



# THE SUMMONS

## Saginaw County Bar Association

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**FRANK M. POLASKY**  
10/17/1926 - 9/18/2016



**JOSEPH J. TROGAN SR.**  
9/1/1924 - 9/9/2016

# MEETING DATES FOR 2016-2017

*(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 noon)*

## **Memorial**

*Joseph J. Trogan Sr. & Frank M. Polasky  
Thursday, November 10, 2016 11:00 AM*

## **2016-17 Membership Meetings**

*Wednesday, January 18, 2017 12:00 noon*

*Thursday, March 9, 2017 12:00 noon*

*Law Day Membership Luncheon*

*Thursday, April 27, 2017 12:00 noon*

## **Pro Bono Committee Meeting**

*(All PBC Meetings will be held at Court Street Café, 3rd Tuesday of every month at 12:00 noon)*

## **Annual SCBA/SCLA Holiday Party**

*Tuesday, December 13, 2016*

## **Law Day Events**

*(All LD Meetings will be held in the SCBA Office (basement of courthouse) 2nd Tuesday of every month at 12:00 noon)*

Law Day Mock Trials

**\*\*NEW DATE\*\* -**

Thursday, March 23, 2017 9:00 AM

Law Day Membership Luncheon

Thursday, April 27, 2017 12:00 noon

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



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## CLASSIFIED ADS

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*The Saginaw County Bar Association accepts classified advertising of 30 words or less. The rate is \$15 for attorneys and \$30 for non-attorneys for one issue. This is the ideal way to inform your colleagues about selling equipment, practices, homes, cottages, or vacation property for rent or sale, leased office space available, etc. If you are interested in placing a classified ad, please submit it in writing to the Assistant Editor, Ann R. Van Haute, 4301 Fashion Square Blvd., Saginaw, MI 48603, or email: [annvan@braunkendrick.com](mailto:annvan@braunkendrick.com).*

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# THE SUMMONS

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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.



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## PRESIDENT'S MESSAGE

By: Katheryn A. Houck

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Welcome to November. As we approach the Thanksgiving holiday, I am reminded of the reason for the season. It is a time to acknowledge and give thanks to those who have helped us in the past year. I want to take this opportunity to say thank you to all our members who donate either time or money (or both) to pro bono services. Last month we honored all of our membership for their dedication to this cause. This year we again honored those members at the October 27th Pro Bono Luncheon. Special thanks are extended to Valerie Kutz-Otway as the 2016 Pro Bono Attorney of the Year.

I also had the privilege of accepting the Pro Bono Proclamation from the City of Saginaw at their council meeting on October 24, 2016 on behalf of the SCBA and Chris Radke accepted the Pro Bono Proclamation from the Saginaw County Board of Commissioners on October 18, 2016 for the SCBA.

We are going to once again have our silent auction during the Christmas party on December 14, 2016. Anyone who would like to make a donation for this event is asked to contact, Terry Oeming, Kelli Scorson, or myself. We are hoping for a great turnout for the

Christmas Party and a great auction. The proceeds will be split 50/50. The SCLA has elected to use the funds raised for additional scholarship opportunities and the SCBA will use our funds to donate to various community projects.

I recently attended another meeting regarding the overall security of the courthouse. At this meeting Lance Dexter, Court Administrator, advised that there are now four rooms available on the fourth floor that attorneys can use for meetings, either with clients or between attorneys. Two of the rooms (Room numbers 414 and 416) are located in the far north hallway leading into the jury room. As well in the hallway is the Lawyer's Lounge which can be used for attorneys to meet. The fourth room is the Case Evaluation Room 412. Unfortunately, space on the third floor is still needed and does not have similar options. The Honorable Fred Borchard has indicated that he is open to hearing any suggestions that you have on these subjects.

I wish everyone a great Thanksgiving holiday and safe travels.



**The Saginaw County Bar Association**

**will hold a Memorial Recognition**

**honoring**

**Joseph J. Trogan Sr.**

**and**

**Frank M. Polasky**

**on Thursday, November 10, 2016**

**at 11:00 AM**

**in the Probate Court**

**Honorable Patrick McGraw presiding**

**Saginaw County Courthouse**



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## **IN MEMORIAM**

**None**

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





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## REMEMBERING FRANK M. POLASKY

By: Larry Preston

---

Thirty-four years ago, almost to the day, I started working with Frank Polasky. His recent passing stirred in me many recollections and emotions. I recall sitting down with him in his law office for the first time. His walls were covered with family photographs, awards, stamp collectibles and art. Each item having special meaning to him and a reflection of the many facets of his life. Frank was a man with many interests and passions. One passion was his unique filing system. His desk, credenza and floor were always covered in files. In our first meeting I noticed he had a big black leather couch that also was stacked with files. I was to later learn that his couch was part of his permanent filing system.

This first meeting was a turning point in my life.

How many people have impacted you to the extent of changing the course of your life? Frank was one of those people for me. Frank was a wonderful mentor. Soon after joining his office I was invited to client meetings. These meetings were a tremendous learning opportunity as Frank was an exceptionally gifted and creative business and tax attorney. He had passion for his clients, and his counsel helped lead them through their challenges in ways only a person who understood and

cared could do. Caring for others was part of Frank's DNA. He gave his time, expertise and money to countless non-profit organizations. Giving back to the community is yet another example of how he shaped my thinking about life.

Frank was a wonderful ethical issues mentor. Early in my career a client asked me to backdate documents. I knew this was wrong. The question was how to handle the situation. So I went to Frank. He told me never to compromise my reputation or put my law license in jeopardy. He emphasized the point by telling me that no client was that important and if that's the kind of attorney they wanted they could go elsewhere.

Frank's belief in me was the element that made our relationship special. He encouraged me to meet with clients on my own and strive to become an expert in business and estate planning. He sent me to national conferences so I could learn what the leading experts in the country were doing. And he reassured me that he was always there for me if I needed help.

It saddened many of us to no longer have Frank's counsel. But he left an endearing legacy. He believed in me and I like to think he loved me. I loved him.



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## PORTRAIT OF A LAWYER JOSEPH L. TROGAN, SR.

By: Barbara Trogan Tomcal

---

Joseph J. Trogan, Sr., was the third child of four born to Nicholas Trogan and Josephine (Accetta) Trogan. He was a first generation Italian-American and very proud of his Italian heritage. He served in the United States Army, was stationed in India and reached the rank of Sargent. After the service he enrolled in Bay City Junior College, attended the University of Michigan, and the University of Michigan Law School under the GI Bill.

Joe married my mother, Betty Jean Corbett in 1949, and they have five children, me, the oldest, my brother, Joseph J. Trogan, Jr., and my sisters, Yvonne Snyder, Elaine Vlassis and Ann Marie Fitch. We all worked for my father either at his law office or at the restaurant/bar he owned, first named Del Mondo's then as Gable Gardens.

Dad set up his law practice in 1956 in the Ippel building. He told me when he first started practicing law, he didn't know how to even prepare a deed because they did not teach practical law in law school. However, if my Dad did not know something of a legal nature (God know, he wasn't mechanically inclined) he researched the subject until he knew everything about it.

My Dad was a plaintiff's personal injury attorney. During one trial, my

Dad's client was having a heart attack, and the defense counsel accused my Dad of courtroom theatrics, but the client was really having a heart attack and 911 was finally called. Dad also handled some domestic relations cases, one of the more infamous ones was the couple that were fighting over the custody of the family dog. That case made the Saginaw News.

Dad was not afraid to appeal a ruling he did not like. One of his appeals, a published opinion, changed the impact of a nolo contendere plea in civil cases involving the same party.

Dad was respectful to the Court and prepared to present his case. He had a briefcase full of candy for the court staff.

Dad with other seasoned attorneys formed the Saginaw County Senior Circuit Pro Bono Bar Association. Those meetings were always lively.

My dad encouraged me to go to law school, which wasn't my childhood ambition. But I did go and graduate from Cooley Law School. My dad was my sponsor when I passed the bar. He was someone I could bounce off ideas regarding my cases, not that I always took his suggestions, and someone I deeply admired professionally and hope to follow in his footsteps as an attorney.



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## SAGINAW COUNTY LAWYERS' AUXILIARY

By: Terry Oeming

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Fall is in the air, and change is coming. The Michigan Lawyers Alliance voted in a slate of officers, including Judy Weldy and Mary Ann Farris, as co-presidents, then voted to go to inactive status this year. This does not mean dissolution of the organization. It does mean, however, that the MLA has appointed an Executive Committee whose job is to disperse the MLA funds to the current active local Auxiliaries and to wrap up any current projects. The co-presidents and five others representing the other active auxiliaries were charged with making all executive decisions on behalf of the membership. The MLA can be reactivated in the future, or it can vote in future to dissolve. Currently, the status of the American Lawyers Alliance is reported to be in good shape, and local

members are being urged to join.

The SCLA Fall Luncheon was held at the Saginaw Country Club on September 29th, where twenty-three members and friends enjoyed a Mexican-themed meal and Mrs. Olivares' famous Tres Leches cake. Hostesses Ethel O'Neill and Pam Jarema outdid themselves in providing delicious fare setting the tone for social comradery in a most pleasant setting. Our next social event was scheduled for Wednesday, October 12th, at the McColgan Gallery, where Suzie McColgan was prepared to instruct the members and friends in painting a "masterpiece." Appetizers and beverages brought in by Auxiliary members for the social time preceded the painting lesson, and all set out for home with a beautiful work of art. Great fun!

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Fall Luncheon hostesses Pam Jarema and Ethel O'Neill, 9-29-16.



MLA meeting 9-22-16, including seated Co-Presidents Mary Ann Farris and Judy Weldy.

In November, the Auxiliary will sponsor our annual Poinsettia and Wreath sale to benefit the scholarship fund. Please be generous and bless your friends, employees, family members, and special people with flowers or a wreath by ordering them from Pat Moore who is chairing this event: (989) 245-3545. Poinsettias come in Pixie, Small, Medium, and Large and your choice of White, Red, or Pink. Wreaths come in Small, Medium, and Large and your choice of bow colors: Silver, Gold, or Red. Other items such as Garlands may also be available.

Coming in December is the SCBA/SCLA Holiday Party. We're truly hoping not to be snowed out or cancelled by a power failure as happened last year! Kelli Scorsone will be taking reservations for this very enjoyable evening. Rumor has it that a silent auction may spice up the event. Plan to get together with colleagues and friends to kick off the Holiday season.

If you or anyone you know is interested in joining the SCLA, we are always delighted to welcome new members. Contact me at 692-0322 or [toeming@gmail.com](mailto:toeming@gmail.com). Happy Thanksgiving!

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# SCLA PROGRAMS

## 2016-2017

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September 17, 2016  
**CONSTITUTION DAY**

September 29, 2016  
**FALL LUNCHEON**  
Saginaw Country Club  
11:30 a.m. Social  
12:00 noon Lunch  
Chairpersons  
Ethel O'Neill and Pam Jarema

October 12, 2016  
**PAINT WITH SUZIE**  
BYO Appetizers and Beverage  
The McColgan Gallery  
116 S. Michigan 48602  
5:30 p.m. Social  
6:30 p.m. Painting  
Chairperson  
Terry Oeming

October 20, 2016  
**RED MASS AT ST. DOMINIC**  
(St. Stephen Parish )  
Volunteers: call Kelli Scorsone

November 2016  
**WREATH AND POINSETTIA SALE**  
Benefit for Scholarships  
Orders due Friday, November 18, 2016  
Pick up date  
Wednesday, December 7, 2016  
Pick up location  
Case's on Hamilton Street  
Chairpersons  
Pat Moore and Claudia Wallace

December 13, 2016  
**SCBA/SCLA CHRISTMAS PARTY**  
Saginaw Country Club  
5:30 p.m.  
Coordinator  
Kelli Scorsone

January 2017--Date TBA  
**SIX-COURSE DINNER**  
**AT THE MAPLE GRILLE**  
Benefit to support our scholarship fund!  
(Sunday)  
Chef Josh Schaeding  
13105 Gratiot Rd. Hemlock MI 48626  
Chairpersons  
Terry Oeming and Kim Mair

February 2017--Date TBA  
**COOKING DEMONSTRATION**  
**AT THE MAPLE GRILLE**  
6:00 p.m.  
(Monday) Chef Josh Schaeding  
13105 Gratiot Rd. Hemlock MI 48626  
Chairpersons  
Terry Oeming and Kim Mair

March 23, 2017  
**SAGINAW COUNTY**  
**LAW DAY CELEBRATION**  
Morning---Mock Trials  
Chairpersons:  
Mary Ann Farris, Claudia Wallace, and  
Judy Weldy  
Awards presented at individual  
schools

April 2017--Date TBA  
**A NIGHT OF PAMPERING**

Spa Event  
The Willows Spa  
5820 Gratiot Rd.  
5:30 p.m.  
Chairpersons  
Elissa Basil and Carrie Burns  
RSVP to Elissa at 799-1604  
(Limited to 20)

APRIL 26, 2017

**SPRING PLANTING FUNDRAISER**

Boehler's gift cards  
To support our charitable giving fund!  
Chairperson  
Claudia Wallace

MAY 2017--DATE TBA  
**SPRING LUNCHEON &  
INSTALLATION OF OFFICERS**

11:30 a.m. Social Time  
12:00 Noon Luncheon  
Place TBA  
Chairpersons  
Denise Clack and Jennie Jordan

Ongoing dates

**COURT HOUSE TOURS**

9:00-11:00 a.m.  
Scheduled by individual schools  
Chairpersons  
Pam Jarema and Claudia Wallace



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*SAGINAW COUNTY BAR ASSOCIATION  
PRO BONO HONOR ROLL 2016*

~Gold~

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Susan Brady  
William Cowdry  
Thomas Fancher  
Julie Gafkay

Donald Gilbert  
William Jungerheld  
Valerie Kutz-Otway  
John Lozano

Jamie Nisidis  
James O'Neil III  
Bruce Petrick  
Patricia Rehmann  
Anne Schulte

~Silver~

Contributed between 15 and 30 hours or \$150 - \$300

Richard Alger, Jr.  
Peter Bagley  
Katherine Baluha  
Thomas Basil, Jr.  
Lori Bommarito  
Lane Clack  
Tobin Dust

Elian Fichtner  
Norman Harrison  
Eldor Herrmann  
Robert Jarema  
Clayton Johnson  
Floyd Kloc  
Thomas Lawler

Masud Labor Law Group  
Hon. Daniel Opperman  
Scot Putzig  
Justine Sylvester  
Douglas Taylor  
Diane Thompson  
Barbara Tomcal  
Trojan and Trojan PC

~Bronze~

Participation or Financial Contribution

David Alexander  
Christ Anagnost  
Hon. Janet Boes  
Caitlin Borchard  
Alexandria Brady  
Otto Brandt  
Sharon Burgess  
Hon. Terry Clark  
Joseph Collison  
Andrew Concannon  
Travis Dafoe  
Manda Danielecki  
Sheila DiBerardino  
Alan Ells  
David Fisher  
Debra Freid  
Cynthia Fullwood  
Edward Gallagher II  
Katherine Gardner  
Stephan Gaus

Jessica Gentile  
Corey Grandmaison  
Heather Gust  
Danelle Harrington  
Daniel Himmelspach  
David Hoffman  
Katheryn Houck  
John Humphreys  
Kelli King-Penner  
Michael Kitson  
Michael Krempa  
Andrea LaBean  
Hugh LeFevre  
Thomas Luplow  
Karen McNish  
Diana McParlan  
Howard Maturen  
Timothy Moore  
Elan Nichols  
James O'Neill III

Frederick Overdier  
Christopher Radke  
Joshua Reinert  
Steve Seman  
John Shinnors  
Michael Shovan  
Michael Sovansky  
Daniel Straka  
Phillip A. Sturtz  
Christopher Swartz  
John Swartz, Jr.  
Andrew Titus  
Alan Walton  
Jack Weinstein  
Michael Weiss  
Karl Weyand, Jr.  
Sharon Withers  
Karl Weyand, Jr.  
Sharon Withers  
Darrell Zolton



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## 2016 PRO BONO AWARDS

By: Marilyn Hackett

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The 2016 Holli Wallace Memorial Pro Bono Attorney of the Year Award was presented to Valerie Kutz-Otway at the Pro Bono Appreciation Luncheon during National Pro Bono Week. Ms. Kutz-Otway was recognized for her outstanding level of service to Legal Services of Eastern Michigan. She contributed over 60 pro bono hours in the past year which includes case referrals, Ask the Lawyer, the Veterans Legal Advice Clinic, the LSEM Legal Advice Clinic, and as Chairperson for the SCBA Pro Bono Committee. Although not required, she also attends the Annual Pro Bono Workshop at the State Bar. Many times she has accepted pro bono case referrals on an emergency basis and with little notice.



Valerie is a Member of the Probate and Estate Planning, Elder Law and Disability, and Veterans Law sections of the State Bar of Michigan. She also serves on the Board of Directors for HIS Restoration Ministries, an organization that provides shelter and counseling for homeless expectant mothers.

Congratulations also to those attorneys who received the SCBA Gold Award, which recognizes pro bono participation that exceeds the State

Bar Voluntary Standard of 30 hours or \$300. Congratulations to the following attorneys who received the Gold Award:

CAROLYN BERNSTEIN  
SUSAN BRADY  
WILLIAM COWDRY  
THOMAS FANCHER  
JULIE GAFKAY  
DONALD GILBERT  
WILLIAM JUNGERHELD  
VALERIE KUTZ-OTWAY  
JOHN LOZANO  
JAMIE NISIDIS  
JAMES O'NEIL III  
BRUCE PETRICK  
PATRICIA REHMANN  
ANNE SCHULTE

Thank you to all attorneys on the SCBA Pro Bono Honor Roll. Your service is deeply appreciated. If you are not currently a volunteer, please consider joining the Pro Bono Panel. Any amount of time you can provide would be greatly appreciated. Your participation would help address the huge unmet legal need in Saginaw County. To sign up for any type of participation, please contact Marilyn Hackett, LSEM Pro Bono Coordinator, at 800-322-4512, ext. 145 or [mhackett@lsem-mi.org](mailto:mhackett@lsem-mi.org).



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## SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

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### 2017 MEMBERSHIP ENROLLMENT FORM AND FIELD OF PRACTICE FORM

Please make sure you retrieved the above forms included in this issue of The Summons. The forms will also be sent over the listserv several times, and, available on the SCBA website. Prompt payment saves SCBA time and money so please return by the due date, which is January 1, 2017.

The SCBA FIELD OF PRACTICE is still offered at the same low price. It is posted on the SCBA website, which gets hundreds of hits; the FOP book is mailed to people who call the SCBA looking for an attorney; and, distributed to County libraries.

Also, do not forget to fill out page two of the Enrollment Form. It asks for important information about you and your practice.

\* \* \*

### REMINDER - WHEN SENDING EMAILS TO THE LISTSERV

The address is [scba@saginawbar.org](mailto:scba@saginawbar.org). The **.org** is what gets it to the listserv, so remember when sending to that address it goes to the entire listserv, all members.

\* \* \*

**REMEMBER TO  
VOTE** on November  
8th.

Good luck to all  
SCBA Candidates.



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## A CONTRACT IS A CONTRACT EXCEPT WHEN ITS A UNION CONTRACT

By: Joshua J. Leadford  
Masud Labor Law Group

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The Sixth Circuit recently ruled that federal labor law, rather than state law, must be applied to determine whether a collective bargaining agreement has been formed between respective parties. In *Sheet Metal Employers Industry Promotion Fund v Absolut Balancing Co., Inc., et. al.*, 2016 U.S. App. LEXIS 13094 (July 18, 2016, 6th Circuit), two multi-employer funds sued to enforce arbitration awards issued against five employers. The employers, however, contended that they were not parties to the underlying collective bargaining agreement which contained the arbitration provision and, thus, should not be bound to the arbitrator's decision.

The District Court ruled that because collective bargaining agreements are contracts, state law should be utilized to determine whether or not the collective bargaining agreement was enforceable against the employers. Ultimately, the issue of whether federal or state law applied to settle issues concerning the formation of a collective bargaining agreement was submitted for interlocutory appeal to the Sixth Circuit.

The Sixth Circuit reversed the District Court. The Sixth Circuit reasoned that while many general contract cases, even those dealing with arbitration provisions, are governed by state law a

collective bargaining agreement is itself not an "ordinary contract." According to the Sixth Circuit, "the practical realities of collective bargaining oblige us to reject traditional contract law in favor of federal labor law." Therefore, the Sixth Circuit ruled that federal labor law must be applied to determine whether a col-



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lective bargaining agreement exists, and whether a specific employer is bound to the terms of the particular agreement.

The Sixth Circuit did not apply its ruling to the facts of the case. Instead, the factual question of whether or not the parties were bound to the collective bargaining agreement remained a question of fact that had to be settled at the District Court.

Under the *Sheet Metal* decision, traditional rules of contract formation created by Michigan law may offer little guidance to a practitioner who is tasked to determine the extent of an employer's contractual obligations relating to a collective bargaining agreement. The same could be true regarding an employer's obligations under a number of other labor related agreements such as letters of understanding or multi-

employer pension fund documents. Instead, the duty to bargain imposed by the National Labor Relations Act and the case law developed under its statutory precepts will control.

As a result, any number of traditional defenses applicable to general contract formation may not apply in the collective bargaining context. Indeed, an argument that a specific employer did not sign a particular agreement will provide little defense to an allegation the employer is the successor or alter ego of another business entity. For these reasons, non-labor law specialists who may represent clients in matters involving collective bargaining agreements, such as in mergers and acquisitions, will need to take special care to fully consider the federal labor law implications which may lurk in the dark.

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## **NOTICE OF TERMINATION OF ATTORNEY/CLIENT RELATIONSHIP**

By: Susan K. Prine - Saginaw County FOC

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Please see the attached form which is going to be required to be filed with the Clerk's office, when a pending matter has been resolved and you wish to have your name removed by the Clerk, so that your name no longer appears as attorney of record. This issue has presented a problem for quite some time, because if your name is not removed, you continue to receive pleadings/notices filed by the Friend of the Court, and any notices sent out by the Court. Often times, when the Friend of the Court sends pleadings/notices, many of you have called the Friend of the Court, indicating that you no longer represent the party.

In addition, if your name continues to be on the Clerk/Court records, as attorney of record, then the dockets printed for the Court on motion day indicate you are representing the party, when in fact, you are not.

Therefore, if a Judgment of Divorce is entered, you must then use this form to make sure that the Clerk removes your name as attorney of record. If within the Judgment of Divorce it states that the attorney/client relationship is terminated, please still file this form, just to make sure your name is removed. All issues must be resolved before

Judgment of Divorce is entered. The only exception is if child support needs to be recalculated/updated and the matter needs to go back to the referee. If this is the case, there should still be an amount of support ordered in the Judgment, but a separate order must be entered to refer support to the referee. Also, the attorneys must remain as attorneys of record until the child support matter is resolved and an order is entered. At that point, this attached form would be completed and filed with the Clerk so that your name is removed as attorney of record.

This form must also be used in any post judgment matters. If you file an appearance on a post judgment matter, then when that matter is resolved by entry of a final order, you must file with the Clerk this form to have your name removed as attorney of record.

Thanks.

This form, and this article is coming from me, Sue Prine, FOC, but at the directive of the Chief Judge, Fred L. Borchard. So from this point forward this is required, as set out above.

STATE OF MICHIGAN  
IN THE 10<sup>TH</sup> JUDICIAL CIRCUIT COURT – FAMILY DIVISION

\_\_\_\_\_  
Plaintiff,

File No. \_\_\_\_\_

v

\_\_\_\_\_  
Defendant.

\_\_\_\_\_ /

NOTICE OF TERMINATION OF ATTORNEY/CLIENT RELATIONSHIP

All pending matters before this Court regarding the above entitled case have been concluded at this time, as represented by the Order/Judgment addressing the issues between the parties. As there are no further pending matters before this Court regarding the above entitled case, let this serve as notice to the 10<sup>th</sup> Judicial Circuit Court Clerk, that as of \_\_\_\_\_, the attorney-client relationship between \_\_\_\_\_(Attorney), and \_\_\_\_\_(Party), is terminated.

\_\_\_\_\_(Attorney), for \_\_\_\_\_(Party), requests that, due to the resolution of all issues between the parties on the above entitled case (or any pending issues where the party has not retained the attorney), the Circuit Court Clerk remove his/her name as attorney of record from the case information screen.

\_\_\_\_\_  
DATE \_\_\_\_\_, Attorney

CERTIFICATE OF MAILING

I certify that on this date I mailed by ordinary mail with first class postage fully prepaid a copy of the foregoing to the parties (counsel if opposing party is represented) and the Saginaw County Friend of the Court.

\_\_\_\_\_  
Date of Mailing \_\_\_\_\_ Signature

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## BANKRUPTCY CASE NOTES

By: Jack Weinstein

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*Can a Chapter 7 debtor list as a countable monthly expense repayment of student loans?* That was the issue before Bankruptcy Judge, Daniel S. Opperman, in the case of Vicky Sue Jones, Case No.: 15-32931, decided on August 24, 2016. In that case, debtor who was a registered nurse, claimed a combined monthly income of \$3,212.00 reduced by her monthly expenses of \$3,210.00 which included student loan repayments at \$500 per month. One of her creditors had been garnishing her wages resulting in a \$656 per month reduction in her take home pay. Debtor filed for bankruptcy on December 14, 2015. The US Trustee filed a motion to dismiss her Chapter 7 case because of the claimed \$500 monthly tuition loan repayment. The trustee claimed that was not a valid deduction which

if eliminated would result in a monthly dividend to her unsecured creditors in the amount of \$500 representing a payment of approximately 20% to her unsecured creditors if she were in a Chapter 13 plan.

Debtor owed approximately \$131,400 in student loans. The Means Test determined that debtor's gross annual income was approximately \$59,000 and approximately \$58,800 pursuant to her Schedule I. Her Schedule J list of monthly expenses was \$3,210 which the court determined were reasonable except for the \$500 repayment of her student loans.

Debtor's original voluntary petition answered question 16 stating that her debts were primarily consumer debts; however, on March 2, 2016, debtor amended her voluntarily petition to

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change her answer to read that her debts were neither primarily consumer debts nor were they primarily business debts. Debtor was then required to answer the question set forth on line 16c which was to state the type of debts that she owed. She failed to answer that question. She also amended her voluntary petition regarding the means test and filed a statement of exemption from abuse assumption stating that her debts were not primarily consumer debts.

At the March 30, 2016, hearing, the US Trustee argued that the student loans should not be given preference over other unsecured creditors since her monthly loan repayment of \$500 represented such a preference. Therefore, the US Trustee urged the court to either dismiss the case or allow debtor the opportunity to convert her case to a Chapter 13 case.

Debtor disagreed with the Trustee's position arguing that the conversion to a Chapter 13 case would not allow her to take advantage, at a later date, of the many loan repayment reduction programs that might be available to her. Further, if the US Trustee's position was upheld, then the debtor would actually owe more money in deferred interest and possible other costs at the end of

her Chapter 13 proceedings regarding her student loans.

Therefore, the issue was whether a student loan obligation constituted a consumer debt for purposes of §707(b)? Debtor argued that her student loan debt was not a consumer debt since the bulk of her indebtedness consisted of student loans; and, therefore, §707(b) was inapplicable.

Judge Opperman in determining whether a debt is a consumer debt or not referred to the term's definition per §101(8) which states that it is a "debt incurred by an individual primarily for a personal, family, or household purpose". The Judge noted that other courts that examined the issued focused on the purpose for which the debt was incurred; and, what the primary purpose of the debt was when it was incurred to determine whether or not the debt is or is not a consumer debt.

The 10th Circuit, in the case of Stewart v United States Trustee (In re Stewart), 215 B.R. 456, 465 (B.A.P. 10th Cir. 1997), determined that student loans were not consumer debts finding that the primary purpose for which the loan was incurred was a factual determination examined on a case by case basis. In Stewart the court noted that

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“there may be circumstances in which the debtor can demonstrate that the student loan was incurred purely or primarily as a business investment, albeit an investment in herself or himself, much like a loan incurred for a new business”. It is also possible for a student loan to be a consumer debt when the loan is incurred for the purpose of supporting one personally or supporting one’s family.

Judge Opperman determined that there was no need to do an analysis since the primary purpose of debtor’s student loans were for educational purposes; and, therefore, were not to be considered as a consumer debt. Further, debtor’s amendment to her voluntary petition on March 2, 2016, represented a deliberate change in positions by the debtor in response to the US Trustee’s dismissal motion; and, therefore, was done with the motive of attempting to make §707(b) inapplicable when she changed her original position which was that the student loan was a consumer debt to later stating that somehow it had lost that characterization after the US Trustee filed its motion.

Because §707(b) applies to the debtor, the court turned its analysis to determining whether debtor’s Chapter 7 case should be dismissed for substantial

abuse. There was no evidence before the court that debtor had incurred extravagant expenses or led a lavish lifestyle. In fact, after payment of her student loans, debtor had very little money left over. Further, the court noted that debtor had not attempted to negotiate a repayment plan of her Judgment or attempted to enter into an installment payment plan agreement or even attempted to adjust her student loan payments. Therefore, the court concluded that the US Trustee’s motion to dismiss should be granted and the case dismissed but only after the debtor was afforded an opportunity to determine whether she wished to convert to a Chapter 13 case. The court allowed debtor 21 days to file a pleading requesting conversion to a Chapter 13 case; otherwise, the court would dismiss her Chapter 7 case.



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