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Official Publication of the Macomb Bar Association

February 2023



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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 2023 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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# All you need is love... and little self care.

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

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All you need is love.

The Beatles proclaimed this to be true. I am not entirely sure how accurate it is but love is an important component of a happy and fulfilled life. It can provide a sense of connection, belonging, and support. Love can come in many forms, such as romantic love, familial love, and platonic love. It can also manifest itself in different ways such as through acts of kindness, words of encouragement, and gestures of affection.

Love can also play a role in self-care and self-compassion, as it can help to build self-esteem, self-worth and self-acceptance. But we all know that it's not always easy to take time for yourself during periods of stress, anxiety, or even depression—especially when you are already feeling overwhelmed by the demands of work and life. But there are ways to make it happen, you just have to make YOU a priority.

First off, give yourself permission to take care of yourself. You must make time for self-care—whether it's a bubble bath, a yoga class, an hour of reading a good book, retail-therapy or dinner with friends you need to realize that doing these activities are not selfish at all. They are necessary! So if your to-do list is full enough already (which I am sure that it is), you need to prioritize yourself on the top of that list.

Second, do not neglect your health just because you are stressed or overwhelmed with activities and tasks.

It is easy to let things slip under the radar when you're feeling overwhelmed, like drinking more than usual, skipping meals because there aren't enough hours in the day for food prep or not scheduling or following up with necessary medical appointments. But these behaviors can lead to weight gain and other health issues that could compound your stress levels even more—not exactly what we are striving for.

We all know that stress is harmful to our mental

and physical health and can negatively impact our work and relationships. To take care of ourselves during periods of stress, it's important to get enough sleep, exercise, eat healthy foods, and engage in self-care activities.

Additionally, recognizing the signs of stress such as feeling irritable or angry, having trouble sleeping or concentrating, and experiencing headaches or muscle pain is important in order to take a break and recharge. It's important to

remember that making time for self-care and taking care of your health is not selfish, it's necessary for overall well-being.

It is also important to remember that you are not alone in these struggles, and it is perfectly acceptable to reach to others to ask for help. Whether we know one another personally or not, I welcome you to reach out if you are feeling overwhelmed, or simply need another person to listen for a while. I would further implore you to schedule at least one self-care activity per week this month and show some love to yourself.

**We all know that stress is harmful to our mental and physical health and can negatively impact our work and relationships.**



# Three Pieces

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

Macomb Bar Members,  
I'm keeping it short this month.

## **Macomb Bar Awards**

Nominations for the several Bar Association awards are now open. There is an online form on the website, [MacombBar.org](http://MacombBar.org). Or email your letter of nomination to the attention of Dana Freers to [RTroy@Macombbar.org](mailto:RTroy@Macombbar.org).

## **Bar Leadership**

The Macomb Bar Association and Macomb Bar Foundation Boards of Directors recently established their respective nominating committee for the upcoming board elections. If you are interested in running for an Association board position, please see page 10. If you have an interest in getting involved in Foundation leadership, simply send an email to the attention of Foundation President, Eric Shepherd, to [RTroy@Macombbar.org](mailto:RTroy@Macombbar.org).

## **Bench Bar Conference**

I look forward to seeing you on February 24 as we bring the Macomb County Bench Bar Conference back. Advanced Registration is Required. Please select your lunch menu when you register at [MacombBar.org](http://MacombBar.org). If you have technical difficulties, simply call the bar office and we will take your registration over the phone, 586-468-2940.

Best regards,  
Rick R. Troy  
Executive Director  
Macomb County Bar Association  
Macomb County Bar Foundation

## 2023 Macomb Bar Awards

Nominations are open for 2023!

### **Extraordinary Service Award**

### **Distinguished Public Service Award**

### **Pro Bono Award**

### **Kimberly M. Cahill Civility Award**

### **Special Service Award**

### **Liberty Bell Award**

Visit [MacombBar.org](http://MacombBar.org) to submit your letter of nomination, or email to [RTroy@MacombBar.org](mailto:RTroy@MacombBar.org), attention Dana Freers



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# Dark Web Monitoring for Law Firms: Is It Worthwhile?

by Sharon D. Nelson, Esq., John W. Simek, and Michael C. Maschke

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Most lawyers have no idea that the Internet is made up of several different areas, some of which are extremely difficult to access. When they use a browser to search for information or purchase products, they generally are accessing what is called the surface web. It is the information that is freely available with little or no restriction and accessible via search engines such as Google.

However, most internet information resides in what we call the deep web. Essentially, anything accessed using a password is considered the deep web. Examples would be email, bank accounts, medical records, etc. Think of the deep web as the portion of an iceberg that is below the surface and is not indexed by the search engines. Some reports put the amount of deep web data at 97% or more of the total internet.

Before we jump into the subject of dark web monitoring, let's discuss the dark web to set the stage.

## Dark web access

The dark web typically contains sites that are associated with illegal activities such as child pornography, fraudulent services, drug trade, trafficking, etc. It is a minor portion of the deep web. Like other areas of the deep web, the content is not indexed and accessible via search engines.

Websites have .onion at the end of the site URL. The site address is a collection of scrambled text that isn't even close to identifying the site itself. As an example, the dark web URL for the CIA is <http://ciadotgov4sjwlzihbbgxnqg3xiyrg7so2r2o3lt5wz5ypk4sxyjstad.onion/>. At least it starts with ciadotgov.

Special software is used to access sites on the dark web. The Tor (The Onion Router) browser is most often used to access dark web data. Lawyers are always curious about the dark web and what evidence may be available there for their cases.

In fact, they often see the dark web as a “sexy” place to explore and want us to tell them how to safely access it. And yes it can be “sexy” in all kinds of ways, but our recommendation to attorneys is clear: Don't access it. Even if you have the technical knowledge to install and

configure the Tor browser, securely accessing the dark web is simply beyond the skill level of most attorneys. In other words, to reverse Nike's slogan... Just Don't Do It!

## Privacy

People hear the term “dark web” and immediately visions of criminal activity come to mind. Sex, drugs, guns, cyberattacks, etc. However . . . by its very design, the dark web is an excellent place to protect privacy. Journalists use the dark web to send and receive messages anonymously and to protect the identity of news sources. The dark web is also used to access information in countries where internet access is restricted. So it is not all evil, though much of it is – and it is best avoided as a destination.

## Dark web marketplace

Unfortunately, the dark web is mainly used for illegal activity, as noted above. It is also a repository for stolen personal information that is typically put up for sale by cybercriminals. We will concentrate on marketplaces used to sell personal information such as stolen credit cards, bank account logins, medical records (yes, medical records are quite valuable in relation to other records) and other items where financial gain is the motive. It is the fear of personal information being disclosed on the dark web that has spurred such great interest in monitoring services. That is particularly true for lawyers who are ethically mandated to protect client confidential data.

## Dark web information

A key question is “How did my personal data get on the dark web?” While each person's situation is unique, here are the ways cyber criminals gain access to your information. A common method is to have your computing device(s) infected with malicious software designed to capture your activity by stealing your passwords and user IDs.

Phishing scams are another method to get you to divulge your private information. You may end up on a malicious web page where you freely enter the requested information which is then transmitted to the cybercriminal. Another popular phishing scam gets you to call a phone



number (typically toll free) to get technical assistance with a pop-up warning or to dispute a purported credit card charge for a service or item you did not purchase.

Commonly, your data ends up on the dark web because of a data breach. In other words, your information is held by another party (like a law firm!) and the firm suffers the breach. Since the pandemic, ransomware attacks have significantly increased. Many ransomware attackers exfiltrate the target's data first and then take various steps to entice the target to pay the ransom. Commonly, the exfiltrated data includes client information which may end up on the dark web.

### Monitoring services

You may have seen commercial advertisements for services that monitor for identity theft. Services tend to start at around \$100/year. The services promise to monitor various aspects of your life and alert you to suspicious activity. Basically, they monitor your credit score, as well as online and financial activity. Dark web monitoring is typically part of the service too.

How do they monitor and what does it mean to you? **Let us first say that we are not big fans of any of the monitoring services.** You will probably end up giving them all sorts of personal information so that they know what to look for and act on your behalf. They can't scan for release of your social security number if they don't know what it is. They'll need to know your credit card numbers to scan the dark web to see if they are available for sale. You get our drift.

Do you trust the monitoring company to have robust security in place to protect all the personal data you have entrusted to them? It seems to us that a monitoring service is very similar to a law firm in that it provides a "one-stop shop" for cybercriminals.

What about dark web scans? Frankly, we think many security and monitoring companies use dark web scans as the FUD (Fear, Uncertainty & Doubt) factor to scare you into paying them money. We see hundreds of dollars a month being charged to law firms just for dark web scans. The vendors will produce a report showing that your email address, social security number, password, etc. were found on the dark web. So what? The discovered data is usually stale (several years old) and of very little value. You've probably already changed your password for the discovered sites and implemented MFA too.

### Get real value for your money!

One real value for a dark web scan is awareness. You should be able to obtain an initial dark web scan free of charge – without paying an ongoing monthly monitoring fee, which we certainly don't recommend. The initial report

will help identify if you have law firm employees that tend to reuse the same password across multiple sites. It may even identify sites you were not aware of so that you can immediately change the password. Use the dark web scan to educate employees at your next cybersecurity awareness training session. If you're not teaching your employees about cybersecurity, at least annually, you are missing a very significant part of cyber resilience! A human element is involved in data breaches 82% of the time.

Take control of your data and don't hand it over to a monitoring service. You should be using a password manager and a unique password for each website or application you use. Put a freeze on your credit file at the three major credit bureaus. Freezing your credit file is free. Why would you want to pay someone to monitor your credit score since freezing your credit file will stop a huge amount of identity theft opportunities? A lot of credit cards offer free credit score reports too.

### Final Words

If fear seems to be the driving force to get you to sign up for dark web monitoring, and it usually does, use the advice above and stop throwing your money away!

*Sharon D. Nelson is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She is a co-author of 18 books published by the ABA. [snelson@senseient.com](mailto:snelson@senseient.com)*

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# Crossing Thresholds

By Donald Wheaton, Esq., Family Law Committee Chair

---

In the first iteration of my career in the law, I was (mostly) a corporate litigation attorney. When I received a client's lawsuit to pursue or to defend, the first things I looked at were jurisdiction, venue, and statute of limitations. Now that my practice is over 60% family law matters, the first issues I look for are an established custodial environment, proper cause, and change of circumstances.

Clients often come to us and emphatically insist on sole custody or they demand a change in custody or parenting time, claiming that their current arrangement or anything other than what they want is "unfair" or "inequitable." More often than not, the perceived fairness or equity is from the client's perspective, and not necessarily the child(ren)'s. That's one reason why our statutory and caselaw framework (hopefully) prevents knee-jerk changes of custody and parenting time at the whim and caprice of one parent, because a party must cross an initial threshold before the Court will even consider awarding or changing custody or parenting time.

In post-judgment custody and parenting time matters, our Courts retain jurisdiction to modify their previous judgments and orders about custody and parenting time.<sup>1</sup> But for courts to reexamine those orders, the moving party must show "proper cause" or a "change of circumstances."<sup>2</sup> The proper cause/change of circumstances requirement establishes a barrier against removing a child from an established custodial environment and minimizes unwarranted and disruptive changes of custody orders, except under the most compelling circumstances.<sup>3</sup> This is the first threshold that someone trying to change custody or parenting time must cross, and how tall that threshold is depends on what the party is trying to achieve.

A "proper cause" is one or more appropriate grounds that have or could have a significant effect on a child's life that will compel the Court to reevaluate custody.<sup>4</sup> To show a "change of circumstances" the moving party must prove that, since the entry of the last custody order, the conditions surrounding custody that have or could have a *significant* effect on a child's well-being have materially

changed.<sup>5</sup> The evidence has to show something more than normal life changes and must also show that material changes have had or will have an effect on the child(ren); the facts must be gauged according to the statutory best interest factors in MCL § 722.23.<sup>6</sup> This is the taller threshold.

But if someone doesn't want to change custody and just wants to change a condition on the other parent's exercising parenting time, or when a party asks to "minimally" modify the frequency or duration of parenting time, the terms "proper cause" and "change of circumstances" have a lesser, more flexible meaning.<sup>7</sup> The threshold is lower: "[P]roper cause' should be construed according to its ordinary understanding when applied to a request to change a condition on parenting time; that is, a party establishes proper cause to revisit the condition if he or she demonstrates that there is an appropriate ground for taking legal action."<sup>8</sup> So if someone wants parenting time to be supervised, or to change the schedule but not the overall days of parenting time, or any number of relatively minimal impacts on parenting time, the lesser and more flexible standard – the lower threshold – applies.

What constitutes "proper cause" and "change of circumstances" therefore depends on the ultimate impact on the children. If the change someone wants would have a relatively minimal impact on the kids, the party only needs to cross the lower threshold that has the lesser and more flexible definition. But if the impact on the kids is great or significant, that party must cross the higher threshold because Court must follow the more stringent definitions.

And once the moving party crosses the threshold and shows proper cause or a change in circumstances, the Court must then determine whether an established custodial environment exists with one parent, both parents, or neither parent before making *any* further determinations.<sup>9</sup> This is an entirely factual determination that fixes the burden of proof on the parent wanting to change the type of custody granted to each parent.<sup>10</sup> The Court won't be concerned with why a custodial environ-



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ment exists but only that it does.<sup>11</sup> And in determining whether any proposed change to custody or parenting time would alter a child's established custodial environment, the Court must consider the time each child will spend with each parent after the proposed change.<sup>12</sup> Put another way, the ultimate upshot of the requested change determines what burden of proof the moving party must meet to get the relief they want: clear and convincing evidence or preponderance of the evidence.<sup>13</sup>

Where a custody order has not yet been entered the Court must consider the consequences of granting a party's request for custody. The Court must determine where the child(ren)'s "established custodial environment" is to set the burden of proof.<sup>14</sup>

What is an "established custodial environment"? The Child Custody Act provides, "[t]he custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort."<sup>15</sup> An established custodial environment involves a custodial relationship of a significant duration where a parent provides care, discipline, love, guidance, and attention that is appropriate to the children's ages and individual needs; it is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence.<sup>16</sup>

Courts are required to look at each custody request – whether to establish or change custody – and assess the effect on the children "[f]rom the children's perspective" to determine if there are any changes in their established custodial environment and, if so, whether those "changes in the established custodial environment they share with [the parties are] minor, if at all."<sup>17</sup> As the Michigan Supreme Court holds:

*To summarize, when considering an important decision affecting the welfare of the child, the trial court must first determine whether the proposed change would modify the established custodial environment of that child. In making this determination, it is the child's standpoint, rather than that of the parents, that is controlling. If the proposed change would modify the established custodial environment of the child, then the burden is on the parent proposing the change to establish, by clear and convincing evidence, that the change is in the child's best interests. Under such circumstances, the trial court must consider all the best-interest factors because a case in which the proposed change would modify the custodial environment is essentially a change-of-custody case. On the other hand, if the proposed change would not modify the established custodial environment of the child, the burden is on the parent proposing the change to establish, by a preponderance of the evidence, that the change is in the child's best interests. If a factor does not apply, the trial court need not address it any further. In other words, if a particular best interest factor is irrelevant to the question at hand, i.e., whether the proposed change is*

*in the best interests of the child, the trial court need not say anything other than that the factor is irrelevant.*<sup>18</sup>

When someone looking to change parenting time proposes a schedule that effectively changes a child's established custodial environment then they must meet their burden to show the proposed change is in the child's best interests by clear and convincing evidence. Otherwise, the preponderance of the evidence burden of proof applies.<sup>19</sup>

To make it through the door to an evidentiary hearing on custody or parenting time matters, a party must cross thresholds our State has put in place to try to minimize disrupting children's lives. And it is your responsibility to explain to your client (and to the Court) the thresholds to be crossed and the burdens to be met. Provide your Judge with the authority to rule in your client's favor, and don't just assume that the Judge knows the law (even though they most likely do).

1 MCL § 722.27(1)(a)-(c).

2 MCL § 722.27(1)(c), and *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003).

3 *Vodvarka*, 259 Mich App at 509 [quoting *Heid v AAA Sulewski (After Remand)*, 209 Mich App 587, 593-594; 532 N.W.2d 205 (1995)], and *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001).

4 *Vodvarka*, 259 Mich App at 512-513.

5 *Vodvarka*, 259 Mich App at 513 (emphasis in original).

6 *Vodvarka*, 259 Mich App at 514.

7 *Kaeb v Kaeb*, 309 Mich App 556, 570-571; 873 NW2d 319 (2015) [request for changes to the conditions imposed on a party's parenting time]; and *Shade v Wright*, 291 Mich App 17, 25; 805 NW2d 1 (2010) [although the schedule of parenting time changed, its frequency and duration did not].

8 *Kaeb*, 309 Mich App at 571 [citing *Vodvarka*, 259 Mich App at 510-511].

9 *Kessler v Kessler*, 295 Mich App 54, 61; 811 NW2d 39 (2011).

10 *Ireland v Smith*, 214 Mich App 235; 542 NW2d 344, 348 (1995), *aff'd*, 451 Mich 457; 547 NW2d 686 (1996).

11 *Treutle v Treutle*, 197 Mich App 690; 495 NW2d 836, 838 (1992) [citations omitted], *lv den*, 442 Mich 882; 500 NW2d 477 (1993).

12 *Pierron v Pierron*, 486 Mich 81; 782 NW2d 480, 485-486 (2010).

13 *Vodvarka*, 259 Mich App at 509.

14 See, e.g., MCL § 722.27(1)(c) and *Ireland*, *supra*.

15 MCL § 722.27(1)(c) and *Ireland*, 542 NW2d at 347-348.

16 *Demski v Petlick*, 309 Mich App 404, 445; 873 N.W.2d 596 (2015) (quotation marks, brackets, and citation omitted).

17 *Pierron*, 486 Mich at 89.

18 *Pierron*, 486 Mich at 92-93.

19 *Pierron*, 486 Mich at 92.

**Don Wheaton** is a solo general practice attorney and mediator who focuses on real people with real problems, and helps them to find workable, pragmatic solutions. About 60% of his practice involves divorce, custody, parenting time, and other family law matters, and the remainder varies between criminal defense, commercial/contract litigation, probate, bankruptcy, driver's license restoration, and many other matters. Don is a trained domestic relations and civil litigation mediator, and also is a trained collaborative divorce practitioner. A graduate of Alma College and the University of Michigan Law School, Don is an active community volunteer, having served 29 years on the Lakeview Public Schools' Board of Education, 25 years as a highly-decorated Boy Scout leader, and 20 years with the St. Clair Shores Goodfellows. He is the immediate past Chair of the LGBTQA Section of the State Bar of Michigan and is the Corresponding Secretary of the Family Law Section. In his spare time he enjoys travel, fine food and wine, single malt whisky, euchre, and great conversation and company.



# 2023-2024 Macomb Bar Association Board Of Directors Election Notice

Letters of Interest to be nominated for the Macomb Bar Association Board of Directors are due by 5:00 pm on March 17, 2023. The Macomb Bar Association Nominating Committee is actively seeking those regular attorney members who would like to be a member of the Board of Directors. The Board of Directors will meet to nominate the slate for the 2023-2024 Macomb County Bar Association Officers and Directors.

The nominating Committee is looking for a broad range of candidates that exemplify:

- Service to the Bar
- Commitment to the bar and related activities
- Consistent desire to be active in the Macomb Bar Association
- Leadership potential

## How to Apply

In accordance with the By-laws of the Macomb Bar Association, the opportunity to lead is available exclusively to regular members of the Macomb Bar Association.

*Article VI. Section 1. Nomination of Officers and Directors. The Board of Directors shall appoint a nominating committee of at least five (5) regular members. The nominating committee may nominate twice the number of candidates for the several terms of Directors, two nominees for the term of Treasurer and one for the nominee of Secretary. For the 2022-2023 elections the Macomb Bar Nominating Committee may nominate:*

- One candidate for Secretary
- Two candidates for Treasurer
- Six candidates for Director

Letters of interest to be considered for nomination by the nominating committee are due to the macomb bar office by 5:00 P.M., March 17, 2023.

*Article VI. Section 3. Petitions. Any regular member of the Association may be nominated as a candidate for Treasurer, Secretary or Director by a petition signed by at least fifteen (15) regular members in good standing and filed with the Secretary.*

Valid petitions are due to the macomb bar office by 5:00 P.M., April 3, 2023. Nominees and valid petitioners shall appear on the ballot for the 2023 election.

## Young Lawyers Section

Interested Members are encouraged to send a letter of interest to the Macomb Bar Association office by March 17, 2023. All letters will be reviewed by the YLS Board. The YLS election results will be announced at the Annual Meeting in Spring 2023, along with the general Macomb Bar Association election results.



# Romeo District Court 42-1 Spotlight

*By Grace J. Crivello, Crivello Law PLLC*

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As a relatively young member of the Bar, appearing in any Court used to bring a sense of apprehension and nervousness. However, you quickly learn the character and the general attitude of a district court. Appearing in Romeo District Court quickly became an open and welcoming Court to practice in. When current Judge Jennifer Andary took the bench, I was excited to see how the Court would grow with her leadership. Judge Jennifer Andary makes it known that all individuals appearing before her are to be treated with dignity and respect, she takes an active interest in the rehabilitation of criminal defendants and ensures that matters are resolved in a manner that is fair and just.

On a personal note, I have been impressed with the way that Judge Andary crafts sentences with the eye on rehabilitation rather than crafting punitive sentences which do not address underlying issues which may exist. On a number of occasions, I have been impressed with the way Judge Andary asks questions to Defendants to determine if there is an underlying issue and adds those goals to her probation orders. Many times the insightful questions surprise the defendants (and sometimes counsel!) but the importance of probing into the needs of the defendants cannot be overstated. One memorable case included Judge Andary re-quiring a defendant to journal their struggles with sobriety as an aid to outpatient therapy that defendant was currently enrolled in. When we returned for a sentence review, the defendant specifically cited the journaling as something which enhanced the outpatient therapy and actually brought a few things to the defendant's attention which they had not considered before.

Romeo District Court covers a number of municipalities including Romeo, Washington Township, Armada Village, Armada Township, Richmond, Richmond Township, Memphis Township, Ray Township and Bruce Township. With such a wide geographic area, it is clear that Romeo District Court is a very busy court. Although the Court covers a wide area, each case is given

the attention it requires and litigants are able to navigate the court process with ease.

Judge Andary also has made her presence known within the community by taking an active interest in her community and using her position to demystify the court process. I had the good fortune to appear in court on a day when the 10th grade class from HHP Pathway at the Academies at Romeo attended court to observe the docket and learn more about the legal process. Judge Andary took care to explain what was happening, to answer any and all questions and to allow the students to actively engage in the process. District courts are typically the court with which people have the most experience, so welcoming high school students into the court provides them with an understanding of the process, demystifies attending court and allowed the students to gain insight into a number of careers which involve the legal system.

The Romeo District Court also responded to the Covid-19 pandemic in other ways.

Romeo District Court had the same challenges as the other district courts, particularly when it came to landlord/tenant cases. The Courts were required to find new ways to serve parties involved in Summary Proceedings cases, especially when the Michigan Supreme Court enacted measures to ensure that the rights of tenants would be protected. Romeo District Court worked to ensure compliance with Michigan Supreme Court Administrative Order 2020-17, which laid out a new process to handle Summary Proceedings matters. The creation and use of an initial pre-trial to advise tenants of their rights under Michigan law and to attempt to triage cases. The Michigan Supreme Court also supported the efforts of Michigan Department of Health and Human Services who assisted with the implementation of the COVID Emergency Rental Assistance (CERA) Program. This program had specific rules to screen for the eligibility and applicability of emergency rental assistance to tenants who qualify. In accordance with the CERA program,

cases were stayed or were adjourned to allow tenants to apply for and receive assistance. Magistrate Jeffrey Davis oversees the Summary Proceedings docket and worked to ensure that the guidelines and rules set forth by the Michigan Supreme Court were followed. Romeo District Court further transition to the use of zoom, particularly with these hearings in order to better serve tenants and counsel. In order to achieve this, Romeo District Court further partnered with Lakeshore Legal Aid to provide counsel to tenants who qualified for services. Lakeshore Legal Aid focuses on the civil legal needs of low income clients and senior clients, prioritizing those who are survivors of domestic violence, lack access to the justice system and are at risk of losing their housing. Magistrate Davis works closely with Lakeshore Legal Aid and private counsel to ensure that the policies and guidance of the Michigan Supreme Court are followed.

As counsel who represents both tenants and landlords, appearing in front of Magistrate Davis for such hearings has been demonstrated the court's ability to adapt and to ensure that dockets are run smoothly. For matters that aren't resolved, the matters are promptly set for hearing with the Hon. Jennifer Andary. The Court is flexible however, and has set matters for zoom hearing as well as in person

hearings. Importantly, the Court doesn't take a "one size fits all" approach to these cases and will ask counsel and the parties as to their preference. This courtesy is incredibly important and helps practitioners better manage not only their schedules but the particular cases which are pending. The ability to request zoom is incredibly important as it allows the parties to resolve matters and it helps parties who may have transportation issues address these eviction cases without fear of receiving a default judgment.

Romeo District Court recently welcomed former Assistant Prosecuting Attorney, now Hon. Darra Slanec as part time Magistrate and full time Court Administrator. Court Administrator/Magistrate Slanec brings her prior experience to the Court and her tireless work ethic to ensure that the District Court continues to meet the needs of the constituents. Importantly Court Administrator Slanec is not afraid to jump in and assist with matters which can be heard by the Magistrate to ensure that the docket continues to run in a timely manner.

Behind the scenes, there is a whole team of clerks and staff who work closely with Judge Andary, the Court Administrator and Magistrates. The clerks and staff work tirelessly to ensure that notices are sent out, cases are scheduled timely, assisting litigants and attorneys with accessing the court and (my personal favorite) assisting counsel with filing lawsuits and pleadings. The Court has divided clerks into several divisions including traffic, criminal and civil/summary proceedings. This allows for the clerks to specialize in their assigned division and to work closely with the bench to ensure the continued efficient operation of the court.

Judge Jennifer Andary has been the presiding Judge of the 42-1 Romeo District Court since the 2020 election. She was previously the Magistrate of the 42-1 Romeo District Court and her previous experience in the Court made the transition seamless; her ability to pivot and quickly determine how best to meet the needs of the litigants and counsel ensured that cases were promptly addressed and the docket continued to advance, despite all of the logistical challenges we faced. Romeo District Court has adapted to the changing landscape and has utilized both zoom and in person hearings to ensure that the differing needs of the litigants are met. Each time that there was a change in the policy regarding whether the appearances were to be in person or via zoom, the Romeo District Court communicated with litigants and the legal community as a whole.

Currently, Romeo District Court is holding traffic formal hearings and Probable Cause Conferences (PCCs) via zoom with Judge Andary. The informal hearings for

## 42-1 DISTRICT COURT

### Hon. Jennifer Andary

District Court Judge  
Zoom ID: 42-1236 540 4377  
Password: 030721

### Hon. Jeffrey Davis

Magistrate  
Zoom ID: 813 714 3768

### Hon. Darra Slanec

Court Administrator/Magistrate  
darra.slanec@macombgov.org

### Criminal Division

42-1districtcourtcriminal@macombgov.org

### Civil Division

42-1districtcourtcivil@macombgov.org

### Traffic Division

42-1districtcourtraffic@macombgov.org

### Probation

586-752-9101

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traffic ticket are all in person before the Hon. Jeffrey Davis. The information is provided on the notices when a case is set for a date. Trial dates, evidentiary hearings and sentencing dates remain in person and are noted on the Notices to Appear. As indicated above, the pre-trials for Summary Proceeding matters are held via zoom, typically with Magistrate Davis, and can be set for zoom trial dates with Judge Andary.


For matters which are proceeding to trial and are anticipated to actually be tried, the same are being set for in person hearing dates. The Romeo District Court has struck a balance to ensure flexibility, compliance with the Michigan Supreme Court Administrative Orders and the practical concerns of taking testimony. All of the courts in Michigan have struggled with the competing interests of protecting public health with the use of telecommunication and remote hearings, with the protection of the rights of litigants to conduct in person hearings.

The 42-1 District Court also has attempted to make changes which are responsive to the needs of counsel and which make it easier for counsel to plan their schedules. Judge Andary has traditionally held criminal sentencing on Thursday- afternoon in response to comments from counsel, who preferred Thursdays rather than sentencing on Friday afternoons. Further, the majority of Summary Proceedings cases are held on Wednesday afternoons. The predictability of scheduling these matters assists counsel in planning for these appearances and gives a level of routine which makes it easier to advise clients regarding their matters.

The Court has demonstrated that it is responsive to the feedback from the Macomb County Bar and only reinforces my appreciation of the district courts in Macomb. Our community is tight knit and this is clearly seen any time that I have appeared in the 42-1 District Court. We have also included the information regarding each division with contact information to assist counsel.



Denis LeDuc  
District Court Judge, Retired  
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# Charitable Giving – It's Not Just for December

*By Frank E. Henke, Partner, Warner, Norcross + Judd*

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At the end of the year, many people think about giving to charities, especially people who are seeking additional tax deductions. In fact, statistics show that as much as 30% of charitable giving is done in the last month of the year, with 10% coming in the last three days of the year.

At Warner, we encourage our clients to be more strategic in their efforts to make an impact in their communities. We often help them create charitable giving plans that utilize multiple giving options and provide funds to charities over time.

Depending on your tax needs and your philanthropic goals, 2023 may be the year to consider other ways to support charitable organizations beyond making a gift of cash or property.

1. Make a gift of appreciated assets. A best practice is to donate appreciated assets directly to the charity, rather than selling the appreciated assets and then donating the after-tax sales proceeds, as this avoids capital gains taxes.

- If donated assets have appreciated in value and have been held for more than one year, you can generally claim the fair market value of the contributed assets as a tax deduction of up to 30% of your adjusted gross income (AGI). Alternatively, you can donate these assets valued at your cost and deduct up to 50% of your AGI.
- Assets that have been held one year or less can be donated but must be valued at your cost for a deduction up to 50% of your AGI.

2. Make a gift bequest in your will or trust where you can provide that a certain amount of your assets will pass directly to a charity upon your death. If your estate will be subject to estate taxation, you would generally be entitled to a charitable deduction against those estate taxes.

3. Designate a charity as a beneficiary of all or a portion of a life insurance policy so that these proceeds will pass directly to the charity upon your death. If your estate will be subject to estate taxation, you would

generally be entitled to a charitable deduction against those estate taxes. Another alternative would be to gift a life insurance policy to a charity during your lifetime. In this case you would receive a charitable deduction for the value of the policy, together with charitable deductions for your payments of future insurance premiums.

4. Name a charity as a beneficiary of an IRA, 401(k) or other qualified retirement plan. These retirement assets will pass directly to the charity and neither you nor your heirs will pay any of the deferred income taxes associated with the IRA or plan — meaning the full amount of the account will benefit the charity without loss from income or estate taxes. Additionally, if your estate will be subject to estate taxation, you would generally be entitled to a charitable deduction against those estate taxes.

5. Make qualified charitable distributions from your IRA. During your lifetime, you can give up to \$100,000 directly from your IRA and count it as all or part of your required minimum distribution(s). You must be age 70 ½ or older to do this, and the gift is not included in your AGI.

6. Establish a private foundation. A private foundation is a non-profit entity established for charitable purposes by an individual, family or business. It could be administered by you, your family members or your professional advisors, with the primary activity of making grants to other charitable organizations. A private foundation must apply for tax-exempt status with the IRS and may be subject to certain excise taxes, including a tax on net investment income. The establishment of a private foundation provides an immediate deduction for donated funds and allows families to establish a legacy of giving that may continue for future generations.

7. Establish a donor-advised fund at a charity. A somewhat simpler alternative to a private foundation is the establishment of a donor-advised fund with a charity. Donor-advised funds do not need to apply for tax-exempt status, do not pay the excise taxes that may be applicable to private foundations and do not have ongoing administrative requirements. A donor-advised fund can have a



stated purpose, as long as it aligns with the charity's purposes, and you can make one or more gift contributions to this fund which then will be invested within the charity and grow tax free. You will generally receive an income tax deduction in the year the gift is made, and you can recommend grants from the fund in the future.

8. Create a charitable gift annuity to benefit a charity. With this strategy, you make a gift to the charity, and in return, you would receive an annuity, which is a fixed stream of income for a term of years or for your remaining lifetime. The remainder of the gift after all annuity payments have been made will belong to the charity. Your gift would generally entitle you to an income tax deduction in the year you establish the annuity for the amount of the remainder passing to the charity, but a portion of your annuity payments may be taxable.

9. Create a charitable remainder trust to benefit the charity. This trust would make distributions to you or your selected beneficiary for a period of years and the remaining assets would pass to the charity at the end. You can be the trustee of the trust, and you can change the beneficiary as needed. You would generally be entitled to an income tax deduction in the year you establish the trust for the amount of remainder interest that will pass to the charity, but a portion of the annuity payments may be taxable.

10. Create a charitable lead trust to benefit the charity. This trust would make annuity payments to the charity for a period of time, and the remaining assets would pass to your beneficiaries at the end. You generally are entitled to an income tax deduction in the year the trust is created for the annuity amount passing to the charity.

11. Grant a conservation easement. A conservation easement is a voluntary, legally recorded agreement between a landowner and a state that restricts land to agricultural and open space uses. The easement prohibits or limits any subdivision, development or any activity that would diminish the property's agricultural or open space value. An individual donor of the conservation easement is entitled to a charitable deduction of up to 30% of the donor's adjusted gross income for the value of the easement. The use of this strategy requires careful consideration of the property valuation and other tax compliance requirements.

You will need to talk with your estate planning attorney and financial professionals about any charitable giving strategies you are considering so that you can understand how these may or may not work with your current estate and financial planning. Also, remember that your charitable contributions exceeding the AGI limitations described above can be carried forward to the next five years, subject to the limitations in those later years.

The start of a new year is a good time to set philanthropic goals and create or update your charitable planning. Contact your Warner attorney or Frank Henke at [fhenke@wnj.com](mailto:fhenke@wnj.com) or 586.303.4108 to discuss creating a charitable giving plan that meets your family's legacy and tax goals.

*Frank Henke represents clients in the areas of estate and trust planning, tax and business succession planning, probate estate and trust administration, and business and corporate law. In his almost three decades of practice, he has assisted a substantial number of clients across many areas of legal practice.*

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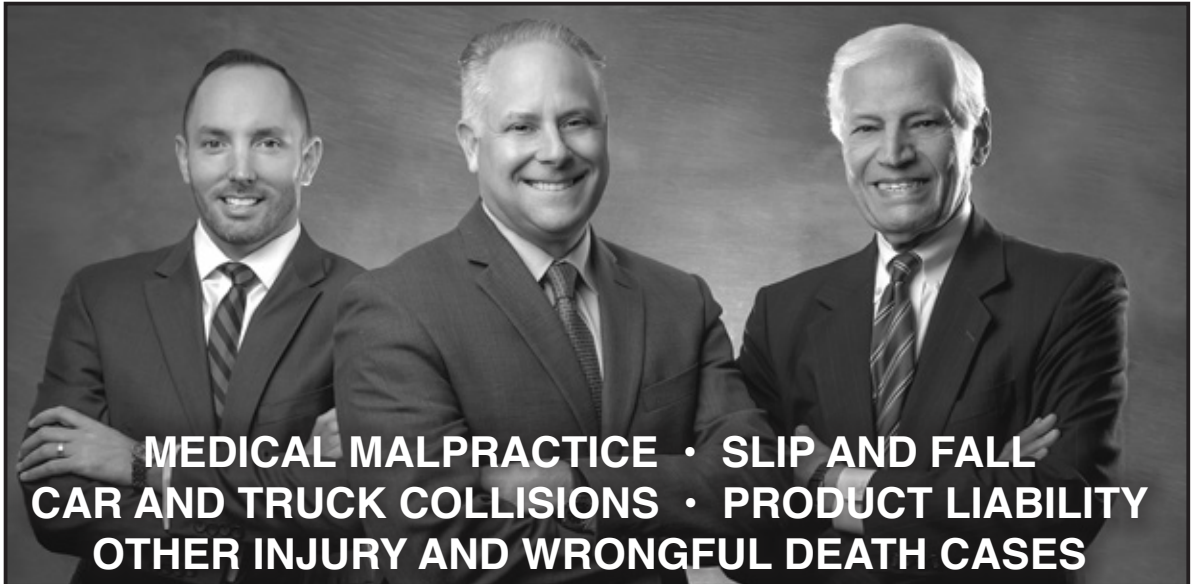
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- 1:15PM** **Circuit Court Session A: Family Law- Practice, Procedures, and FOC**  
**Circuit Court Session B: Criminal Law-**  
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- 2:30PM** Break
- 2:45PM** **Probate Court Session C: Prospering in Probate in 2023**  
**Circuit Court Session D: Civil Law Catch-Up - It's More Than Civility**
- 3:30PM** Adjournment Gathering @ Ernie's
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