

BAR BRIEFS

Official Publication of the Macomb Bar Association

April 2024

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Bar Briefs

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The New Season

By Ryan Zemke, President of the Macomb Bar Association

“The most important thing is to try and inspire people so that they can be great in whatever they want to do.”

— Kobe Bryant

April is an exciting time for sports fans (although admittedly there have been plenty of years that garner more excitement locally than 2024). We get to experience the end of “March Madness” at the same time as Opening Day for MLB baseball and a final playoff push for the NHL and NBA. For college sports, we get to see the chaos and excitement of underdogs making a deep run through the bracket taking down teams that are, in the opinion of the experts, more talented. For baseball we get a chance to see teams start a marathon season loaded with fresh expectations and hope and the culmination of an offseason of preparation finally comes to fruition.

Sometimes we see new faces in new places and other times we see those that we already knew take on larger roles and come out of seemingly nowhere to make an unexpected impact. For hockey and basketball teams we see some teams who are happy to move on to the offseason and look towards the future whereas other teams are feeling the crunch of a playoff push – needing every person on the roster to do their share to make a final push towards the postseason. Many teams rely on veteran players to mentor younger players on exactly what it takes to succeed in these high-pressure environments and the value of great leadership on the bench (and support in the stands) cannot be understated.

In many ways these same themes can be found in our legal community as well. We see attorneys training and educating themselves year round – honing their skills in anticipation for their moment to shine in a courtroom or

even at a deposition. We see our experienced attorneys mentoring the next generation – showing them the ropes and guiding them towards success both in and out of the court (pun intended). You might even say sometimes we are affected by a referee making a “bad call” here and there.

Our young lawyers can show some of our veterans emerging trends and technologies while our veterans can provide experience that can only be learned through “in-game” experience and not in a batting cage or game simulator. Some of you may try to change teams, some of you looking to improve your offense, and others seeing things from a more defensive mindset. At the end of the day, we all have experienced our fair share of agonizing defeats and unforgettable victories (no matter how big or small they may be) along the way and we all have (and need) those support systems and “fans” to keep us going.

Together, as a thriving bar association, we can work together as a team to utilize our skill, experience, and teammates to reach unprecedented levels of success. Utilizing each other for training, for advice, for knowledge, or maybe just for a scouting report on a judge or opposing counsel we can achieve our goals no matter where you are at in your career. No matter what your individual experience and expertise may be, it is clear that as a team we are better than we are as individuals. You are all hall-of-famers in my book and it is an honor to be a part of our legal community. I look forward to seeing what the season ahead brings for all of us.



Video Conferencing And Injury Law Practice

By David C. Femminineo, Owner and Founder of Femminineo Law

Femminineo 

As a practicing injury attorney for almost 30 years, I would say that the most significant change that has taken place in that 30 year period is the proliferation of video conferencing.

For the first 25 years of my career, every single court hearing, status conference, case evaluation hearing, client meeting, client deposition preparation and most certainly client deposition took place *live and in-person*. The parking lots were full at the office and at the courthouses. The office lobby was always active. Each and every year of the first 25 years of my career I would deal with traffic delays, weather delays, car trouble and every other excuse for why my opposing counsel/my client would never be on time for a court hearing or deposition. It was also impossible to be a two places at once, and my office was constantly rescheduling with the court/opposing counsel to accommodate other court hearings that were taking place in other courthouses at the exact same time.

Of course, then came the pandemic of 2020 and nothing could have prepared personal injury practitioners for the changes that were about to happen.

The youngest caught on first

At first, the youngest practitioners adapted to the concept of video conferencing strongly and embraced it. The mid to oldest practitioners were very recalcitrant to the idea of not being able to meet opposing counsel, and their client, face-to-face. I spoke with endless “seasoned” insurance defense practitioners who insisted that they would “never” agree to video depositions. How could they possibly evaluate a plaintiff without a “live” deposition? Never!!! Until they had no choice.

Then, something changed. After a few hearings via video conferencing, it became obvious that this form of communication was far more efficient and cost-effective than in-person hearings and depositions. Then, it became the oldest generation of lawyers who embraced it the most. Why was that? For the first time in a personal injury attorney’s career, it was possible to be in multiple places, statewide, at the same time. It was suddenly possible to remain in your office or at home while the snow is falling and still get everything accomplished that you set out to do that day. There were no more traffic delays. There were no more car trouble excuses. Furthermore, when a deposition or hearing was done, you

simply hit “end” or “leave meeting” button and you were right back to what you were doing before the deposition of court hearing....including being on vacation if you so choose. Now, I find that it is hardest to get the most “seasoned” insurance defense practitioners to do anything “live”.

For judges, in my opinion, it became a matter of getting more done in a shorter period of time with all of the same advantages (no more car trouble and traffic excuses). In fact, with video conferencing hearings, when an attorney does not have a matter on their calendar, and they are 40 miles away, that attorney can simply jump on the computer and join the court hearing without having to reschedule.

Ask for an in-person hearing....you will get it!!

Sometimes an in-person hearing is needed for one reason or another. My experience is that the hard working and practical judges of the Macomb County Circuit Court (and surrounding Circuit Courts of Michigan) will grant that request and schedule the next hearing to be “in-person with all counsel and persons with authority to appear live”. This has become an effective tool towards the end of the case...since appearing before the judge has become the exception rather than the rule.

A change in how we practice

From a practical standpoint, those who are injured in an accident are less mobile and less willing to get out of their house to go meet with their attorney. Instead, they can simply join a video conferencing meeting and you are meeting suddenly face-to-face from their couch or bed. The client can also rest easy knowing that they will likely not have to appear personally in court unless and until the case gets close to a jury trial. The ramifications of the pandemic of 2020 as it relates to personal injury practitioners and the practice of law cannot be overstated. Although some judges are attempting to make in-person hearings more frequent on injury cases, the mandate of the Michigan Supreme Court remains that these hearings shall take place via video conferencing whenever possible.

Although I do miss watching live court, speaking with other practitioners at the case evaluation hearings, seeing old friends from other forms of practice, these benefits are seemingly far outweighed by the convenience of video conferencing for the injury practitioner.



Are You and Your Company Impacted by the Corporate Transparency Act?

By Arvin F. Zora, Associate, O'Reilly Rancilio P.C.

O'REILLY RANCILIO P.C.
ATTORNEYS AT LAW

The answer is probably yes, so you should pay careful attention to the information below. The Financial Crimes Enforcement Network of the United States ("FinCEN") has set forth stiff penalties to anyone who chooses to ignore or disregard their reporting obligations.

The Corporate Transparency Act officially went into effect as of January 1, 2024 (the "CTA"). The CTA requires reporting through FinCEN, which is a division of the United States Treasury Department. FinCEN has established a national registry, which will contain personal identifying information about the more than 32 million companies that the CTA is expected to effect.

Background

The CTA was authorized as part of the National Defense Authorization Act of 2021. The objective of the CTA is to fight against money laundering, terrorist financing, corruption, tax fraud, and other nefarious activity. FinCEN was set up by the US government to support such objective by requiring beneficial owners of entities to report, which is intended to make it difficult for bad actors to conceal financial activities through entities with undisclosed or muddled ownership structures.

Timely Reporting is Mandatory.

Existing entities formed before January 1, 2024, must file an initial reports no later than January 1, 2025. Newly-formed companies created after January 1, 2024, must file their initial reports 90 days after receiving notice of their creation or registration.

Who Must Report?

Reporting Companies and their Beneficial Owners (see definitions below).

"Reporting Companies" are defined broadly by the CTA as any corporation, limited liability company, or other similar company created by filing a document with the secretary of state or similar office in any state, territory, federally recognized Indian Tribe, or formed under the laws of a foreign country and registered to do business in the United States.

"Beneficial Owners" are defined by the CTA as individuals who, directly or indirectly, through any contract,

arrangement, understanding, relationship, or otherwise (a) exercises substantial control over the company; or (b) owns or controls at least 25% of the equity interests of the company.

Any company considered Reporting Company will be required to file a beneficial ownership information report ("BOI report") with FinCEN's Beneficial Ownership Secure System ("BOSS").

Exceptions to Reporting Requirements.

The CTA provides 23 exemptions from reporting. Exemptions from the reporting requirements mainly consist of exemptions for certain regulated industries and non-profit organizations. The CTA also provides other exemptions that are reserved for large companies with more than 20 employees and \$5 million in annual revenue and their wholly owned subsidiaries, and limited exemptions for inactive or dormant companies.

What Information Must be Reported?

Reporting Companies must include the following information: (a) legal name, all assumed names, and/or all trade names for the company; (b) actual street address for the company's principal place of business; (c) state of formation of the company; and (d) identification number of the company.

As part of the BOI report, Beneficial Owners and Company Applicants are required to disclose their personally identifiable information, including current address, date of birth, and an unexpired passport number, state identification document, or driver's license number. To help simplify reporting, FinCEN will issue a unique FinCEN identifier to individuals who are required to make multiple BOI reports upon request. A "Company Applicant" under the CTA is an individual who files the document that forms the company.

Penalties and Fines Under the CTA.

The failure to comply with such FinCEN requirements, or the willful provision of or attempt to provide false or fraudulent Beneficial Ownership information may result in civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties, including imprisonment of up to two years and/or a fine of up to \$10,000.


Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a Reporting Company not to file a required a BOI report or to report incomplete or false Beneficial Ownership information.

Constitutionality of the CTA.


On March 1, 2024, the U.S. District Court for the Northern District of Alabama declared the CTA unconstitutional in the case of *National Small Bus United, d/b/a the Nat'l Small Bus Ass'n v Yellen*, No 5:22-cv-1448-LCB, ___ F Supp 4th ___ (ND Ala Mar 1, 2024). The court held that the CTA “exceeds the Constitution’s limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress’ policy goals.” Slip op at *3. It is important to note that the court did not issue a blanket ruling prohibiting enforcement of the CTA to parties other than the plaintiffs. The ruling certainly makes the future of the CTA unclear. Until the CTA is struck down for all U.S. business entities, the obligation to comply with the CTA shall remain effective.

The Attorneys at O’Reilly Rancilio Are Here to Help You Navigate the CTA.

The best way to avoid any negative consequences discussed above is to take a proactive approach as soon as possible. Please don’t hesitate to contact Arvin F. Zora at azora@orlaw.com if you have any questions regarding with your company is a Reporting Company or whether or not you meet the definition of a Beneficial Owner under the CTA.



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Macomb County Prosecutor Safeguards Seniors at the Spring Senior Expo

By the Macomb County Prosecutor's Office



Mount Clemens, MI - Macomb County Prosecutor Peter J. Lucido is dedicated to safeguarding seniors from scams and empowering them with the knowledge to steer clear of such schemes. In pursuit of this mission, he has authored an informative booklet named "S.C.A.M.S. Stopping Crimes Against Macomb Seniors," aimed at enhancing awareness and protection for senior citizens across Macomb County. This resource covers a range of scams targeting seniors, encompassing identity theft, telemarketing fraud, internet fraud, home improvement fraud, and caregiver fraud.

Prosecutor Lucido is committed to assisting the elderly community by disseminating crucial information and insights. He will personally distribute these informative booklets at the Spring Senior Expo scheduled for Thursday, April 18, 2024, from 10 am to 1 pm, taking place at the Century Banquet Center, located at 33204 Maple Lane in Sterling Heights, MI 48312.

Moreover, this event will feature a lineup of experts offering guidance on various topics pertinent to seniors, such as Medicare coverage, assisted living, mobility solutions, veterans benefits, and more.

"It's not just about seeking justice after a crime has occurred; it's about proactively arming our communities with the knowledge and resources they need to prevent crime in the first place. Protecting our seniors from scams isn't just a duty; it's a commitment to safeguarding the most vulnerable among us," said Macomb County Prosecutor Peter J. Lucido.

Additionally, Prosecutor Lucido conducts Senior S.C.A.M.S. presentations throughout Macomb County, providing attendees with the S.C.A.M.S. booklets and engaging in discussions about recent scams. To arrange a Senior S.C.A.M.S. presentation for your group or venue, please contact Heather Esposito at (586) 469-5642 or at hesposito@macombgov.org.



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The Critical Role of Firewalls in Small to Medium-Sized Businesses

By Cheyenne Harden, Cyber Protect, LLC and
IT Director - O'Reilly Rancilio, P.C.



The importance of cybersecurity cannot be overstated. For small to medium-sized businesses (SMBs), investing in robust security measures is not just an option but a necessity. A dedicated firewall, particularly a Unified Threat Management (UTM) Firewall, is a crucial element of a comprehensive cybersecurity strategy. This article explores why relying solely on an ISP router is insufficient for safeguarding your business and why a firewall is indispensable.

ISP Routers: A Limited Defense

While an Internet Service Provider (ISP) router, wireless access point, or firewall may provide a basic level of security for home users, they fall short of meeting the advanced protection needs of a business environment. Typically, these devices offer minimal configurations, with the ISP maintaining control. The lack of customization and advanced security features leaves businesses vulnerable and potentially liable for sophisticated cyber threats.

UTM Firewall: Elevating Security to Business Standards

(There are over 15 advantages, but here we will list the top 10)

Implementing a UTM Firewall is imperative for small businesses aiming for comprehensive cybersecurity. Unlike ISP routers, UTM Firewalls deliver many advanced features, ensuring a higher level of protection. Here are key reasons why SMBs should invest in a UTM Firewall:

1. **Granular Firewall Access Control List:** Enables precise control over network traffic, specifying which resources users can access.
2. **Regular Updates and Security Patches:** Ensures the firewall's database is continuously updated with the latest threat intelligence, enhancing protection against emerging threats.

3. **Content Filtering:** Restricts access to malicious or inappropriate websites, reducing the risk of cyberattacks and maintaining productivity.
4. **Intrusion Detection and Prevention:** Detects and blocks suspicious activities in real-time, preventing unauthorized access and potential data breaches.
5. **Deep Packet Inspection:** Analyzes network traffic at a granular level, identifying and blocking malicious content.
6. **Built-in VPN:** Facilitates secure remote access, essential for businesses with remote or traveling employees.
7. **Logically Separate Internal and Guest Networks:** Ensures guest users are isolated from sensitive internal resources.
8. **Logging and Visibility:** Provides detailed logs and visibility into network activities, aiding in threat detection and incident response.
9. **Traffic Shaping:** Management of bandwidth usage is crucial for optimal network performance, and UTM Firewalls with traffic-shaping capabilities allow businesses to allocate resources based on priority.
10. **Ability to Add Features and Services:** This feature adapts to evolving security needs by allowing the integration of additional features and services.

In the contemporary legal landscape, the ethical responsibility of law firms extends beyond the confines of legal practice to encompass the safeguarding of sensitive client information through robust cybersecurity measures. As custodians of confidential and privileged data, law firms shoulder a profound ethical obligation to prioritize the security of their digital assets, minimizing the risk of a

data breach. Implementing comprehensive cybersecurity protocols preserves client trust and upholds the legal profession's commitment to client confidentiality. Failing to protect against cyber threats adequately not only jeopardizes client data but can also result in severe consequences, including potential breaches of attorney-client privilege. By embracing and enforcing stringent cybersecurity measures, law firms fulfill their ethical duty to clients and demonstrate a proactive commitment to maintaining the integrity and confidentiality essential to the legal profession. In an era where cyber threats are ever-evolving, ethical considerations underscore the imperative for law firms to invest in robust cybersecurity infrastructure, ensuring the preservation of client trust and the ethical foundations of the legal practice.

In conclusion, the minimal security ISP routers provide is insufficient for the dynamic threat landscape law firms face. Implementing a UTM Firewall ensures compliance with security standards and acts as a crucial line of defense against cyber threats. Investing in cybersecurity is not just a business necessity or an upsell; it is a strategic imperative for safeguarding sensitive data, maintaining trust with clients, and ensuring the longevity of your business.

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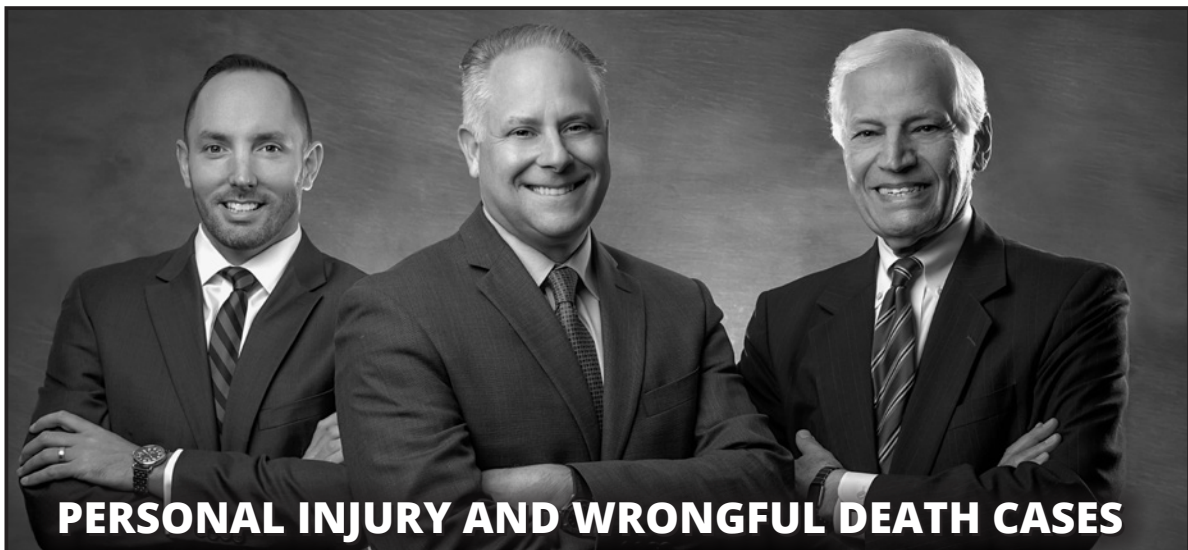
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11:00 a.m. - 2:00 p.m.

As part of Crime Victim's Week April 21-28, 2024, join us for an event dedicated to crime victims and the resources available to support them. This event offers an understanding of the criminal justice system, including information from crime victim advocates, prosecutors, police officers, and resource centers. Participants will gain valuable knowledge on the legal processes, accessing support services, and understanding their rights as victims.

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Scheduled to Speak

Macomb County Prosecutor's Office Crime Victim Advocates

Macomb County Assistant Prosecuting Attorney

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Macomb County Sheriff's Department

Macomb County Judiciary



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"This project is supported by a National Crime Victims' Rights Week Community Awareness Project subgrant awarded by the National Association of VOCA Assistance Administrators through grant number 15POVC-21GK-00412-NONF awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this video are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice."

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MCBA'S Diversity & Inclusion

Future Meeting Schedule

Every 3rd Wednesday of the month at 5:00 pm, for about 1.5 hour

Location:

O'Reilly Rancilio

12900 Hall Road, Suite 310 | Sterling Heights, MI 48313

Any location change for a future meeting will be communicated via email blast in advance

July 19, 2023	November 15, 2023	March 20, 2024
August 16, 2023	December 20, 2023	April 17, 2024
September 20, 2023	January 17, 2024	May 15, 2024
October 18, 2023	February 21, 2024	June 19, 2024

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2024 Regional Mock Trial Tournament

By Lori Smith, O'Reilly Rancilio P.C., MBCF Director;
WLAM Macomb, President; MCBA Immediate Past President

O'REILLY RANCILIO P.C.
ATTORNEYS AT LAW



On Saturday, March 3rd the Macomb Bar Foundation once again hosted the Michigan Center for Civic Education's Regional Mock Trial Tournament. There were 15 truly talented high school teams led by their teachers and attorney coaches who provided some fierce competition and very close final scoring including:

- | | |
|--|----------------------------|
| Anchor Bay | Port Huron |
| Cardinal Mooney | Regina |
| De La Salle Collegiate | Romeo |
| Fraser | St. Clair (2 Teams) |
| Grosse Point (2 Teams) | Detroit Jesuit |
| International Academy (2 Teams) | Warren Woods Tower |
| Lutheran North | |

- | | | |
|--------------------------|----------------------|----------------|
| William Moore | Thomas Tomko | Jean Cloud |
| Anthony Servitto | Patrick Sierawski | Jevona Fudge |
| Grace Crivello | Brian Grant | Josh Van Laan |
| Marc Kaszbuski | Benjamin A. Schock | Stephen Becker |
| Phil Vera | Denise Hirschmann | Amanda Hudson |
| Chris Metry | Liz Ferguson | Tanya Grillo |
| Megan Cashen | Joseph Pernicano | Angela Medley |
| Alison Bowden | Chase Wrobel | Megan Mitchell |
| Julie Markgraf | Sandra Kacprzak | Debra Hill |
| Sandra Marshall | Lucinda (Lucy) Smith | |
| Wayne State Law Students | | |

The day could not have been a success without the support of our Judges, attorneys and volunteers who served as presiding judges, scoring judges and court officers throughout the day.



- | | |
|-------------------------|----------------------------|
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| Hon. Sara A. Schimke | Mag. Ryan Zemke |

The behind the scenes set up, preparation and use of the Court house could not have been accomplished without Jean Cloud, Nick Parent, Chet Keller & the blue coats, Mike McIntrye, the housekeeping crew and of course Tracy Caldwell. And special thanks to the Judges and staff on the 3rd and 4th floors for allowing us to use their courtrooms and conference rooms for this event. Amir from the Court House Café was also kind enough to open for the competition to ensure that the students, coaches and their supporters all had access to lunch, snacks and beverages throughout the tournament.



Finally, Congratulations to the teams advancing from the Macomb Regional – wishing them all the best at the State Competition on March 23rd in Lansing.

**International Academy
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My sincerest gratitude to everyone involved in making this day a success. If you are interested in volunteering for the Mock Trial competition in the future, we would love to have you. Please feel free to contact me with any questions.



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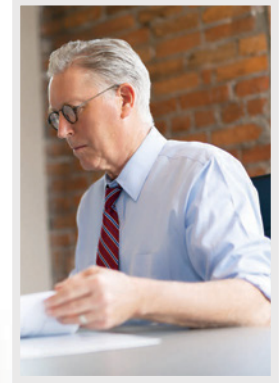
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April 13, 2024 9:00am | Macomb County Public Defender Office
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REGISTRATION CODE: TBA

MIDC STANDARDS: COMPLIANCE AND CLIENT-CENTERED BEST PRACTICES WEBINAR - FREE (1.5 CLE CREDIT HOURS)

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