

BAR BRIEFS

Official Publication of the Macomb Bar Association

February 2024

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Principles of Professionalism

By Ryan Zemke, President of the Macomb Bar Association

February features Random Act of Kindness Day (the 17th) and while we shouldn't need a special day just to remember to be kind to one another it is certainly a little enlightening to realize that our society has come to the point where we need to have a special day to remind us to do something good in the world.

As attorneys, our profession is often cast in a negative light when it comes to being compassionate and considerate – some of that being earned and some of that being completely unfair and based on false perceptions. These assessments have not only been made by those outside of our profession but more recently have been noticed by those within our field as well.

In 2020, the Michigan Supreme Court found it necessary to release and adopt an administrative order that set forth “12 Principles of Professionalism” to help attorneys and judges remain mindful of the foundational principles of personal conduct that have always been a cornerstone of the legal profession.

Those principles are as follows:

- **We show civility in our interactions** with people involved in the justice system by treating them with courtesy and respect.
- **We are cooperative with people** involved in the justice system within the bounds of our obligations to clients.
- **We do not engage in, or tolerate, conduct** that may be viewed as rude, threatening or obstructive toward people involved in the justice system.

- **We do not disparage or attack people** involved in the justice system, or employ gratuitously hostile or demeaning words in our written and oral legal communications and pleadings.
- **We do not act upon, or exhibit, invidious bias** toward people involved in the justice system and we seek reasonably to accommodate the needs of others, including lawyers, litigants, judges, jurors, court staff, and members of the public, who may require such accommodation.
- **We treat people involved** in the justice system fairly and respectfully notwithstanding their differing perspectives, viewpoints, or politics.
- **We act with honesty and integrity** in our relations with people involved in the justice system and fully honor promises and commitments.
- **We act in good faith** to advance only those positions in our legal arguments that are reasonable and just under the circumstances.
- **We accord professional courtesy**, wherever reasonably possible, to other members of our profession.
- **We act conscientiously and responsibly** in taking care of the financial interests of our clients and others involved in the justice system.
- **We recognize ours as a profession** with its own practices and traditions, many of which have taken root over the passing of many years, and seek to accord respect and regard to these practices and traditions.

With this being a leap year, February offers you an extra day to go out and do things right and make a difference.

- **We seek to exemplify the best** of our profession in our interactions with people who are not involved in the justice system.

Following the release of these principles the State Bar of Michigan established a special committee on Professionalism & Civility which I have served on since its inception. This committee intends to be a resource to our field to help promote the highest standards of personal conduct while educating and collaborating with all stakeholders in the administration of justice to ensure a culture of professionalism within the industry.

It is a bit unfathomable that things would need to get to this point where our behavior has gotten to the point where our state justices feel the need to release such a directive but we have arrived at that point and at this point we must work together to move forward and do better together.

Fortunately, many of the issues with professionalism and civility that are demonstrated in other parts of the state are not prevalent in Macomb County. Our local community has long been an exemplary community who works together and welcomes one another, and we all cherish being a part of the tradition that exists here at home. However, you can expect to see training both locally and statewide related to the 12 Professionalism Principles as the committee continues to develop under the guidance of the State Bar of Michigan and the Michigan Supreme Court.

Rather than waiting for a particular day of the year to do a random act of kindness – challenge yourself (and others around you) to be kind on a regular basis and set the standard that you want to see future generations follow. Think back to the Lawyer’s Oath that you took when being admitted to practice law and the privilege and responsibility that comes with being a part of our profession.

With this being a leap year, February offers you an extra day to go out and do things right and make a difference. It is an honor and privilege to be a part of the Macomb County Bar Association with each of you and I look forward to continuing to be a part of the most amazing in the legal community in the state here in Macomb County.

The 16th Circuit Court Treatment Court Programs Now Offer “Specialty Court Interlock Program”

Effective September 19, 2023, 2023 PA 124 and 2023 PA 125 established the “specialty court interlock program.” The new program expands the eligibility of specialty court participants to install an ignition interlock device on their vehicle and obtain a restricted driver’s license. Before the amendment, participation in an ignition interlock program was limited to DWI/sobriety court participants only. The new program expands to all participants who are eligible.

This program will now apply to all treatment court programs within the 16th Circuit Court; the Adult Drug Court Program, the DWI/Sobriety Treatment Court Program, the Mental Health Court Program, and the Veterans Treatment Court Program.

This expansion will offer many individuals the opportunity to earn their license back, while receiving appropriate treatment and participating in intensive supervision with the court. It will give program participants the incentive to address their needs while being accountable so that future suspensions are avoided. Chief Judge Biernat stated, “This new program will enhance the Court’s ability to provide services to the many individuals that desperately need the help to maintain their sobriety and to obtain their driver’s license back.”

For more information on any of the programs offered at the 16th Circuit Court you may visit our website at: <https://www.macombgov.org/departments/16th-judicial-circuit-court> or contact the Court Services Director at (586) 469-5016.

Macomb County Prosecutor's Office Announces New Head of the Hate Crime Unit

By the Macomb County Prosecutor's Office



Mount Clemens, MI - Prosecutor Peter J. Lucido is proud to announce that Macomb County Assistant Prosecuting Attorney Patrick Coletta will now head the Hate Crime Unit. Prosecutor Lucido established the Macomb County Prosecutor's Office Hate Crime Unit in 2022 to prosecute Hate Crimes in Macomb County.

The Hate Crime Unit works with law enforcement to prosecute Hate Crimes such as ethnic intimidation. In Michigan, a person may be guilty of ethnic intimidation (two year felony) if that person maliciously, and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin, causes physical contact with another person, damages, destroys, or defaces any real or personal property of another person, or threatens, by word or act, to do so, if there is reasonable cause to believe that such an act will occur.

"I am appointing an experienced Hate Crimes Unit Chief to affirm our commitment to combating intolerance and bigotry. Hate Crimes tear at the fabric of our society, and we stand united in our pursuit of justice for all, fostering a community where every resident can live free from fear and discrimination," said Macomb County Prosecutor Peter J. Lucido. "Martin Luther King, Jr. said the arc of the moral universe is

long but it bends towards justice. Our Hate Crimes Unit is our collective effort to expedite that bend, ensuring equality, dignity and compassion for all."

Patrick has been an assistant prosecutor since 2011, and has been with Macomb County since 2015. He has tried over 100 cases, including murder, police

misconduct, and ethnic intimidation. His most recent murder trial secured a first-degree murder conviction against a man who killed his friend on the victim's birthday, leaving his body to be discovered by his 5-year-old son. Patrick has convicted people from all walks of life of felony crimes, including a Customs and Border Protection officer and a Catholic priest. His experience affirms that everybody deserves the same accountability for their actions, regardless of who they are. But equality under the law doesn't just involve accountability; it also means that every person

should be able to live their lives and express their identity without fear of bigoted attacks. He looks forward to continuing his career working to ensure every Macomb County resident has equal access to, and enjoyment of, everything the Constitution guarantees.

The Macomb County Prosecutor's Office Hate Crime Unit headed by Patrick Coletta marks significant strides in addressing and combating hate crimes in Macomb County.



*Patrick Coletta, Head of the Macomb County
Prosecutor's Office Hate Crime Unit*

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Medical Marijuana and Parenting Time

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



Over the 15-years since the medical marijuana act was passed, courts in Michigan have weighed in on marijuana’s intersection with parenting and custody in our county family courts. Like alcohol, family court judges are frequently asked to regulate parenting when a custodial parent uses marijuana around the children.

A theme has developed within the published Michigan Court of Appeals decisions: so long as a parent’s marijuana use does not affect the parenting of minor children, parenting time cannot be conditioned upon abstinence from properly certified medical marijuana.

In re Ott ___ Mich App ___ (Decided December 15, 2022) (No. 362073), is a recently published decision of the COA where the family court judge conditioned Mother’s parenting time in a child protective proceeding on her submitting evidence of marijuana abstinence for three consecutive marijuana drug screens. Mother had a long track record of homelessness, drug abuse, missed parenting sessions, and missed drug screens; she had extensive mental health issues.

The family judge’s zero tolerance condition was reversed by the COA holding that the medical marijuana act itself:

Provides that a person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person’s behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

An automatic suspension of parenting time for a positive drug screen for THC absent any examination of and determination under these statutory provisions is invalid. Respondent [Mother’s] use of marijuana did not justify the denial of her parenting time with LO unless the court determined that as a result of her marijuana use, parenting time, even if supervised, may have been harmful to LO’s life, physical health, or mental well-being.

In so holding, the COA expressly found that the medical marijuana act applied to family court and custody matters. Because the case is published, it now binds the lower family courts on the issue.

Our law firm has observed this dynamic before. Despite a particular parents’ past sins, so long as that parent’s conduct remains

within acceptable boundaries of child safety, then that parent’s contact with their children cannot be conditioned on a negative marijuana drug screen.

On the other hand, we have also experienced cases where a parent hides drug-seeking risky behavior behind either a medication prescription or a medical marijuana certification. In such cases, the other parent must be able to detail the misconduct with admissible evidence.

Clarkston Legal is a group of attorneys practicing in the areas of Family Law, Probate and Criminal Defense centrally located in Northern Oakland County. The firm is only minutes away from Oakland County Circuit Court and practicing in all adjacent counties.

...the COA expressly found that the medical marijuana act applied to family court and custody matters.



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Macomb Court Administrator James McGrail to Oversee SCAO Region 6

Press Release, Michigan Supreme Court

Michigan Courts
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LANSING, MI, – The State Court Administrative Office (SCAO) has named former court administrator James McGrail as the new Region 6 Administrator, effective February 5. In this role, McGrail will serve as SCAO’s liaison to 26 courts (circuit, probate, and district) in Oakland, Macomb, Lapeer, and St. Clair counties. For the past seven years, McGrail has served as Court Administrator/Attorney Magistrate for the 41B District Court in Clinton Township.

“Jim McGrail possesses the perfect combination of legal experience in a government setting and extensive knowledge of court administration,” said State Court Administrator Tom Boyd. “With his time on the Michigan Judicial Council, Jim also brings a strategic approach to enhancing the work of the trial courts and developing partnerships with key stakeholders to benefit the people we serve.”

McGrail’s primary responsibilities as Region 6 Administrator will include monitoring and providing management assistance to all trial courts within the region, directing the judicial assignment program, mediating funding and policy disputes, investigating complaints, and acting as a resource to judges and court staff as the State Court Administrator’s executive representative to courts in the region. McGrail will also

develop and implement plans and goals and direct the personnel and operational activities of the Regional Office.

In his most recent position at 41B District Court, McGrail managed dockets for three judges, supervised more than 40 employees, managed the court budget under three funding units, and much more. Prior to working in the court system, McGrail served as the city

attorney and assistant city attorney for the City of Utica. In these roles, he represented the City of Utica in all litigation and advised city officials on legal matters. As a private practice attorney for more than 16 years, McGrail performed pre-litigation, litigation, appellate, and criminal defense work. He also served as an adjunct professor at Baker College, where he taught classes in the paralegal program.



James McGrail brings experience working in district court

“I am excited to bring my proven track record of integrity and innovation to this new role working alongside the trial courts in Region 6,” McGrail said. “In this capacity, I aim to strengthen my existing relationships and build new ones among courts in the region, while helping to improve access and efficiency in our branch.”

McGrail earned a Juris Doctorate degree from Wayne State University Law School and a Bachelor of Arts degree from Michigan State University.



Thwarting Phishing Attempts with SLAM

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



Deciphering the SLAM Acronym

In the battle against phishing emails, the SLAM acronym offers a helpful mnemonic to pinpoint potential threats. SLAM represents Sender, Links, Attachments, and Message – essential aspects to scrutinize when identifying phishing attempts.

Sender

Phishing perpetrators often disguise themselves as trustworthy senders, employing a familiar email address to deceive recipients. To shield yourself, it's crucial to scrutinize the sender's email address before opening unsolicited emails. Verify an email's legitimacy by hovering your mouse pointer over the sender's name to uncover its true source. Pay close attention to detect any misspellings in a trusted individual's name or a company's name. Additionally, legitimate company emails typically include the company's name in the domain address. For example, an email originating from "microsoft-support@gmail.com" is not a genuine Microsoft email. Conversely, a legitimate Microsoft email would appear as "support@microsoft.com."

Links

Phishing emails frequently contain links that facilitate the theft of login credentials and unauthorized network access. Just as with sender email addresses, examine the legitimacy of links within an email by hovering over them. Ask yourself if the URL accurately directs you to the stated webpage and watch out for any spelling errors in the link address. To enhance security, it's advisable to avoid clicking links within the email itself. For instance, many phishing emails falsely claim that your login credentials for a specific company have been compromised, providing a reset link within the email. However, clicking on such a link exposes your credentials to hackers. Since many people use the same login details across multiple platforms, compromising your credentials in one instance can lead to hackers gaining access to other accounts. When you receive an email regarding

compromised login credentials or password resets, manually enter the company's website into your browser to ensure you are on the legitimate site, thus safeguarding your login details from theft.

Attachments

Never open email attachments from unfamiliar senders, and exercise caution even with attachments from known sources. Hackers often employ compromised email addresses to distribute malicious attachments to the recipient's contacts. It's unlikely that a legitimate business would send an unsolicited email attachment. If you wish to verify the authenticity of an email attachment, reach out to the sender directly to confirm the legitimacy of the attachment.

Message

While phishing techniques have grown more sophisticated over time, the content of the message itself can still expose malicious intent. Phishing emails often feature generic greetings, misspellings, grammatical errors, or unusual wording. Any email exhibiting these characteristics should be treated with skepticism.

Responding to a Phishing Email

In addition to using the SLAM method for identifying phishing emails, it's essential to know how to respond when you recognize one:

1. Mark the email as spam.
2. Report the phishing attempt to your organization's management to alert other employees.
3. Report the email to your IT department or Managed Service Provider (MSP) to blacklist the sender's domain address.
4. Do not forward the email to anyone else.

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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



Expansion of the Macomb County Office of Public Defender

By Thomas J. Tomko, Macomb County Public Defender

On Friday 1-12-2024, the Macomb County Office of Public Defender was thrilled to hold an Open House, presenting its newly renovated office space. This new location is in the Clemens Center at 22 Market Street, just down from the space it originally occupied.



As Michigan Indigent Defense Commission (MIDC) Standards are implemented and become mandatory, the Office of Public Defender soon outgrew its original 1,650 sq ft space in the Clemens Center. The new office space occupies 9,640 sq ft.



Construction at the new site started in early 2023 and was completed in October 2023. Employees moved into the new space in early November 2023.

Special thanks to the Macomb County Executive Mark Hackel, the Executive Office, and cooperating MIDC personnel who helped make this project a reality. This new office space will provide for current need and future growth.

The new space can accommodate 21 attorneys and 17 staff. These maximum number of employees will not be reached right away but can be reached over time. A training room at the new facility is designed to handle 20 people and will facilitate attorney education. The number of employees at the Office of Public Defender could increase in 2024 from the current 9 attorneys to 14, and from current staff of 6 to 10.



This new space allows staffing to be hired to meet MIDC standards and achieve the Office of Public Defender's Mission Statement. Addition of personnel will help increase the quality of indigent defense and level the playing field with the prosecutor's office when it comes to things like use of experts and investigators and case preparation.

The open house on 1-12-24 was well attended by some members of the Macomb Board of Commissioners, by Macomb Chief Judge James Biernat Jr., and by other Circuit and District Court Judges. Roster attorneys also stopped by, as well as some court clerks, and secretaries.





41-A District Court Celebrates Inaugural Sobriety Treatment Program Graduation

By Aaron J. Hall, Editor-In-Chief

On Wednesday, January 10, 2024, the 41-A District Court celebrated the inaugural Sobriety Court Treatment Program graduation. With over sixty people in attendance, the new Sterling Heights Community Center was full of positivity and excitement. Starting a Sobriety Treatment Court program for 41-A has been a passion project for Judge Annemarie Lepore since she took the bench. With Sterling Heights, Utica, Macomb, and Shelby Township, the 41-A District Court is one of the largest districts in the state. “When I shared my vision of starting a sobriety court in 41-A, all of my fellow 41-A Judges were so supportive,” Judge Lepore said. Building renovations and a pandemic would not dissuade her. Judge Lepore continued her remarks, “Today, I’m so proud of the graduates and our entire treatment team. We are excited to provide a proven path to sobriety.”

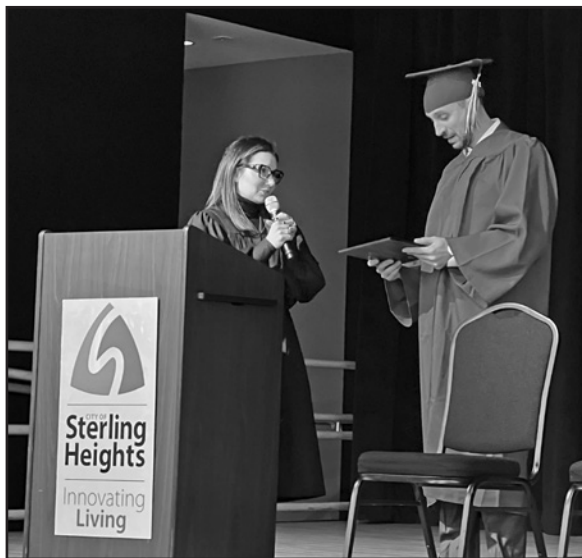
When the 41-A Sobriety Treatment Court program started, applications arrived immediately. It is serendipitous that the first graduate (whose name will remain confidential) was actually the first person ever admitted to the program. In his inspirational speech, he said that he was unsure of this new program, but was committed to his sobriety. He was a stellar treatment court participant, and he graduated with zero sanctions. His family, fellow participants, and team members were present cheering for him. Without hesitation, he accepted the request to start and lead the alumni group.

In addition to Judge Lepore, Chief Judge Stephen

Sierawski, Judge Kimberly Wiegand, Magistrate Michael Piatek (Judge Doug Shepherd was unable to attend), the event had several local government officials, representatives from the prosecutor’s office, defense attorneys (Sherman Abdo and Sherrie Detzler), law enforcement, community leaders, peer recovery coaches, and members from the original “memorandum of understanding” in attendance.

Retired Assistant Prosecuting Attorney and former Chief of Homicide, Bill Cataldo, delivered the keynote address. Just like his classic closing arguments, everyone was on the edge of their seats. In his speech, he congratulated the first graduate and challenged the participants to be a reflection of the program. He noted the difficulty in battling addiction. “It takes discipline. It can’t be done alone. Despite 41-A District Court being one of the largest district courts in the State of Michigan, these judges chose to increase their already busy schedules to give back to the community by establishing an alcohol rehabilitation/sobriety court for its citizens. Judge Lepore recognized the national trend that simply jailing addicts only temporarily denies access and delays use. Education is required to build a foundation to empower an addict to overcome their urges.”

All of the people involved with the program were exceptionally happy. “Having the first person accepted into the program successfully complete it showed that Judge Lepore had put together a winning team and the team had developed methods that were applied successfully.” Mr. Cataldo’s speech tied the treatment team’s success in the short-run with



the need for the graduate and future graduates to continue with the program afterwards (on a volunteer basis). This will reinforce their sobriety and prove to us that the methods being used work long term.

“To successfully overcome addiction takes discipline. It is hard. Addicts need to learn how to manage and control impulses to gain the ability to overcome their struggles.” Mr. Cataldo said. The 41-A Sobriety Treatment Court provides participants with the tools and foundation to start their road to recovery. “Addiction recovery is a process, an extended one. It is not a game. There is no winning or losing but managing and controlling urges to successfully function without alcohol, prescription or illegal drugs.”



Mr. Cataldo concluded, “It takes a village to raise a child and the 41 District Court Sobriety Court is your village. Your community. Your safe zone. Your judgment free zone. We expect that along the way there will be failures. Trust us. We accept them. You will not be judged because you had a failure while on this path but by how you got back up and learned from your mistake. There is no ‘Plan B’ in this program. No pity parties. No protection. No fallback position. No safety net. You cannot overcome addiction by believing there is a consolation prize for effort. There isn’t a successful person around who hasn’t failed first and used that as motivation to climb the ladder. We expect no less from each of you.”

If you have a client interested in treatment court, please visit <https://www.sterlingheights.gov/1991/Specialty-Court-Programs>. The website explains the application process, admission procedure, participant forms, and helpful resources.



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\$9.7 Million Macomb Wrongful Death Verdict (April 2023)



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THE MACOMB COUNTY BAR
FOUNDATION WILL BE HOSTING
THE MICHIGAN CENTER FOR CIVIC
EDUCATION'S
MOCK TRIAL
COMPETITION
ON SATURDAY
MARCH 2, 2024



REGISTRATION AND DETAILS TO FOLLOW
PLEASE CONTACT LSMITH@ORLAW.COM WITH
QUESTIONS OR TO PRE-REGISTER



UPCOMING SEMINARS

REGISTRATION TYPE: MACOMB, LAPEER, ST. CLAIR unless otherwise stated

Register at <https://cdam.wildapricot.org>

**DEFENDING HEALTH PROFESSIONAL
LICENSEES (ZOOM)**

February 16, 2024
From 10:00am-11:00am
REGISTRATION CODE: *MLSC57*

A IS FOR ATTORNEY

March 7, 2024, 9:30-5:30pm
Auburn Hills Marriott 3600 Centerpoint Parkway, Pontiac MI
REGISTRATION CODE: *MOL52*
(For Those With Five
Or Less Years' Experience)

**CDAM EVIDENCE BOOT CAMP E
(IN PERSON)**

March 7, 2024, 9:30 AM
Auburn Hills Marriott
3600 Centerpoint Parkway, Pontiac MI
REGISTRATION CODE: *TBA*

2024 CDAM SPRING CONFERENCE

March 8-9, 2024 9:00am
Auburn Hills Marriott
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REGISTRATION CODE: *TBA*

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