

BAR BRIEFS

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January 2024



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New Year, New You, New Us

By Ryan Zemke, President of the Macomb Bar Association

Welcome to 2024!

A new year brings us an opportunity to reevaluate things, reconfigure our paths, and recalibrate our compass to get on a path to achieve our goals. So many of you probably welcomed the new year by setting goals, both personal and professional, and made resolutions to help achieve those goals.

The most common new year's resolutions usually involve exercise and weight loss, while others want to learn new hobbies or spend more time with their family and friends. No matter what you set out to do, the changing of the calendar year gives you a fresh slate and perhaps a convenient excuse to make the changes that maybe you have been putting off for far too long.

The Chinese Horoscope labels 2024 as the year of the dragon. More specifically, 2024 is the year of the wood dragon which means that we should expect to see growth, progress, and perhaps abundance. It was seen as an ideal time for fresh starts and laying the ground-work for lasting success and the foundation for long-term achievements. While I certainly hope that this is true for each of you, I also believe that this will be true for our bar association as a whole.

As our association says goodbye to 2023 and a year of transition, we welcome 2024 and a year of new beginnings. Your board of directors continues to make

progress finding the next executive director of the MCBA with a focus on finding the right fit to lead the organization into the future based on the feedback that has been provided by our membership. Rather than rush to make a hire as fast as possible, the board has put significant effort into working to find the proper fit.

While that process may have led to some frustration and minor bumps in the road over the past few months, the long term benefits will be well worth the wait. Surely, the bar association will have a list of new year's resolutions for the new director to strive towards just as many of you have set for yourselves.

2024 is the year of the wood dragon, which means that we should expect to see growth, progress, and perhaps abundance.

The board continues to engage with our membership about what new year's resolutions you would like to see for the MCBA in 2024. Your feedback is vital to shaping the future of the organization and providing guidance to our future leaders.

Please reach out to myself or other board members so that we can hear your ideas. Together, we can create a bar association that will continue to grow and be successful for the profession and the public for generations to come. I wish you all the best with your own new year's resolutions and look forward to working with you to help the MCBA reach ours as well.

2023 Achievements and Accomplishments

By the Macomb County Prosecutor's Office



The Macomb County Prosecutor's Office successfully fulfilled its goals thanks to the Board of Commissioners. We were facing numerous challenges including school threats, gun violence, domestic abuse, and mental health issues and the office has initiated programs to tackle all of these issues. In 2023, we also exonerated an innocent man through the Conviction Integrity Unit, collected more money for Macomb County children in back child support than ever before, exceeded all expectations in securing grant funding, reached tens of thousands of seniors to prevent financial crimes, improved the office processes and procedures, and we are eager to achieve further progress in 2024.

Successful prosecutions: The Macomb County Prosecutor's Office successfully prosecuted murders, rapists, thieves and other criminals throughout 2023.

More child support collected for Macomb County children: Under the direction of Prosecutor Peter J. Lucido, the Family Support Division has instituted a program with Felony Non-support cases. As a result, the office has successfully collected over \$501,864.82 in 2023, channeling much-needed money towards the support and care of the county's children.

Child support collection program: Prosecutor Lucido coordinated a child support collection program for parents who owe child support ordered through Macomb County Circuit Court. This program is a targeted effort to offer a fresh opportunity to parents who are behind on their child support payments, allowing them to rectify their obligations without legal consequences.

More grants, more access to justice: The Macomb County Prosecutor's Office has exceeded its expectations in securing grant funding, thanks to the support from the Macomb County Board of Commissioners. Prosecutor Lucido's foresight in hiring a professional grant

coordinator has resulted in the acquisition of over \$2.5 million in grants, at the cost of only \$35,000.

School threats are taken seriously: in 2023, The Macomb County Prosecutor's Office zero tolerance policy resulted in 108 charges of communicating a threat of terrorism (20 year felony), calling in a bomb threat (four year felony), threatening violence against a school, employee or students (one year felony), or malicious use of a phone or computer (six month misdemeanor).

Conviction Integrity Unit exonerates innocent man: On March 20, 2023, after an extensive investigation and file review by the Macomb County Prosecutor's Office Conviction Integrity Unit (CIU), Prosecutor Peter J. Lucido asked the court to release Mack Howell from the Michigan Department of Corrections after serving 7.5 years of a 25-50 year sentence.

First appeal filed to the U.S. Supreme Court: In October 2023, the Prosecutor's Office filed its first Writ of Certiorari to the U.S. Supreme Court Circuit Court, in the case of *People of the State of Michigan v Anthony Joseph Veach*.

Senior SCAMS: Prosecutor Lucido's "Stopping Crimes Against Macomb Seniors" SCAMS program has delivered booklets to Macomb County seniors. Prosecutor Lucido and staff have also conducted 85 SCAMS presentations in Macomb County for various groups and organizations.

Big dollars in restitution paid to victims: The Macomb County Prosecutor's Office Consumer Protection Unit has successfully secured over \$500,000 in restitution this year, marking a significant milestone in the fight against financial crimes in Macomb County. Under the leadership of Prosecutor Lucido, the Consumer Protection Unit has achieved a commendable feat by

ensuring that victims of various financial crimes are compensated for their losses.

Macomb County Prosecutor seeks mental health evaluations on gun charges: Macomb County Prosecutor Peter J. Lucido announced a two-step plan to address gun crimes: requesting a mental health evaluation as a condition of bond for felony gun suspects, and no plea bargains that eliminate felonies on assaultive gun charges. In 2020, the year before Lucido took office, felony firearm was charged 146 times. In 2023, it was charged 432 times. In 2020, the year before Lucido took office, carrying a concealed weapon without a license was charged 434 times. In 2023, the five-year felony was charged 533 times.

Prosecutors prosecuted, even though it took more effort per case: With more than 650,000 pieces of digital evidence in the system, the volume of digital evidence is higher than it's ever been, and keeps growing.

“Knocking Violence Out of My School” Video Competition: Prosecutor Lucido implemented the second annual “Knocking Violence Out of My School” video competition, giving students the opportunity to talk peer to peer about how they feel about school threats, violence, weapons, and bullying.

Domestic Violence Awareness Campaign: Prosecutor Lucido's Office created a Domestic Violence Awareness campaign including a social media series, print resources and community outreach to educate citizens on what is domestic violence, what happens if you report the abuse, and resources available.

Stopping violence in schools campaign: In 2023, Prosecutor Lucido provided a “Stopping Violence in Schools: What Parents and Students Need to Know” campaign that includes print and online materials and assistant prosecutors going into the schools and talking to students about threats, violence, weapons and bullying.

Paperless crime victim rights: Prosecutor Lucido implemented the county's first paperless system for crime victims to request rights and notification. Crime victims may now request victim information via text message, or entirely online via the Prosecutor's Office Website.

Police training provided: Prosecutor Lucido sent assistant prosecutors to law enforcement agencies in Macomb County and provided 31 training sessions.

Collaboration with law enforcement: The Macomb County Prosecutor's Office has conducted five

Detective Meetings in 2023. This collaboration between law enforcement and the Prosecutor's Office is another example of working together to protect our community.

New case management system improved transparency and efficiency: Prosecutor Lucido's office implemented a cutting-edge case management system in just eight months, leaving behind a decades-old system.

Internship Program Grows: In 2023, the Macomb County Prosecutor's Office had 32 Law school student interns that participated in courtroom proceedings and gained invaluable experience and 67 undergraduate interns that learned about the criminal justice system.

Macomb County Circuit Court specialty courts: Macomb County Circuit Court has specialty treatment courts in which the prosecutor's office participates. In 2023, Prosecutor Lucido's Office worked with 7 participants in Mental Health Court, 23 in Drug Court, 18 in Sobriety Court, 7 in Swift and Sure Sanctions Probation Program, and 10 in Veterans Treatment Court.

Peanut the prosecutor: In January 2023, the Macomb County Prosecutor's Office added a new addition to the office with Peanut the Prosecutor, a therapy dog that came from the Canine Advocacy Program in connection with CARE House to help survivors of trauma participate in the Criminal Justice System. No tax dollars are used to care for Peanut.

Providing comfort to abused children: The Crime Victim Advocate Unit revamped the office's kids room and made it more inviting and more geared towards a child's mindset, especially when being asked uncomfortable topics.

Major Crimes Unit: Prosecutor Lucido created the Major Crimes Unit with the top major crime assistant prosecutors to work major crimes and train more assistant prosecutors, resulting in more access to justice by victims of major crimes.

Providing transparency: Under Prosecutor Lucido, the Communications Department created transparency by delivering over 200 press releases, implemented a new prosecutor's department website, created interactive monthly email newsletters, and created numerous social media campaigns to keep the public informed.

Warrant appeals unit: Prosecutor Lucido created the Warrant Appeals Division so that if a victim or police

officer is not satisfied with a denied warrant, they can ask for a review of the warrant request from the Warrant Appeals Division. In 2023, 13 warrants were reviewed and 11 are still in review.

Special prosecutions: Under Prosecutor Lucido's direction, the Macomb County Prosecutor's Office has prosecuted Macomb County Officials, police officers, and the community equally and fairly.

"Hero Award" tells students and teachers a hero walks among them: The Macomb County Prosecutor's Office gave out four hero awards in 2023.

Macomb County Prosecutor ties office record for national awards: The Prosecutor's Office received seven 2023 National Association of Counties Achievement Awards in the category of Criminal Justice and Public Safety.

Prosecutor of the Year Award: Michigan Chapter of the International Association of Arson Investigators (MIAAI), a professional association of fire investigation experts, awarded Assistant Prosecuting Attorney and Chief of Trials Sian Hengeveld the Prosecutor of the Year Award for 2023, after a five day jury trial on a murder and arson case.

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What Never Changes

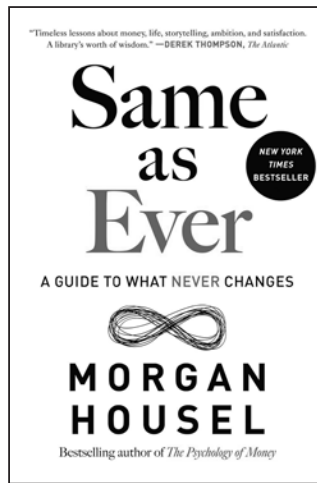
By Aaron J. Hall, Editor-In-Chief

“Change captures our attention because it’s surprising and exciting. But the behaviors that never change are history’s most powerful lessons, because they preview what to expect in the future. Your future. Everyone’s future.” Morgan Housel has done it again.

It’s January and the clickbait is the same as ever. So many articles at the beginning of the year highlight the noble prospect of change. Why shouldn’t we use this opportunity as a reset? We say to ourselves, “This is the year I’m finally going to give up sugar.” But Housel’s new book is about the exact opposite. If you’re unsure what to purchase with your shiny Amazon gift cards following the holiday season, I highly recommend the incredible new book, *Same As Ever: A Guide to What Never Changes*. Housel is the best-selling author of *The Psychology of Money: Timeless Lessons on Wealth, Greed, and Happiness*. In this follow up, he does not let down his more than four million readers. “No matter who you are, where you’re from, how old you are, or how much money you make, there are timeless lessons from human behavior that are some of the most important things you can ever learn.”

The book contains nuggets of wisdom and chronicles from important figures like Warren Buffet, Charlie Munger, Franklin D. Roosevelt, and Martin Luther King, Jr. There are accounts of triumphs and failures from athletes, politicians, lawyers, titans of business, and medical professionals. Filled with twenty-three brief insightful chapters, the book can be read in any order. A couple of my favorites include “Trying Too Hard” and “Casualties of Perfection.” These passages are especially relevant for attorneys.

Our profession is overwrought with needless complexity. Housel writes that “complexity sells better,” but “there are no points awarded for difficulty.” Being too “attracted to complexity” can “backfire spectacularly.” This is true for trial strategy, oral arguments, brief writing, and dealing with litigants. Simplicity is the key to success—but that’s easier said than done. A popular Mark Twain quote comes to mind: “I didn’t have time to write a short letter, so I wrote a long one instead.” Is this the reason why we’re stuck in Zoom waiting rooms for longer than actually necessary? Cases become unnecessarily complicated and deviate from the key issues. We know the



essential skill of issue-spotting, yet we often spend far too much time pontificating on the superfluous. This is a reason the appellate courts place time limits on oral arguments. But some things never change. We are human. We want to show everything that we know, even if it is irrelevant to our case. This isn’t new. As a wise and experienced attorney reminded members of the YLS recently, “Long before Zoom virtual waiting rooms, we were still waiting for other attorneys in the physical courtroom.”

Although the courts were closed a few days over the holidays, I’m sure many (especially those who traveled) feel as though we could use a vacation from our vacation.

Housel highlights the importance of vacation. With all the technological advances, do attorneys ever truly get away? We must disconnect to reset. But how can we do that as the cases need attention? Upcoming trials. Motion deadlines. What about billable hour targets? Housel writes, “Many people strive for efficient lives, where no hour is wasted. But an overlooked skill that doesn’t get enough attention is the idea that wasting time can be a good thing.” Housel observes that when we return from a true vacation, we often have a clearer approach to the biggest decisions in our lives. This is why experiencing Pure Michigan (or escaping from the depths of the polar vortex to someplace warm and humid) matters. However, we are so afraid of wasted time. Our profession, like many other “thought jobs,” can superficially reward us for being workaholics, but there is more than just the office. Housel puts it this way: many “thought jobs basically never stop, and without structuring time to think and be curious you wind up less efficient during the hours that are devoted to sitting at your desk cranking out work.”

Not long ago, a skilled trial attorney informed some of the MCBA that he regularly came up with his best and most creative ideas for opening statements and closing arguments while walking his dog. He wasn’t behind his desk. He set aside time to “waste,” but it proved to be the most productive. So in 2024, perhaps we can increase our value by allowing ourselves to be curious. We know this to be true. It is “self-evident.” It never changes.



SCOTUS Hears Argument on Domestic Violence Gun Ban

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



The Supreme Court of the United States recently heard oral arguments on a case involving a federal law that disqualifies individuals under a domestic protective order from possessing firearms. The majority of the justices seemed reluctant to strike down the federal law. We have tracked this case since SCOTUS granted certiorari on the last day of its term back in June. The case will have huge implications for our nation’s second amendment jurisprudence.

Texan Zackey Rahimi came within the injunctive powers of the federal law, 18 USC 922(g)(8), when he assaulted his then girlfriend with whom he has a minor child. Rahimi was also a suspect in several shootings. When local law enforcement searched his home, they found weapons resulting in his charges under the above-referenced federal gun ban.

Rahimi challenged the constitutionality of the federal law pursuant to the SCOTUS holding in *New York Rifle & Pistol Assn v Bruen*, 597 US 1; 142 S Ct 2111; 213 L Ed 2d 387 (2022), the most recent seminal second amendment case. The *Bruen* Court ruled that gun restrictions should only be upheld when there is a “tradition of such regulations” in our nation’s history; a “well-established and representative analogue” to the challenged law.

Even the conservative justices seemed to acknowledge that domestic violence is dangerous and places its victims in the path of injury or death. During the argument, however, the conservative justices, Roberts and Coney Barrett in particular, inquired about the degrees of dangerous conduct and fretted about how to parse certain conduct.

For her part, Solicitor General Elizabeth Prelogar asserted the basic concept that the challenged federal statute was a “clear application” of the principle “that you can disarm dangerous people.” Seems simple enough to us over here at Clarkston Legal.

Rahimi’s lawyer faced a tough reception from the justices; he had a tough client to represent. Justice Roberts asked him: “[y]ou don’t have any doubt that your client is a dangerous person, do you?” Someone that, no doubt, is ineligible to possess a firearm.

The discourse touched on certain categories of citizens that are ineligible to possess weapons: convicted felons, mentally ill persons, and persons possessing weapons with their serial numbers removed, among others. The central issue in the case is whether persons subject to domestic violence injunctive orders should be included in the list of disqualified individuals.

Michigan’s Governor Whitmer is expected to sign a state bill into law that mirrors 18 USC 922(g)(8); the challenged federal law in *Rahimi*, on the very day of oral arguments in Washington DC. The Michigan law disqualifies any person convicted of “a misdemeanor involving domestic violence”; the disqualification lasts for 8-years from the successfully completed term of incarceration or probation.

This new law ties into the recently enacted package of “red flag” gun laws here in Michigan. One of the components of this package is the Extreme Risk Protection Order Act. This act, signed by the governor in May, allows specified individuals (a spouse or someone with whom a person shares a child) to file a civil action requesting a circuit court to file an Extreme Risk Protection Order. If the court determines that such an order is necessary – because the individual is determined to pose a risk to himself or others through the possession of a weapon – issuance of the ERPO would prohibit the individual from the possession of a firearm.

There has been much speculation here in Michigan that, like the federal domestic violence gun ban, this law will be subjected to immediate constitutional scrutiny. Some counties have already indicated their unwillingness to enforce this new law.

The legislative intent behind both the federal and state law gun bans is the prevention of domestic violence. Studies used to pass the laws indicate that victims of domestic violence suffer much greater harm, including death, when the perpetrator possesses a weapon.

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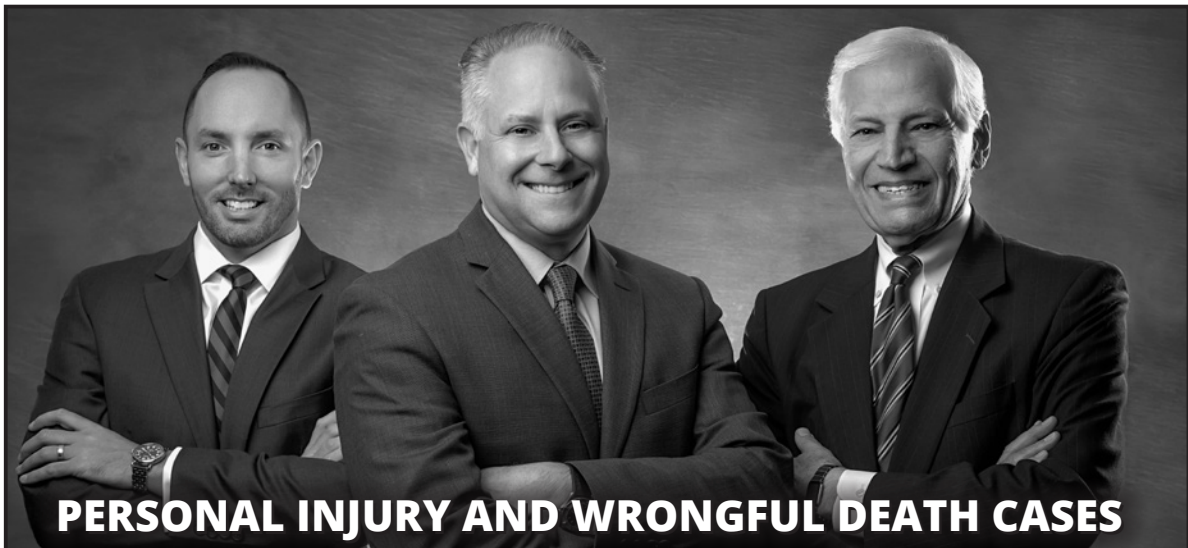
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Warner Moves to New Macomb County Office

With a population of 881,000 and growing, a national leadership position in the IT and cybersecurity industries, and a strong foundation of automotive suppliers, defense contractors and health care service providers, Macomb County is pushing the accelerator on growth and success.

“That’s why we knew we had to do the same thing at Warner Norcross + Judd, for ourselves, for the community and for our clients, to provide a new office in sync with the growth and success of this dynamic community,” said Matt Casey, executive partner of Warner Norcross + Judd’s Macomb County office.

One of Michigan’s largest law firms, Warner has a long history serving Macomb County’s diverse business community and opened the firm’s first Macomb office in 2006. The firm’s newest office suite at 12900 Hall Road in Sterling Heights features approximately 20 attorney offices, three private conference rooms and informal gathering spaces. It’s a place where clients and their attorneys can collaborate on new ideas and problem solving, on doing all the things that need to be done to keep their own businesses secure and successful.

“Macomb County is a thriving community with consistent population growth, incredible natural resources and a strong, collaborative business sector,” Casey said. “Yet the county is underserved by professional service providers needed to support its growth and industries. Warner’s office is staffed by many lifelong Macomb residents like me, who are fully invested in the county’s success and who know how to get things done. We’re hoping to attract more attorneys who share our excitement and want to help Warner build on its history here.”

With 230 attorneys statewide, Warner represents more than 7,000 organizations and individuals, including Fortune 500 companies, second-stage growth businesses, entrepreneurial startups, individuals and families from across the country and around the globe. Warner is the only major law firm to have offices in Oakland, Macomb and Wayne counties.

Attorneys in the Macomb office are active in aerospace and defense, automotive, cannabis, construction, corporate, financial institutions, higher ed, infrastructure and public-private partnerships, intellectual property, litigation, mergers and acquisitions, trusts and estates, real estate, supply chain and more.

The Macomb office is home to the firm’s well-respected Emerging Media and Technology Industry Group. The U.S. Congress sought Warner’s advice when it called partner Brian Wassom to prepare for its first hearings on augmented reality. Several attorneys are also steeped in traditional media law, first amendment, copyright, cybersecurity, privacy and trademark law,

providing a broader context for understanding the legal doctrines that govern newer media as well.

“Warner is a sophisticated, go-to law firm for clients in dozens of industries who have complex legal needs,” Wassom said. “Lawyers in our Macomb office have broad national and international practices and benefit from Warner’s full-service capabilities and deep bench strength. The fact that the Macomb office is five minutes from my home adds a quality-of-life element that I couldn’t get anywhere else.”

Macomb attorneys participated on the Warner team that served as legal counsel to nearby Bay City as it structured several agreements to rehabilitate two city-owned drawbridges that span the Saginaw River. Considered to be the first of its kind of public-private partnership in Michigan, the complex lease agreements required approvals from the Federal Highway Administration, Michigan Department of Transportation and other state and local authorities.

Warner attorneys also recently served as legal counsel to Calumet Electronics as the company secured nearly \$50 million in federal and state support to scale up manufacturing for a first-of-its-kind printed circuit board factory. Calumet, which works closely with the U.S. Department of Defense, is an award-winning engineering and manufacturing company that produces sophisticated printed circuit boards and recently developed the ability to manufacture packaged substrates critical to the semiconductor ecosystem.

Outside of the office, Warner attorneys are active in the community, sitting on numerous boards, volunteering and supporting an array of business, recreation, cultural and nonprofit causes.

“I’m honored to be a longtime board member for Advancing Macomb,” Casey said. “Our mission is to mobilize collective assets to solve community challenges to create opportunities for the County. It’s a role that has brought me in contact with many invested Macomb leaders and helps me stay connected to important matters that impact us all.”

Warner’s new suite in the Sterling Town Center is designed to be convenient, efficient and welcoming. Enhanced security, cutting-edge technology and convenient parking will help to create an engaging and welcoming atmosphere for attorneys, staff and clients.

“We’re excited to build on our past success and to play an even more significant role in Macomb’s highly promising future,” Casey said. “We’re proud to be part of Macomb. Any time we can help, we will.”



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THE MACOMB COUNTY BAR
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MOCK TRIAL
COMPETITION
ON SATURDAY
MARCH 2, 2024

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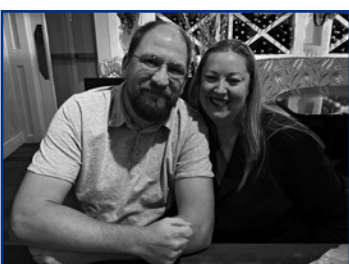
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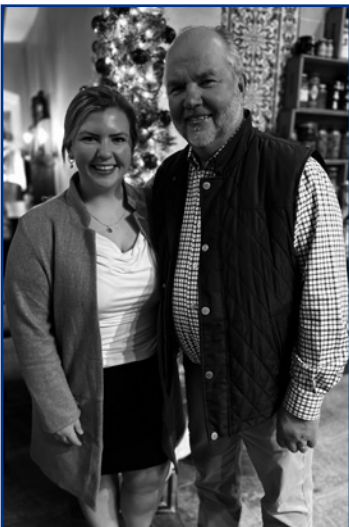
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