BAR BRIEFS

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CONTINUING LEGAL EDUCATION

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Bar Briefs

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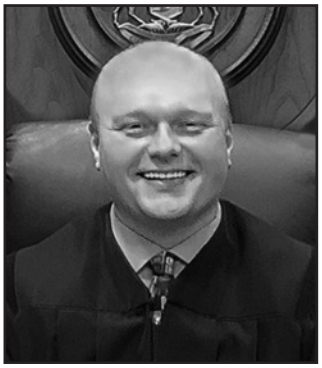

CE Broker: Tracking CLE Hours

By Ryan Zemke, President of the Macomb Bar Association

2024 brings many positive changes to the Macomb County Bar Association. Among those changes will be a new way to track criminal CLE hours for those who provide indigent defense. As you already know, any attorney that provides criminal defense through assigned counsel programs in Macomb County or through the Macomb County Public Defender Office, is eligible for unlimited free CLEs. In conjunction with our training partners, the Criminal Defense Association of Michigan (CDAM), and the Macomb County Public Defender's Office, we are able to provide quality MIDC compliant training for attorneys no matter what their individual experience level may be.

Providing (and attending) the training has been rather straightforward, but the tracking at the backend has been a challenge. Reporting your hours to various bodies has been a continuous cycle of paperwork—emailing, mailing, dropping off, printing, collecting, signing—and seemingly never knowing just who actually knows what and whether you have properly accounted everything you completed.

To make this process simple, the MCBA is utilizing CE Broker moving forward. CE Broker is absolutely free to use for appointed attorneys. There are paid options available, but those are not necessary unless you make a personal choice to utilize those options. The CE Broker system will allow you to see your status at any time without having to wonder where things stand. You will be able to track all of your hours in one place and know exactly what you have left to do to remain in compliance at all times. Many of you have already begun using CE Broker and are familiar with the system. For attorneys getting started with the program, you simply need to visit www.cebroker.com/mi/account/basic and enter your P number to create your account. Once your account is created you will be able to review your account and certify that you have completed the required credit hours on your own without having to worry about anything getting lost in the proverbial shuffle.

Just like any other time that an improvement occurs, there are going to be some questions that arise along the way. Macomb Bar members and staff, in addition to CE Broker support, will be here along the way to assist. One anticipated issue is that not all education providers utilize the provider function of CE Broker that allows them to automatically provide you with credit for attending training. It will be up to each of you to check your account and upload your hours through the "Report CE" function within your account if your provider does not automatically credit your account. This is a simple process, and it is anticipated that as more attorneys utilize CE Broker more providers will follow suit and make things even easier.

MIDC also uses CE Broker to add credit for CLE forms they receive via email at lara-midc-cle@michigan.gov and will add the hours that you send to them to your account automatically (though it may take some time to process). When in doubt, simply log in to your account to verify that the hours that you have completed are posted and if you do not see them, you simply need to report and certify the hours to add them to your account. At the end of the year, you will have a fully compiled list that shows your total hours that can be provided as needed rather than having to send the same proof to various destinations each and every time you complete training.

Over the coming weeks, you will see updates to the MCBA website as well as training that will reflect these changes and provide assistance with the new process. We are excited to utilize CE Broker and know that the benefits from having this process simplified will outweigh the short learning curve involved. Submitting your CLE hours for 2024 is much more efficient and reliable than in previous years.

Prosecutor Lucido Honors Legal Legend Emil Cardamone for His 100th Birthday

By the Macomb County Prosecutor's Office

Mount Clemens, MI - On Friday, January 26, 2024, Macomb County Prosecutor Peter J. Lucido honored longtime legal legend Emil Cardamone with a tribute for his 100th Birthday at his Sterling Heights home.

"I am grateful for this opportunity to join the family and friends of Mr. Cardamone, who has given so much to our legal community and our country, said Macomb County Prosecutor Peter J. Lucido.

It is with great pleasure that we extend our best wishes to Mr. Emil E. Cardamone on the occasion of his 100th birthday. We are grateful for this opportunity to join the family and friends of Mr. Emil Cardamone as the Macomb County Prosecutor's Office honors an individual who truly understands the beauty of life along with its challenges and triumphs. Born in Detroit, Michigan, on January 19 th, 1924, to Italian immigrants Angelo and Elizabeth Cardamone, Emil Cardamon was one of five children, two brothers, and two surviving younger sisters. Emil Cardamone moved to St. Clair Shores, Warren, and finally, Sterling Heights, where he has resided for over 35 years.

Prosecutor Peter Lucido, legal legend Emil Cardamone, and Former APA Eric Flinn

At the age of 18, on November 11, 1942, Congress approved lowering the minimum draft age to 18. Emil registered, and at the age of 19, he was enlisted and served in World War II from 1943 to 1946. He was stationed in France, Germany, and Austria. Being patriotic, he was proud to defend his country and the liberties and freedoms he and his family still enjoy as American citizens. He was awarded the Bronze Star Medal and four medals from the French government for his role in the liberation of POW camps during his journey through the front lines.

After Mr. Cardamone was honorably discharged, he met his wife, Margaret "Marge" Rieli, at church, whom he married in 1950. They honeymooned for two months in France, Italy, and Switzerland. They were married for 71 years. Unfortunately, Emil E. Cardamone's wife passed away in July of 2021. During their marriage, they had seven children: Charles, Karen, Richard, Raymond, Nancy, Marian, and Roger. Their children blessed them with 15 grandchildren and four great-grandchildren.

Emil Cardamone studied at Wayne State University under the GI Bill of Rights, obtaining a law degree, and becoming a successful and accomplished lawyer. He was hired by the Macomb County Prosecuting Attorney's Office (MCPO) in 1959. Emil left the MCPO for a position in the Warren City Attorney's Office and initially served as an Assistant City Attorney. He is the oldest living Macomb County Assistant Prosecuting Attorney and Warren City Attorney. He retains his membership in the State Bar of Michigan. He has been a member of the State Bar of Michigan for 65 years and is a past president. He is also a past president of the Macomb County Bar Association and the Macomb County Bar Foundation. He is a role model and a mentor to many attorneys.

The First Critical Stage

By Erin Freers-Cole, Assistant Public Defender, Macomb County Public Defender's Office

A mere formality: that is one way to view an arraignment. However, courts have long recognized it as a critical stage in a legal proceeding. From the Defendant's point of view, as well as the Michigan Constitution, it is. Pretrial release of an accused is a constitutional right. 1963 Const, art 1, § 15; *People v Edmond,* 81 Mich App 743, 747; 266 NW2d 640 (1978). See also MCL 765.6. While the case likely will not be resolved at that stage, it may set the tone for the remainder of the case, especially if the Defendant is in custody. It is also the first contact the Defendant has with the court.

We all know the purpose of the arraignment: to let the Defendant know what the charges are; what the possible penalties for the charges are; and to set a bond. What many attorneys focus on is the bond part, as it potentially has the greatest impact, especially at that point in time.

In 2020 the Michigan Joint Task Force on Jail and Pretrial Incarceration came down with recommendations on Jail Reform. Many of these were implemented into Court Rules and Statutes that were in part intended to help both free up space in the jail and to provide fairer bonds than just setting a monetary one. The determination of the Task Force was that jail may be appropriate for those that pose a significant risk to an individual or to the public, but that state laws should expand options and incentivize jail alternatives for those who do not. Laws enacted because of the Task Force recommendations reserve jail for those that pose a risk to public safety. The sweeping Task Force reforms carry across all stages of a criminal proceeding, including presumptive non jail, non-probationary sentences, reducing and eliminating terms of probation, and penalties for violations. This article will focus primarily on the beginning stages.

The law now presumes an appearance ticket in lieu of arrests for most misdemeanors, subject, of course, to some exceptions, MCL 764.9c. A summons, in lieu of an arrest warrant is also presumed with certain exceptions. Common exceptions to appearance tickets and/or sum-mons are domestic violence charges and/or assaultive crimes, see MCL 764.1, et seq. All this flows from the idea of keeping more people out of jail, especially for what are generally considered lower-level crimes, but these notions have broader applications so long as there is no risk to the public.

The rules surrounding bond exemplify that idea. The law now presumes a personal bond (subject, of course, to certain exceptions). Pursuant to MCR 6.106 (C), If a defendant is not "denied pretrial release" pursuant to subrule B[1], "***the court must release the defendant on personal recognizance,*** or on an unsecured appearance bond, subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public," *emphasis added.*

MCR 6.106(D), provides, "If the court determines that the release described in subrule(C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the appearance of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines appropriate..." The court rule goes on to list some conditions including reporting, testing, seek employment, no contact with certain places or individuals and a catch all "comply with any other condition, including the requirement of money bail as described in subrule (E), reasonably necessary to ensure the appearance of the defendant as required and the safety of the public." MCR 6.106(D)(2)(o).

A personal bond is presumed, if that is insufficient (to protect the public and ensure the appearance of the defendant), then a personal bond with conditions, money

bail is and should be a last resort. In fact, when a judge or magistrate determines that money bail is appropriate the court must state the reasons for its decision on the record. See also, *People v Majeed,* 978 NW2d 853 (2022), trial court abused its discretion when it modified defendant's bond from $5,000 personal to $25,000 cash with weekly drug testing without any explanation as to why the modification was reasonably necessary to ensure the defendant's appearance or the protection of the public.

"Money bail is excessive if it is in an amount greater than reasonably necessary to adequately assure that the accused will appear when his [or her] presence is required." *Edmond,* 81 Mich App at 747-748. The goal is twofold, protection of the public and ensuring the appearance of the defendant. This policy also encourages those with little means to attend their court dates without fear that they will not be able to afford to post a bond.

In a recently unpublished opinion, the Michigan Court of Appeals found the court abused its discretion when it increased bond from $10,000 to $250,000, without any new evidence establishing flight risk or additional crimes committed. Under the $10,000 bond the defendant had appeared at all court hearings except one. See *People v Murry,* Michigan Court of Appeals Docket No. 363937 (2022).

The new bond rules also favor a defendant who voluntarily appears on a bench or arrest warrant, within one year of the warrant issuance. In this situation, the court must either arraign the defendant within 2 hours or recall the warrant and schedule the case for a future appearance. It is presumed that the defendant is not a flight risk. MCR 6.105[2]. Finally, the court must also now wait 48 hours, excluding weekends and holidays, before issuing a bench warrant when the defendant has failed to appear to allow the defendant an opportunity to voluntarily appear, MCR 6.103[3]. The court must not revoke a release order or forfeit bond during this period of delay. The rule does not apply if the defendant has previously failed to appear.

In sum, the setting of bond should be a layered approach. The main considerations being the appearance of the defendant and the protection of the public. If both can be accomplished without the need to post a monetary bond, then none should be required.

[1]*See MCR 6.106(B) authorizing denial of pretrial release (no bond) for treason and murder, etc.*

[2]*Subject to certain conditions*

[3]*Subject to certain conditions and the rule does not apply for cases involving assaults/domestic violence.*

Commercial and Industrial Real Property Tax Appeals

By Ralph Colasuonno, Partner at Aloia Law

ALOIA LAW

Attention all owners of commercial and industrial real properties in Michigan: Around the end of February, you should have received in the mail a "Notice of Assessment, Taxable Valuation, and Property Classification" from your local assessor for each parcel of real property that you own. Although you may be tempted to ignore this Notice because it states at the top: THIS IS NOT A TAX BILL, you should retain and examine this Notice carefully. It will list several important items which will help you determine whether to file a valuation appeal to try and lower these taxes.

The Notice will list your property's Taxable Value ("TV"), its State Equalized Value/Assessed Value ("SEV/AV"), and the increase in these values as compared to the previous year.

The SEV/AV should always be 50% of the property's true cash value, otherwise referred to as the fair market value. The fair market value is the usual selling price of the property as of December 31 of the previous year, as determined by the local assessor using any method recognized as accurate and related to market value.

The TV is the number on which your property taxes are actually based. In the year immediately following a transfer of ownership of the property, the TV will be the same as the SEV/AV. Until the property is transferred again, the property's TV can only increase on a yearly basis by 5% or the current inflation rate, whichever is less. Thus, even though the fair market value of your property may continue to go up from year to year (with the SEV/AV tracking that figure at 50%), the TV is capped under Michigan law and should only increase as described above.

If you believe your property's fair market value is less than twice the TV listed on the Notice of Assessment, you may have an appropriate valuation appeal. However, to properly appeal the property's valuation, you must follow the strict statutory deadlines for doing so. For valuation appeals of commercial or industrial real property, you must file your appeal with the Michigan Tax Tribunal on or before May 31. Failure to file by this date means you will lose your right to challenge the assessment for that year.

Remember, a successful valuation appeal which lowers the TV by even a small amount will result in the TV being re-capped at that lower amount which, in turn, will result in lower taxes (and thus tax savings) on a yearly basis moving forward, even though the property's fair market value continues to increase.

If you have any questions regarding your Notice of Assessment, or should you need assistance in determining whether you have a suitable appeal, please contact Ralph Colasuonno at Aloia Law, at 586 783-3300 or colasuonno@aloia.law.

2024 ABA Update

By Aaron J. Hall, Editor-In-Chief and ABA YLD Affiliate Delegate

Louisville, KY, successfully hosted hundreds of attorneys for the **2024 ABA Midyear Meeting**. From January 31 to February 5, various law sections and committees took over the city. The State Bar of Michigan's YLS Executive Council actively participated in the proceedings. Beyond networking opportunities, attorneys engaged in CLE programming and the celebration of industry leaders. The ABA House of Delegates, the legislative body of the Association, debated and voted on dozens of important issues impacting the future of the profession, such as Tribal membership and land recognition issues, the designation of a "National First Generation Lawyers Day," a moratorium on the sale of abusive commercial spyware, and the need for transparency as to the true cost of law school and a legal career.

The next national event with significant State Bar of Michigan representation is the **2024 GPSolo, LP, and YLD Joint Conference**, from May 15, 2024 to May 18, 2024, in Omaha, NE. In addition to the Young Lawyers Division (YLD), the "GPSolo" encompasses the ABA Solo, Small Firm, and General Practice Division. "LP" is the Law Practice section, which focuses on critical aspects such as Finance, Practice Management, and Technology.

The **2024 Annual ABA Meeting** is in Chicago from July 31 to August 6, 2024. Last time Chicago hosted this event, recently retired Supreme Court Justice Stephen G. Breyer was awarded the ABA Medal. To register, visit www.americanbar.org.

Using 1031 Exchanges in Estate Planning

By Benjamin A. Schock, SSR Law

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A 1031 exchange, also known as a like-kind exchange, is a provision in the U.S. tax code that allows an individual or business to defer capital gains taxes on the sale of certain types of real property.

In a 1031 exchange, the proceeds from the sale of one property are reinvested in another property of "like kind", and the capital gains taxes that would typically be due on the sale are deferred until the new property is sold. This allows investors to defer the tax liability and potentially use the funds that would have paid the capital gains tax to acquire a higher-value property. If used correctly, there are no limits on how frequently you can do 1031 exchanges.

It's important to note that there are specific rules and timelines that must be followed to qualify for a 1031 exchange. The replacement property must be identified within 45 days of the sale of the original property, and the exchange must be completed within 180 days. Additionally, both the relinquished property (the one sold) and the replacement property must be of like kind.

What is considered like kind?

Like-kind property is property of the same nature, character or class. Quality or grade does not matter. Most real estate will be like-kind to other real estate. One exception for real estate is that property within the United States is not like-kind to property outside of the United States. Also, improvements that are conveyed without land are not of like kind to land. Therefore, this is a broad term. This phrase like kind doesn't necessarily mean what you expect it to mean. You can exchange an apartment building for forest land or a beach front rental for a strip mall.

Can a 1031 exchange be used for the family cottage?

The short answer is no. 1031 exchanges apply to real property held for investment purposes. Therefore, a regular vacation home won't qualify for 1031 treatment unless it is rented out and generates an income.

Can a 1031 Exchange be used to purchase multiple properties?

The short answer is yes. A 1031 exchange can be used to purchase multiple properties, but there are specific rules and guidelines that must be followed to qualify for this. The exchange process involves selling a relinquished property and acquiring one or more replacement properties of "like kind."

Here are key points to consider when using a 1031 exchange to purchase multiple properties:

1. **Identification Period:** After selling the relinquished property, the taxpayer has 45 calendar days to identify potential replacement properties. During this period, they must identify the properties they intend to acquire in writing to a qualified intermediary.
2. **Three-Property Rule:** The taxpayer can identify up to three replacement properties without regard to their fair market values.
3. **200% Rule:** Alternatively, the taxpayer can identify more than three properties as long as their combined fair market value does not exceed 200% of the fair market value of the relinquished property.
4. **95% Rule:** Regardless of the number of properties identified, the taxpayer must acquire properties with a total value of at least 95% of the total value of all identified properties.
5. **Purchase Within 180 Days:** The taxpayer must complete the acquisition of the replacement properties within 180 calendar days of the sale of the relinquished property.

What is a qualified Intermediary?

In a 1031 exchange, a qualified intermediary (QI) is a neutral third party that facilitates the exchange process on behalf of the taxpayer. The use of a qualified intermediary is a crucial requirement for a 1031 exchange to meet IRS regulations.

Here's how a qualified intermediary works in a 1031 exchange:

1. **Facilitating the Exchange:** The qualified intermediary plays a key role in facilitating the exchange. After the sale of the relinquished property, the proceeds from the sale are typically transferred to the qualified intermediary rather than directly to the taxpayer.
2. **Safe Harbor:** By using a qualified intermediary, the taxpayer is able to take advantage of a safe harbor

provision. This provision helps ensure that the exchange is treated as a tax-deferred like-kind exchange under Section 1031 of the Internal Revenue Code.

3. **Hold Funds Temporarily:** The qualified intermediary holds the funds from the sale of the relinquished property in an escrow account. During the exchange process, these funds are not accessible to the taxpayer, preventing them from having constructive receipt of the money, which is a crucial element for the exchange to qualify for tax deferral.
4. **Acquiring Replacement Property:** Once the replacement property or properties are identified, the qualified intermediary uses the funds held in escrow to acquire the replacement property on behalf of the taxpayer.
5. **Meeting Timelines:** The qualified intermediary helps ensure that the strict timelines set by the IRS for identifying and acquiring replacement properties are adhered to. For example, the identification of potential replacement properties must be done within 45 days of selling the relinquished property, and the acquisition must be completed within 180 days.

1031 exchanges in Estate Planning

One of the downsides of 1031 exchanges is that the tax deferral will eventually end on the sale of the property and the individual will be faced with a potentially large tax bill. However, there is a way around this.

Tax liabilities end with death, so if you die without selling the property obtained through a 1031 exchange, then your heirs won't be expected to pay the tax that you postponed paying. The heirs will inherit the property at its stepped-up market-rate value. This means that a 1031 exchange can be a valuable tool in an estate plan.

Here is an example of how this works: Frank purchases an ocean front condo in San Diego California in 1994 for Five Hundred Thousand Dollars. He uses the condo a couple weeks a year to avoid the snow of Michigan and rents it out for income the remainder of the time. Today, the property would be worth 1.5 million dollars. Frank has two sons, Mark and Phil, who he does not feel could manage the property together. Frank notices that there are two ocean front condos available in a new complex for 1.25 million. Frank hires a qualified intermediary. He then sells his current condo for 1.5 million, the proceeds are conveyed to the qualified intermediary where the funds are held in escrow. The qualified intermediary then uses the proceeds as well as additional funds from Frank to purchase the two condos for sale within 180 days of the sale of the original. Frank plans to continue using one of the condos for his two-week vacation to San Diego, while renting out the remainder of the year. He plans on using the other unit strictly as a rental. There would be no capital gains on the original sale as Frank met the requirement of the 1031 exchange. Frank then modifies his estate plan to leave one condo to Mark and one to Phil. Upon his death ten years later, the properties are worth 2 million each. Mark and Phil would receive a stepped-up basis on the property left to them and the family would not realize capital gains on the sale of the first condo because of the 1031 exchange. Frank also eliminates the problem of having them manage one rental property together.

Hopefully, you can see that a 1031 exchange can be a valuable tool in estate planning. Finally, it is important to remember that the individual needs to work closely with a qualified intermediary and seek professional advice from tax and legal professionals to ensure compliance with the rules of a 1031 exchange, especially when dealing with multiple properties. Failure to adhere to the specific timelines and rules may jeopardize the tax-deferred status of the exchange.

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

Michigan's Extreme Risk Protection Order Act

A Legislative Response to Gun Violence

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

Clarkston Legal

Michigan's Extreme Risk Protection Order Act, also known as the "red flag" law, is a legislative measure aimed at preventing individuals who pose a risk to themselves or others from possessing firearms. One of the primaries aims of the Extreme Risk Protection Order Act is to prevent gun violence and suicides. By allowing concerned individuals to intervene before a potential tragedy occurs, this law provides a proactive approach to identifying and addressing individuals at risk. Research has shown that temporary firearm removal can significantly reduce the risk of harm during periods of crisis or heightened emotional distress. Under the Extreme Risk Protection Order Act, family members, household members, and law enforcement officers can petition the court for an extreme risk protection order (ERPO) against an individual they believe to be a risk.

Signed into law on May 22, 2023, this law provides a legal framework to temporarily remove firearms from individuals who exhibit warning signs of violence or self-harm. 2023 PA 38. The legislature did not vote to give this law immediate effect so it would become effective 90 days after it was signed into law.

The Michigan Supreme Court has proposed various amendments to the Michigan Court Rules in response to the new legislation under proposed MCR 3.700 Personal Protection Orders and Extreme Risk Protection Proceedings. The proposed changes to the Michigan Court Rules allow identified individuals to file an action with circuit court in a similar manner to a Personal Protection Order (PPO) in Michigan. Anyone in a dating relationship, a relative, law enforcement officer or health care professionals can petition the court for entry of an Extreme Risk Protection Order.

This order allows for the temporary removal of firearms from the person in question, typically for a period of up to one year. The Complainant or petitioner must articulate facts that the respondent can reasonably be expected within the near future to injure themselves or another person intentionally or unintentionally with the use of a firearm. The standard for issuing an ERPO is by preponderance of the evidence. If someone is a law enforcement officer, the petitioner must identify them as being a member of law enforcement.

The statute allows for entry of an order on an Ex Parte basis. If the court entered an Ex Parte ERPO the respondent is entitled to a judicial hearing to terminate or otherwise modify a ERPO much in the same fashion that a respondent is allowed to file a motion to terminate or modify Personal Protection Order PPO.

The ERPO process involves a judicial hearing where evidence is presented to determine whether the individual poses a credible risk. A respondent is permitted to file a motion to terminate an Ex Parte ERPO and have a hearing within 14 days. If the Respondent is an identified member of law enforcement that hearing must occur within 5 days. If the court finds sufficient evidence, it can issue an order to temporarily remove firearms and prohibit the person from purchasing new firearms during the order's duration. If a court issues an extreme risk protection order, the court can also determine whether the firearms should be immediately surrendered, and it can issue a search warrant to seize those firearms.

This statute is not without significant enforcement mechanisms for those who violate an ERPO. The Extreme Risk Protection Order act also outlines criminal sanctions if a restrained individual violates that order. The sanctions could range from one year misdemeanor and fines of not more than $1,000.00 for a first-time offender. Repeat offenders of the statute could subject themselves to a five-year felony and fines of up to $20,000.00.

Inevitable litigation involving the ERPO as to how and whether it restricts second amendment rights. Thus, after implementation, the courts will flesh out a necessary body of case law.

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.

Lawyers on Lockdown

Shielding Sensitive Data & Fortifying Cybersecurity in the Legal World

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

Legal professionals manage an abundance of data, and the bedrock of the legal business is confidentiality. Clients must trust that their attorney-client privilege ensures that their shared information remains secure.

Regrettably, the frequency of data violations is rising, posing a significant threat to the privacy of clients' sensitive data and potentially harming the reputation of law firms. The ABA discloses that over a quarter of law firms have incurred a data breach in the past.

Given this reality, cybersecurity must be a pressing concern for law firms. This article outlines why attorneys should safeguard their clients' information, underscores the primary threats confronting an average law firm, and offers essential strategies for bolstering your firm's cybersecurity policies.

The Importance of Cybersecurity for Law Firms

Law firms are tantalizing targets for potential cyber criminals. These organizations store priceless, confidential data and may even be custodians of trust accounts overflowing with their clients' funds, rendering them susceptible to theft and exploitation.

In such breaches, law firms face a conundrum: comply with the criminals' demands and suffer significant monetary losses, or risk the public exposure of their clients' sensitive information.

In some instances, firms might have additional obligations to safeguard specific types of information, like personal health information, as stipulated by HIPAA or as mandated by New York's SHIELD Act, which requires law firms to establish "reasonable" security measures to shield their clients' data.

Data breaches can unleash catastrophic repercussions for law firms and their clients alike. The firm risks potential penalties and litigation, and its reputation incurs a severe blow. The message is crystal clear: no firm, regardless of its practice area, size, or location, can risk a data breach.

Protection Obligations of Lawyers

During the ABA Annual Meeting in August 2014, the ABA ratified a resolution on cybersecurity. It "promotes all private and public sector organizations to develop, implement, and uphold a suitable cybersecurity program that aligns with applicable ethical and legal responsibilities and is adapted to the characteristics and extent of the organization and the data and systems to be protected." This resolution envelops all law firms.

However, amidst resolutions, firms comprehend it's their ethical and professional obligation to ensure the safety of their client's data—and, in case of a breach, promptly communicate it to the necessary authorities.

For instance, RI-381: Syllabus of the Michigan Bar Association (MBA) mandates, *"Lawyers have ethical obligations to understand technology, including cybersecurity, take reasonable steps to implement cybersecurity measures, supervise lawyer and other firm personnel to ensure compliance with duties relating to cybersecurity, and timely notify clients in the event of a material data breach."*

References: MRPC 1.1, 1.3, 1.4, 1.6, 5.1, and 5.3; R-1, RI-86, RI-187, RI-245, RI-249, RI-313, RI-344, and RI-355."

That said, your firm's specific liabilities might differ depending on the nature of the information—for example, if it falls under HIPAA.

The Cybersecurity Risks Encountered by Law Firms

Sensitive information can be compromised in several ways. Human error often emerges as a primary factor, such as when attorneys misplace their computer, smartphone, or briefcase or they become victims of theft. Simultaneously, firms may also endure an online hack; their website could be compromised or experience physical intrusion.

Generally, the larger the firm, the increased risk it bears. Based on ABA statistics from 2021, 17% of firms with up to nine employees experienced a data breach, 35% with 10 – 49 employees, and 46% with 50 – 99 employees. This trend is hardly shocking - the bigger the firm, the more sensitive data it likely retains.

Striking Strategies for Law Firm Cybersecurity

Having addressed the theory, let's delve into how firms can fortify their cybersecurity strategies and maintain the integrity of their clients' confidential data in the future.

Conducting a Risk Assessment. Undertake regular risk assessments to detect if your firm possesses critical vulnerabilities that could jeopardize your clients' data privacy.

No firm wishes to discover a latent risk of a data breach. However, it's paramount to identify these blind spots before a breach occurs, which allows you to take the necessary preventive steps.

Consider engaging a third-party service to perform an independent audit, assisting you in detecting cybersecurity gaps, developing an Incident Response Plan, implementing enhanced security measures, and training your staff on the latest best practices.

Adopting a cybersecurity framework can provide an understanding of your firm's risk potential and showcase your security qualifications. For instance, the Center for Internet Security (CIS) framework instructs firms to demonstrate their data security proficiency to prospective clients.

Securing Law Firm Cybersecurity Insurance. Cybersecurity insurance extends additional protection to firms during a data breach. Although insurance cannot directly secure the stolen data, certain policies compensate for specific financial impacts of a breach, such as fees associated with the restoration of data, income loss due to downtime, crisis management, or forensic investigations.

Alternatively, another feasible option is third-party cyber liability insurance that shields firms from liability claims in a data breach.

Developing a Comprehensive Law Firm Cybersecurity Policy and Incident Response Plan. Unfortunately, many firms lack rigorous cybersecurity policies and incident response plans. The ABA reveals that only 53% of firms possess policies to manage the information/data retention held by the firm, while merely 36% have an incident response plan. A staggering 17% of firms need more procedures, with 8% unaware of cybersecurity policies.

Firms cannot simply adopt a one-fits-all approach to implement a cybersecurity policy. Each policy must be uniquely designed to cater to the firm's specific needs. Consequently, each procedure will differ. Firms must thoroughly audit potential risk areas, create a tailor-made policy considering these vulnerabilities, and ensure that each team member understands their obligations related to cybersecurity.

Developing a rigorous cybersecurity policy is only possible if the staff is informed about it, understands it, and knows its role within its framework.

Utilizing Cybersecurity Tools. Firms must employ comprehensive, state-of-the-art tools to bolster their data security. These tools vary in complexity, from spam filters to software-based firewalls to hardware-based firewalls. However, getting the right tools is merely the first step—firms must also enforce reliable data encryption and protection, such as multi-factor authentication and encrypted data storage.

Collaborating With Practice Management Providers who Prioritize Security. When choosing practice management providers, cybersecurity must be a key consideration. The best providers understand its significance and incorporate cybersecurity best practices into all their services.

Final Thoughts on Cybersecurity for Law Firms

While achieving 100% breach-proof security is impossible, firms can bolster their cybersecurity strategies and reduce their risk. The key is to give cybersecurity the critical importance it deserves before costly missteps occur.

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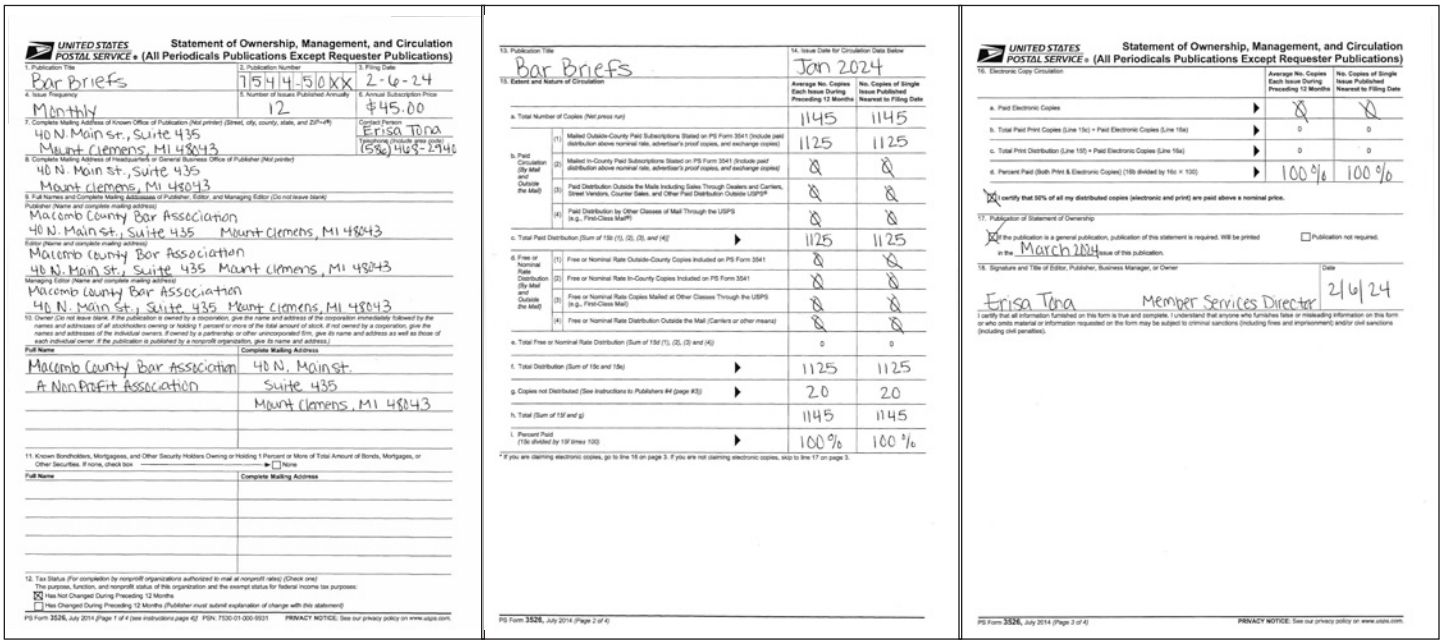

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