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Official Publication of the Macomb Bar Association

September 2022





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# Bar Briefs

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# Coming Attractions and Coming Together

*By Lori K. Smith, President of the Macomb Bar Association*

I am happy to report that we are making great strides in planning for this bar year. We have several events that are still in the planning stages, but I intend to have further details following this month's Board meeting as one of the goals is to prepare a complete calendar of events for the year.

At this time, the Installation Celebration of the 2022-2023 Board of Directors and myself is scheduled for Thursday, September 15th, at Packard Proving Grounds. We have also confirmed our *Fallin' Into Fun* event for members & their families for Friday, October 14th at Blake's Big Apple & Haunted Attractions on North Avenue in Armada. Further details will be provided via e-blasts and at MacombBar.org.

## **Committee Chairs:**

The Macomb Bar has several different practice law committees comprised of several of the different areas of practice. There is no cost for members to join a committee and you can participate at any level you wish. You simply need to contact the Bar office and request to become a member of the respective committee. Due in large part to COVID, the individual committees have been a bit stagnant, but I am confident that with the selection of this year's Committee Chairs there will be a revitalization within the individual committees. To that end, I am pleased to announce the following Committee Chairs:

I look forward to working with each of the Committee leaders to help develop programming, outreach and mentoring opportunities to our membership. You will have a chance to learn more about each Chair in next month's *Bar Briefs*.

If you have any questions or ideas for future planning relative to any particular area of practice, please feel free to contact myself or the appropriate Committee Chair to discuss. In addition, if you practice in an area of law that is not included within any of these Committees and have an interest in creating one, please contact me directly to discuss.

## **State Bar of Michigan SOLACE Program:**

Support of Lawyers/Legal Personnel All Concern Encouraged (SOLACE) is a program coordinated by the State Bar of Michigan designed to help members of the legal community or their immediate families who are in critical need because of a recent, sudden catastrophic illness, injury, or event. All members of Michigan's legal community, regardless of income or assets, are eligible to receive assistance from SOLACE. This includes Michigan judges, lawyers, court personnel, paralegals, legal assistants, legal administrators, law students, and their immediate families.

I am happy to report that the Macomb Bar was one of the first partner organizations for this wonderful program. The Bar office will notify our membership when relevant requests are received. However, if you would like to take a more active role in the program, you can also join the SOLACE network on an individual basis. This allows you will receive an email alert directly from SOLACE when a fellow member is in need.

If you, or anyone you know, are in need of assistance please contact SOLACE via email at [solace@michbar.org](mailto:solace@michbar.org) or by calling (517) 346-6300. You are also welcomed to contact me directly at (586) 726-1000 or the Macomb Bar office staff at (586) 468-2940 if you have any questions or would prefer to have a discussion prior to contacting SOLACE.

**Civil Law Committee:**  
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**Diversity & Inclusion Committee:**  
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# UPCOMING SEMINARS

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

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## Skills Training 101 (In Person)

September 15 & 16, 2022 • 9:00am-5:00pm

Oakland County Bar Association 1760 S. Telegraph Rd  
#100, Bloomfield Twp.

MACOMB REGISTRATION CODE: MLSC6

## Important Legislative Updates from Arrest to Sentencing: (By ZOOM)

September, 22 2022 9:00am

MACOMB REGISTRATION CODE: MLSC30

## CDAM Evidence Boot Camp C: (By ZOOM)

September 23, 2022 9:00am

MACOMB REGISTRATION CODE: MOL7

## Deferrals, Delays and Dismissals: (By ZOOM)

October 6, 2022 11:00am

MACOMB REGISTRATION CODE: MLSC31

**FOR A FULL LIST OF CLE'S VISIT [MACOMBBAR.ORG](http://MACOMBBAR.ORG)**



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# Commissioner's Corner

*By Sherrie Detzler, State Bar of Michigan Commissioner - District D*

## The Michigan Bar Exam is Evolving

By order issued October 13, 2021, as amended on December 15, 2021, the Michigan Supreme Court

directed that the bar examination to be given in Michigan is the UBE as prepared by the National Conference of Bar Examiners. In addition, the Michigan Legislature passed HB 5541, which provided that the Michigan Bar Examination would consist of the UBE. On April 7, 2022, the Governor signed that bill into law (2022 PA 59), allowing for the first administration in Michigan to be in February 2023. Michigan Adopts Uniform Bar Exam (4/8/2022)

The Uniform Bar Exam (UBE), a nationally administered bar examination, tests knowledge of general principles of law, legal and factual analysis, reasoning, and communication skills to determine readiness to enter legal practice in any jurisdiction. The test consists of three components: the Multistate Essay Examination (MEE), the Multistate Performance Test (MPT), and the Multistate Bar Examination (MBE). The subjects tested on the UBE include the following: Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Civil Procedure, Conflict of Laws, Constitutional Law, Contracts (including Article 2 [Sales] of the Uniform Commercial Code), Criminal Law and Procedure, Evidence, Family Law, Real Property, Torts, Trusts and Estates (Decedents' Estates; Trusts and Future Interests), and Article 9 (Secured Transactions) of the Uniform Commercial Code.

The Michigan Board of Law Examiners (BLE) will grade the written portions of the exam and determine the passing score. The minimum passing score on the Uniform Bar Examination has not yet been announced. According to the NCBE, the minimum passing scores in other UBE jurisdictions currently ranges from 260-280. One of the BEST features of taking the UBE is the score is "portable" meaning you can take a UBE score to another UBE jurisdiction, and with completion of any

of that state's requirements, you could become licensed there with out taking the bar again! (Hint---there are over 40 jurisdictions accepting UBE scores now---many in warm winter climates!)

In addition to the UBE, to become licensed in Michigan, you must complete the Michigan Law Basics course. The Michigan Board of Law Examiners (BLE) announced the new Michigan Law Basics online training requirement for all UBE transfer score applicants and bar applicants starting in February 2023, when the Uniform Bar Exam (UBE) is administered for the first time in Michigan. All bar applicants and UBE transfer score applicants must successfully complete this Michigan-specific training prior to licensure in Michigan. Michigan Law Training Component required for Admission


Additional UBE information and information regarding the Michigan Law Basics training will be provided online and will be updated periodically. Applicants are expected to regularly visit the BLE website for updates. Board of Law Examiners (michigan.gov)

As always, I am here to help you with any bar examination questions—law students, new attorneys, and future “retirees” alike!

Sherrie



Denis LeDuc  
District Court Judge, Retired  
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586-265-5999  
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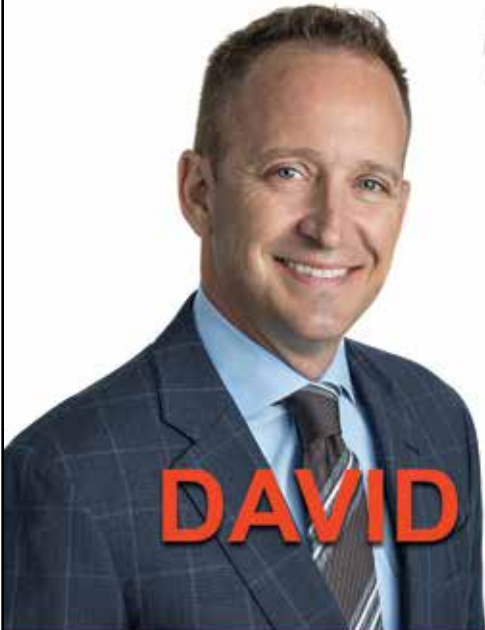


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# Committees, KENECT, and Criminal CLE Catch Up

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

Macomb Bar Members,

The Macomb Bar Association Law Practice and Service Committees are looking for volunteers.

**Law Practice committees include:** Family, Civil, Criminal, Juvenile and the recently formed Diversity and Inclusion committee.

**Service committees include:** Membership Events, Golf, Lawyer Referral, Member Rewards, and Publications.

Get involved in a bar committee and bring your ideas for bar projects, programs, speakers and events to life. Keep an eye on [www.MacombBar.org](http://www.MacombBar.org) for the newest information on bar committee action.

If Civic and Law Related Education interest you, then the Macomb Bar Foundation’s programs might be a good fit. Help build a *Legally Speaking* television show from concept to production. Get in on the ground floor of producing a historical mock trial. Work alongside some amazing high school students through the Regional Mock Trial Tournament or, help elementary students with Law Day activities in the classroom or remotely. You will come away motivated! Have contacts with a law school? Then you can help grow the law school scholarship program. Do you enjoy a good book? Then the Kimberly M. Cahill Memorial Reading Program is the right place for you to share your passion with young adults.

There are unlimited ways for you to become active in your bar association and foundation. Have an idea? Contact me and let’s connect you!

## New Member Benefit

How many unopened emails do you have right now? How many unread texts do you have right now?

The fact is that 96% of texts are read while just 12% of emails are opened. Does this sound about right for you? It is with this background that I am pleased to announce



the Macomb Bar’s latest technological partnership.

KENECT is a business texting platform that uses your business number to engage clients, significantly increase leads, generate online reviews, and capture payments all via text.

The association is bringing this to you, because, much like Law Pay did with credit card acceptance for lawyers, KENECT is transforming how the legal space is doing business. The Macomb Bar has been using KENECT for the past sixty days and we have experienced just how powerful of a business tool it is. We have negotiated

Macomb Bar partnership rates for our members and even deeper discounts for our Sustaining Members. KENECT is the best business tool you’re not using. Your clients will choose the first company who engages with them. Make sure that’s you.

So, stop texting customers on your personal cell phone. It’s not professional, it’s inconvenient, and it’s quasi-weird. Instead, text them from a business number.

The texts flow into your Kenect text inbox (like an email inbox, but for texts). You can respond to them, intelligently route them to individuals, teams, locations, or departments AND even create auto-responses.

This will save you time, get you more clients, and connect you with customers and clients more quickly.

### Online Reviews

Reviews are the lifeblood of your business. Today’s consumer trusts reviews more than they trust an in-person referral from their mom. Studies show that if you don’t have 150+ reviews and an average of 4.5 stars you’re in trouble.

Kenect provides a simple platform to get reviews, respond to reviews, and manage your online reputation in real time. Kenect will allow you to get 35x more reviews than you get now (that’s true). Kenect is a review generating machine for your company. Turn on the machine!

### Web Leads

Add the ‘Text Us’ widget to the bottom of your site and start texting with your customers immediately. You’ll get so many leads you’ll be begging for mercy.

The average Kenect client gets 260% more leads

by simply adding the ‘Text Us’ widget to the bottom of their page. And the best part: you can automate responses and intelligently route the texts to people, departments or employees.

Get leads and respond to them immediately. The quicker you respond, the more likely you are to get a new lead.

Remember, they really want to text you, stop making it so difficult.

### Payments

Think about how easy it is to send a text message, now it’s that easy to get paid. Simply send a text to your customers and get paid. It’s that simple. Your customers will love it and so will you. It’s the simplest payments tool on the planet.

This will get you paid faster, reduce your accounts receivable, and it’s 100% secure and PCI compliant.

## MIDC in 2023

For our members fighting the good fight for the indigent, please know that I am here to support you in as many ways as possible.

The Arthur Law Firm is a personal injury, insurance, domestic and criminal law firm based in Ohio. Here are some of the challenges they faced and the solutions that KENECT provided them.

PROBLEM	SOLUTION
Needed an easier way to leave online review	Send review requests via text message
Need a process to send appointment reminders	Automate reminders via text
Need ability to allow clients to text photos	Clients can text photos directly to the firmsbusiness number
Need ability to allow clients to text photos	Clients can text photos directly to the firms business number
Need a solution for clients to inbound via text	Add “text us” widget to website to allow clients to text in directly

Seriously, if you need a private Zoom Room, we have it here for you. Bring your own device or use our laptop. Having problems downloading or printing a file, stop by the office and let us help you. And of course our partnership with CDAM provides you exceptional training.

Let’s beat the rush for the mandatory 12 hours of training this year. I mean I don’t mind being online helping on New Year’s Eve but let’s try to beat that December 31 deadline this year.

### What you need to know:

The Macomb Bar partners with CDAM to provide a plethora of ANNUAL and SKILLS based trainings.

Macomb attorneys have access to UNLIMITED hours of training – all for FREE.

The Macomb Bar has an agreement with Macomb County to track Standard 1 Training compliance of all Macomb attorneys. We report to all courts in Macomb County and the MIDC.

Email, text, mail or drop off completed training certificates or letters of completion. We will enter them into your member profile.

The Macomb Bar maintains a menu of upcoming trainings and video replay trainings on MacombBar.org with corresponding registration codes. If you need assistance, contact me. Just use the “text me” button on MacombBar.org!

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# TLAP: Identifying Mental Health Issues and Getting Help

*By Buddy Stockwell, Executive Director  
Tennessee Lawyers Assistance Program (TLAP)  
(Reprinted with Permission)*

Experts now estimate that lawyers and judges suffer substance use disorders at rates of up to twenty percent. Depression rates are even higher, nearing thirty percent. That means up to six thousand lawyers and judges in Tennessee may be personally impacted by depression and/or the unhealthy use of alcohol and/or drugs.

The ongoing and often increasing damages and consequences that these individuals (and their family members) suffer are not limited to personal consequences as we might imagine. In truth, both the legal profession and the public can be severely damaged

when an impaired lawyer or judge practices law. In fact, many disciplinary complaints have a core component of alcoholism, drug addiction, or may involve some mental health impairment issue such as depression.

While alcohol issues do cause big problems in our profession, it is important to also acknowledge that promoting help for alcoholics is not about prohibition. If only one out of five lawyers has a problem with alcohol then, conversely, four out of five lawyers do not have a problem with alcohol and they can enjoy alcohol responsibly if they choose to.

The focus here is on helping impaired alcoholics – the people who misuse alcohol and really need help. They

have developed a maladaptive pattern of alcohol use that causes clinically significant impairment or distress. Early intervention is key.

If left unaddressed, a mild alcohol use disorder can soon become a moderate to severe alcohol use disorder (Alcoholism). These chronic conditions can be fatal unless the person gets help. No matter how smart or capable the individual, in the fullness of time and if left untreated, a severe alcohol (or drug) use disorder will defeat them. So, when does one's alcohol misuse reach the point of "enough is enough?" It has been said that

an alcoholic will probably not hit bottom and seek help until the painful consequences of their alcoholic behavior plummets them downward faster than they can lower their personal standards of acceptable behavior. That is why a crisis is often reached before the person will seek help on their own.

Early intervention and the mitigation of damages are often accomplished only when someone else is concerned enough about the person to get involved and help the person who is in trouble with alcohol or drugs. Of course, the starting place is being able to recognize a problem.

Thus, the issue becomes: how does one go about asking effective preliminary questions and answering those



questions in an unflinching fashion so as to identify a potential problem with alcohol?

Obtaining an initial read on the situation is less complicated than one might think. Objective screening tools are available to help everyday people determine whether they or someone they are concerned about may have a problem. The National Institute on Alcohol Abuse and Alcoholism (NIAAA) is a good resource to begin to find answers.

At this NIAAA online link, you can find three screening tools that are quick and easy to use: <http://pubs.niaaa.nih.gov/publications/arh28-2/78-79.htm>

One tool, the “CAGE” test, poses four simple questions you can ask yourself or others:

C Have you ever felt you should Cut down on your drinking?

A Have people Annoyed you by criticizing your drinking?

G Have you ever felt bad or Guilty about your drinking?

E Have you ever had an “Eye-opener” drink in the morning to steady your nerves or to get rid of a hangover?

Answering yes to two or more questions indicates a positive test and warrants further clinical assessment.

Other tools at the NIAAA link include the T-ACE test, based on the CAGE test. Also, there is the ten-question Alcohol Use Disorders Identification Test (AUDIT). All of these tools offer simple ways to determine whether or not it is likely that alcohol use has become problematic.

As for detecting depression and treating it, the National Institute of Mental Health (NIMH) provides full information here: <https://www.nimh.nih.gov/health/publications/depression>

Many people will need help from someone else before they will take concrete steps to address a mental health issue. Addressing any mental health issue early on requires paying attention to early warning signs and being willing to reach out to the person having trouble.

So, what should we be looking out for? The answer is simple: changes in behavior by degrees. For example, you notice that someone who has always been punctual

begins to be late for work or meetings. A habitually neat dresser starts showing up looking rumpled now and then. Perhaps the person is uncharacteristically missing a deadline now and then, or they are not returning clients’ calls as timely as usual.

Lawyers are very high functioning, and they can “play hurt” for a long time without detection, especially if administrative staff are picking up the slack. If no one is paying close attention, the opportunity to help someone early-on may be missed.

The counterpart to TLAP is the State Bar of Michigan’s Lawyers and Judges Assistance Program. The Lawyers and Judges Assistance Program’s goal is to support Michigan legal professionals to optimize their general wellness and/or to facilitate involvement in our monitoring program.

### Who We Serve

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- Practicing wellness
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**State Bar of Michigan Lawyers and Judges Assistance Program Helpline (800) 996-5522**

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# Sending Adjournment Requests & District Court Motions Just Got Easier

*By Macomb County Prosecutor's Office*

Exciting news! Submitting requests to adjourn district court hearings, and filing copies of district court motions just got easier for defense attorneys. Defense attorneys may now serve a copy of motions to adjourn and all other district court motions on the Prosecutor's Office by using the new online District Court Motion form.

The new District Court Motion Form is on the Prosecutor's Office Website at:

<https://prosecutor.macombgov.org/Prosecutor-DistrictCourtMotions>

## **Benefits to Defense Attorneys include:**

**Immediate confirmation:** Defense counsel immediately gets an email confirming the Prosecutor's Office received a copy of the district court motion they served.

**Faster response:** Defense attorneys may also get a faster response to requests to adjourn district court hearings and motions because such requests will get to APAs much more quickly.

**Less data entry:** Defense attorneys need only simply type in their P number. Automatically inserted into the form will then be their name, address, phone, and email.


**Directly routed to the APA and Support Staff:** incoming district court motions and requests to adjourn district will be automatically routed to the APA and office support staff assigned to that district court within one minute of the office receiving it. The process lets our staff handle incoming District Court motions much more efficiently, which will help our District Court Unit continue to provide outstanding service.

**Not for Circuit Court motions:** this is not for any Circuit Court filing. The Prosecutor's Office District Court Motion Form has nothing to do with the Circuit Court's e filing system.


Prosecutor Peter J. Lucido continues to press forward and improve efficiencies in his office interactions with the public, the courts, and the defense bar.

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# Ukraine: Stay and Remain

By Mark E. Sullivan, Law Offices of Mark E. Sullivan

The Pentagon has deployed thousands of servicemembers in response to the Russian invasion of Ukraine. Naval vessels, surveillance aircraft, artillery units and brigade combat teams are all heading out as part of the first-ever NATO Response Force. President Biden announced in June that the Defense Department would establish a permanent station for the 5<sup>th</sup> Army Corps Headquarters Forward Command Post in Poland and a rotational brigade combat team in Romania.

Undoubtedly some of the servicemembers (SMs) will be involved in civil cases, administrative legal proceedings, and family law litigation. It is essential to know how to ask the court to *freeze the case* during a deployment (or any period in which the SM is unavailable due to assigned duties), so the *status quo* will remain while the SM is not available.

The "stay" is how litigation may be suspended.

The Servicemembers Civil Relief Act (SCRA), Chapter 50 of Title 50, U.S. Code, tells how to request and obtain a stay of proceedings. The court may order an

automatic, mandatory stay if the four essential elements are shown. The statute requires a letter or other communication:

1. with facts showing how military duties materially affect the SM's ability to appear, and

2. stating a date when he will be available.

The Act also requires a letter or other communication from the SM's commanding officer stating that:

3. the SM's current military duty prevents his appearance, and

4. military leave is not presently authorized for the SM.

50 U.S. C. § 3931(b)(2). The court may issue the stay on its own motion, and the court *shall issue the stay* upon application of the SM if the above four elements are shown.

No specific document is prescribed for requesting a stay. A motion or application will certainly suffice, but the request could also be in the form of a letter to the court or an affidavit.

Preparing a stay request is not 'rocket science.' But there are two issues worth keeping in mind:



A. Follow the statute. In a Kansas case, the SM was denied a stay of proceedings because he failed to provide a statement as to how his current military duties materially affected his ability to appear and when he would be available to appear. In addition, he didn't provide a statement from his commanding officer stating that his current military duty prevented his appearance and military leave was not authorized. *In re Marriage of Bradley*, 137 P.3d 1030 (Kan. 2006).

B. Provide persuasive details. Don't just recite the bare elements of the statute. Be sure to fill in specifics as to duties and inability to appear or participate in the proceedings. This is also true for the commander's communication.

The court can grant an initial 90-day stay, and it may allow an additional stay as well. 50 U.S.C. §3931(b)(1) and (d).

Can a stay request be denied? Does the court have the power to refuse the application of a SM for a stay of proceedings while he or she is deployed and unavailable for participation in the litigation?

The answer is YES. There are two primary routes to blocking a stay request.

The first of these is to show that the application doesn't fit the requirements of the statute. If the stay request has omitted one or more elements of 50 U.S.C. § 3931 (b)(2), the court may deny the request. In an Alaska case the court denied a request for a stay because evidence was lacking about military duties precluding the SM from participation in the case, and there was no communication from his commanding officer. *Childs v. Childs*, 310 P.3d 955 (Alaska 2013).

The second issue involves misconduct by the SM. SMs who fail to comply with the rules and orders of the court may find that their stay requests are denied. In a North Carolina case, a soldier received several continuances because of military duty during the Persian Gulf War, had an attorney, failed to comply with court discovery orders and continued to request additional stays or continuances; the court denied his

stay requests. *Judkins v. Judkins* 113 N.C. App. 734 (1994).

Withholding important information from the other party or the court can also lead to denial of the stay request. When a party applying for a stay has acted inequitably, most courts will refuse to consider the stay request based on the doctrine of "the sword and the shield," ruling that the SCRA is intended to be used as a *shield* to protect the rights of the service-member, not as a *sword* to defeat the rights of others. "Fair play" is the key to successful use of the SCRA in slowing down civil proceedings.

More information on the stay request and its essential elements may be found in "A Judge's Guide to the Servicemembers Civil Relief Act," at [www.nclamp.gov](http://www.nclamp.gov) > Publications > additional Resources.

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