

Bar Briefs



December 2021

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Happy Holidays

*By Francesco Briguglio,
President of Macomb Bar Association*

I wanted to use this month's article to wish each one of our members happy holidays, health, and wealth.

As I reflect on this past year, the way that we practice law has most definitely changed because of COVID-19. The lives of our clientele, whether it is transactional, civil litigation, criminal cases, or domestic cases are different. Many of us entered lockdown last year not knowing how it was going to affect our practices. Those first few months of the pandemic were strange for sure. Then came use of technology to keep legal proceedings moving through the court system. Eighteen months later, it is apparent that increased use of technology has not made attorneys obsolete at all. The need for attorneys is greater than it ever has been before.

COVID-19 caused our jury trials to come to complete halt. SCAO as well as other bodies thought long and hard on how to restart jury trials in a safe manner and made multiple recommendations that have been implemented in our local courts. After many months, courts are now conducting jury trials while taking proper precautions to limit the spread of COVID-19. Both criminal and civil cases that have been languishing since this pandemic started her now getting their day in court.

Our Circuit Courts and District Court now largely open to conduct daily business. Our Bar office continues to operate under the leadership of Rick Troy and is fully available to our membership. While court traffic was down bar leadership elected to make several large changes in the bar office itself, We are in the process of making technology upgrades. Technology upgrades include new computer equipment that our members will use as well as equipping the Rick Troy and Dawn Fraylick to work at maximum efficiency whether they

are operating remotely or on site in the Circuit Court building.

I encourage our members to come in and visit to see your membership dues at work to deliver the best services possible. The Bar has endeavored to remodel the physical layout of the office to allow for increased social distancing by tearing down the pre-existing dividers that could place attorneys shoulder to shoulder with each other.

By all accounts, it appears that most court hearings will continue to be conducted electronically to the greatest extent possible. Our local legal community is one of the most prepared to serve our clients no matter the manner or place that legal services are delivered. The Bar office is also optimized to accommodate for increased virtual hearings even if you are physically within the Circuit Court building.

On another more personal note, most of us are accustomed to going to multiple Christmas parties during this season. This Christmas season may look substantially different than those in years past. I would encourage everyone to donate their time, their money, or their talents to their favorite charitable cause. There are too many great charities to list right within our community. Giving local this holiday season will help make the greatest impact to Macomb County.

Each of our members are in my thoughts and I wish you all the best.

Regards,
Frank

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Lawyer Referral Works!

*By Rick R. Troy, Executive Director,
Macomb Bar Association*

As the calendar year comes to a close, goal setting and planning for the new year may be an activity that you are currently engaged in. If you are thinking through your practice for 2022 consider joining the Macomb Bar's Lawyer Referral Service. I'll admit it, the Lawyer Referral Service is not for everyone, but for those that participate, it works.

The Macomb Bar's Lawyer Referral Service, (LRS), connects lawyers with people that are in need of representation. For more than 30 years the bar has built relationships with businesses, courts, and a deep network of government agencies that regularly refer people seeking legal service. Often times people learn about the LRS through the positive experienced of



others.

When people contact the LRS, Dawn and I conduct an intake to determine if they are looking to hire a lawyer. It's true that many times the caller is shopping around for legal service or "researching" their "case." Some heard the words "pro bono" on television the night before and call to demand their "free" lawyer. Some are unreasonable and others are simply obnoxious. But, that's why Dawn and I conduct the intake. We sift through the undesirable stuff and refer the good stuff. Since we cannot provide legal advice to the caller, we have to make a judgement call to refer to lawyers, or not. Suffice it to say that answering LRS calls is an unending education. Not all of the callers we refer out turn into cases for our member lawyers, but they do connect possibilities for the present and the future.

Lawyers that participate in the LRS are put on practice panels. This way they are only receiving referrals in their area of practice. There are 13 Matter Types and there are 118 Sub Types that help us do a deep dive so that we find the correct area of law and the



referral. The following are the percentages of referrals by Matter Type over the past year:

- 1.5% Business
- .9% Appeals
- 22.9% Family
- 7.62% Criminal
- 7.1% Consumer
- 1.9% Elder
- 3.2% Personal Injury
- 11.4% Probate
- 19.5% Real Estate
- 1.9% Insurance
- 2.25 Social Security
- 3.9 Labor / Employment
- 3.9 % Finances
- .9% Malpractice
- 11.7 Other (*Admiralty, Computers, Education, Entertainment, Identify Theft, Medical Records, Property Damage, Restraining Orders*)

The Macomb Bar has been providing this service for lawyers and the public for more than three decades. What was once managed with 5x7 index cards is now managed by a database backed website called

Community Lawyer. Participating lawyers simply log in to their referral and click through a few questions as a way of keeping track of referrals.

The annual LRS subscription rate for Macomb Bar members is \$200. Non-members pay \$450 per year. Additionally, subscribers agree to share 15% of the revenue generated by the referral. As we close out the year we have 101 active lawyers participating in the program. Many of whom have been LRS panelists for 10 years or more. Which makes you wonder, why? My guess is the bar's LRS works for them.



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Circuit Court Corner

By Macomb County Circuit Court Administration

Judge Mark Switalski has announced his retirement from the 16th Judicial Circuit Court Bench, effective January of 2022.

Judge Mark Switalski received a Bachelor of Arts degree from the University of Michigan in 1973 and graduated from Boston University School of Law in 1976. Judge Switalski was in the private practice of law from 1977 to 1988, and served as 39th District Court Magistrate from 1983 to 1988. Judge Switalski began his judicial career in 1988, when he was elected to the 39th District Court (Roseville). He served as Chief Judge of the 39th District Court from 1991 to 2000. Judge Switalski was first elected to the 16th Judicial Circuit Court of Macomb County in 2000. He has been reelected to the Circuit Court Bench in 2006, 2012, and 2018. He was appointed as Chief Judge

of the 16th Judicial Circuit Court and the Macomb County Probate Court by the Michigan Supreme Court in November 2009, for a two year term beginning January 1, 2010. Judge Switalski currently serves in the Family Division of the Circuit Court.

Chief Judge James M. Biernat, Jr., stated “I have had the pleasure of working with Judge Mark Switalski for many years, and I’ve always held him in great esteem. He has always maintained a dignified and courteous demeanor on the bench, and still managed to inject humor into his interactions with his colleagues and staff. Mark is a great asset to the Circuit Court Bench, and we wish him all the best in his pursuits following retirement.”

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8 Lawyers Listed in Michigan Super Lawyers



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Military Matters: Know What You're Dividing!

*By Mark E. Sullivan
(Permission Given to Reprint)*

We were just about finished with the hour-long Zoom interview when I heard it. It was one of those moments when your ear says to your brain, “What? Hold on – stop every- thing!”

The military client was telling his local lawyer and me how he expected to retire from the Army in four months. He said he'd know for sure when the PEB report came through. “PEB... as in Physical Evaluation Board?” I asked. He confirmed that's what he meant.

It was now clear – as it definitely had not been in the previous hour – that “John Doe” was not gracefully exiting the Army after 20 years of service at his own choice. Rather, he was being forced out with a disability retirement. And that made all the difference in the world.

Disability Retirement

We'd been discussing what share his wife would receive in the divorce settlement, how to write up the military pension division order (MPDO), how much of the pension would be allocated to her, when payments would start from the retired pay center, and what language and data points were required. But now, with the new information, it became clear that this was not a longevity retirement; he was being “put out to pasture” because he was mentally or physically unfit to continue to serve.

And that meant that there was a good possibility that none of the pension would be divided. When a servicemember gets a disability retirement under Chapter 61 of Title 10, U.S. Code, his retired pay is calculated in two ways. The first is retired pay based on his percentage of disability. The second method is

pay calculated according to his years of service. The servicemember gets to decide which to receive. 10 U.S.C. § 1401(a). In John's case, if the higher amount were based on percentage of disability and he chose that, then none of the pension would be divisible. 10 U.S.C. § 1408(a)(4)(A)(iii). If the higher amount were based on years of service and he chose that, then only the difference between that amount and the percent-of-disability amount would be divisible.

This made a huge difference in the structure and strategy for the case, and the PEB information only came to light in what we thought were the last five minutes of the hour's interview. It led us to continue the conversation for almost

another hour, ranging over topics such as the duty to disclose information to the wife's attorney, what discovery requests (if any) were served by the other side, the possible role of spousal support in the settlement, grounds for a later motion by the wife to set aside the divorce settlement for fraud, and the Rules of Professional Conduct. The main lesson coming out of the interview was the importance of knowing what you're dividing when the interview involves military pension division.

Retirement from Active Duty

In many cases, John Doe's pension is based on active duty only, and he will receive a “regular retirement” under Chapter 71 of Title 10. When the divorce is after December 23, 2016 and he isn't receiving retired pay at divorce, then the MPDO must contain his years of service and his High-3 pay, both as of the divorce date. Further discussions often involve how to calculate the marital fraction.

If John's "regular retirement" is based on active service as well as time in the National Guard or Reserves, then the discussion may involve calculating the marital fraction according to time, and then again according to retirement points acquired during the marriage; each of the parties will want that resulting percent which most benefits him or her. The time calculation will involve not only active-duty service but also "extra Section 1405 service," that is, additional time attributed to retirement points received for weekend drill.

Non-Regular Retirement and "Pay Status"

If John is to receive a "non-regular retirement" from the National Guard or Reserves under Chapter 1223 of Title 10, then the data points are still required, but the "years of service" is replaced by "retirement points at divorce," and someone has to do that calculation. The marital fraction can be fixed as of the divorce date, or it can be a "formula clause" with marital pension service divided by total pension service (and the latter is unknown when John hasn't stopped drilling). The fraction would look like this:

Marital Military Service / Total Military Service

When the denominator is not fixed on the date of separation, filing or divorce, it is represented by "X." And in this situation, military rules for Guard/ Reserve retirements require that the fraction be expressed in terms of retirement points, not time.

When John is already in pay status and he's getting monthly pension payments deposited into his bank account, the issue often involves "back payments." If the parties have been separated for, say, two years, then he may owe "Jane Doe" a sum of money for the pension-share payments which he received in the past 24 months and did not share with her. Or he may owe her nothing if he's been making the house payments or paying spousal support from his pension during the interim period.

When It's Disability Retired Pay...


And finally, when John's retired pay is based on

disability, the golden key for the pension-division issue is: Can the pension be divided at all? If that issue is not spotted during the interview, then the consequences could be serious and substantial for the spouse or the servicemember down the road when the pension order is entered and sent to the retired pay center. The reply letter sent to Jane Doe will likely say that John's retired pay "cannot be divided since it is based entirely on disability." Jane's attorney might file a motion under Rule 59 to amend or alter the divorce settlement. The motion could be under Rule 60, asking for the settlement to be set aside or vacated. There may be a motion for contempt, and Jane might even file a grievance against John's attorney.


All of this can be avoided if the attorney for Jane or for John is aware of what's being divided. It means that – to start the interview – the responsible attorney needs to ask about the nature of the retired pay that the court will be allocating in divorce. It means, in short, that you need to know what you're dividing.

About the Author

Mr. Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina, and is the author of The Military Divorce Handbook (Am. Bar Assn., 3rd Ed. 2019) and many internet resources on military family law issues. A Board-Certified Specialist in Family Law for over 30 years, Mr. Sullivan works with attorneys nationwide as a consultant on military divorce issues and in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.



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Benjamin Dietlin
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Ahmad Mazloum
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A MCBF Scholarship Can Make All the Difference

By Sherrie Detzler, Macomb County Bar Foundation Director

It's that time of year in the Macomb County Bar Foundation's calendar where we are dotting the "i" and crossing the "t" for funding and administering our various scholarship opportunities. As a 501c3 organization, the Foundation's entire mission rest upon our awarding scholarship funds to those law students (our future colleagues) we recognize as going above and beyond.

Your participation and input is priceless! Do you know a deserving law student that you can encourage to apply? Are you active at your law school where you can promote current students to participate? Is your current law clerk someone you see as the "up and coming" based on their contributions in our community? Spread the word! Applications will soon be available for the following MCBF scholarships:

The Philip F. Greco Memorial Scholarship is awarded to a second or third year law student who demonstrates a commitment to serve or contribute to the Macomb County legal community, a need for financial assistance, good academic standing (2.5 GPA or better). Special consideration is given to non-traditional law students. This \$3000 scholarship originates from the contributions of Emil E. Cardamone and continues with the generous contributions of Attorneys Title Agency, Greco Title Division and honors the memory of the late Philip F. Greco, Esq.

The Kimberly M. Cahill Leadership Memorial Scholarship is to be awarded to a second or third year law student who is currently enrolled in law classes at any accredited Michigan law

school. The recipient should demonstrate outstanding qualities of leadership and the ability to inspire and effectively lead others to a defined objective. The recipient must also demonstrate a need for financial assistance and an academic standing (3.0 GPA or above). This \$3,000 scholarship originates from the generous contributions to the MCBF's Kimberly M. Cahill Memorial Fund and honors the memory of Kimberly M. Cahill who passed away January 21, 2008.

The MCBF Trustees Law School Scholarship is awarded to a second or third year law student who demonstrates a commitment to serve or contribute to the Macomb County legal community, a need for financial assistance, and high scholastic achievement. The \$3,000 scholarship originates from the generous contributions of the Foundation's Trustees. Applicants for the Macomb County Bar Foundation Trustees Law School Scholarship must be enrolled as a law degree candidate at one of the Michigan Law Schools.

In addition to promoting this incredible opportunity, we hope you will continue to support the Foundation and purchase your Holiday Raffle tickets today (see flyer in this edition of Bar Briefs). Together we truly can make all the difference.

Macomb Bar Foundation Scholarship Recipients

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Savanna Polimenti - Philip F. Greco Memorial Scholarship
- 2020
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- 2019
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Marilyn Yousif - Philip F. Greco Memorial Scholarship
- 2018
Rachelle Lynn Glisson - Trustee Law School Scholarship
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Mallory Fiordellisi - Philip F. Greco Memorial Scholarship
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- 2014
Salvatore Amodeo - Trustee Law School Scholarship
Kathleen Cieslik - Kimberly M. Cahill Memorial Scholarship
Lorenzo Parker - Philip F. Greco Memorial Scholarship
- 2013
Angela Medley - Trustee Law School Scholarship
Dawn Young - Kimberly M. Cahill Memorial Scholarship
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Elizabeth Denmark - Trustee College Scholarship
Rachel Gerard - Trustee College Scholarship
Angela Simon - Trustee College Scholarship
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Heather Smilde - Trustee Law School Scholarship
Trisha Tarjeft - Trustee Law School Scholarship
Amber Hay - Kimberly M. Cahill Memorial Scholarship
Angela Sulaka - Philip F. Greco Memorial Scholarship
- 2011
Adam Wenner - Trustee Law School Scholarship
Aisa Villarosa - Kimberly M. Cahill Memorial Scholarship
Rachel Culley - Philip F. Greco Memorial Scholarship
Heather Harper - Trustee College Scholarship
- 2010
Jeffrey Bruss - Trustee Law School Scholarship
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