachers well thought challenges. This year a book was the gift and she challenged the classes to read it and if they succeeded, she would provide them with the additional books in the series. It was such a pleasure to watch her light up the faces of all of these children.



1st place winner Reaghan Graham far left in red and white



2nd place winner Isabel Giles in black and white stripe shirt

*Spring Luncheon with Terry Oeming and Ethel O'Neill:*

Once again, our Spring Luncheon was a beautiful breeze with an Italian flair this year. On a beautiful afternoon at the Saginaw County Country Club, our taste buds were treated to a fantastic Italian wedding Soup, a delicious

main course salad and TWO types of homemade tiramisu!!! It was all so tasty that we were begging for the recipes and round two.



Left to right, Marty Triantafillou, Pat Moore, Kelli Scorsone, Mary Ann Farris, Jill Vary, Linda Taylor



Sue Purcell, Mary James, Sue Burns, Terry Oeming, Ruth Braun, Sally Kemp, Melanie Grierson



Ethel O'Neill, Claudia Wallace, Jennie Jordan, Jennifer Jaffe, Carrie Burns, Sue Smith, Sue Kallenbach

*Our new executive board was also sworn in. The officers are as follows:*

*President – Jennie Jordan*

*Treasure – Jennifer Jaffe*

*Corresponding Secretary – Carrie Burns*

*Recording Secretary – Marty Triantafillou*



Left to Right, Jennie Jordan, Marty Triantafillou, Carrie Burns, and Jennifer Jaffe



The oaths were administered by past president Terry Oeming and each officer took the oath and were given flowers with symbolic ribbons, but It was so fun because our group is filled with unique and amazing people that always bring you happiness. We could barely make it through the oaths because we have so many little giggles, or funny comments. BUT SERIOUSLY these individuals work very hard to put together fundraisers, events and meeting to benefit all of Saginaw County.

Special thanks to Kelli Scorscone and the SCBA BOARD for helping me learn the many things that It takes to make an organization a success.









To my SCLA ELITE, (the core members at every event, every meeting, and who answer my text and calls with immense patience), I would have never had the strength to take on this position without you. Your dedication to SCLA

has taught me so much about helping others AND asking for help when you need it. Thank you for guiding me and I hope to continue to make you as proud as you all make me.

I would also like to thank my husband Robert (Drew) Jordan. Before our by-law changes, he's actually the only way I could join SCLA, so I did at his encouragement. He has helped me every step of the way and at times literally carried me. He is my constant source of support through what has been a very difficult year. Most important, he believes in me and makes many sacrifices for our family.

I leave you with the highest hope that each and everyone enjoy their freedom this summer in a SAFE way. Please drive safe, whether it's a bike, boat, or car, wear your seatbelt and don't forget your safety gear and sunblock!

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## PORTRAIT OF A LAWYER ROBERT J. STROEBEL

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Robert (Bob) J. Stroebel passed away 12/4/18 at the age of 87. He was the youngest of 6 children born to the late Ralph W. and Clara B. Stroebel. He was born May 26, 1931 in Saginaw, Michigan. On April 5, 1958 he married the former Leticia (Tish) Johnson of Jane Lew, West Virginia. He is survived by his wife, Tish, daughters Cynthia K. Stroebel of Imlay City, Michigan and Susan S. (Pasquale) Iaderosa of Rochester Hills, Michigan and his grandchildren Marisa, Lara, Benjamin and Paolo Iaderosa.

Robert graduated from Arthur Hill High School, Valparaiso University and Valparaiso University School of Law. He was admitted to the practice of law in Michigan in January, 1956. He served two years in Washington D.C. as a Legislative Assistant to Congressman Alvin M. Bentley. He returned to Saginaw as assistant prosecutor and thereafter entered private practice of law in Saginaw and Frankenmuth serving his clients honorably for over 50 years. He also served as Frankenmuth city attorney for 45 years.

He was a member and past president of the Saginaw County Bar Association, member of the State Bar of Michigan and the American Bar Association.

He was a member of Frankenmuth Rotary Club. He served on the Board and as President of Historical Society Saginaw County and Christmas in July. He also served on the Board of Star of the West for decades.

He was an active member of Peace Lutheran Church in Saginaw and served as chairman of its Board of Education, member of the Board of Elders and Peace Foundation Board. He was also a member of Abiding Presence Lutheran Church in Rochester Hills, Michigan.

He received the Distinguished Alumni Award from Valparaiso University where he also served on the Law School Board of Visitors for many years.





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## PORTRAIT OF A LAWYER JOHN W. WOLF, JR.

By: J. Michael Fordney

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On December 29, 1964, after having graduated from the University of Notre Dame and the University of Detroit Law, John was sworn into the Michigan State Bar Association and the Saginaw County Bar Association before the Honorable Eugene Snow Huff. He was the third generation of attorneys in his immediate family following his grandfather, the Honorable William J. (Booty) Wolf and his father, John William Wolf. However, John's legacy did not end there. His son, William John Wolf became the fourth generation of attorneys in the Wolf family and William's son, John William Wolf (named in honor of his grandfather John) became the fifth generation of Wolf attorneys.

John began his legal career as many did working for Vincent Nash as an Assistant City Attorney and also working as an associate at his father's law firm, Wolf, Walker, Stingline and Troester. It was not long though that John lost his father who died at a very early age of 54. John used to say "My Dad passed away after making a bid of 7 No Trump". Then John became the head of his rather large family which consisted of four sisters, Carolyn, Nancy, Patsy and Sarah and his brother Mike.

John left his father's firm and became

a partner with his mentor and close friend Tom Joseph. The law firm of Joseph & Wolf was known throughout the State of Michigan as the go-to firm for physicians, attorneys and corporations. John and Tom set up practically every professional medical corporation and limited liability corporation in this state's jurisprudence.

Not long after Tom's death, John became a shareholder in the firm of Braun Kendrick. John's success as an attorney and counselor was virtually unmatched and his professional reputation as well as his personal reputation always gave John a backstage pass wherever he went. John was a giving person. He was always there whenever someone was in need. He was a hard worker and driven by the desire to be the best that he could be and one of his favorite sayings was, "The harder you work the luckier you get." John's quick wit and attention to detail served him well. He was a true friend to each and every one of his clients, staff and business associates. John was respected for his intellect and unique talent to make very complicated situations simple. As I have said before, we will all remember his compassion and willingness to help others. If you need-

ed help, John Wolf was always there.

John is survived by his devoted wife, Marilyn and by his three sons and their families: William (Debra, John, & Cara); James (Karen, Jackson & Meaghan) and Andrew (Jennifer & Julia). John's three sons embody all the wonderful values of their father. They are fiercely loyal to each other as well as to their friends; like their father they are true gentlemen; they all have the same trust worthiness; the same civility; the same integrity and the same wisdom as John. All three sons are indeed representatives of their father and he was so proud of his boys as well as his grandchildren.

John and Marilyn were married in 1962 and celebrated their 56th wedding anniversary at their family cottage in Walloon Lake, Michigan where John loved piloting his pontoon boat for sunset cruises over the last 40 years. John and Marilyn would spend their winters at their Clearwater Beach, Florida residence and both frequently expressed how blessed they were by being able to spend time at Walloon and Clearwater, Florida. Marilyn was John's standard and his protector. Marilyn had absolutely no problem giving John the direction he needed whenever he

came to her. If John ever didn't listen to what Marilyn had to say, he heard about it and immediately changed course. John and Marilyn were two of the most wonderful persons I have ever had the pleasure of knowing and treasure so much being able to be a part of their lives.

He also thrived as a true leader as: (1) past President of the Saginaw Country Club, (2) Member of the Saginaw County Bar since 1964; (3) followed in his father's footsteps as an assistant city attorney, (4) established with his best friend, Tom Joseph, a very successful law firm and since 1998 has been a member of the law firm of Braun Kendrick Finkbeiner P.L.C. serving his clients for well over 50 years, (5) Board of Director on numerous non-profit and profit organizations, including his most proud work with The Field Neurosciences Institute, (6) recipient of the Badin Guild of the University of Notre Dame, and (7) a member of five generations of attorneys.

The only appropriate epilogue to this narrative would be to leave you with John's own words, which in conclusion, he would state as follows:

"GOD, COUNTRY, NOTRE DAME."



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# SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

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## **"Thank You" Departing Board Members**

A Very Special "Thank You" to Board Members Judge Barbara Meter and Trevis L. Ruffin. Your years of service on the Board, as committee Liaison, and on various committees is much appreciated. It is so important for Board Members to be active members, it encourages other members to participate more. I hope you continue your much needed participation with SCBA.

Thank you President Dan Straka. I have been very lucky to have a President that was always available to answer questions, and one that continued to participate in three of our biggest committees. We are fortunate to have you staying on as Treasurer.

Christopher Radke. You have been with us as Board Member, Vice President, President, Past President and lastly Treasurer. Your continued leadership in the many different rolls added similitude to the Board.

SCBA is so fortunate to have such leaders willing to serve and volunteer their time to maintain and improve this Association.

Again, **THANK YOU** leaving Board Members and those that are continuing to serve their term. I much appreciate your support and willingness to serve.

I look forward to the newly elected Board Members. I know you will continue the strong leadership we have seen in prior years.

\* \* \*

## **SCBA COMMITTEES**

Please evaluate your goals! The New Board wants to hear from you, let us know if you need new leadership, have new ideas, or just want to vent! We want to hear from you and you are welcome to address the Board at a board meeting, just call me to get on the agenda.

**CONGRATULATIONS TO THE FOLLOWING HONOREES**

**50-Year Honoree - Admitted to SBM in 1969**

*The State Bar of Michigan will hold a special luncheon honoring those who became SBM members in 1969 in fall 2019. The SCBA has also invited these honorees as our guest at the SCBA Annual Meeting.*

Otto W Brandt, Jr.  
Date of Admission: January 2<sup>nd</sup>

Robert L. Farris  
Date of Admission: December 17<sup>th</sup>

Richard M. Handlon  
Date of Admission: December 9<sup>th</sup>

Irwin F. Hauffe, II  
Date of Admission: December 8<sup>th</sup>

Jerome P. Reif  
Date of Admission: December 4<sup>th</sup>

Steven L. Rygiel  
Date of Admission: December 22<sup>nd</sup>

Nicholas R. Trogan, III  
Date of Admission: December 8<sup>th</sup>

W. Kenneth Wright  
Date of Admission: June 25<sup>th</sup>

**60-YEAR**

Robert L. Loucks

**40-YEAR (1979)**

Timothy L. Curtiss, Patrick O. Duggan, Stephan M. Gaus, Joseph S. Harrison, Gregory E.

Meter, James F. Piazza, Timothy M. Swieczkowski

**30-YEAR (1889)**

H. Renee Brisbois, James M. Hession, Judith A. Lincoln, Barbara J. Tomcal, Susan A. Brady

**20-YEAR (1999)**

Russell C. Babcock, Brigham C. Bell, Kent E. Greenfelder

**10-YEAR (2009)**

Joseph M. Albosta, David L. Puskar



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## DEPARTMENT OF LABOR ALTERS THE FLSA REGULAR RATE OF PAY TO REFLECT THE REALITY OF CONTEMPORARY EMPLOYMENT RELATIONS

By: Kraig M. Schutter  
Masud Labor Law Group

In an effort to have overtime compensation reflect current employment relations, the Department of Labor “DOL” issued a proposed rule on March 29, 2019, addressing the regular rate of pay. The proposed rule is the largest alteration to calculating the regular rate of pay since the 1960s and grants

clarity to employers so they can confidently offer non-traditional benefits to employees.

Overtime rules under the Fair Labor Standards Act (FLSA) require employers to pay non-exempt employees one-and-one half times their regular rate of pay for hours worked over 40 in a workweek. Under the FLSA, the regular rate of pay includes all remuneration for employment unless excluded by the act or regulations. The proposed rule’s largest impact is that it will expand the types of remuneration excluded from the regular rate of pay. Under the rule, remuneration that does not have a connection to the quantity or quality of work performed will generally be excluded.

### Pay for Forgoing Holidays or Leave

The DOL acknowledged that most employers no longer offer separate sick and vacation leave, but a single type of leave—paid time off. The DOL proposed regulation abolishes the distinction between payment in lieu of sick leave and payment in lieu of vacation or holiday leave, creating a single inquiry for when payment for forgoing use of leave is excludable

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from the regular rate. The inquiry of the proposed rule is “whether the amount paid is approximately equivalent to the employee’s normal earnings for a similar period of time, and whether the payment is in addition to the employee’s normal compensation for hours worked.” If the payment for forgoing the use of leave meets these two factors, it is excludable from the regular rate of pay for calculating overtime. Additionally, the proposed regulation states that the payments for forgoing the use of the leave are excludable from the regular rate regardless of whether they are paid during the same pay period or during a subsequent pay period.

#### Compensation for Bona Fide Meal Periods

Bona fide meal periods are not “hours worked” for FLSA’s minimum wage or overtime requirements, and employers are not required to pay for such time. The DOL proposed rule states that an employer offering a paid meal period does not convert the period to “hours worked” for computing regular rate of pay. However, if the employer has agreed or through course of conduct treated a paid lunch period as

hours worked, it is not excludable from regular rate.

#### Reimbursable Expenses

The DOL’s proposed regulation clarifies when reimbursable expenses are excluded from the regular rate of pay. The proposed regulation eliminates the existing requirement that an excluded reimbursable expense could only be for an expense that solely benefited the employer. The proposed rule states that to have a reimbursement be excluded from the regular rate, the expense need only benefit the employer. For example, an employer under the rule could reimburse an employee for a hotel room to go to a conference for work and exclude the reimbursement from the regular rate of pay. Under current rules, it is uncertain because the expense of paying for the hotel room does not solely benefit the employer.

#### Other Similar Payments

Like payments for forgoing leave, compensation for bona fide meal periods, and reimbursable payments, the exclusion of “other similar payments” from the regular rate of pay is designed to govern benefits given by employers that do not have a connec-

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tion to the quantity or quality of work produced. With employers offering novel benefits such as gym membership, mental health programming, student loan repayment, and tuition reimbursement, the DOL is also clarifying that such benefits are excluded from the regular rate of pay if they are not linked to hours or quality of work performed.

### Discretionary Bonuses and Call Back Pay

Like compensation for bona fide meal periods, the proposed rule treats discretionary bonuses and call back pay as excludable from the regular rate if they are not so regular as to be expected by employees. Like other forms of remuneration excluded from the regular rate of pay, discretionary bonuses and call back pay are not contingent on hours worked. The DOL proposed rule holds that discretionary bonuses are excludable if “both the fact that bonuses are to be paid and the amounts are determined at the sole discretion of the employer . . . and are not paid pursuant to any prior contract, agreement or promise causing the employees to expect such pay-

ments regularly.” Similarly, call back pay is not excludable from the regular rate of pay if it is so regular that it is part of the employee’s schedule.

The DOL’s proposed rule on regular rate of pay for overtime compensation will benefit both employers and employees because clarifying what types of benefits are excluded from the regular rate of pay may encourage employers to offer employees more non-traditional employment benefits. With a few significant exceptions, the proposed rule asserts that employer benefits that do not have a connection between the quality or quantity of worked performed are excluded from calculating the regular rate of pay. However, given the complexity of the FLSA it is advised employers consult a labor and employment attorney before determining what benefits may be excluded from the regular rate of pay. Practitioners should be aware that the DOL’s proposed rule is not yet in effect, and that the public will have 60 days to comment on the proposed rule. The DOL may alter the proposed rule after considering the public comments.

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## BANKRUPTCY CASE NOTES

By: Jack Weinstein

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*Just when you think you understand the boundaries of a concept you discover that someone challenges your belief seeking to extend the boundary lines.* In the case of Michael and Betty Hodgins Case #18-21810 decided by Bankruptcy Judge Daniel S. Opperman on March 12, 2019, the definition of what is a “judicial lien” was in issue. Debtors’, prior to filing their Chapter 13 bankruptcy, needed siding for their home but also needed financing for both the purchase and installation. FCC Finance, LLC, (FCC) was willing to provide the financing but required the debtors’ to sign an agreement which they did; thereafter, FCC filed a financing statement. The siding was installed at debtors’ residence. Subsequently, debtors filed for Chapter 13 bankruptcy. Thereafter they sought to avoid the lien that debtors had given to FCC claiming that it was a judicial lien impairing their exemption. FCC submitted evidence of a signed Michigan Home Improvement Installment Contract, a portion of which granted a security interest to FCC; and, further provided that debtors agreed that they were purchasing personal property (even if the goods became attached to the home and land) and that by signing

the agreement, they granted a security interest in those goods and that a copy of the contract was filed as a financing statement under the Uniform Commercial Code.

After the siding had been installed, Mrs. Hodgins signed a completion certificate for the construction company which was assigned to FCC which subsequently filed the UCC financing statement with the Midland County Register of Deed’s Office on September 30, 2016. Debtors’ subsequently filed for Chapter 13 relief on September 25, 2018, and sought to avoid FCC’s lien claiming that FCC’s judicial lien impaired their homestead exemption in the amount of \$12,309 which debtors’ sought to avoid pursuant to 11 USC §522(f)(1)(A). 11 USC §101(36) defines a judicial lien as one obtained by judgment, levy, sequestration or other legal or equitable process or proceedings. Debtors claimed that the creditor’s alleged lien was a judicial lien because it arose from the legal process of the creditor exercising its alleged statutory right to record a UCC-1 Financing statement for fixtures in the debtors’ chain of record title for their home; therefore, the creditors held a judicial lien against debtors’ home-

stead which could be avoided pursuant to 11 USC §522(f)(1)(A).

Judge Opperman reviewed §101(36) which defined the term “judicial lien” as meaning a lien obtained by judgment, levy, sequestration or other legal or equitable process or proceedings. He next referred to the term “security interest” defined in §101(51) as meaning “a lien created by an agreement” and the definition of the statutory lien as set forth in §101(53) which defined a statutory lien as “arising solely by force of a statute on specified circumstances or conditions, or a lien of distress for rent, whether or not statutory but does not include a security interest or judicial lien, whether or not such interest or lien is provided for by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

Judge Opperman then determined that in order to avoid the FCC lien under §522(f)(1)(A), the FCC lien must be a judicial lien as defined in §101(36); how-

ever, Judge Opperman determined that in this case, the lien was created by an agreement in the contract and; therefore, there was no evidence that the contract or the financing statement was obtained by a judgment, levy or sequestration or equitable process or proceeding.

The debtors’ argument that the lien was obtained by legal process because FCC relied on a statute and the legal protocol created to allow the filing of a financing statement was incorrect. While it was an innovative argument, it ignored §101(51) which specifically fits the definition of a security interest given that the lien was created by a contractual agreement. Further, even if the debtors’ argument that FCC relied on a statute to file its financing statement, then §101(53) is more appropriate. Under no circumstances did the court determine that the lien was a judicial lien as defined by §101(36) and avoidable under §522(f)(1)(A). Therefore, the court denied debtors’ motion to avoid FCC’s lien.

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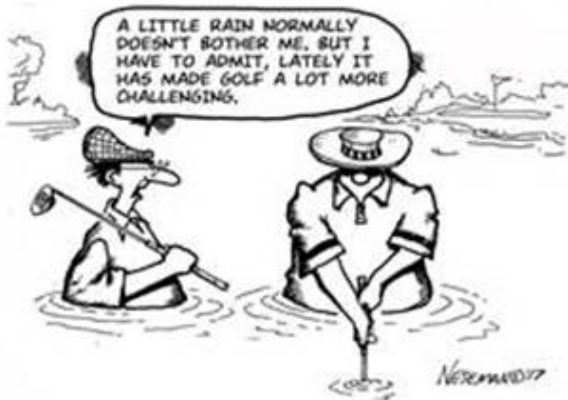
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