



THE SUMMONS

Saginaw County Bar Association

50 Year Anniversary of 70th District Court

The original six from 1969

City District Judges



Hon. Joseph L. Scorsone
1/1/1969 – 9/13/1979



Hon. Joseph P. Friske
1/1/1969 – 5/7/1975



William Glover Gage
1/1/1969 – 1971

County District Judges



Hon. Bruce J. Scorsone
1/1/1969 – 11/1/2000



Hon. Harold W. Martin
1/1/1969 – 12/31/1982



Hon. Maurice L. van Benschoten
1/1/1969 – 12/31/1980

MEETING DATES FOR 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)

Courthouse Closed - Presidents' Day

Monday, February 18, 2019

Membership Meeting

*Thursday, February 28, 2019
Speaker - Dayna Harper of the Community Resolution Center*

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*

Blood Drive

Tuesday, April 2, 2019

Soup Kitchen Volunteers needed

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

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*



Monday, February 18th



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

THE SUMMONS

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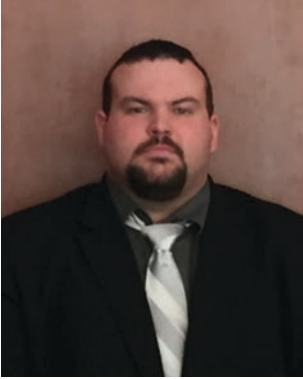
SCBA Website

www.saginawbar.org

Lawyer Referral Service

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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.



PRESIDENT'S MESSAGE

By: Daniel J. Straka

Dear Bar Members:

Happy New Year, I trust this first issue of Summons 2019 finds you well. I rang in the new year in wonderful fashion drinking sparkling cider, watching the three best Indiana Jones movies as I was on duty, and actually had to take a police call as the ball dropped at midnight.

Many of us like to set some New Year's Goals. I tried to do that for the bar by trimming the bar budget, but just like people thought I lost weight over the holidays and I actually just bought bigger pants. The increase in dues will ensure we can continue to provide the same services and likely a few more. Speaking of dues, many

of you, including me, received emails saying paid dues were not paid. This was in error and I do apologize for that. The system is brand new this year and likely to have a couple glitches for the next few years as we try and smooth things out.

Before the new year we had our annual holiday party. I thought it was another success and I had a lot of fun. Many of us stayed all the way till the end, much to the chagrin of my wife who wanted me home.

This year already we have had the 50th anniversary celebration of district court. Alas, I was stuck in circuit court and Katie Baluha was out sick. Our dictator, I mean executive director

IN MEMORIAM

Robert J. Stroebel – P21097, died December 4, 2018. He was born May 26, 1931, and was sworn into SBM April 27, 1956.

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.



Kelli Scorsone, was luckily available and having worked for district court for 40 of its 50 years was by far the most qualified bar representative to present the plaque and speak at its dedication.

By the time of this Summons we also would have had our first young lawyers meeting. The young lawyers section is for lawyers who have under five years of legal experience OR thirty-six years of age. Lawyers who qualify by one or both of those criteria are automatically enrolled as a member assuming that the lawyer is current on their county dues. Hopefully, this section will take off and show younger lawyers the benefits of being involved with the bar. I am hoping the social networking and mentoring available through this section will thrive for years to come.

On February 28, 2019 at noon there will be a membership meeting in the basement of the courthouse. The speaker will be Dayna Harper of the Community Resolution Center, those of you with an interest in mediation will want to attend. The community resolution center is one of the few places I am aware of that offer the training required to become a certified mediator.

Law Day Mock Trials are March 21, 2019 so I know all the teams that have signed up are working hard on this year's problem. I encourage you all to come and watch the teams participate. If you are interested in coaching or helping manage law day, please contact me.

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SAGINAW COUNTY LAWYERS' AUXILIARY

By: Jennie Jordan

Greetings for a joyous New Year 2019! On behalf of the entire auxiliary, I hope your holiday was magical and full of family and friends. My family was safe and blessed this year with a beautiful Christmas but I'm excited for 2018 to be over because 2019 is really starting off well with our first meeting at Kathleen Horn's home being short and sweet, I think some of our changes are finally working and make things run much efficiently.

S C L A would also like to thank you for participating in our 2018 Annual Wreath and Poinsettia Sale. Boehler's really provided a great product and excellent service, as always. We would like to thank Pat Moore for all her hard work on this event and it's not only a great way to shop for the holidays but it's easy, traditional, and beautiful. Please contact Pat Moore for more information or to get involved next year! Thank you all again for your support.



All dressed up with a GREAT PARTY to go to! I not only got a babysitter, but I got a back-up just in case. AND IT WAS COMPLETELY worth it! I think just knowing that you're going to see so many friends just adds to the excitement because it took my breath away when we pulled into the Horizon Center this year with the beautiful lights and a large decorated tree that lit up the evening. The wonderful staff took our coats (Don't Worry... they gave them back at the end) and we got our name tags, which I'm a personal fan of because I hate having to run around the room asking what the name of the woman I just met was because then whom ever I ask gets complete brain failure and can't think of it either. The food was DELICIOUS and I'm not a big drinker, but the wine was particularly good, and the service was excel-



lent. It was wonderful visiting with all of you and I know I missed a few people because there is just never enough time, but you're on the top on my list for next year's party... I'm already looking forward to it. Thank you to Kelli Scorsone, Chris Radke, Katie Baluha, and all the others who made this possible and also to those who took the time to come and celebrate with us.



On Thursday, January 3, 2019, the SCBA held an open house to celebrate the 50th Anniversary of the District Court (Establishment). Everyone agreed that it was very well received from the presentation to the 140+ **HOMEMADE PROFESSIONAL STYLE** cupcakes made by Sue McGraw, which were extremely beautiful and super delicious. We also would like to send a big Thank you to Claudia Wallace and Terry Oeming along with all the others who helped the event run smoothly.

2019 GET READY FOR IT...

Saginaw County Law Day 2019 - March 21, 2019. This is the Mock Trial Competition Day and Pizza Luncheon for the High School competition. The SCBA and Schools have been working diligently to prepare all year.

The Saginaw County Lawyers Auxiliary is responsible for providing the performance raters for the competition. This is an EXCELLENT way to get involved!!!! It only takes a morning and you're done after free pizza.

The other activities for our celebration include these additional contests:

- Law Day Coloring Contest: Sponsored by Frankenmuth Kite Kraft (SCBA & SCLA) - students kindergarten and younger, and students 1st - 3rd grades are encouraged to participate,
- Poster Contest: 4th Grade Students have a chance to create and enter a poster contest with a cash prize, and
- Billboard Contest: Our Annual Billboard Contest Sponsored by Catholic Federal Credit Union is an art/design where students compete to have their design displayed on **ACTUAL BILLBOARDS!**

SCBA Law Day Luncheon – May 1, 2019

SCLA Spring Luncheon – May 15, 2019

Location for February's Auxiliary is still TBA. We will be sending an email for the time, place, and agenda or contact myself or any Auxiliary Members for details.

Best Wishes for an exciting New Year!



SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

REMINDER:

MEMBERSHIP ENROLLMENT FORM AND FIELD OF PRACTICE FORM were due January 1st. If you had difficulty submitting your form with our new electronic process, please contact me.

THE SUMMONS:

The subscription fee for mailed issues of *The Summons* is \$20.00 first year and regular members, \$15.00 Senior or Emeritus). If the subscription fee is not paid it will not be mailed to you, but you will still receive your issues through the listserv. So please provide an email address.

NOMINATIONS:

NOMINATION FOR ABA and SBM AWARDS - Please remember your fellow SCBA members and take a look at the ABA and State websites for nomination information about their many awards.

NOMINATIONS FOR LOCAL AWARDS:

LIBERTY BELL AWARD is presented in observance of Law Day; celebrated annually May 1st since 1958. This award is presented at the Law Day Membership Meeting on May 1st. The award honors one outstanding citizen whose selfless contributions have enriched our principles of life, liberty and the pursuit of happiness. The State Award Committee selects the Statewide Liberty Bell Award winner from local bar winners submitted to the State Bar by local bar associations.

F H MARTIN AWARD also presented in observation of Law Day, is given to a local attorney in recognition of the outstanding contributions made by F H Martin in support of Saginaw County Bar Association Law Day Program and are recognized in his memory for their exceptional service. This award is presented at the Law Day Membership Meeting on May 1st.

GOLDEN APPLE AWARD is sponsored by SCBA and SCLA and recognizes teachers who have made an outstanding contribution in law-related education programs. This award is presented at the pizza lunch for local mock trial teams, this year to be held March 21st.

Nomination for both the Liberty Bell and the F H Martin can be submitted in writing to SCBA - Law Day Committee; 111 S. Michigan Ave.; Saginaw, MI 48602 or scba@saginawcounty.com by April 1, 2019. The Golden Apple Award should be submitted by March 1, 2019.

COMMUNITY SERVICE AWARD is awarded at the SCBA Annual Meeting in June. It is awarded to a local attorney for an outstanding commitment to volunteer services.

Nominations can be submitted to SCBA Board of Directors; 111 S. Michigan Ave.; Saginaw, MI 48602 or scba@saginawcounty.com by May 1, 2019.

PRO BONO ATTORNEY OF THE YEAR AWARD and HONOR ROLL:

PRO BONO ATTORNEY OF THE YEAR AWARD is given through SCBA and LSEM. The award recognizes attorneys promoting an environment supportive of pro bono, including primary services to low income individuals or organizations. The award is presented at the Pro Bono Membership Meeting in October. To submit your name for the SCBA HONOR ROLL please turn in your hours to LSEM.

Nomination forms for Pro Bono Attorney of the Year are supplied in the September issue of The Summons and due October 1, 2019.



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



On January 1, 2019, the 70th District Court joined all other district courts statewide in celebrating the 50th anniversary of the district court system. However, celebrations have been occurring around the State of Michigan since June 2018, commemorating the passage of Public Act 154 on June 17, 1968, as amended, which serves as the foundation of the district court system.

Following the passage of Public Act 154, primary elections were held in August 1968 followed by the general election in November of 1968 to elect the first judges of the district courts. The following individuals served as the first district court judges in Saginaw County:

- Hon. William Glover Gage (1-1-1969 to 1971)
- Hon. Joseph P. Friske (1-1-1969 to 5-7-1975)
- Hon. Joseph L. Scorsone (1-1-1969 to 9-13-1979)
- Hon. Maurice L. van Benschoten (1-1-1969 to 12-31-1980)
- Hon. Harold W. Martin (1-1-1969 to 12-31-1982)
- Hon. Bruce J. Scorsone (1-1-1969 to 11-1-2000)

“THE PEOPLE’S COURT”

D1-CITY JOSEPH L. SCORSONE 1969-1979	D2 – COUNTY MAURICE L. VAN BENSCHOTEN 1969-1980	D3 – COUNTY HAROLD W. MARTIN 1969-1982	D4 – COUNTY BRUCE J. SCORSONE 1969-2000	D5 – CITY WILLIAM GLOVER GAGE 1969-1971	D6 – CITY JOSEPH P. FRISKE 1969-1975
HARRY M. TITUS 1979-1996	ROBERT E. BRIGHT 1981-1989	KYLE HIGGS TARRANT 1983-2016	DARNELL JACKSON 2001-2006	GARY R. MCDONALD 1972-1976	DANIEL R. WEBBER 1975-1990
M.T.THOMPSON, JR 1997-2016	CHRISTOPHER S. BOYD 1989-2012	DAVID D. HOFFMAN 2017	A.T. FRANK 2006	JOSEPH G. DEFRANCESCO 1977-2002	TERRY L. CLARK 1990
MANVEL TRICE, III 2016-2017				M. RANDAL JURRENS 2002	
ELIAN E.H. FICHTNER 2018					

Since its inception, Saginaw County has been served by 21 district court judges.

On December 31, 2018, retired District Court Judge Bruce J. Scorsone and current District Court Judge Elian E. H. Fichtner were guests on The Art Lewis Show (WSGW) and discussed the 50th Anniversary Celebration. As one of the very first district court judges, Judge Scorsone provided a rich history of the court and the changes he observed during his 30 plus years of service.



The Saginaw County Board of Commissioners joined in the 50th Anniversary Celebration on January 2, 2019, by having the court administer the new Board's oath of office. The celebration culminated in an Open House on Thursday, January 3, 2019, which welcomed retired Judges Bruce J. Scorsone, Jo-



seph G. DeFrancesco, Kyle Higgs Tarrant, and Christopher S. Boyd as well as former district court administrators Barbara Meyer and Cheryl Jarzabkowski.

During the Open House Saginaw County Board of Commissioners Chair Michael A. Webster presented the Court with a resolution acknowledging the milestone. The Saginaw County Bar Association also presented the court with a commemorative plaque. The court fur-

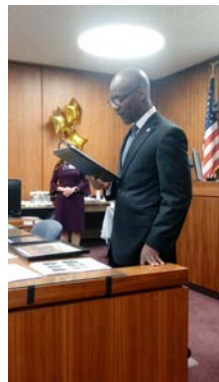


ther welcomed State, county and local officials, law enforcement, court employees and members of the general public for refreshments during the afternoon open house.

As one of Michigan's 102 district courts, which are often referred to as the "People's Court" (the general public has more interaction with the district court than with any other court in the state and many individuals go to district court without an attorney), it was an honor to



celebrate the 70th District Court's 50th anniversary. The Court and all of the individuals making up the Court are committed to serving the Saginaw County community with honor, dignity and respect now and well into the future.





DRUG TREATMENT COURT UPDATE

By: Judge Janet M. Boes

As we begin the new year, it is good time to reflect on the status of the Drug Treatment Court as well as other treatment courts and plan for the new year.

Information and statistics from 2018

The National Association of Drug Court Professionals [NADCP] presents the big picture for us and has noted the following national highlights for treatment courts (mental health, veterans and sobriety courts, as well as drug treatment courts) from 2018:

150,000 PARTICIPANTS SERVED	\$165M IN FEDERAL FUNDING	1,500 POSTIVE MEDIA STORIES
10,000 PROFESSIONALS TRAINED	250 IN-PERSON TRAININGS	5,500 CONFERENCE ATTENDEES

The Saginaw County Drug Treatment Court statistics for 2018 include the following:

- 46 participants – including 21 admissions;
- Drug of choice for those 46 participants were 4-crack cocaine, 12-heroin, 5-opiates (other), 13-cocaine, 8-poly drug, and 4-THC;
- 6 people successfully completed the program, with many others

still in the program looking to successfully complete in 2019;

- Average number of continuous sobriety days was 191.07;
- Average number of days in DTC was 324.2;
- Several participants transferred to other programs better able to meet their needs, such as mental health court.

Most participants begin the program with placement in residential treatment – for example, Odyssey House or TRI-CAP (Tri County Community Adjudication Program). In-patient treatment programs especially at TRICAP are coordinated with Saginaw Psychological so that the transition to outpatient status will include ongoing treatment with some of the same therapists. In addition, most treatment programs including Saginaw Psychological utilize Recovery Coaches to assist participants with continuing their sobriety and clean time.

Notably, TRI-CAP has recently added beds. During a recent open house we were able to see the artwork of one of our Drug Treatment Court participants decorating the walls – see photos on opposite page.

Challenges ahead

Due process issues and the rights of defendants are important. All of the participants in Drug Treatment Court have been indigent and many in the other specialty courts are as well. Unfortunately, the state and the county do not have an ongoing plan for payment of counsel for indigent defendants who participate in any of the specialty courts. Defense counsel in the specialty courts are specifically trained along with the rest of “the team” for each specialty treatment court and participate in team meetings, as well as court proceedings. During the next year, we hope to have the state and county as-



sist in establishing a plan for payment of treatment court counsel to ensure continuity, appropriate representation, and adequate compensation from year to year.

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.

As always, if you have any questions or concerns please contact our Coordinator Sue Smith: ssmith@saginawcounty.com.



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MICHIGAN'S NEW PAID MEDICAL LEAVE ACT

By: David Bryce
Masud Labor Law Group

On December 14, 2018, Governor Snyder signed into law the Paid Medical Leave Act (the "Leave Act"). The Leave Act requires employers with 50 or more employees to provide paid medical leave to certain employees. It is the culmination of the Legislature's efforts to minimize the negative impact of a ballot initiative that would

have been placed on the November 2018 ballot but for the intervening legislation.

March 29, 2019 is the effective date for the Leave Act. With the effective date rapidly approaching, labor and employment lawyers should become acquainted with how the Leave Act may impact their clients' businesses.

Who the Leave Act Covers

The Leave Act applies to employers with 50 or more employees ("Covered Employers"). For purposes of determining whether an employer has 50 or more employees, both full-time and part-time employees are counted.

Employers with 50 or more employees must provide paid medical leave to "eligible employees." The Leave Act defines "eligible employees" as those for whom an employer is required to withhold federal income tax - which, of course, is virtually every employee. There are, however, several significant exceptions, most notably:

- Employees exempt from overtime under the Fair Labor Standards Act;



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- Private sector employees covered by a union collective bargaining agreement;
- Employees working less than 25 weeks in a calendar year; and
- Employees working less than 25 hours per week on average in the preceding calendar year.

Employers should note that even though they are not eligible for paid medical leave, employees in excepted categories listed above nevertheless count toward whether an employer has 50 or more employees.

The Leave Act’s Requirements Regarding Accrual of Paid Leave

Eligible Employees must accrue paid medical leave at a rate of at least 1 hour for every 35 hours worked. Covered Employers, however, can

limit accrual of paid medical leave for eligible employees to no more than 1 hour per calendar week. Covered Employers can also limit both accrual and use of paid leave to no more than 40 hours in a consecutive 12-month period (“benefit year”). In addition, Covered Employers can limit carry over to no more than 40 hours of unused accrued paid leave from one benefit year to the next.

As an alternative to the accrual method described above, the Leave Act provides that a Covered Employer “may provide at least 40 hours of paid medical leave to an eligible employee at the beginning of a benefit year.” If a Covered Employer elects to “frontload” paid medical leave in this manner, there is no requirement that it allow any hours to carry over from one benefit year to the next.

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Covered Employers who already provide paid leave benefits of at least 40 hours per benefit year are presumed to be in compliance with the Leave Act. The presumption of compliance applies in cases where the already existing 40 hours of paid leave includes any combination of paid vacation, personal days, and paid time off.

Under the Act, leave for eligible employees begins to accrue on either the effective date (March 29, 2019) or the date of hire, whichever is later. Employers, however, may require that new employees wait 90 days before being able to use any accrued leave under the Act.

The Leave Act's Requirements Regarding Use of Paid Leave

The Leave Act provides that a Covered Employer must allow an eligible employee to use accrued paid medical leave for any of the following: (1) the eligible employee's own physical or mental injury or illness; (2) the physical or mental injury or illness of an eligible employee's family member; (3) the eligible employee's or his or her family member's need for medical care, counseling, relocation, or legal services relating to domestic violence or sexual assault; and (4) the "closure

of the eligible employee's primary workplace by order of a public official due to a public health emergency," or the eligible employers need to care for a child whose "school or place of care has been closed by order of a public official due to a public health emergency." The Leave Act's definition of "family member" does not include an eligible employee's domestic partner or his or her children or parents.

The Leave Act provides that employees may use paid leave in one-hour increments, "unless the employer has a different increment policy . . . in writing in an employee handbook or other employee benefits document."

Covered Employers are required to pay eligible employees using paid leave at a level at least equal to their normal hourly wage or base wage, and are not required to pay overtime, bonuses, tips, or commissions when an eligible employee uses paid medical leave.

The Leave Act provides that employers may continue to use their usual notice and documentation requirements with respect to an eligible employee's request to use accrued paid medical leave. An employer, however, must provide an employee with at least 3 days to provide any medical documentation.

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Enforcement

The Leave Act provides employees with the right to file complaints with the Department of Licensing and Regulatory Affairs (the “Department”) within six-months of an alleged violation. If the Department finds a violation occurred, it can award payment to an employee of any wrongfully withheld paid medical leave and can assess up to a \$1,000 administrative fine against an employer.

Covered Employers are required to display a poster at their place of business, in a conspicuous place accessible to employees, that includes the following information: (1) the amount of paid medical leave required to be provided to an eligible employee;

(2) the terms under which the leave may be used; and (3) the eligible employee’s right to file a complaint with the Department for any violation of the Leave Act. The Department will make posters available to Covered Employers.

Actions for Counsel

With the Leave Act taking effect on March 29, 2019, lawyers advising businesses with 50 or more employees should take steps to familiarize themselves with the Act so that they can be prepared to advise clients on how to comply with it. Masud Labor Law Group is available to provide assistance in addressing any issues that may arise with respect to the Leave Act.

Saginaw County Bar Association

Membership Meeting Guest Speaker – Dayna Harper Community Resolution Center

Thursday, February 28, 2019

noon

\$5.00

**Saginaw County Courthouse
Basement Training Room LL006**

RSVP: by Feb 14, 2019

989 790-5285 or scba@saginawcounty.com

Snacks will be available



BANKRUPTCY CASE NOTES

By: Jack Weinstein

Does an attorney have a valid non-dischargeability claim against a client who promises to pay his attorney fees in installments but subsequently files for a Chapter 7 bankruptcy seeking to discharge the balanced owed? That was the issue before the Ohio Bankruptcy Court in the case of David A. Schachter, Esq. v Michelle R. Verbeek (In re Michelle R Verbeek), 29 CBN 83, 2018 WL 4907840 (Bankr. N.D. Ohio 10/9/2018).

Plaintiff represented debtor in her divorce proceedings. She agreed to pay his fee in installments and promised throughout the proceedings that she would pay his entire fee. Plaintiff was in the process of completing a divorce settlement for his client when she filed for bankruptcy without telling him. The court held that debtor's rep-

resentation regarding her willingness to make monthly payments until plaintiff was paid in full was a material fact that made her previous representation false. She had a duty to disclose such intent before accepting plaintiff's ongoing legal representation of her.

Factually, in May of 2017, debtor agreed to pay plaintiff a \$2,500 retainer to represent her in her divorce action. Plaintiff stated that debtor repeatedly represented that she was financially capable of paying for his legal services plus costs. Further, she agreed to make such payments pursuant to a payment plan.

When the debtor was unable to pay her retainer fee, plaintiff agreed to accept \$1,000 along with monthly payments of \$400. In September of 2017, plaintiff asked the debtor to increase

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her monthly payments. Debtor agreed and paid plaintiff \$900 and increased her monthly payments to \$600.

Subsequently, debtor filed for Chapter 7 relief on May 30, 2018, plaintiff was in the final stages of negotiating a settlement in her divorce action. However, debtor never instructed plaintiff to cease representing her nor informed him that she sought to discharge her legal obligation to him in her bankruptcy. After she filed for bankruptcy, plaintiff filed an adversarial complaint asking the court to deny debtor's discharge pursuant to §727(a)(4)(C) (debtor knowingly and fraudulently promised to pay) and/or to deny the debtor a discharge of the creditor's claim pursuant to §523(a)(2)(A) (denial of discharge of a debt obtained by false representation, actual fraud, or false pretenses). Debtor moved for a judgment on the pleadings. Plaintiff's allegations addressed the debtor's assurances that debtor would pay him, her legal fees.

The court stated "at best these allegations relate to an alleged advantage sought by debtor with respect to plaintiff's particular claim for legal fees and expenses. They do not allege efforts of debtor to subvert the bankruptcy process in the underlying bankruptcy case. Plaintiff has not stated a claim under §727(a)(4)(C)". The court

granted debtor's motion to set aside that allegation in plaintiff's complaint. However, the court denied the debtor's dismissal motion that plaintiff's claim citing 523(a)(2)(A) claiming that debtor never intended to pay plaintiff in accordance to their agreement; and, she misrepresented her financial conditions to plaintiff. The court denied debtor's motion to the extent that plaintiff asserted that debtor concealed her intentions to file for bankruptcy. The court stated "a failure to disclose material facts can amount to a misrepresentation where there is a duty to disclose." Further, "plaintiff's allegations that he continue to represent debtor in her divorce proceedings in reliance of her representation that she would continue to make monthly payments to him until he was paid in full, that he was in the midst of settlement negotiations in her divorce proceedings when she filed her bankruptcy petition seeking a discharge of any debt owed to him, and that debtor never informed plaintiff that she was filing bankruptcy, when viewed in a light most favorable to plaintiff, permits an inference of fraudulent intent. After debtors representation of debtor's willingness to make monthly payments until plaintiff was paid in full, her intent to file bankruptcy was a material fact that would



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make her previous representations untrue. She had a duty to disclose such intent before accepting plaintiff's ongoing representation in her divorce case. A reasonable inference could be made that debtor did not purposely disclose her intent to file bankruptcy in order to

continue receiving plaintiff's legal services. Debtor's motion for a Judgment on plaintiff's §525(a)(2)(A) claim was therefore denied to the extent that plaintiff's claim alleges non-dischargeability based on fraudulent non-disclosure of debtors intent to file bankruptcy.



SAVE THE DATE



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June 20, 2019

SCBA Golf Outing and Annual Meeting
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SCBA will hold Mock Trials on March 21, 2019 at 9:00 AM. Please stop by to watch your favorite high school compete. Our script was written by Genesee County Bar Association and loaned to SCBA for our Mock Trials. While we do honor the ABA theme for our contests, our mock trials are not always based on their theme. Our local trial theme is *Texting while Driving*.

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