

Bar Briefs

April 2020



A Mockery of the Justice System?



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Macomb Bar Association

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Houses in Motion

*By Jonathan C. Biernat,
President of the Macomb Bar Association*

Greetings fellow counselors! As spring gets into full swing, we look forward to an array of functions both fun and educational!

I'd like to start by congratulating Thomas Tomko for being named as the administrator for the newly formed public defender's office. We are all very proud of Tom and all the work

he's done over the years for the legal community, for his clients and for the practice of law. Tom is a tremendous lawyer, a gentleman, and a tireless advocate. We at the Macomb Bar have no doubt he will make an amazing administrator. Also, we are thankful to county executive Mark Hackel for hiring Tom and giving us an administrator who has been part of the Macomb Bar for over 20 years and who knows Macomb County Courts inside and out. He will do a tremendous job and we look forward to watching the public defender's office take shape and grow to be a great addition to the defense bar in this county.

Additionally, I'd like to congratulate Rebekah Sellers on being named as the newest Macomb County FOC Referee. As some of you remember, Rebekah was at one time a research attorney with the county. She is a wicked smart lawyer and a phenomenal writer, and will no doubt make an amazing referee. Prior to this position she was a referee with the Wayne County FOC. I can't say enough about her qualifications, her temperament



and her overall disposition. I am looking forward to having her oversee matters in the family court here in Macomb.

I'd like to also congratulate Michael Gibbs who was recently named as the new Juvenile Court Referee. Michael Gibbs is a tremendous lawyer who has always been a very strong advocate. Michael has been practicing juvenile law for many years and is well-versed in the procedures of the juvenile court. Additionally, he is our own Macomb Bar Juvenile Law Section Chair! Any of you who know Mike can attest he is a tremendous asset to the juvenile court and I'm sure he will do an amazing job.

Going forward we have a lot of CLE's coming up as well as our Annual Meeting which will be held at the Jimmy John's field in Utica. We are very excited about the future of the bar and we are hopeful that together we can build a better, stronger bar and make this the best possible place to practice law!

Jonathan C. Biernat



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What You Need to Know



*By Rick R. Troy, Executive Director,
Macomb Bar Association and Macomb County Bar Foundation and
Dawn Fraylick, Associate Executive and Communications Director, Macomb Bar Association*

MacombBar.org

MacombBar.org is your membership website and, if you have not already done so, we need you to **ACTIVATE** your account. It is a simple process. Ready?

- Go to www.MacombBar.org.
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You will then receive an activation email. If you receive an error it is because your First Name, Last Name or Email does not match what we have in the database. Simply call us at 586-468-2940 and we will work with you over the phone to correct the data.

The Info Hub

Once you activate your account you will see the Info Hub. This is where you can edit your member profile (address, numbers, emails, etc.), upload your photo and access member-access-only areas such as the Member Directory. The Info Hub is your go-to location on MacombBar.org

Calendar

From the home page, scroll down to see the Calendar of bar events. Or, you can click on the Events and Education tab and click on Calendar. From here you can

check out what's happening and register!

Continuing Education

Especially important for assigned counsel who provide services for out-county courts, the Continuing Education section of your personal profile stores certificates of completion for any Macomb Bar / CDAM training that you completed. You can simply print these off and send to other, (out-County) courts. It is a simple way to keep track of your hours!

Bar Briefs

Under the Products and Services tab is a link to archived Bar Briefs, so you can read past articles.

Events

As I write, the story of 2020 is unfolding, and it's not even November! Universities are cancelling face to face courses, concerts and sporting events

are being postponed or canceled and every gathering is being scrutinized. The Bar world is no exception to the pandemic. For the first time ever, the American Bar Association's Bar Leadership Institute, a two-day event that brings together hundreds of bar association Presidents and Executive Directors, has been cancelled. These are uncharted waters for membership organizations of all types. The Macomb Bar Board of Directors will proceed with the necessary caution and with everyone's safety in mind as we navigate future

Macombbar.org Account

Go To Member Center
Click Create Account
Check your Email
Change your password
Login

events.

That being said, part of the magic of the Macomb Bar is to connect with each other in person. Bar events allow all of us to develop new professional relationships and further friendships. The advice and counsel we get from one another at events are invaluable to professional and personal growth. While the online world provides some sense of connectivity, it pales to the experience of person to person communications that often further your (client) interests, allow you to learn (and share) unique aspects of the law, while expanding your network of professional colleagues.

At this time the Macomb Bar has the Annual Meeting schedule for May 15 at Jimmy John's Field. The ball park will open at 5:15pm for Macomb Bar Members. The annual meeting, including presentation of awards and election results, will take place between 5:30pm and 6:00pm. At 6:00pm the gates open for the public. A wonderful summer buffet and drink tickets are available for registered Macomb Bar members. At 7:05pm the Westside Woolly Mammoths take on the home town Utica Unicorns in this United Shore Professional Baseball League game. Register today to join in the fun! If the need to cancel arises we will of course notify you.

The Golf Outing is scheduled for June 22 at Greystone. Extend the Father's Day weekend, register your foursome today and take advantage of the Early Birdie special!

Foundation News

As you can see on page 16, the 7th High School Mock Trial was a phenomenal success. More than 130 high school students were in the 16th Circuit Court all day to compete on Saturday March 7. Shouts of joy, high fives and hugs that are normally seen on the fields of sport happened once again in the Jury Room as students, parents and teachers cheered for their teams. Witnessing their elation was the "paycheck" for all of the volunteers that helped that day.

Hosted by your Macomb County Bar Foundation, this incredible event would not happen if it were not for the passion and hard work of **Renee Tegel**. Renee has chaired this event all seven years and, from the start, the Macomb Tournament was recognized as the best in the State. **Lori Smith** has been Renee's co-chair for years. It is amazing the opportunity that this dynamic duo has created for our youth, in the name of

your profession. Yet, there are many more volunteers that make this day happen, thank you to:

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Macomb Bar Association Annual Meeting and Elections

Friday, May 15, 2020
Jimmy John's Field

5:15-5:30pmpm - Doors Open / Voting

5:30-6:00pm - Annual Meeting & Election Results

6:00pm-7:00pm - Buffet / Social Hour

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A Mockery of the Justice System?

By Stephen M. Steinhardt, Law Offices of Stephen Steinhardt

A few weeks ago, a non-attorney friend of mine told me that she received a 72/60 speeding ticket from the City of Toledo. The letter from the City stated that it was a zero- point ticket with a fine of \$ 120, and provided an opportunity for her to “challenge” it if she wished. My friend has absolutely nothing ever on her criminal record. She received one

were long. What we experienced that day is a prime example of the need of dedicated attorneys and citizens to protect the fairness of the process. What we witnessed that day was a complete mockery of the justice system.

While “only” a zero point \$120 ticket, this situation provides a microcosm for how an unfair process can lead to innocent people

Florida, Chicago, Cedar Pointe, or Cleveland. Therefore, they would have no voice in voting out the Toledo City Council members who enacted this unjust ordinance. Making clear to my friend that I was not an Ohio attorney and could not formally represent her, I was able to informally discuss with her what an informal hearing might be like, analogizing what



speeding ticket about 15 years ago. What she found so aggravating was that the evidence the city was claiming to use against her was a one- second video that focused on another car for about half that time. She was determined to have her day in court, even though she knew the odds of coming away victorious

being convicted of a much larger violation, or even a crime. With the geography of Toledo, I- 75, and the East- West highways that run through the City, it is probable that a great majority of people who receive tickets are not citizens of Toledo. Likely, many are Michiganders on their way to

she likely will be facing to my 25 years practicing criminal law in Michigan, and provided her with a copy of the ordinance in question. My friend is not the ordinary person to appear in court without an attorney. She currently serves as the vice-chancellor at a major university in Michigan, and has

a PhD. When we arrived at the hearing room, my friend was one of about 25 people on the 4:30 pm docket. While few people are ever happy to be in court, the first odd thing we observed was how many people were stating out loud things like “kangaroo court,” “money grab,” “unfair,” this system is a mockery, “ etc. While waiting for the hearings to begin, we sat next to a person who told us that “his video was as shaky as the law this case is based upon.”

We were next surprised that there was no city attorney to speak with ahead of time. Often, if the ticketed person arrives, there is an opportunity to discuss various plea reductions. There was no such opportunity to speak with a city representative ahead of time, especially as the “arresting officer” failed to appear.

When the hearings were about to begin, the person in charge instructed everyone about the process. He identified himself as an assistant city attorney. Incredibly, he was also going to serve as the fact finder, the so-called judge for the hearings. It was appalling. The city attorney would hear testimony from the city police officer who didn’t witness the event to determine whether the city should collect on a speeding ticket. It took every bit of restraint on my part to not stand up and yell that this was an outrage, a violation of basic norms of American Justice, a violation of the separation of powers that any 8th grade civics student knows. To say the least, the odds were stacked against the 25 or so litigants. It should be no surprise to say that

the City (The House) always wins, unless it chose not to.

About ten people had their case before my friend’s case. The judge/ jury/ and prosecutor for the case was the same person. Except for the rare situation where the City chose to provide a break, virtually everyone walked out with the profound sense that they did not have their day in court, that no one ever wins, that the so-called hearing was a complete farce.

Other matters factored into the unfairness of the process. Virtually every person requested the presence of the officer who used the radar gun. He was absent. The presiding officer reviewed the video and gave his testimony about a matter that he had absolutely no direct knowledge of. He merely watched the one second videos and read the identifying information off of it. By paying one officer to “testify” about 25 cases from which he had no direct knowledge, plus one officer who acted as the court officer, the city saved a great deal by not having to secure and pay for the presence of the many police officers who actually witnessed the alleged events. While the Confrontation Clause of the U.S. Constitution is a right generally reserved for trial, and hearings for tickets are civil matters not criminal, this does affront one’s sense of fundamental fairness.

While the rules of evidence do not apply in traffic matters, the general rule is that a proper foundation is needed to admit evidence in a court of law. I am analogizing the foundation needed to use the radar gun

machine to the need to establish the foundation for the datamaster instrument in Michigan. It is not a perfect analogy, but it helps us to understand the main point.

The City as the moving party has the burden of proof to establish the foundation to admit evidence. The burden of proof is preponderance of the evidence. In order for the results of chemical tests of blood alcohol to be admitted into evidence, the proponent of such tests must meet four foundational requirements. First, it must be shown that the operator was qualified. Second, the proper method of procedure must be demonstrated as having been followed in the tests. Third, the test must have been performed within a reasonable time after the arrest. Finally, the testing device must be shown to be reliable. *People v Kozar* 54 Mich App 503, 509 (1974).; *People v Tipolt*, 198 Mich App 44, 46 (1993).

In the Toledo radar gun matter, it makes sense that the person who actually used the radar gun that day is present to establish that he or she is qualified to use it; that he followed proper procedures that day and in this particular instance; and that the radar gun was properly calibrated. The City of Toledo utterly failed on the day in question, and apparently does so on a regular basis.

Several litigants asked for the officer who wrote the ticket to be present, as tickets are dismissed on a regular basis when the officer fails to appear. Second, the presence of the officer would allow the ticketed person to challenge whether he or she was qualified

properly, whether he followed proper procedures, and any other matter that a neutral and detached magistrate would find relevant to such a hearing to make a just ruling.

Thirdly, the City utterly failed to establish any foundation that the radar gun was calibrated and working properly that day. When several people queried into this matter, the officer dismissed these comments stating, “we check it every day,” “you could have asked for discovery on the form and I would bring it” and other similar condescending statements that shock the conscience for their utter disregard for tradition norms of justice and fairness. The officer said the request option was listed somewhere on the form the litigants received. It is worth noting that not one single person

made this request. If this exists, it is likely boilerplate language placed in the blurry middle of a technically written statement that non-lawyers, and even many lawyers would not understand. Even if the language was in the letter, the moving party who wants to use the evidence has the burden of proof to establish that the proposed evidence is proper. The City wants to argue and hold that the machine/video says the litigant is guilty/responsible. It is up to the City to prove that the radar gun was working. Some vague language on a form letter does not shift the burden of proof to the other party.

My friend will be appealing this matter. My understanding is that this Toledo ordinance is currently being challenged in the Ohio Supreme Court and has

received much deserved negative attention in the Ohio media. The purpose of me writing this article is to inform the citizens of Michigan who drive through Toledo, and others in the Toledo area how unfair this system is. The City is benefitting from a cash windfall from this program as the money they collect is likely from non-Toledo residents who cannot vote in Toledo elections. This unjust practice tarnishes their reputation as a good place to do business, and is offensive to the justice system. All those of you who values fairness and due process speak out against this unjust process that Toledo has adopted. We should be vigilant against any other jurisdictions who attempt to mimic this process, as they will appear as unjust and unwise as the City of Toledo does.



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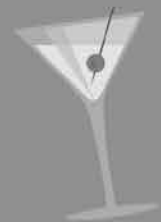
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Macomb Regional High School Mock Trial

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Hon. Julie Gatti's courtroom during Macomb County Region High School Mock Trial with William Moore as the Court Officer.



Mock Trial Volunteers: Judy Goodman, MCBF Past President Lori Smith and MCBF President Dana M. Warnez



Macomb Regional Mock Trial Volunteer Orientation led by Renee Tegel.



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(Northwest of M-59 & M-53) **(586) 323-9620**

Classified Ad

\$25 Members
\$35 Non-Members

Call Dawn at (586) 468-2940 or
dfraylick@Macombbar.org

MACOMB BAR GOLF OUTING



JUNE 22, 2020 • 1PM SHOTGUN START
GREYSTONE GOLF CLUB

67500 MOUND RD, WASHINGTON, MI 48095

AGENDA:

11:45AM LUNCH

1:00PM SHOTGUN START

6:00PM DINNER

COST:

\$150 PER PLAYER

REGISTER AT MACOMBBAR.ORG OR AT (586) 468-2940

EARLY BIRDIE SPECIAL - \$135 PER PERSON IF REGISTERED & PAID BEFORE MAY 15, 2020



Macomb County Bar Association

40 N. Main St., Suite 435

Mt. Clemens, MI 48043

MacombBar.org

2020 CDAM/Macomb Bar Training Schedule

Criminal Seminars for Court Appointments

All Trainings will be held at Macomb Community College, University Center 1 located at 44576 Garfield Rd., Clinton Township, MI 48038 unless otherwise stated.

Register at CDAMonline.com

April 24, 2020

Specialty Courts

Macomb Community College

10:00am-12:00pm

12:00pm-1:00pm Lunch

1:00pm-3:00pm

(4) Annual Hours



June 4, 2020 & June 5, 2020

Skills Training101

Macomb Intermediate School District

44001 Garfield Rd #1100, Clinton Twp, MI 48038

(16) Skills Hours

Training for attorneys with 2 years or less experience practicing criminal law.



More Details to Come:

August 7, 2020 - Evidence Boot Camp

September 11, 2020 - How to Win a DIU Case

September 18, 2020 - Evidence Boot Camp D

October 16, 2002 TBD

December 4, 2020 TBD