

Bar Briefs

Official Publication of the Macomb Bar Association

March 2021



Hon. Kathleen G. Galen
38th District Court



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Rod Ponton: A Hilarious Lesson in Zoom Protocol

*By Francesco Briguglio,
President of the Macomb Bar Association*

In the middle of our quarantine and zoom court hearings, one lawyer cat has caught the world by storm with hilarious results.

A lawyer in Alpine Texas, whose Zoom failures with a cat filter has rocketed him into internet fame, experienced firsthand the pitfalls of technology in this digital age. During a hearing in the 394th District Court, Judge Roy Ferguson, to his surprise, saw the attorney appear as a sad yet adorable kitten.

Judge Ferguson commented “Mr. Ponton, I believe you have a filter turned on in the video settings. you might want to uh...”

Mr. Ponton responded, “It is...but I don’t know how to remove it. I got my assistant here; she’s trying to but uhhhh...”

I am prepared to go forward with it.

I am here live

I am not a cat.”

What actually happened is Mr. Ponton was working in a remote satellite office, and he was not using his normal computer; he was using his secretary’s computer. When Mr. Ponton logged onto the computer, everything seemed normal. What caused the mishap was that his secretary’s granddaughter would use the Zoom device and somehow installed a cat filter.

Fortunately for Mr. Ponton, Judge Ferguson had a sense of humor about the whole situation, and it did not have any serious consequences for any of the parties that were involved. As hilarious as this mishap is, it provides us with a valuable lesson on practice protocol during the age of zoom.

Some of the best practices that I use in my own practice as are follows:

1. First and foremost, be familiar with your zoom device. Go through a couple of “dry runs” in starting up your zoom connection.
2. Make sure you have a reliable internet

connection while on zoom. As understanding as some parties may be about the technical difficulties of video conferencing in court, it could be disastrous at crucial moments

3. Be aware of your surroundings during the hearing.
4. You must, must, must look at each individual judge’s landing page, if one exists, when practicing in front of said judge. Each judge will have invaluable information on how to operate in his or her courtroom while hearings are being conducted via zoom. Such valuable information given can vary from how to position your camera, whether you can be in your car during the hearing or use a stable mount, or requirements on how to rename yourself a certain way during the remote hearing.
5. Look at whether the judge will schedule your hearing for a specific time or if you will be grouped together with other litigants.
6. Determine whether you will want to have the client present in your office with you during the hearing. If you have your client present with you during the hearing, be prepared to have that client leave the room if the judge wishes to take you “in chambers”.
7. Be cognizant of filters and backgrounds as well. Some judges will allow a virtual background and some will not.

Mr. Ponton’s mishap has provided us in the legal community with a light-hearted lesson that can help provide us with re-invigorated discourse how we can continue to improve on practicing law in the ZOOM era.

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Here's to Us

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

Dear Macomb Bar Members,

Friday, March 13, 2020 – The Macomb Bar begins the adventurous journey of working remotely.

While there are many bar association moments that will forever be imprinted on my memory, locking the office door on Friday, March 13, 2020 was as surreal as August 14, 2003, the day of the great blackout. The blackout was a heck of a lot more fun. The day after the blackout my neighbors lined up grills in the back yard and pulled out everything from the melting freezers. It was a terrific day-long picnic filled with great food, laughter, yard games and high fives. The day after we left the office for the remote land of work was the beginning of what is now a year-long barrage of gloom. It has been a year of coping. A year of testing limits of anxiety, perseverance, and creativity. Recently an Uncle posted on Facebook that his Father, my Grandfather, was famous for saying, “Son, you learn until your dead.” Leave it to the elder to be succinct! Looking back over this pandemic year, I like to think that we have all learned a lot and that, together, we will be better for it.

Virtually Together is a new series of events that we have put in place to come together socially. In March, we have put together a fun event called “Behind the Bar” a cocktail class with bartender extraordinaire, Mark Phelan. This is a FREE Zoom event that will most certainly involve more than a few laughs as you learn how to create an Irish Buck and a Gin Green cocktail. You can choose to make yours with or without alcohol. To participate you MUST register early so that you can get the ingredient list in advance. To create these crafted cocktails correctly takes a little advanced planning, but it’s worth it! There will be a virtual tip jar, Venmo, Paypal, etc. available. Proceeds are divided equally among Mark’s employees that have endured over these many months.

As we look at spring dawning before us, we want to be able to recognize legal professionals for their extraordinary efforts in these extraordinary times. Please consider nominating someone you know for any of the Macomb Bar awards. Deadline for nominations March 31.

Kimberly M. Cahill Civility Award

The Kimberly M. Cahill Civility Award is given to the member who has brought respect to himself or herself and the legal profession through both dialogue and conduct by cultivating considerate, professional conduct with opposing counsel, especially in the presence of clients; encouraging clients to adopt meritorious positions and avoiding inflammatory and retaliatory tactics and behavior; welcoming and encouraging attorneys of all races, ethnicity and genders; assisting and mentoring new and inexperienced attorneys; avoiding disparaging comment and criticism of the bench and bar, and commending the profession’s members when appropriate.

Special Service Awards

The Special Service Award is given to those individuals who initiated and/or completed special projects for the MCBA during the year.

Extraordinary Service Award

The Extraordinary Service Award is awarded to the most involved member during the year. The Board only chooses a winner in this category when a member stands out as deserving of this honor.

Distinguished Public Service Award

This category recognizes those members that demonstrates excellence and selflessness in their public service.

Pro Bono Award

The Macomb Bar Pro Bono Service Award recognizes and honor attorneys that assist with the unmet legal needs of low-income or senior residents of Macomb County on a pro bono basis.

For a list of past recipients, please visit MacombBar.org

Foundation Update

The Foundation's biggest supporters are its Trustees. Trustees contribute \$150 a year and are eligible for election or appointment to the Board of Directors. One of the programs directly funded by Trustees contributions each year is the Trustee Law School Scholarship. Last year's recipient was Taylor Wells from Wayne State University Law School. The tradition of celebrating our scholarship recipients at the annual Gala was broken due to the Gala's cancellation. We are hopeful that this fall we can celebrate new Law School Scholarship recipients and extend Ms. Wells an invitation too. However, in order to invite recipients, we need 2L and 3L law school students to apply. You can have a huge impact on a soon to be attorney by bringing this opportunity to their attention. DO NOT hesitate as the deadline is St. Patrick's Day. Scholarship application forms are available on MacombBar.org.

Trustee Law School Scholarship

The Macomb County Bar Foundation Trustee Law School Scholarship is awarded to a second or third year law student who demonstrates a commitment to serve or contribute to the Macomb County legal community, a need for financial assistance, and high scholastic achievement. The \$3,000 scholarship originates from the generous contributions of the Foundation's Trustee.

Philip F. Greco Memorial Scholarship

The Macomb County Bar Foundation Philip F. Greco Memorial Scholarship is to be awarded to a second or third year law student who is currently enrolled in law classes at any accredited Michigan law school, have good academic standing, demonstrates financial need and a commitment to serve the Macomb County Legal community. Graciously funded by National Title Group.

Kimberly M. Cahill Leadership Memorial Scholarship

The Kimberly M. Cahill Leadership Memorial Scholarship is to be awarded to a second or third year law student who is currently enrolled in law classes at any accredited Michigan law school. The recipient should demonstrate outstanding qualities of leadership and the ability to inspire and effectively lead others to a defined objective. The recipient must also demonstrate a need for financial assistance and an academic standing (3.0 GPA or above). This \$3,000 scholarship originates from the generous contributions to the MCBF's Kimberly M. Cahill Memorial Fund and honors the memory of Kimberly M. Cahill who passed away January 21, 2008.

For a list of past scholarship recipients, visit MacombBar.org.

Interested in setting up a scholarship? Give me a call!

As I look at the calendar I notice that March 13 falls on Saturday this year, so..., Here's To Us

Here's to us, here's to love
All the times that we messed up
Here's to you, fill the glass
'Cause the last few months have kicked our ...
So lets give 'em hell
Wish everybody well, here's to us, here's to us
(Halestorm)

Circuit Court Corner

By Macomb County Circuit Court Administration

We would like to extend a cordial welcome to our newest magistrate, Jeffrey R. Davis. Following the Hon. Jennifer Andary's election as Judge of the 42-1 District Court, Jeff was selected to replace her as magistrate. Following his graduation from Michigan State with a BA in Political Science Pre-Law and French, Jeff attended the U of D Mercy Law School and received a Juris Doctor in 1992. Jeff has more than 28 years of experience in criminal, civil and family law, and enjoys the opportunity to provide legal counsel and insight to the daily needs of his individual and corporate business clients. He has represented his clients in numerous Circuit, District and Municipal Courts throughout the State of Michigan. Jeff is a member of the Macomb County Bar Association and the State Bar of Michigan and is a member of the Family and Criminal Law Sections. He also sits as a Case Evaluator for the 40th District Court

Jeff is married to Attorney Rosemary Davis, and is the proud parent of Andrew and Elise (both currently attending MSU). He is also an avid sports fan and served four years as the Treasurer of the St. Mary's Athletic Booster Club, while his two children attended St. Mary's in Mt. Clemens.

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Friday, March 26, 2021, 9:00am-1:00pm**
(no one-day registrations allowed)

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Meet Hon. Kathleen G. Galen, 38th District Court

By The Divas - Lori Smith, Sherrie Detzler, and Dana Warnez

Daughter, sister, aunt, godmother, philanthropist, friend, colleague, champion of Justice, wine connoisseur, and Diva. These are but a few of the impressive titles that apply to this month's cover honoree. After countless hours of hard-work and unwavering dedication, she has added another coveted title to this list: Judge.

We are honored to introduce you to the Honorable Judge Kathleen G. Galen of the 38th District Court.

Kathy received her law degree from the University of Detroit Law School in 1989, a mere three years after she obtained her bachelor of science from University of Detroit.

However, Kathy heard her calling to help others and to join the legal profession early on in life. At the young age of 10, she emphatically told her Poppa that she was going to be a lawyer. In the pursuit of her dream, she started her career at a Detroit law firm at the age of 15, as a runner. Runner became Secretary, became Clerk,

became Lawyer! All along the way, her determination, dedication, experience, and professionalism has served her well. In true Galen form, she did not let anything stop her, so it is no surprise she is now serving as Judge.



Kathy has always been a public servant, active in her community, and anyone that knows her, is aware that her kindness and generosity to others is unmatched. She is always there to help others, which is unquestionably the reason, she has such a strong support network of people who would do the same for her.

During our interview, Judge Galen spoke of her appreciation to all of those who

helped work on her campaign. She insisted we share, "I truly appreciated the hard work and support of all who helped me on my journey. I especially want to thank my brother Jim who was a great supporter and best sign strategist ever! It truly takes a village and I have a very good village. I am blessed beyond

measure” She hopes to personally thank everyone when the time is right.

Her number one supporter is her Poppa. Kathy spoke lovingly of her father as “the man who went without so that we had plenty” and told us how they would go to the bank each spring where her Father would take out a loan so that she and her brother could attend private school. Poppa Galen wanted nothing but the best for his children and by all accounts he

just hearing of the adventure, enjoying it vicariously. Judge Yokich, your generosity of sharing this honorable tradition has made a lasting impression on Judge Galen!

Judge Galen is already streamlining processes within the 38th District Court. She has an open-door policy and welcomes your thoughts and suggestions to improve the service of the Court to the attorneys and the public at large.



The Divas: Lori Smith, Sherriee Detzler, Dana Warnez and Hon. Kathleen G. Galen

did an amazing job in raising them. Kathy’s brother, James Galen, is also a prominent attorney and a strong supporter of his sister during the campaign for Judge and in life.

Judge Galen has fully embraced her new role as Judge, and has hit the ground running. She was so humbled and honored to share with us the generosity of her colleague on the Bench, Judge Tracey Yokich, who, as soon as the results were tallied, reached out to schedule a date to accompany the “New” Judge to select her robe. Just telling us of the adventure brought tears of joy to Kathy. We divas shed tears

She is so thankful for her technical abilities during these trying times. The first couple months have been “virtually” productive, yet she longs for the days of in-person business. Since the election, Kathy was sworn in via ZOOM, attended Judge’s school via ZOOM, and performed her duties on the bench in the same manner. Judge Galen looks forward to the time when she can

more fully embrace and celebrate this accomplishment with all, face to face.

Judge Galen embraces her faith and heritage in everything she does. She is confident it will guide her in fairness and the delivery of justice. She shared one of her favorite Irish blessings, “May you get all your wishes but one, so that you will always have something to strive for.” Cannot wait to share in her next “wish.” Godspeed Judge Galen.



The Top 10 Reasons Why the Constitution is Revolutionary

By Hon. Michael Warren
Patriot Week Co-Creator

The United States Constitution is not some musty piece of parchment, in barely legible calligraphy, irrelevant to our lives. To the contrary, it is a revolutionary document of profound historical and current significance. If you don't believe that, here are the "Top Ten" reasons you should change your mind:

1. A Written Constitution.

The Constitution was the first written document to establish a major nation's government. For thousands of years, mankind was almost universally ruled by fear, force, custom, and tradition. But no country had actually written down the basic outline of their government. The act of writing down our form of government is taken for granted today, but was a huge leap forward for the rule of law (that is the law governs, not the personal desires of those in power).



2. **Approved by the People.** Until 1788, no country in the course of human history put the form of their government up to a vote of the people for adoption. Usually governments were imposed by force, war, and corruption. Before the federal Constitution was adopted,

the States were nearly entirely independent countries, that had united together under the Articles of Confederation for a very few purposes. Because each State was basically its own country, the Congress of the Articles of Confederation needed to act unanimously to pass any law, and then it was up to each State to follow through. So to

make a new federal Constitution, each State needed to ratify it. But instead of having the legislature or governor of each State make that decision, the States convened ratifying conventions. The People at large voted for representative delegates to each convention, each of which then robustly debated ratification. Unless the ratifying convention of any respective approved the Constitution, it would not be adopted. This was

another amazing advancement. We literally created a new Social Compact for the country, agreed to by the People.

3. **Separation of Powers.** Although England and ancient Rome had some pretense of separation of powers, it was muddled and often subverted. Until the United States Constitution, no national government in world history firmly divided the three major functions of government

into co-equal separate branches of government. By dividing power up between the legislative (Congress), executive (President), and judicial (Supreme Court) branches, the Constitution protects liberty by stopping one person or group from taking total control of the federal government.

4. **Checks and Balances.** Hand in glove with separation of powers, by giving each branch the ability to check the other branches, the Constitution better protects liberty. It requires that all three branches act together - or at least have a voice - to enact policy. For example, the President can veto legislation passed by the Congress, but then Congress can override that veto with a $\frac{2}{3}$ vote. The President is the commander-in-chief of the military, but only Congress can fund it and declare war. Even if Congress and the President pass a law, if it violates the Constitution, the Supreme Court must strike it down. The President nominates judges, but the Senate must approve the nominees. Again, liberty is protected by limiting the power of any particular branch of government.

5. **Enumerated Powers.** Most governments in human history presume that the government is all powerful, and then carves out certain restrictions (privileges) where it cannot act. The federal Constitution is exactly the opposite. Unless the federal Constitution specifically lists (i.e., enumerates) that the federal government has the authority to act, it cannot do so. By substantially limiting the reach of federal power, enumerated powers is a key safeguard of liberty.

6. **Federalism.** By reserving all powers not enumerated to the federal government to the States, federalism empowers the People of the States to enact policies in light of local circumstances. By ensuring that local issues are addressed locally, the States can ensure better governance - they can tailor their policies to the facts on the ground, as opposed to one-size fits all solutions from Washington, D.C. It also empowers experimentation at the local level, and people can move to States that are more in alignment with their idea of the good life. It also strengthens the Social Compact by making State officials accountable for State policies. More importantly, federalism protects liberty by creating built-in tensions between the States and federal government. By dividing power between the federal and State governments, it protects freedom. Power is divided not just between the branches of government, but between the levels of government. To have uniform, national

oppression, oppressors would need to take control of all three branches of the federal government, plus the three branches of governments of all 50 States - quite a tall order! This system was unique in human history.

7. **Unalienable Rights.** The Constitution has many protections of unalienable rights (rights given to us by the Creator) in the original Constitution as well as the Bill of Rights. These constitutional rights include key components of freedom, including the free exercise of religion, freedoms of speech and press, the right to jury trials, and the right to be free from unreasonable searches and seizures. We could wax eloquently, but we all know these rights are vital to our liberties.

8. **Equality.** Equality under the law is guaranteed by the 13th Amendment (abolishing slavery), and the 14th Amendment (ensuring equal protection of the laws and due process for all Americans). During the course of human history, inequality was the prevailing reality. We have not yet escaped the dark shadow of slavery, but we have made tremendous progress through the Constitution and need to continue to strive to fulfill its promise.

9. **Voting.** Through the 15th Amendment (granting freedmen the vote), the 19th Amendment (granting women the right to vote), the 24th Amendment (abolishing poll taxes), and the 26th Amendment (giving citizens 18 and above the right to vote), the Constitution gives all American citizens the right to vote. This struggle for the franchise took centuries and should be cherished by all.

10. **Amendment.** The Founding Fathers understood that they were far from perfect, and the Constitution itself permits its amendment - which we have done 27 times. We can even call for a new Constitutional Convention to start anew.

There you have it, a solid Top 10 reasons why the Constitution is vitally important to us today. However, whether or not we will maintain our Constitution, freedoms, and liberties, will be entirely up to you. Accept the challenge!

Judge Michael Warren is the co-creator of Patriot Week (www.PatriotWeek.org), author of America's Survival Guide (www.AmericasSurvivalGuide.com), and host of the Patriot Lessons: American History & Civics Podcast.



It's Not Always Black and White: Race, Confessions, and Preserving Your Client's Rights

2021 Spring Conference Schedule at a Glance

March 12-13, 2021 via Zoom

Friday, March 12, 2021 9 CLE Annual Hours

7:45am	Zoom Room Opens
8:30 - 9:15am	<i>Announcements and Updates</i> Karl P. Numinen, CDAM President Loren Khogali, MIDC Executive Director Marilena David-Martin, SADO Deputy Director Bradley R. Hall, MAACS Administrator
9:15 - 10:30am	<i>A Case Against Prosecutors</i> Bennett Capers
10:30 - 10:45am	Break
10:45 - 12:15pm	<i>KEYNOTE: Litigating Racial Discrimination in Criminal Cases</i> Andre Vitale
12:15 - 1:15pm	Lunch / Tech Tips (Optional Session) Marla McCowan
1:15 - 2:30pm	<i>False Confessions and the Reid Technique</i> Gerald A. Shiener, M.D., P.C
2:30 - 2:45pm	Break
2:45 - 4:00pm	<i>Walker/Miranda: When Your Client's Confession Isn't Voluntary</i> Lillian F. Diallo
4:00 - 4:15pm	Break
4:15 - 5:30pm	<i>Moving Beyond Bias to Cultural Competency as a Professional Skill</i> Tracey Brame

Saturday, March 13, 2021 5 CLE Annual Hours

7:45am	Zoom Room Opens
8:30 - 9:45am	<i>State and Federal Law Update</i> Kathy Swedlow
9:45 - 10:45am	<i>Unequal Application Of The Law Based Upon Racial Bias</i> Todd Perkins
10:45 - 11:00am	Break
11:00 - 12:15pm	<i>Justice for the Mentally Ill</i> Elisha Oakes
12:15 - 1:30pm	<i>Michigan Sentencing Updates</i> Anne Yantus



Macomb Assigned Counsel Registration Password: MACOMB17

8 Lawyers Listed in Michigan Super Lawyers



Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. From left to right: Donald Gasiorek, 15 years selected; Paul Hines, 9 years; Sam Morgan, 15 years; Patrick McCauley, 14 years; Greg Jones, 5 years, Rising Star Designee; David Kotzian, 15 years, Top 100 Designee; David Greco, 9 years; Angela Mannarino, 5 years, Rising Star Designee.



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A Purr-suasive Take on Virtual Proceedings

*By Zachary R. Morgan, Young Lawyers Section Director,
Associate Attorney at Macomb Law Group, and
Adjunct Professor at the University of Detroit Mercy School of Law*

This past week, while preparing what to write, a colleague forwarded along a viral video of a Texas lawyer experiencing technical difficulties during a Zoom hearing.

The video depicts a Zoom hearing similar to the ones we have all become accustomed to during COVID; but, in this hearing, one of the attorneys mistakenly turned on a filter which altered his appearance to that of a fluffy, wide-eyed kitten.

As the attorney attempts to remove the filter, he assures the court he is ready to proceed and promises, “I’m here live. I’m not a cat.” While watching it, I could not help but laugh as the attorney tries to remove the filter and the virtual kitten’s eyes are seen dashing back and forth. But

as the vaccine roll-out begins, and the prospect of in-person court proceedings and resuming jury trials becomes more imminent, the kitten mishap generates

questions about the role virtual proceedings will play in our practice when life after COVID begins.

Personally, being a young lawyer, having practiced a little more than two years when COVID began, I was eager to get back into the courtroom as quick as possible. In the early months, mornings were spent sitting in my make-shift home

office, wearing my “sweat” suit, staring at a computer screen that said, “Please wait for the host to start this meeting.” This experience just did not have the same feeling as being in the court hallway at 8:15 a.m.



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on a Monday morning waiting for the court officer to open the courtroom, while discussing your case with opposing counsel and catching up with other colleagues. I initially pushed back at the thought of virtual hearings and depositions becoming the new normal, being skeptical whether they would be as effective and efficient as being face-to-face with the judge or witness.

The early months quickly turned into August, September, and October; and my skepticism began to fade away as virtual proceedings took over my calendar as in-person proceedings previously had. Mornings were spent on the phone discussing cases with opposing counsel before logging into my computer and appearing for virtual hearings. Depositions would begin by having the witness hold up their ID to the screen and then having them rotate their screen 360 degrees to confirm the witness was alone. But, otherwise, being virtual proved to be as effective and efficient, if not more, than in-person proceedings.

As this month marks one-year since appearing in-person for any proceeding—be it a deposition, motion or mediation—my sentiment towards virtual proceedings has shifted. Now this is not to say I am not eager to get back into the courthouse, however, I hope we do not abandon the virtual proceedings altogether. I think there is a benefit to not having to drive longer than the proceeding takes such as the case for scheduling, status and early settlement conferences. At the same time, there’s a certain effectiveness to appearing in-person whether it be for motions, final settlement conferences or depositions—I know a few cases of mine would have benefited from this over the past year.

So, as we wait for the day in-person proceedings once again consume our calendars, I am hopeful in-person proceedings will be met with the balance of virtual proceedings—as we recognize the benefits virtual proceedings provide greatly outweigh the possibility your opposing counsel is turned into a fluffy feline.

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