

BAR BRIEFS

Official Publication of the Macomb Bar Association

October 2023



Well-Being in Macomb

Page 2

**EEOC Examines Bias in
A.I. Hiring Tools**

Page 7

**Contemporary Prenuptial
Agreements and Divorce**

Page 9

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IN THIS ISSUE:

- 2 Well-Being in Macomb
By Ryan Zemke, President of the Macomb Bar Association
- 4 Closing Your Web Browser Protects Your Security and Privacy
By Cheyenne Harden, Owner and CEO of Cyber Protect LLC
- 7 EEOC Examines Bias in A.I. Hiring Tools
By Michelle Ruggirello, KHVPH
- 9 Contemporary Prenuptial Agreements and Divorce
By Timothy P. Flynn and Frank L. Briguglio, Clarkston Legal
- 15 In The Trenches
By The Macomb County Bar Foundation
- 16 Classifieds

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Well-Being in Macomb

By Ryan Zemke, President of the Macomb Bar Association

The Macomb County Bar Association heralds itself as a professional association of lawyers and legal professionals that exists to advocate and promote excellence in the legal profession. Most of our efforts go towards serving our clients, our firms, and the community as a whole. Our profession often gets labeled with negative connotations in the court of public opinion, yet we are all aware that the legal profession – especially here in Macomb County – contains some of the most selfless and generous individuals that you have ever met.

The amount of bar association members that spend time volunteering at legal and other community events, mentoring law students, serving on non-profit boards, assisting with community service and other local projects, and assisting countless other worthwhile causes and projects, often without any recognition, is staggering. This does not even take into consideration the amount of financial support that our legal community has provided toward fundraisers, sponsorships, and support for projects and causes that are equally worthy.

Our profession goes to great lengths to support our local communities and help others but oftentimes we are so busy helping others that we forget to take the proper steps to take care of ourselves. If we cannot take care of ourselves then we will be unable to take care of others. In August, the Task Force on Well-Being in the Law released a report with detailed recommendations (see below) to

address the high rates of depression, anxiety, and substance use in the legal profession.

This report can be found on the SCAO website and emphasizes that improving well-being is critical to professional performance, client service, and the public's trust in the legal system itself while providing recommendations for everyone from law students to judicial officers. "Our profession must take concrete, substantial steps to address lawyer well-being because well-being is an essential component of competence," said

Michigan Supreme Court Justice Megan K. Cavanagh, co-chair of the Task Force.

Each of these recommendations comes with strategies for implementation and my hope is to form a committee locally so that we can work together with the State Bar of Michigan to foster a healthier legal community in Macomb County. This will require a group of dedicated individuals who are committed to serving on a "working committee" to bring these recommendations to our area via events, education

opportunities, and whatever other options we may have to help our local lawyers move beyond survival mode and thrive in a healthy and welcoming environment by connecting our legal community with the tools that exist to assist the when needed.

These issues are especially prevalent during someone's first decade of practice, so I am going to be seeking young lawyers to serve as well so that we have a



variety of perspectives represented and a variety of feedback to utilize. Please contact me if you are interested in working on this local committee and I hope to get a kickoff meeting scheduled for January of 2024 (or sooner if there is enough immediate interest) so that we can get to work.

As a side note, I would be remiss if I did not take this opportunity to also promote the local specialty courts that we have here in Macomb County. If you are looking to help your clients that are struggling with similar mental health, substance abuse, or veteran specific issues please look into the wide variety of programs that exist locally. These programs are evidence based and have proven time and time again to be successful, life-changing programs for your clients.

Information about these problem-solving courts and who to contact for each of them can be found on the MCBA website under the “events & education” tab. Courts are being added and contact information changes so if you are involved with one of these courts and notice that your information needs to be changed or added please contact the MCBA office and we will have it updated as soon as possible.

**For Judicial Officers,
the Task Force recommends:**

- Communicating that well-being is a priority for the judiciary to reduce the stigma of mental health and substance use problems.
- Developing policies focusing on prevention and early intervention to support judicial well-being.
- Conducting judicial well-being surveys.
- Providing well-being programming for judges and staff; and,
- Monitoring struggling judges, and establish a partnership between the Judicial Tenure Commission and the Lawyers and Judges Assistance Program

**For Lawyers,
the Task Force recommends:**

- Incorporating the Lawyers and Judges Assistance Program resources into the Attorney Grievance Commission intake screening process.
- Providing ongoing training on lawyers’ well-being and mental health to the Attorney Discipline Board and Attorney Grievance Commission staff.
- Including training on well-being in the State Bar of Michigan’s “Tips and Tools for a Successful Practice” seminars.

- Encouraging local/affinity bars and employers to create committees.
- De-emphasizing alcohol at legal functions and social events.
- Amending MRPC 1.1 (Competence) to include lawyer well-being as a function of competence.
- Recognizing organizations and individuals who demonstrate their commitment to lawyer well-being.
- Including a personal testimonial of recovery following the discipline section of the Michigan Bar Journal.
- Offering wellness seminars on a regular basis to Michigan attorneys; and,
- Creating and using a tool to measure the impact of lawyer well-being initiatives.

**For Law Schools/Students,
the Task Force recommends:**

- Reassuring law school students that seeking mental health treatment will not create an obstacle to bar admission or their practice of law.
- Encouraging and incentivizing law schools to follow American Bar Association standards on curriculum and student learning, including use of structured assessments, providing reasonable notice to students when they may be asked to provide responses during lectures, and incorporating cross-cultural competencies.
- Offering more robust, long-term, and sustainable mental health resources to law school students.
- Delivering well-being messages to law school students throughout their studies; and,
- Normalizing the ability to make mistakes as part of the learning process.



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Closing Your Web Browser Protects Your Security and Privacy

By Cheyenne Harden, Owner and CEO of Cyber Protect LLC



Closing your web browser after you are done with a session is a recommended practice for several important reasons. In an era where online security and privacy are of utmost concern, taking proactive steps to protect yourself is essential. This answer explores the benefits of closing your web browser, highlighting the significance of security, session hijacking prevention, performance optimization, updates and patches, as well as the avoidance of accidental actions. Understanding these advantages will help you develop good browsing habits and ensure a safer and more efficient online experience.

1. Security: Closing your web browser helps protect your online security and privacy. When you close the browser, it terminates the active session, clears temporary files, cookies, and browsing history. This reduces the risk of unauthorized access to your accounts and sensitive information by preventing others from gaining access to your open sessions or cached data.

2. Preventing session hijacking: By closing your browser, you reduce the chances of session hijacking. Session hijacking occurs when an attacker gains control of your active session, allowing them to impersonate you and access your accounts and personal information. Closing the browser helps ensure that the session cookies and authentication tokens associated with your session are cleared, making it more difficult for an attacker to hijack your session.

3. Performance and resource management: Modern web browsers are resource-intensive applications that consume memory and processing power. If you keep multiple tabs or windows open for an extended period, it can slow down your computer and degrade overall system

performance. Closing the browser releases these resources, freeing up memory and improving system responsiveness.

4. Updates and security patches: Web browsers regularly release updates and security patches to address vulnerabilities and improve performance. By closing your browser, you allow it to update automatically or prompt you to install the latest updates when you reopen it. Staying up to date with the latest browser version ensures you have the most secure and stable browsing experience.

5. Avoiding accidental actions: Sometimes, when you have multiple tabs or windows open, it's easy to click on a link or perform an action unintentionally, leading to unexpected consequences. Closing the browser reduces the likelihood of accidentally clicking on malicious links or inadvertently submitting forms or transactions.

While closing your browser after each session is a good practice, it's also important to use additional security measures like using strong and unique passwords, enabling two-factor authentication, and keeping your operating system and antivirus software up to date.

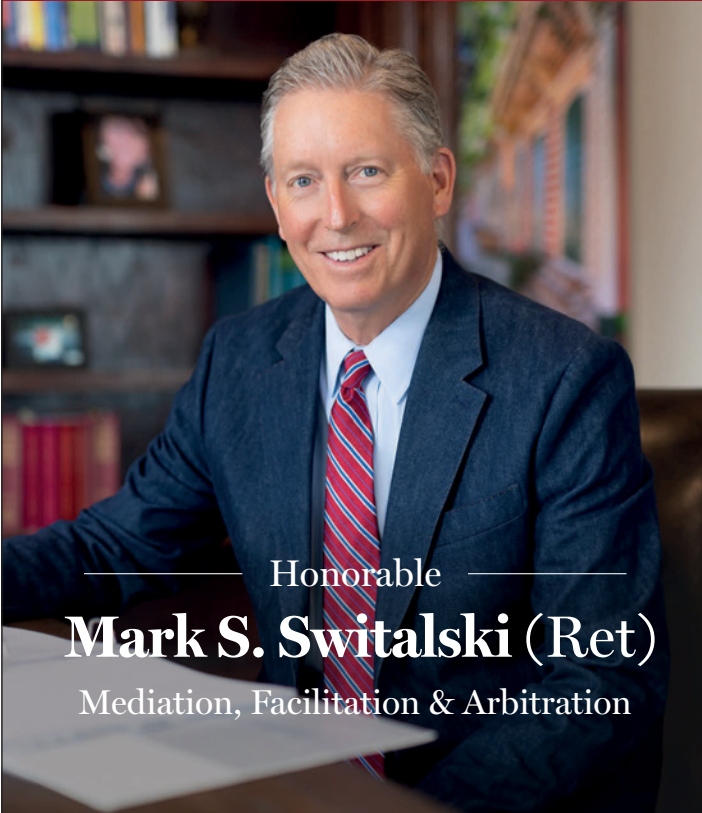
Cheyenne Harden is a Security Expert, and a Data Breach and Ransomware Prevention Specialist.

As a dedicated family man, taking on the roles of both husband and girl dad, I also have a longstanding career in cybersecurity. My expertise is utilized across a multitude of sectors such as hospitality, healthcare, financial services, and legal firms, providing round-the-clock security for their critical information.

My journey in the IT field spans over 23 rewarding years, with 19 of those years sharpening my prowess in cybersecurity. Early experiences had me stepping into credit unions, hotel chains, and even cybersecurity companies. I utilized social engineering, well-established system exploits, and a few tricks to push their security limits, enhancing their defenses through rigorous testing and assessment processes.

When you close the browser, it terminates the active session, clears temporary files, cookies, and browsing history.

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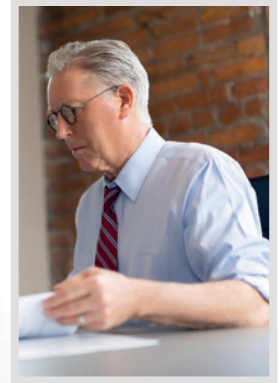
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EEOC Examines Bias in A.I. Hiring Tools

By Michelle Ruggirello, KHVPH



Automation and artificial intelligence are transforming workplaces. It is estimated that nearly every Fortune 500 company – and perhaps three-quarters of all employers – use some form of automated software as part of their hiring processes. But AI and automated software can inherit biases based on their programming. For example, *the Washington Post* reported recently that an artificial intelligence program trained on billions of images and associated captions on the Internet started to associate the term “homemaker” with images of women, and the term “janitor” with images of people of color.

Given this risk of automated bias creeping into the workplace, the EEOC has expressed its interest in evaluating the interplay between artificial intelligence and discriminatory hiring practices. In 2021, the EEOC launched an agency-wide initiative to ensure that AI, machine learning, and similar software would not lead to hiring and other employment decisions that violate federal civil rights laws. Last year, the EEOC issued technical guidance explaining that the use of algorithmic software in hiring decisions could screen out disabled candidates in violation of the Americans with Disabilities Act.

But now, the EEOC has signaled its intent to put the weight of its enforcement tools behind its AI initiative. In January, the EEOC released its five-year draft Strategic Enforcement Plan (SEP) for 2023-2027, in which it expressed its desire to focus enforcement actions on decisions, practices, or policies by which technology contributes to discrimination, including automatic resume screening software, hiring software, chatbot software for hiring, and video interviewing tools.

The EEOC has also brought its first automated-software discrimination case. In *EEOC v. iTutor-Group Inc.*, pending in the Eastern District of New York, the EEOC claims that the employer’s hiring algorithm

automatically rejected female applicants over the age of 55, and male applicants over the age of 60. The Complaint alleges that a prospective employee was instantly rejected after inputting her actual birthdate into the application software – but the next day, when reapplying with the same application but putting a birthdate that made her seem younger – was offered an interview. The EEOC claims that over 200 qualified applicants were rejected because of their age.

While the iTutorGroup lawsuit alleges that the algorithm in question was intentionally designed to discriminate against older applicants, even inadvertent bias could lead to employer liability under a disparate impact theory. The EEOC’s SEP identifies as a subject-matter priority “the use of automated systems, including artificial intelligence or machine learning, to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups.”

Employers should remain vigilant and take steps to ensure that AI-driven hiring tools do not perpetuate bias or otherwise discriminate against applicants based on protected characteristics. Additionally, employers are encouraged to work with legal counsel and HR professionals to develop best practices for implementing AI-driven tools in their hiring processes.

Michelle Ruggirello handles complex employment and commercial litigation matters for businesses in a variety of industries. Ms. Ruggirello’s practice is founded on her extensive trial experience. She began her career in the Wayne County Prosecutor’s Office, where she first-chaired jury and bench trials in a wide spectrum of criminal cases. Ms. Ruggirello then transitioned to private practice, where she has represented employers facing discrimination, retaliation, and other claims in federal and state courts and in administrative agency investigations. She has also litigated significant commercial disputes over real estate, insurance, and corporate matters.

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Contemporary Prenuptial Agreements and Divorce

By Timothy P. Flynn and Frank L. Briguglio, Clarkston Legal



Hollywood movie star Kevin Costner has been instrumental in placing prenuptial agreements back into the news. The actor’s wife filed for divorce several months ago. It did not take long for the world to learn that the couple tied the knot with a prenuptial agreement 19-years ago. Just within the last few days of this article, the couple settled all the remaining issues of their divorce after contentious litigation.

When Costner executed his prenuptial agreement, most of his big hits were in the past and he was doing movies like *Open Range* and *The Upside of Anger*. He has acted in at least one movie a year since *Sizzle Beach* in 1981; his most-recent offering on the small screen with *Yellowstone*. By any standard, a successful wealthy actor at the time of his nuptial to the relatively unknown Christine Baumgartner.

Costner’s divorce highlights one of the chief criticisms of prenuptial agreements which have been the subject of scholarly analysis over the past century. A prenuptial agreement is often seen in the United States, and in Michigan, as a contract to protect the assets of a wealthy individual.

A recent article in the ABA publication *The Family Advocate* noted that prenuptial agreements can be traced back at least 2000 years. Here are some interesting general observations about prenuptial agreements:

- **Prenuptial agreements** did not start out as contracts to protect the assets of the wealthy but

rather, they were designed to protect and maintain the non-propertied spouse [usually the wife];

- **The wife of the prophet Mohammad**, married several times, had at least one prenuptial agreement that allegedly proscribed her husband from disagreeing with her about anything;

- **The Hebrew marriage contract** known as the ketubah has been around for two millennia;
- **Dowries were considered** to be early forms of prenuptial agreements dating back to the Seventh Century;
- **Because a woman’s** property became her

husband’s property upon marriage well into the 19th Century, a prenuptial agreement was needed to protect the wife’s property rights, to the extent that they existed at all; and

- **A Harris poll** cited in the *The Family Advocate* article, supra, estimated that only 3% of married couples executed prenuptial agreements in 2010, but that percentage shot up to 15% by 2020.

Over the course of modern divorce history, prenuptial agreements have regularly come under attack as symptomatic of an unequal relationship. A “power play” to protect the assets of the moneyed spouse.

The longer the marriage, and therefore the longer the prenuptial agreement remains in place, the greater the potential that the moneyed spouse will significantly

Kevin Costner’s divorce highlights one of the chief criticisms of prenuptial agreements.

improve his or her position. Ultimately, the property division becomes unfair at some point in time, with the non-moneyed spouse devoting her life to a spouse for very little relative material gain.

Prenuptial agreements contemplating divorce became legal in Michigan in 1981. Prior to that year, prenuptial agreements could only contemplate the death of a spouse, not divorce. There are some basic requirements for a valid prenuptial agreement: paramount among these is that the agreement must be fair, equitable and reasonable relative to the surrounding facts and circumstances of the executing couple.

To be considered fair, the executing parties must disclose all their assets and liabilities to the other. Each party must have ample opportunity to consult legal counsel. The further in advance of the nuptials the agreement is signed the better; midnight on the evening before the wedding is not the time to execute the agreement.

Setting all of the above aside, a seminal 2017 Michigan Supreme Court decision in *Allard v Allard* forever changed the landscape of modern prenuptial

agreements. In that case, the issue was whether a family court had the power to invade the separate property of a spouse, even when the genesis of that separate property was a prenuptial agreement.

The Supreme Court answered the question in the affirmative: family court judges can, under certain circumstances, award the separate property of one spouse to the other spouse, even when the property was designated as separate within a properly executed prenuptial agreement. Spouses in Kevin Costner's position would have good reason to doubt the efficacy of their prenuptial agreements if they found themselves filing for divorce here in Michigan.

Currently, there is a movement among the family law bar in Michigan to adopt the Uniform Premarital and Marital Agreement Act [UPMAA]. This uniform act does not apply to separation agreements; does not affect the rights of third parties; affirms that prenuptial agreements are enforceable without consideration [normally a requirement for a contract to be valid]; and establishes standards of enforcement to guide family court judges.

Some critics assert that adoption of the UPMAA would conflict with the *Allard* decision. If the model code was adopted, would family court judges still retain the power to invade separate property identified in a prenuptial agreement?

The bottom line is that if a family court judge deems the present circumstances of a couple before it on a divorce proceeding make enforcement of a longstanding prenuptial agreement inequitable, then the judge can make their own determination of an equitable property division, regardless of what the prenuptial agreement says. This gives clients contemplating a prenuptial agreement pause: should they bother protecting their separate property if a judge is going to invade that separate property at the end of the marriage?

Of course, it depends on the circumstances of the case. There are many situations, particularly in second marriages, or at the beginning of a marriage, where prenuptial agreements are mutually desirable. In other cases, they do point to a potential inequity in the relationship.

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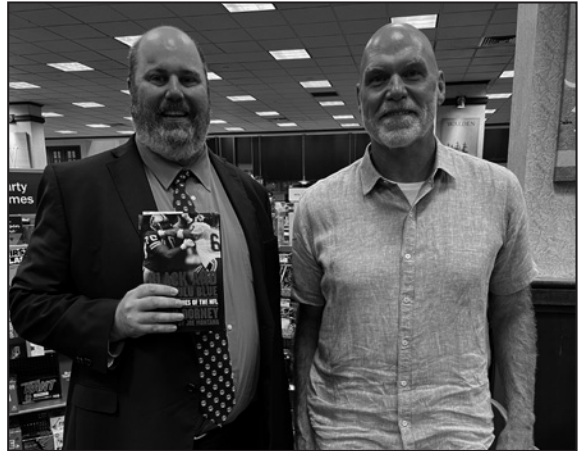
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In The Trenches

By The Macomb County Bar Foundation

The Macomb County Bar Foundation's book club event at Barnes & Noble was a wonderful success. Thank you to MCBF trustees, MCBA members, and community leaders for participating in a night filled with highly entertaining stories from three former Detroit Lions.

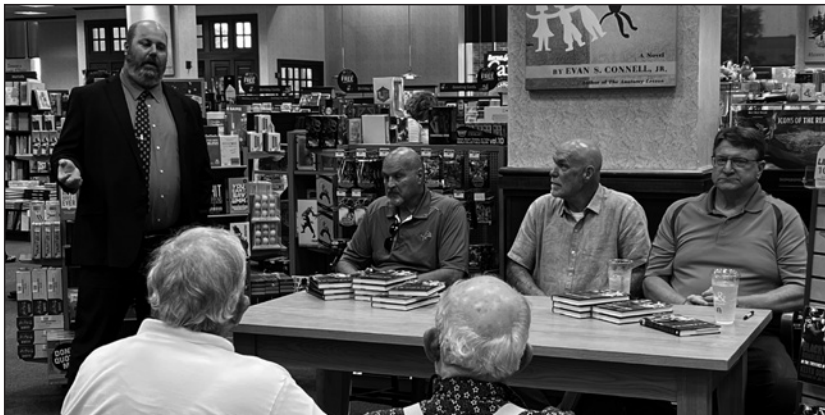
We would especially like to thank Chris Metry and Steve Steinhardt for your organization and enthusiasm for this event.



Chris Metry and Keith Dorney

For more behind the scenes history, pick up your copy of *Black and Honolulu Blue: In the Trenches of the NFL* by Keith Dorney.

To learn more about the MCBF and becoming a trustee, please visit MacombBar.org.



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November 9, 2023 9:30am

Shanty Creek

5780 Shanty Creek Rd., Bellaire, MI

REGISTRATION CODE: MOL49

CDAM 2023 FALL CONFERENCE (IN PERSON)

November 10-12, 2023 9:00am

Shanty Creek

5780 Shanty Creek Rd., Bellaire, MI

REGISTRATION CODE: MLSC45

To report your CLE hours, please send a digital copy of the certificate to Samantha Jones at sjones@macombbar.org

Dr. Ronald Fenton & Associates

Mental Health / Risk Assessments

The Macomb County Prosecutor
has instituted a policy
regarding gun crimes.

**In order to be eligible for a plea
bargain, the defendant must submit
a Mental Health / Risk Assessment
performed by a qualified licensed
psychologist or other evaluator.**

Our psychologists are approved
to perform these assessments
by the prosecutor office.

We are now offering this service
to defense attorneys.

**Call us at
(586) 286-5870
for further information.**

Dr. Ronald Fenton & Associates
8344 Hall Road, #209
Utica, Michigan 48317

CLASSIFIED ADS

OFFICE SPACE

BRAND NEW OFFICE SPACE - Northern Macomb/St. Clair County
RICHMOND MI: New space now being built out. Perfect for a lawyer
doing: DIVORCE/FAMILY LAW, SOCIAL SECURITY/DISABILITY, REAL
ESTATE, BANKRUPTCY. I do not practice in any of those areas.
Significant referral opportunities in a growing community.
Call Jon Frank at (248) 703-5701, or email at jfrankesq@comcast.net

Available - Two large offices in a law office suite located at 19 Mile
and Garfield with 8 established attorneys. Amenities include a
full time receptionist, copier/printer/scanner/fax, telephone and
internet, secretarial units, and kitchen.
For inquiries call (586) 263-1600.

Executive / Professional office space. Individual offices and
the potential for as much as 8,000 sq. ft. of contiguous space.
Professional decorated common space includes reception, kitchen,
and conference rooms. On site basement storage available. Exterior
is colonial design with split fieldstone accents. 24825 Little Mack
Ave. St. Clair Shores, at 10 Mile. Call Bob Garvey (586) 779-7810.

Professional office space. 15' X 13' office with windows. Professionally
decorated common space with building receptionist, four conference
rooms, copy room, kitchen and storage room above 6926 sq ft. office
space. Exterior is brick ranch. 44444 Mound Rd., Suite 100, Sterling
Heights, MI 48314 Contact Ellen Mroczka 586-795-2375.
Private Law Offices for Lease. Starting at \$ 300/ Month.
2 Crocker Blvd - Free Parking
Call Ted 586-610-7591

REFERRALS

SOCIAL SECURITY and WORKERS COMPENSATION - Casazza Law
Offices - 140 years plus of combined experience with Social Security
Disability and Workers Compensation claims. Offices in Southfield
and Mt. Clemens. Referral Fees. Call Gene Casazza at
(586) 468-4400 or email Gene@Casazzalaw.com

SERVICES

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professional fiduciaries for your clients who have no family or
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Trust Director, Trust Protector, Special Needs Trustee, Durable
Power of Attorney, Health Care Power of Attorney (on a limited
basis), Conservator, Guardian (on a limited basis), and Personal
Representative; we continue to prepare pleadings for all probate
related matters, including Accountings and unique petitions as well.
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insured and here to help. 586.415.0136.



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Dedicated to Elder Law Solutions.



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CLIENT REFERRALS**

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319 Northbound Gratiot Avenue . Mount Clemens, MI 48043 . simaskolaw.com



Macomb County Bar Association

40 N. Main St., Suite 435

Mt. Clemens, MI 48043

MacombBar.org

MCBA
YOUNG LAWYERS SECTION
PRESENTS

MEET THE NEW JUDGES

FEATURING PREMIUM HORS D'OEUVRES & RECEPTION

\$25 - YLS MEMBERS
\$35 - MCBA MEMBERS
\$50 - NON-MEMBERS

WEDNESDAY, OCTOBER 11, 2023
5PM-7PM

VILLA PENNA
43985 HAYES RD., STERLING HEIGHTS, MI 48313

RSVP: MACOMBBAR.ORG
QUESTIONS: AARON.HALL@MACOMBGOV.ORG