



THE SUMMONS

Saginaw County Bar Association



SCBA Office

MEETING DATES FOR 2016

(Go to www.saginawbar.org for meeting updates)

Board Meeting

(Meetings will be held at Saginaw Country Club, 1st Wednesday of every month at 12:00 PM)

Law Day

Law Day Committee Meetings

(All Law Day Committee Meetings will be held in the SCBA Office in the basement of the Saginaw County Courthouse at 12:00 PM the 2nd Tuesday of the month)

Law Day Celebrations

Law Day May 1, 2016

Mock Trials Thursday, April 28, 2016

Award Ceremony - TBD

Miscellaneous Law Day Events - TBD

Pro Bono Committee Meeting

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

Pro Bono Week October 23 - 29, 2016

SCBA Membership Meetings

Speaker - Underground Railroad, Date - TBD

Speaker - ZeekBeek, Date TBD



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

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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 Hautte, 4301 Fashion Square Boulevard, Saginaw, Michigan 48603 • (989) 498-2100.



PRESIDENT'S MESSAGE

By: Nathan J. Collison

Fellow Members,

On behalf of your Board of Directors, I hope that everyone had a safe, happy, and enriching holiday season. Now that the celebrations have ended, and life and work have begun to return to normal, it is time to look ahead to 2016 and the promise it brings. For the Saginaw County Bar Association, there are exciting things on the horizon.

As many of you know, 2016 is a composite picture year. For the last several decades, these pictures have been taken every five years. The turnout for this project is always great, and we hope to continue that tradition this time around. You have to be a member to be included in the composite, so please pay your dues and encourage

your colleagues who are not members to join and be included in the composite. Remember: this picture will hang prominently in the lobby of the courthouse for the next five years. Several e-mails have gone out regarding the picture packages, sitting information and scheduling, and picture package details. You can also find that information later in this issue of the *Summons*, or contact Paetz Photography at (989) 792-4971.

2015 turned out to be a transition year for our organization. We saw new court administration, heightened court security, and changes to the way we do business as attorneys. Soon, the substitute lawyer's lounge on the fourth floor will revert to an attorney conference room. Accordingly, ID ac-

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cess cards for our new office/lounge remain available through the Sheriff's Department.

Another aspect of our organization that is undergoing a transitional period is this publication. Over the last several decades, The Summons has become a staple in the Saginaw legal community. Issues can be found in nearly every law office in the county. For many attorneys, time is set aside from their usual routine the day their copy of The Summons arrives. As is the case with so many things today, the rising cost of printing and postage has outpaced the revenue generated by our gracious advertisers. The result is that The Summons is no longer sustainable. In fact, in the early months of 2015 many of our advertisers were looking to cancel their advertisements in favor of more modern and effective marketing strategies. Fortunately, we were able to convince them of the value of their continued support of our publication.

You may have notice that, recently, you have been receiving digital copies of The Summons in your e-mail. While the "bugs" are still being worked out,

this is the format to which The Summons is transitioning. In conjunction with our new website, www.saginawbar.org, the Summons will begin a transition to an on-line only format wherein The Summons will be e-mailed to you and also hosted on the website. This new format will also allow us to host PDF versions of every back issue of The Summons that we can find, as well as offer our advertisers "active advertising" that allows the reader to click an ad or phone number and be directed to the advertiser's website or call them directly. You can begin to "opt in" to this new format on your own by sending an e-mail request to scba@saginawcounty.com. **Please be advised that The Summons will be available in a digital format only beginning in June of 2016.** Accordingly, please ensure that we have current, valid e-mail addresses for you and your firm by then. If you do not have an e-mail address, please contact the SCBA office and we will provide assistance with getting one.

I wish all of you a productive and prosperous month.

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SAGINAW COUNTY LAWYERS' AUXILIARY

By: Kimberly Mair

After every New Year is celebrated, I enjoy looking back and seeing what was accomplished over the past year. I want to take a moment to thank everyone for participating in the Wreath and Poinsettia Benefit that took place in December. The proceeds from this sale go a long way in helping fund worthy causes throughout Saginaw County. Last year we were able to donate to the East Side Soup Kitchen, 10th Circuit Court, Hidden Harvest, C.A.N Council, Mustard Seed Shelter, Saginaw Career Complex, Emmaus House, Underground Railroad, Hemlock High School and Women of Color. We also have the Administrative Professionals Day Flower Sale planned for those of you who would like to continue to support our cause. More information will be available in the upcoming months.

Over the next few months you will have a chance to get involved in some of the fun evening activities we have planned. In February, we will be having a cooking demonstration at the Maple Grille in Hemlock. This will be a fun time for all, with a great opportunity to meet new people. The date and time will follow by email.



Also, in March we will be getting ready for Spring with our Annual Spa Night at the Willows Salon. This is a great time to get ready for Spring Break or take time to relax with friends. The space is limited, so watch for details on the upcoming date and time.

Our next meeting will be on March 1st, for those interested in attending. We are continuing this year with meetings being held at a member's home. We are always looking for current and new members to join and participate in the activities. If you know of anyone who would like to join, please take a moment to invite them to one of our functions.

If you would like to be added to the email list, please contact me at mairkim@gmail.com.

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SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

REMINDER - MEMBERSHIP ENROLLMENT FORM AND FIELD OF PRACTICE FORM were due January 1st. Requests for forms can be made directly to me by phone or email. I will continue to send reminders by email. If your dues are already paid please disregard and thank you for early payment.

THE SUMMONS - In an attempt to cut costs for The Summons we hope to continue the same number of issues a year but will be available electronically as it has been for the last four months. If you wish to waive your printed version of The Summons please give me a call at 989 790-8488 and leave a voice mail message or text message advising you wish to be removed from the snail mail mailing list and provide an email address you wish it to be mailed to, if other than the listserv.

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be set December 9th through February 29th)

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

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. 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. The award is presented at the Law Day Membership Meeting.

GOLDEN APPLE AWARD is sponsored by SCBA and SCLA and recognizes teachers who have made an outstanding contribution in law-related education programs. The award is presented at the Law Day Membership Meeting.

Nomination for Liberty Bell, F H Martin and Golden Apple can be submitted in writing to SCBA - Law Day Committee; 111 S. Michigan Ave.; Saginaw, MI

48602 or scba@saginawcounty.com by April 1, 2016.

The 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, 2016.

The **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.

Nomination forms are supplied in the September issue of The Summons and due October 1, 2016.



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EEOC FINDS EMPLOYER'S PURSUIT OF FASHION NOT SO FASHIONABLE AFTER ALL

By: Joshua J. Leadford
Masud Labor Law Group

Issues involving the accommodation of religious practices often involve complicated fact patterns and require significant analysis. Under a recent Supreme Court case, these matters have become even more complicated and a sure-fire pitfall for unwary employers and employment attorneys.

In *EEOC v Abercrombie & Fitch*, 135 S. Ct. 2028 (2015), the clothing retailer went to the Supreme Court to fight claims it discriminated against a Muslim woman based on her religious beliefs when it chose not to hire her because she wore a black headscarf (hijab) to a job interview. The case involved a practicing Muslim woman who interviewed for a model position at an Abercrombie store in Okla-

homa. During the interview she wore a black hijab. However, she made no mention of her religion, her headscarf, or the need for an accommodation to address the conflict between the company's policy and her headscarf. Although she was found to be otherwise suitable for the position, she was not hired because her headscarf was deemed to be inconsistent with the company's "look policy."

The EEOC brought suit against Abercrombie and a district court ruled in the EEOC's favor. On appeal, the Tenth Circuit reversed, finding that the company could not be held liable because the applicant did not notify Abercrombie that she wore the headscarf for religious reasons and would need

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to be exempted from the look policy. Stated differently, Abercrombie did not know the headscarf was worn for religious purposes and, therefore, could not have committed intentional religious discrimination.

On June 1, 2015, the U.S. Supreme Court reversed the Tenth Circuit's decision. The question before the court was whether Abercrombie was required to provide religious accommodation even though the employee — or in this case, prospective employee — did not ask for one. The Court ruled that it did. According to the Court, "an applicant need only show that his need for an accommodation was a motivating factor in the employer's decision" to establish the employment decision violated Title VII. The court further

stated that "the rule for disparate-treatment claims based on a failure to accommodate a religious practice is straightforward: An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions."

Attorneys representing employers are routinely asked to provide guidance on the fact-specific topic that is "reasonable accommodation." In the past, the analysis often started with a determination as to whether an accommodation had been requested. The question now needs to be: "do we believe that religion plays a role here." If the answer to that question is yes, the question of whether an accommodation to the religious practice would be reasonable needs to be answered.

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BANKRUPTCY CASE NOTES

By: Jack Weinstein

Who is entitled to the funds in a joint bank account and in what percentages? That was the issue before U.S. Bankruptcy Judge Thomas J. Tucker for the Eastern District of Michigan, Southern Division. The issue arose in the combined cases of Stuart A. Gold, Trustee v Glory Lee Demeter (In re Demeter), 102015 MIEBC, 12-44593 and Stuart A. Gold, Trustee v Dolores Ziolo, (In re Ziolo) Adv. Pro. No. 125212 and 12-5284. Prior to debtor filing for bankruptcy, she and her mother (Dolores Ziolo) were the listed owners of a joint bank account. However, when Ms. Demeter filed for bankruptcy, the joint bank account had been closed and the monies were transferred into another bank account solely in the name of debtor's mother. The trustee filed an adversarial com-

plaint seeking to avoid and recover the cash transferred pursuant to 11 USC §548(a), §544(b), §550(a)(1) and MCL §566.34(1)(a) and for the turnover of the value of debtor's inheritance in her late father's estate pursuant to 11 USC §542(a) and MCL §700.105 (1979).

Factually, debtor and her mother inherited monies used initially to fund an account from debtor's late father who died intestate during December of 1989. The trustee contended that the transfers were made to Ms. Ziolo (an insider), within a month of debtor's bankruptcy filing and that she had received less than an equivalent value at the time when debtor was insolvent. The trustee claimed that the transfer was made with the actual intent to defraud debtor's creditors. Further, that debtor had an interest by intes-

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tate succession to a portion to decedent's estate pursuant to 1979 MCL §700.105.

Judge Tucker determined that defendant Ziolo was an insider since she was the mother of the debtor within the meaning of 11 USC §101(31)(A)(i) and MCL §566.31(g). There was no dispute that the debtor's name appeared on a joint bank account with her mother at Fifth Third Bank and at PNC Bank. On February 6, 2012, debtor requested and/or permitted Ziolo to have the two banks remove debtor's name from both accounts. Thereafter, Ms. Ziolo closed the Fifth Third bank account and moved the funds into a new account at that bank solely in her name. Similarly, the PNC bank account was closed and a new bank account was immediately opened on the same day in Ms. Ziolo's name. Both accounts named the debtor as the beneficiary of the new bank accounts. The total amount alleged to have been trans-

ferred was approximately \$177,540.

Judge Tucker determined that the key issue in both cases was who owned the funds in the two joint bank accounts at the time when those accounts were closed. The trustee contended that as of the transfer date, debtor owned at least half of the monies in both accounts. The trustee contended that this was a fraudulent transfer and sought to avoid and recover it for the benefit of Glory Demeeter's bankruptcy estate. Defendants contested that none of the funds in either of the two joint bank accounts was debtor's property rather the funds were the sole property of Ms. Ziolo even though the accounts were titled in the joint names of both debtor and defendant.

Judge Tucker reviewed Michigan law noting that there is a presumption under Michigan law that funds held in a joint bank account are owned equally by both account holders thereby giv-

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ing rise to the trustee's claim that one-half of the funds in the joint accounts were debtor's property. However, the presumption of equal ownership can be rebutted by evidence showing that one of the two joint account holders owns more than the presumed half of the account's balance. There was no dispute that the debtor had the ability to withdraw the funds unilaterally without her mother's consent. Debtor testified that she had signed the signature cards for the two accounts many years before she filed for bankruptcy in order to have access to those monies for her mother's benefit if she became ill and needed funds. However, the fact that the debtor could unilaterally withdraw all of the funds from the joint bank accounts did not mean that any of the funds in the joint accounts were her property. The court determined that based upon a preponderance of the submitted evidence that at all times before the transfers were made on February 8, 2012, that debtor did not own any of the funds in either of the two joint bank accounts. The court held that the funds came from Ms. Ziolo's financial resources and none came from her daughter.

The trustee contended that under 1989 Michigan law in effect when debtor's father died without a Will that

she was entitled to inherit one-half of the residue of his intestate estate after the first \$60,000 were paid to Ms. Ziolo. However, the evidence at trial was insufficient for the court to determine or estimate what the value of the intestate estate of Mr. Ziolo was within the meaning of the intestates' statute since no estate was ever opened. However, the evidence showed that Ms. Ziolo took and kept all of the intestate estate funds of her late husband with the knowledge and approval of the debtor. Further, debtor never asked that a probate estate be opened after her father's death nor did debtor ever indicate to Ms. Ziolo that she was entitled to any monies from her deceased father's estate. There was no question that Ms. Ziolo ended up with more than her statutory share of her deceased husband's estate; however, since he died in 1989 and debtor did not file her bankruptcy until 2012, Judge Tucker determined that Glory Demeter had no claim or right to any share of her late father's intestate estate since she had waived that right.

Judge Tucker noted that debtor's name was on the two joint bank accounts which had existed for many years before debtor filed for bankruptcy. Further, that Ms. Ziolo never had any intent of giving debtor own-

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ership of any portion of the joint bank accounts funds, rather those accounts had been created for her convenience and her use and her daughter's name was on it for her mother's convenience if monies had to be withdrawn due to Ms. Ziolo being infirmed or unable to write checks for her own benefit. The court concluded that debtor did not own any of the funds in the two joint bank accounts; therefore, the trustee could not avoid the alleged transfers because the trustee had to prove that there was a transfer of debtor's interest in the property which Judge Tucker determined was not the case.

Finally, the trustee had sought to avoid the transfers under the Uniform Fraudulent Transfer Act which defined a transfer as being the disposing of an asset or an interest in an asset pursuant to MCL §566.31(1)(l). However,

to avoid a fraudulent transfer under that Act, the trustee had to prove that debtor made a transfer. In this case the debtor did not dispose of an asset or an asset she had an interest in, rather her mother, a non-debtor, did so. Therefore, the alleged transfer could not be considered a transfer to be avoided under that Act.



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PRESIDENTS' DAY

Holiday Observance

The official holiday observance during February is President's Day which will be observed Monday, February 15, 2016. The Courthouse will be closed.



Reminder

DOMESTIC RELATIONS COMMITTEE MEETING

Monday, February 1, 2016
Time: 5:15 PM
Location: Dill Law PLLC
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LAW DAY

Law Day 2016 - ABA's President Paulette Brown's message



If you are viewing this issue online you can open the link below and hear American Bar Association President, Paulette Brown, discuss the 2016 Law Day theme - Miranda.

<http://bcove.me/s6so3i37>



In 2016, the nation marks the 50th anniversary of perhaps the nation's best-known U.S. Supreme Court case, *Miranda v. Arizona*. The Miranda Warning has become ingrained in law enforcement and has permeated popular consciousness through countless recitations in films and television shows. Yet *Miranda* is only part of the story when it comes to the procedures for ensuring justice. The 2016 Law Day theme — **Miranda: More than Words** — will explore the procedural protections afforded to all of us by the U.S. Constitution, how these rights are safeguarded by the courts, and why the preservation of these principles is essential to our liberty.

WHAT IS LAW DAY?

Law Day is held on May 1st every year to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession. Learn more about the history of Law Day and past themes [click here](#) or go to http://www.americanbar.org/groups/public_education/initiatives_awards/law-day_2015/history_and_archives.html;

MIRANDA v. ARIZONA

[Click here](#) or go to <http://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-miranda-v-arizona> to learn more about the U.S. Supreme Court landmark case pertaining to the 2016 theme -- *Miranda v. Arizona* -- that led to the Miranda Warning.

WHAT IS HAPPENING IN SAGINAW COUNTY ON LAW DAY AND HOW DO YOU GET INVOLVED?

By: Law Day Chairperson Katheryn Houck

Law Day 2016:

This year Law Day will be on Thursday, April 28, 2016. The Law Day Committee has been working hard to once again make this both a fun and learning experience for our students in Saginaw County who participate. The schools in Saginaw County have always been excited to participate in this event and you can see some great litigators during the trials!!

We also look forward to seeing members of the bar who have always assisted with the school teams return again this year. However, I would

encourage anyone who has never participated, or who participated in the past but has not recently, to consider volunteering some of your time this year. We are always looking for additional attorney coaches for the schools. We can pair you with an attorney coach and school so you can “learn the ropes” from a master if you do not want to take on a team yourself. For the past several years, Lori Bommarito and I have team coached

and split the times we met with students etc. This allowed us to meet more times with the students, but also took into consideration time constraints that I know we all have in our professional lives. Please consider if you have some time available.

Also, we are encouraging donations to help support the funding of law day. By contributing through the Saginaw Bar Foundation your donation will be tax deductible as well.



Thursday
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SAVE THE DATE

SAVE THE DATE

THURSDAY, JUNE 23, 2016

SCBA GOLF OUTING & ANNUAL MEETING
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GOLF - 12:30 PM SIGN IN
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DINNER - 7:00 PM

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IN MEMORIAM

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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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