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December 2022

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# Bar Briefs

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Editor's Note: The opinions expressed in Bar Briefs do not reflect the official position of the MCBA, nor does this publication constitute an endorsement of the views expressed. Bar Briefs (ISSN0886-506X) is published monthly by the Macomb County Bar Association. Copyright 2022 by the Macomb County Bar Association. Periodical class postage paid at Royal Oak MI 48043. POSTMASTER: Send address correction to MCBA Bar Briefs, 40 North Main St., Suite 435, Mt. Clemens, MI 48043-1037.

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# Giving

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

“The holiday season is a perfect time to reflect on our blessings and seek out ways to make life better for those around us.”

—ANONYMOUS

I believe time of year renews a sense of giving. Giving to those we love, those in need and to those who have just fallen on tough times. One program that I am very happy to see return this year aligns with this sense of giving back. The Macomb Bar Foundation and our Young Lawyer’s Section will be hosting the “Feed the Need” program which provides a free holiday meal to the community.<sup>1</sup>

The event will be held on **Sunday December 18th** at Rec Bowl in Mt. Clemens starting at 1:00 PM until 5:00 PM. We are looking for volunteers to help serve at the event. If you are unable to attend but would still like to contribute you can donate necessities such as hats, gloves, hand-warmers, toothbrushes or other supplies that will be distributed to the attendees of the event, or can also contribute financially to help purchase the meals and other necessities by contacting the Bar office to make a general donation to the Feed the Need program.

This is also a profound time to reflect on the events of past year. An abundance of blessings, new learning experiences, new friends, the birth of loved ones and a plethora of other events and occasions that will hopefully bring a smile on your face as they come to mind. There have also been tough times and, for some, tragic losses this year. The “most wonderful time of the year” can also be the most difficult time of the year.

Trying to strike a balance, or even just finding a way to cope this holiday season is something that is important. In trying to locate some insights on information to share, I came across an article from the Mayo Clinic which offered some helpful suggestions on how to deal with the stressors that come with this holiday season.

**Acknowledge your feelings.** If someone close to you has recently died or you can’t be with loved ones for other reasons, realize that it’s normal to feel sadness and grief. It’s OK to take time to cry or express your feelings. You can’t force yourself to be happy just because it’s the holiday season.

**Reach out.** If you feel lonely or isolated, seek out community, religious or other social events or communities. Many may have websites, online support groups, social media sites, or virtual events. They can offer support and companionship. If you’re feeling stress during the holidays, it also may help to talk to a friend or family member about your concerns. Try reaching out with a text, a call, or a video chat.

Volunteering your time or doing something to help others also is a good way to lift your spirits and broaden your friendships. For example, consider dropping off a meal and dessert at a friend’s home during the holidays.

**Be realistic.** The holidays don’t have to be perfect or just like last year. As families change and grow, traditions and rituals often change as well. Choose a few to hold on to, and be open to creating new ones. For example, if your adult children or other relatives can’t come to your home, find new ways to celebrate together, such as sharing pictures, emails, or videos. Perhaps meet virtually on a video call. Even though your holiday plans may look different this year, you can find ways to celebrate.

**Set aside differences.** Try to accept family members and friends as they are, even if they don’t live up to all of your expectations. Set aside grievances until a more appropriate time for discussion. And be understanding if others get upset or distressed when something goes awry. Chances are they’re feeling the effects of holiday stress and depression, too.

**Stick to a budget.** Before you do your gift and food shopping, decide how much money you can afford to spend. Then stick to your budget. Don’t try to buy happiness with an avalanche of gifts.

Try these alternatives:

- Donate to a charity in someone’s name.
- Give homemade gifts.
- Start a family gift exchange.

**Plan ahead.** Set aside specific days for shopping, baking, connecting with friends and other activities.

Consider whether you can shop online for any of your items. Plan your menus and then make your shopping list. That'll help prevent last-minute scrambling to buy forgotten ingredients. And make sure to line up help for meal prep and cleanup.

**Learn to say no.** Saying yes when you should say no can leave you feeling resentful and overwhelmed. Friends and colleagues will understand if you can't participate in every project or activity. If it's not possible to say no when your boss asks you to work overtime, try to remove something else from your agenda to make up for the lost time.

**Take a breather.** Make some time for yourself. Find an activity you enjoy. Take a break by yourself. Spending just 15 minutes alone, without distractions, may refresh you enough to handle everything you need to do. Find something that reduces stress by clearing your mind, slowing your breathing and restoring inner calm.

**Seek professional help** if you need it. Despite your best efforts, you may find yourself feeling persistently sad or anxious, plagued by physical complaints, unable to sleep, irritable and hopeless, and unable to face routine chores. If these feelings last for a while, talk to your doctor or a mental health professional.

One of blessings that we share is being a member of the Macomb legal community. Our bench and bar

include some of the most kind and generous people who have demonstrated repeatedly that when a colleague or the community is in need, they are there are help. As a member of this beloved community, you need to know that you are never alone.

Wishing you and your loved ones a safe and joyous holiday season.

**Reference:**

*Stress, depression and the holidays: Tips for coping.* Mayo Clinic. <https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/stress/art-20047544>. Accessed November 1, 2022.

<sup>1</sup>I would be remiss not to acknowledge Steve Steinhardt who conceptualized this event a few years ago and still remains actively involved with the event.

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# Commissioner's Corner

*By Sherrie L. Detzler*  
*SMB Commissioner—District D*

## The Lawyers Oath

In the last few weeks, many new lawyers were required to take the Lawyer's Oath in their admission ceremonies to the State Bar of Michigan. Just like us before them, they stumbled over the phrase "delay any cause for lucre" and made a mental note to look up the word "lucre."

**lucre** noun /'lu:kə(r)/ /'lu:kər/ [uncountable] (disapproving)

1. **money, especially when it has been obtained in a way that is not honest or moral**  
• the lure of filthy lucre

<https://www.oxfordlearnersdictionaries.com/us/definition/english/lucre>

But unlike these fine new attorneys, many of us have not had (nor made) the time to read the Oath we too so proudly took when we were granted admission to this fine profession. Now may be just the right time for a bit of reflections. As we wind down this year, and oh what a year it has been, I invite each of us to "remember where we came from" and recite, even to yourself:

### *Lawyer's Oath*

I do solemnly swear (or affirm):

**I will support** the Constitution of the United States and the Constitution of the State of Michigan;

**I will maintain** the respect due to courts of justice and judicial officers;

**I will not counsel** or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

**I will employ** for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

**I will maintain** the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with my client's business except with my client's knowledge and approval;

**I will abstain** from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

**I will never reject**, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any cause for lucre or malice;

**I will in all other respects** conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in this State.

Pause and give your self just a minute to "remember" just how honored you felt when you first "swore" or "affirmed," you have earned it!

*Kindly, Sherrie*

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# 2022 – It’s a Wrap



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

Dear Members, Happy Holidays!

As we close out the year, there is measurable momentum within the Macomb Bar Association and the Macomb Bar Foundation. Plans are underway for the return of the Macomb County Bench Bar Conference on February 24, 2023. When we flip the calendar to Saturday, March 4, we will be hosting the Foundation’s Regional High School Mock Trial that will see up to 14 high school teams compete for a bid to the Michigan Center for Civic Education’s State championship. On March 8 we have our Red Wings night out. Some crazy fun seats in the gondola are available for just \$30. March 17 is St. Patrick’s Day and this is the due date for Foundation Scholarship applicants. If you know of any 2L’s or 3L’s, encourage them to apply. There is a link right on the MacombBar.org home page.

Did you know that, over the years, the Foundation has granted over \$159,000 in scholarships? The vision of the Foundation Founders is reality on so many levels including scholarships. On March 30, the bar association returns to Topgolf in Auburn Hills for three hours of tournament fun and food with the winning group receiving a cruise on Lake St. Clair, compliments of our friends at Freedom Boat Club. As we close out March, we will be searching for your nominations for Macomb Bar awards. A list of past recipients, nomination instructions and definition of each award can be found by clicking the Macomb Bar Awards link under the About Macomb Bar tab of MacombBar.org Also, if you are interested in running for election to the Macomb County Board of Directors, January is the month for you to submit a letter of interest to be considered for a nomination by the nominating committee of the board. Details of all these opportunities, and more, are available on MacombBar.org.


The new year also means renewal time for Macomb County Bar Foundation Trustees. Trustees contribute \$150 each year to the 501(c)(3) charitable Macomb County Bar Foundation. These Trustee dues are a main source of revenue that allows the Foundation to achieve its mission of

providing and supporting law related and civic education. Trustees are eligible for election to the board of directors and they get to vote for board members. Another main source of revenue for the Foundation is the annual raffle. Tickets are sold in December for just \$20 and then every day in January there is a \$250 winner and on Sundays there are \$500 winners. Foundation board members are selling tickets now, or contact the bar office or visit MacombBar.org.

January is also renewal time for our fantastic Lawyer Referral Service (LRS) panelists. LRS panelists pay \$200 each year to receive referrals from the bar office. Macomb Bar Sustaining Members receive a 50% discount. Panelists may choose up to three areas of law to receive referrals from. Bar staff screen 80% or more of the calls which helps to cut down on time wasting law service shoppers. Our LRS has its own web platform that makes it easy for you to track and report on your cases. If you are interested in joining please see the Lawyer Referral Subscription link located under the Explore Your Membership tab of MacombBar.org for all of the details. Thank you to our panelists who do so much to help people and represent the organized bar through this public service.

I wish you the best of the Holidays.

Rick R. Troy, Executive Director  
Macomb County Bar Association  
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# INTRODUCING THE DIVERSITY AND INCLUSION COMMITTEE CHAIR

*By Esse Tuke,  
Litigator and Owner of The Tuke Firm*

Hello! I'm Esse Tuke, litigator and owner of The Tuke Firm, PLLC. The last name is pronounced '2K.'

I work primarily in the divorce and family law arena, but also handle some civil litigation, litigation consultation on strategy as well. I also act as a domestic mediator. My practice is located in Troy, Michigan, and I handle case in Macomb, Oakland, Wayne, and Washtenaw counties primarily.

I was raised in and around New York City and attend law school at Fordham Law School in Manhattan. Once a New Yorker, forever so.

I transplanted to Michigan 18 years ago after law school. I worked as the judicial attorney for Hon. Kathleen McCarthy in the family division for several years, then moved into private practice.

I opened The Tuke Firm in 2009 to deliver family law, my way. Myself and my team work hard to help individuals and families in their toughest of times. Experience, energy, and tech tools to make it easier for our on-the-go clients to stay connected to their case happenings.

As your new Diversity & Inclusion Committee Chair, my first goal is to grow our committee member numbers so that like-minded or curious members of the Macomb County Bar Association can start meeting, sharing information and planning events for the upcoming year. The committee will be putting on two events next year, one will likely be joint event with a neighboring bar association.

The mission of this committee is to provide a space in the legal community for have safe, open and honest discussions about diversity & inclusion matters...in the many ways it show up—race, gender, ablism, ethnic identity, sexual orientation/expression, holidays, personal bias/case bias etc.

I hope to be able to provide resources to law firms dealing with D & I questions and not sure where to turn, provide community outreach to youth wanting to learn about the legal profession and the diversity within, space for bar members with any issue that is marginalizing to feel included, space to speak up so that we can find ways to include and accommodate them, and a safe space to educate others.

Also, we will be sharing information about Diversity & Inclusion events happening all across the State of Michigan. There are other bar associations and other organizations in this state doing great thing in this area and I look forward to bridging the information gaps on who's doing what where, so there are less duplicated efforts and more adding manpower to existing organizations/events aligned with our mission.

We are just getting started and welcome anyone interested in joining this fun committee and bringing ideas. If you would like to join the Diversity & Inclusion committee, please email the bar office at [RTroy@MacombBar.org](mailto:RTroy@MacombBar.org), [SJones@MacombBar.org](mailto:SJones@MacombBar.org), or call 586-468-2940.

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# Zone Defense

By Nathan D. Petrusak,  
Macomb Bar Civil Law Committee Chair and  
Shareholder at O'Reilly Rancillio PC

At one time or another many of us will receive a notice in the mail that our local Zoning Board of Appeals will consider a land use request that, if granted, may impact our property.<sup>1</sup> Maybe the request is for a special land use for an immensely popular fast food restaurant with a stacked drive-thru. Or maybe the request is to rezone property to construct a three-story apartment complex next to single-story, single family homes. Whatever the request is for, these types of requests almost always implicate questions of suitability: noise, privacy, traffic congestion, etc. The standards for granting these requests vary by local zoning ordinance, and whatever decision is made is subject to review by the local circuit court to ensure the decision was supported by competent, material, and substantial evidence.<sup>2</sup> Courts have stated that the quantum of evidence required to meet this standard is “evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance.”<sup>3</sup>

However, not just any person disappointed by a Zoning Board of Appeal’s decision can seek circuit court review. Instead, the person must qualify as an “aggrieved party.”<sup>4</sup> This past summer, the Michigan Supreme Court redefined what it means to be an aggrieved party in *Saugatuck Dunes Coastal Alliance v Saugatuck Township*, --- NW2d ---, 2022 WL 2903871 (Mich July 22, 2022). Understanding this re-definition before a decision is made by a Zoning Board of Appeals is critical for persons who may ultimately wish to challenge or defend the decision.

In *Saugatuck*, the Supreme Court set forth a three-part test for determining whether a person is an aggrieved party:

First, the person “must have participated in the challenged proceeding by taking a position on the contested decision, such as through a letter or oral public comment.”<sup>5</sup> This requirement means a person cannot sit idly by and then complain about a decision after the fact. It also means that a person who fails to read and/or appreciate the import of the mailed notice and takes no position is barred from challenging the decision. Thus, the onus is on persons to inform themselves of how their communities are being developed and to take an active role in the decision making.

Second, the person “must claim some legally protected interest or protected personal, pecuniary, or property right that is likely to be affected by the challenged

decision.”<sup>6</sup> This requirement synergizes Michigan’s long-standing appellate standing requirement that a person have suffered “a concrete and particularized injury” as a result of the Zoning Board of Appeal’s decision, “not a mere possibility arising from some unknown future contingency.”

Third, the person “must provide some evidence of special damages arising from the challenged decision in the form of an actual or likely injury to or burden on their asserted interest or right that is different in kind or more significant in degree than the effects on others in the local community.”<sup>7</sup> To have “special damages,” a person must have suffered some harm unique in nature and/or magnitude; “generalized concerns about traffic congestion, economic harms, aesthetic harms, environmental harms, and the like are not sufficient to establish that one has been aggrieved by a zoning decision.”<sup>8</sup>

Prior to *Saugatuck*, whether a person had special damages was determined by comparing their damages to “other property owners similarly situated.” *Saugatuck* effected a sea change to this standard, holding that damages now need only be special as compared to “others in the local community.” This change represents a potential significant expansion of the class of persons who are eligible to challenge a Zoning Board of Appeal’s decision, a point the dissent emphasized stating: “It will almost always be possible to find ‘others in the local community’ who have not suffered the same kind of damages or who have suffered them to a lesser degree.”<sup>9 10</sup>

In sum, understanding the Supreme Court’s recent decision in *Saugatuck* is crucial both for those looking to challenge a Zoning Board of Appeal’s decision as well as those looking to defend it.

<sup>1</sup> Generally, notice must be given “to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property.” MCL 125.3103.

<sup>2</sup> MCL 125.3606.

<sup>3</sup> *Hughes v Almena Twp*, 284 Mich App 50, 60 (2009).

<sup>4</sup> See MCL 125.3605 and 125.3606.

<sup>5</sup> *Id.* at \*15.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at \*16 (emphasis in original).

<sup>9</sup> *Id.* at \*23 (Viviano, J., dissenting).

<sup>10</sup> It should be noted that *Saugatuck* did not alter the standard for who is an aggrieved party for purposes of a land use decision by a local Planning Commission, as opposed to a Zoning Board of Appeals. See generally *Ansell v Delta Cnty Plan Comm’n*, 332 Mich App 451 (2020).



# Michigan DNR's New Mandatory Deer Harvest Reporting

By Joe Pernicano,  
Pernicano Law, PLLC & Young Lawyers Section Director

With deer archery season ongoing, and opening day for deer firearm season approaching, I have been receiving a lot of questions from clients regarding the new Michigan Department of Natural Resources (“DNR”) mandatory deer harvest reporting. As of 2022, hunters are now required to report the successful harvest of deer in the state of Michigan to the DNR. Below are some common questions regarding the new requirements and penalties for failing to report a deer harvest.

### What are clients required to do?

They are now required to report the successful harvest through the Michigan.gov DNR web page, or through the DNR mobile app that can be downloaded onto a mobile phone.

They have 72 hours from the time they recover the deer to report the successful harvest. If the deer is being

transferred to a different person, the report must be made before the transfer occurs.

Once the report is successfully made, they will be given a confirmation number that should be kept for their records.

### Do you still need to attach your deer tag?

YES! After successfully harvesting a deer, licensed hunters are still required to attach their tag to the deer.

### What if your client does not have access to a computer or cell phone with internet connection?

They have up to three days to report a harvest. If they still do not have access to an internet connection, they would have to call a family member, or friend who does have internet access to report the harvest for them. The person making the report will need the tag license number, hunters date of birth, and exact location of the harvest.



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If they do not have anyone that can make the report for them, they can call one of the DNR locations providing technical assistance to report the harvest over the phone.

### **What if your client is having technical difficulties or is unable to report their harvest online?**

There is a list of locations providing technical assistance on the DNR website. They can either call these locations or can go to the location during business hours to obtain assistance with reporting a deer harvest.

They can also have a family member, friend, or hunting buddy report the harvest online for them within 72 hours or before transferring the deer.

### **What if your client fails to report a deer harvest?**

A hunter who fails to report a deer harvest is subject to a misdemeanor punishable by up to 90 days in jail and a fine up to \$500.00 under the Wildlife Conservation Order: 3.103.

### **What if your client made a mistake when reporting their deer harvest?**

If a mistake is made in the report, they should call the DNR licensing and customer service center.

### **Why is the DNR requiring hunters report successful deer harvests?**

For decades, mail surveys have been randomly sent to a sampling of licensed hunters who would voluntarily complete and return them to the DNR. Over the last twenty years, the DNR reported an almost 40 percent drop in voluntary responses to the survey. This has diminished the value and ability of the DNR to monitor deer harvesting in the State.

Best of luck to anyone heading into the woods this fall. If you have any questions regarding the new DNR requirements or any DNR violations, you can contact Joe Pernicano at [pernicanolaw.com](http://pernicanolaw.com), (313) 618-5914 or [joe@pernicanolaw.com](mailto:joe@pernicanolaw.com).



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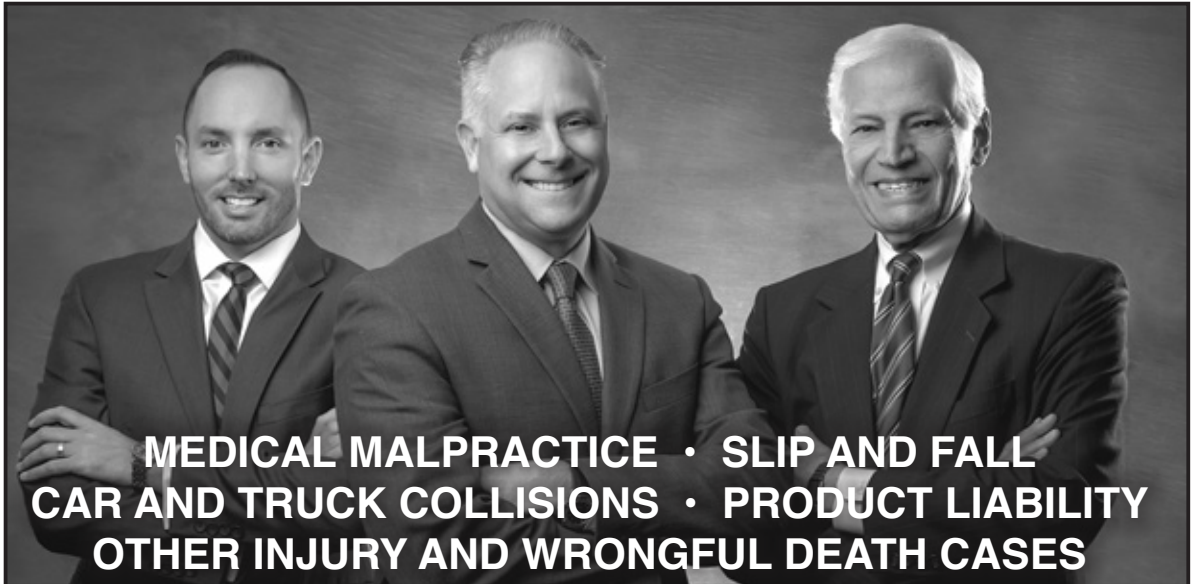
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