



THE SUMMONS

Saginaw County Bar Association



**President Katherine Marie Baluha
presents the 1st Annual SCBA President's
Holiday Spirit Recognition to Kirk C. Ellsworth**

MEETING DATES FOR 2020

(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) Exception is February's Meeting which will be held at the Saginaw Club.

Pro Bono Committee Meeting

(All PB Meetings will be held at Panda House, 3rd Tuesday of every month at 12:00 PM)

Law Day Committee Meetings

(All LD Meetings will be held at Panda House 2nd Thursday of every month at 12:00 PM)

Law Day Luncheon

*Friday, May 1, 2020
Trillium Banquet Center*

Mock Trials

*Thursday, April 30, 2020
9:00am*

Soup Kitchen Volunteers needed

(Call John Humphreys 989-401-2115 if you can serve)
Saturday, February 29, 2020
Saturday, May 30, 2020
Saturday, July 25, 2020
Saturday, August 29, 2020
Saturday, October 31, 2020

National Celebration of Pro Bono

October 25-31, 2020

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



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SCBA Website

www.saginawbar.org

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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: Katherine M. Baluha

Happy New Year! I hope everyone had a wonderful holiday season and your 2020 is off to a great start.

I want to start by thanking everyone that came to the Holiday party at Horizons. It was a great time with new traditions started including the newest award to be given by the SCBA, the President's Award for Holiday Spirit, which will be known by the first recipient's name – The Kirk C. Ellsworth Award. For those of you that couldn't make it – the recipient of this award will be chosen by the current President of the SCBA and given at the annual Holiday Party. This recognition will go to someone that emulates holiday spirit not just during the holidays but all year long. This person will be someone that is always a pleasure to be around whether at fun events or being opposing counsel on a case and everything in between. And finally the recipient will have to have their own unique style, whether it be dress or courtroom antics, that are recognizable as their own by all that know them. Our first recipient, Attorney Kirk C. Ellsworth, is this award to a tee. I have had the pleasure of knowing Kirk and his family since

I was a kid and feel so lucky to have gotten to know him professionally as well. As I said when I introduced Kirk as our first winner, I was unfortunately faced with a case that was completely out of my realm recently that I wanted so badly to take because the client's were friends that had lost a child in an accident. I happened to mention this to Kirk while working at the Saginaw Juvenile Court one day and without hesitation he offered to help me on the case. It not only was such a relief to me but made all the difference to my friends. Anyone that knows Kirk, knows that this is not surprising – he is always willing to help in any way he can and always there with a welcoming smile and a snazzy suit and shoes. I wanted to make sure to mention the shout outs that Kirk made during his acceptance as many were unable to attend the party. First and foremost, Kirk's family were thanked as his family is his whole world, including his sons, Attorney Kelly Ellsworth and Attorney Kirk Ellsworth, Jr. (Chicago), whom if any of you know them have the same positive and welcoming personalities that Kirk does. Kirk also mentioned his long-

time friend and partner at Shinners & Ellsworth, Attorney John Shinners. Not many are lucky enough to get along so well and for so long with their work partners but these guys are still living it up now working even closer by each being on a team as neglect/abuse court appointed counsel. Kirk has had a contract as court appointed counsel at the Saginaw County Juvenile Court for many years and so of course mentioned the many amazing people that he works so close with there. Kirk specifically mentioned long-time contract holders Diane Thompson, Pat Greenfelder, Kent Greenfelder, Libby Dill and Mike Sovansky as well as family court staff, Referees, and Judge Barb Menter, whom Kirk expressed his admiration and pride for the job she has done since taking the bench. Congratulations again Kirk!

Also, thank you so much to our entertainment at the holiday party, Rust Bucket, which includes our very own John van Boenschoten! You brought a great new vibe to the event and ev-

eryone had positive feedback with this addition.

We recently held a meeting at Timbers where Attorney Doug Chalgian of Chalgian & Tripp spoke about some of the changes that took place with civil discovery rules and regulations. Thank you to Doug, Val Kutz-Otway, and organizer of the event Chris Swartz. We had a great turnout, however, if you were unable to attend and want more information, we will be having section meetings that will be more specific to each area of law and those specific changes and also you can visit the State Bar of Michigan website for great resources as well as ICLE.

As an update to things the board is working on – we recently had a meeting regarding application of the SCBA to become a 501(C)(3) non-profit as well as a budget meeting to formalize a budget plan for use by boards in the future. The Law Day committee, headed up by Vice President Millie Shek, has completed the script and we can start prepping our teams for Law Day Mock



In Memoriam



Gary J. Goodman - P31947 died December 5, 2019. He was born December 11, 1952 and was sworn in to SBM November 20, 1980.

Please help the Memorial Committee make sure no member is forgotten. Contact SCBA office at 790-5285 or scba@saginawcounty.com regarding the passing of any Saginaw County Attorney.



Trials on April 30th and there is so much more in the works as well. Please contact us if you have any suggestions for the new year or questions on anything that we are working on.

Our annual St. Patrick's Day party is coming up and we will follow up with a firm date when that is known and hope to have a great turnout as always.

Finally, I would like to wish good luck and an awesome year to our newest Chief Judge Darnell Jackson whom started his term January 1. Also, a big thank you to Judge Patrick McGraw for his service as Chief Judge – the work that is expected of a chief judge on top of a normal docket I can only imagine is, to put it mildly, exhausting.

Wishing you all lots of success and happiness throughout the year!



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SAGINAW COUNTY LAWYERS' AUXILIARY

By: Claudia J. Wallace

Happy 2020 from the SCLA.

With the holidays behind us and Michigan winter weather yet to come we have rung in the New Year with well wishes of good health, happiness and prosperity for everyone.

We are looking forward to the events in the next few months with great enthusiasm.

Friday, March 6th is "The Capitol Steps" Show at the Temple Theatre. There will be appetizers and cash bar at the Saginaw Club beginning at 5 p.m. with the show beginning at 7:30p.m. Please R.S.V.P. to either Elissa Basil 799-1604 or Carrie Burns 781-8958.

The Law Day Mock Trials will be April 30th this year. Please call or e-mail me if you and/or anyone you know would like to volunteer to be a rater and/or help with the luncheon. 245-4628 or cjwallace1953@gmail.com. We all love this rewarding fun filled day once it gets here.

May 1st is the Law Day Awards Luncheon at noon at Trillium Banquet

Center. Kelli Scorsone is the coordinator for this event.

May 13th is the SCLA Spring Luncheon and Installation of Officers. This will be at the Saginaw Country Club 11:30 social time, luncheon at noon featuring a "French" theme. Please R.S.V.P to Ethel O'Neill 799-6916 or Terry Oeming 692-0322.



Ongoing dates scheduled by individual schools for Court House Tours should contact Judy Weldy 799-6545. She will be happy to schedule tours from 9 a.m. to 11 a.m.



SCBA EXECUTIVE DIRECTOR'S REPORT

By: Kelli Scorsone, Executive Director

SCBA Listserv. Please contact me if you are not receiving emails from the listserv. The listserv is our best way to communicate with members. I may not have caught a change in your email address or just submitted it incorrectly.

I am still accepting MEMBERSHIP DUES FORM which were due January 1st.

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. The nomination information can be found at <https://www.michbar.org/News/NewsDetail/nid/5655>.

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.

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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 this year on April 30th.

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, 2020.

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, 2020.

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 and/or your financial contribution to Access to Justice to LSEM. Nomination forms for Pro Bono Attorney of the Year are due October 1, 2020.

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DISTRICT COURT UPDATE

By: Judge M. Randall Jurens

In case you haven't noticed, a shift has occurred in district court regarding who is responsible for serving various documents.

Pursuant to recent amendments to the Michigan Court Rules, the initiating party (i.e. no longer district court) is now responsible for service of –

- notice of entry of default, *MCR 2.603(A)*
- motion for installment payment orders, *MCR 3.104(A)*
- default judgment in land contract forfeiture proceedings, *MCR 4.202(H)(2)(a)*
- judgment in land contract proceedings, *MCR 4.202(J)(5)*
- removal order in small claim proceedings, *MCR 4.306*

Thank you for cheerfully embracing this new responsibility.

Christmas Story Time

Special guest readers, Judge Marvel Trice and Judge Elian E. H. Fichtner joined Bridge The Gap at the Montague Inn for story time fun with 2nd and 3rd graders from Stone and Nouvel Elementary.





2019 SCBA Christmas Party





LOCAL MEDIATION

By: Dayna Harper,
Executive Director of CRC
and Judge Patrick J. McGraw

The Community Resolution Center (CRC) is in its 17th year of providing mediation services for Saginaw County. The CRC is one of 18 non-profit mediation centers partially funded by the State Court Administrative Office and serves the nine counties of Arenac, Bay, Clare, Genesee, Gladwin, Midland, Ogemaw, Roscommon and Saginaw. The CRC is also partially funded by the Saginaw County Courts and is a tool all Judges recommend, especially due to the ease of use and cost savings to your clients.

The new year brings new programs in the field of Alternative Dispute Resolution. Most notably, the new online mediation program, MI-Resolve. Through MI-Resolve, parties can resolve their disputes online with or without the help

of a trained neutral person, known as a mediator. The mediator works to help parties identify a solution to a dispute that best works for them; the system walks the parties through the steps to reach a resolution. The new online service is a game changer because people who are busy with work or children can benefit from mediation on their own schedule. "Making court services more accessible means opening both real and virtual courtroom doors," said Chief Justice Bridget M. McCormack. "With the help of groundbreaking services such as MI-Resolve, Michigan is a national leader in boosting access to justice online." (Michigan Courts, 2019) The MI-Resolve online program is scheduled to be available in all counties by September 2020.

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CREDIT UNION

Due to continued growth and program development, the CRC is looking to increase its volunteer mediator roster.

Requirements and Commitments to serve as a volunteer mediator:

- Completion of the SCAO approved mediator trainings, either General Civil (40-hour) or Domestic Relations (48-hour).
- A Juris Doctorate Degree or other advanced degrees, combined with additional mediation experience.

Volunteer mediator benefits:

- An opportunity to practice the craft of mediation by facilitating a wide range of disputes.
- Enhancement of mediator’s level of experience.
- To support our ADR Community while serving our community.

- The CRC offers significant discounts for the 40-Hour Mediator Trainings and Continue Education Trainings for volunteer mediators.

The Community Resolution Center plans to offer both the General Civil and Domestic Relations Training in 2020.

To request a volunteer mediator application or inquire about a future mediator trainings, contact: Dayna Harper, Ed.D., Executive Director at: 989-799-5949.

To refer a case to mediation, please call our Saginaw office at: 989-799-5949. CRC’s Saginaw office is on the first floor, in the Saginaw County Courthouse.

Reference: Michigan Courts New Release. (2019, August 7). Retrieved from: <https://courts.michigan.gov/News-Events/press-releases/Documents/Statewide%20Media%20Release%20ODR.pdf>

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NEW RULES ON UNION REPRESENTATION ELECTIONS SET TO TAKE EFFECT ON APRIL 16, 2020

By: David V. Bryce
Masud Labor Law Group

Beginning on April 16, 2020, elections to determine if employees wish to be represented by a union will be governed by procedural rules announced by the National Labor Relations Board (the “NLRB” or the “Board”) in December 2019. The rules set to go in effect should benefit employers by eliminating some of the “quickie” election procedures put in place by the NLRB under President Obama in 2014.

The new rules significantly overhaul the procedures for union representation elections in effect since 2014. The 2014 rules gave rise to what became known as “quickie” elections. As the name suggests, the “quickie” rules were designed to expedite the vote on a union’s petition for an election. The focus on holding an election as soon as possible prioritized procedural deadlines over the rights of an employer to fully assess the issues associated with the election petition. For instance, the rules required an employer to file a Statement of Position within seven calendar days of being served with an election petition, and a hearing on the petition was scheduled for eight calendar days after notification. Such a short time period curtailed an employer’s ability to respond to a petition. Making matters

worse, an employer waived any issue not raised in its Statement of Position. The “quickie” rules also discouraged pre-election litigation of disputed issues, such as the eligibility of a particular job classification to vote in the election, and whether a particular individual held supervisory status, making them ineligible to vote. In essence,



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the rule was “vote now, deal with the mess later.”

The new rules provide employers with improved procedural rights by relaxing certain timelines and pre-hearing requirements. Under the new rules, which take effect on April 16, 2020, a hearing will be held within 14 *business* days after an employer receives notice of an election petition, up from eight *calendar* days under the “quickie” rules. Additionally, an employer will have eight business days to file its Statement of Position, as opposed to seven calendar days under the “quickie” rules. Furthermore, unions are now required to file a Statement of Position, which must be done within three business days of receiving the employer’s Statement of Position. Under the “quickie” rules, unions were not required to file a written Statement of Position, allowing them to “ambush” employers at the pre-election hearing.

In addition to relaxing certain timelines, as described above, the new rules also include other important changes. Perhaps most significantly, the scope of the pre-election hearing has been expanded to include litigation on important issues such as whether certain employees are included in the unit and thus eligible to vote. The new rules also provide that parties may file post-hearing briefs without first obtaining leave from the Regional Director, as was previously required. Also, the new rules state that an election is to be scheduled no less than 20 business days from the issuance by the Regional Director of a Decision and Direction of Election (“DDE”). This will allow all parties adequate time to articulate their positions during the election campaign, particularly as

compared to the “quickie” rules which required the Regional Director to set an election date as “early as practicable” after issuing the DDE.

While the relaxed procedural rules regarding representation petitions are welcome, employers should be aware that the old rules remain in effect until April 16, 2020. In addition, it is reasonable to expect a legal challenge to the new rules due to the fact that they were introduced without a notice and comment period. The majority of the Board has taken the position that notice and comment was not required because the new rules solely modified existing procedures, as opposed to changing parties’ substantive rights. Interest groups, however, are likely to challenge the majority’s interpretation of whether notice and comment was required. In view of the procedural changes introduced by the new rules, and the potential impact of a union election on one’s business, employers should continue to work closely with their labor and employment counsel when dealing with representation petitions or other union organizing matters.



SCLA Bow Making Queen 2019



BANKRUPTCY CASE NOTES

By: Jack Weinstein

Is a payment notice, received after debtor has been discharged from a Chapter 13 bankruptcy, stating the amount due, the payment date, and instructions on how and where to send payments, along with a disclaimer stating that the notice was not intended to collect a debt, a violation of the automatic stay? That was the issue in the case of In Re: Roth v Nationstar Mortgage, LLC (In re Roth) 2019 WL 4047509 (11th Cir. 8/28/19). Debtor filed for Chapter 13 relief on December 22, 2010. She agreed to surrender her non-homestead realty subject to a mortgage and did transfer the realty to Nationstar Mortgage, LLC (Nationstar) after her plan was confirmed. Thereafter, Roth received monthly statements from Nationstar specifically stating that it was an informational statement including a lengthy disclaimer, but also set forth the amount owed, the due date and payment instructions. Section §524(a)(2) states that a bankruptcy discharge “operates as an injunction against the commencement or continuation of ... an act... to collect ... any ... discharged debt.” Section 105 enforces that injunction provision which

allows the bankruptcy court to issue any orders or judgments that are necessary to carry out that section.

The 11th Circuit stated that §§ 105(a) and 524(a)(2) authorize the court to impose civil contempt sanctions against those attempting to collect a discharged debt. However, in the case of In Re McClean, 794 F.3d 1313 (11th Cir. 2015), the 11th circuit had held that a communication is prohibited by §524 if “the objective effect of the creditor’s action is to pressure a debtor to repay a discharged debt.”

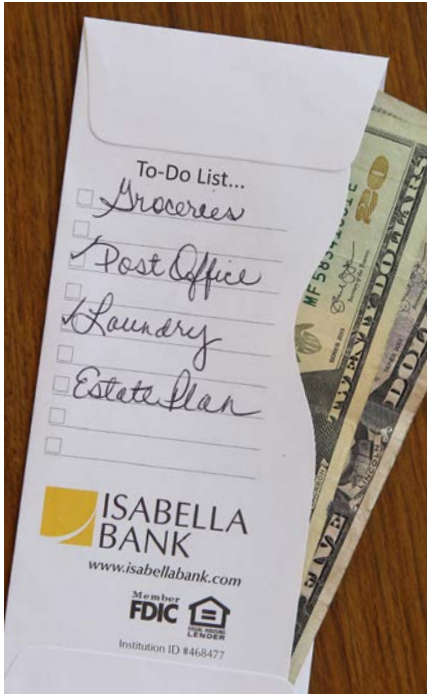
However, the 11th Circuit found that there were a number of reasons to conclude that the overall effect of the statement was not to pressure a debtor to repay a discharged debt. Rather, the court stated “As an initial matter, the disclaimer is printed in bold on the first page of the statement. It declares that it is ‘for informational purposes only and is not intended as an attempt to collect, assess, or recover a discharged debt from you, or as a demand for payment from any individual protected by the United States Bankruptcy Code.’”

That disclaimer repeated that if the account had been discharged in a

bankruptcy proceeding then the statement was for informational purposes only and was not an attempt to collect a debt. While the statement included a payment coupon, it was clearly marked as being for “voluntary payments”. Further, the statement included an amount due plus a due date and set forth a negative escrow balance but that did not diminish the effect of the disclaimer.

Judge Branch, who wrote the opinion for the 11th Circuit, stated: “If we accepted Roth’s argument that the Informational Statement is unlawful debt collection under Section 524, there would be little daylight between (1) a legitimate attempt by Nationstar to inform Roth how she could regain the property and (2) an unlawful attempt at debt collection in violation of the Sec-

tion 524 injunction. Instead, the statutory scheme clearly allows for Nationstar to send potentially helpful informational statements to Roth without simultaneously casting those statements as debt collection. In light of these facts the Informational Statement sent by Nationstar was not designed to have the ‘objective effect’ of pressuring the debtor to pay a discharged debt.”



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