

JACKSON COUNTY BAR ASSOCIATION NEWSLETTER WINTER 2009

Holiday Party

The Executive Committee of the Bar Association would like to thank all those who attended the 2008 Holiday Party and for the generous donations of food and non-perishable goods. The Jackson County Interfaith Shelter was extremely grateful for the donations and we hope to continue this tradition.

2009 Law Day

This year's Law Day will take place on Wednesday, May 6 at 7:30 a.m. at the Country Club of Jackson, 3135 Horton Road. The speaker is Assistant Attorney General Tracy A. Sonneborn. The Bar Association is co-sponsoring this event with Comerica Bank and there is no charge for breakfast. More information will be provided as we approach the date.

Liberty Bell Award

The 2009 Liberty Bell Award will be presented at the Law Day conference. Nominees must be outstanding, non-lawyer citizens within the Jackson community who have given of their time and energy to strengthen the effectiveness of the American system of freedom under law, in keeping with the spirit of our Constitution. Such service may include activities which promote a better understanding of our form of government, especially the Bill of Rights; encourage greater respect for

the law in the courts; educate people in the contrast between totalitarianism and freedom under law; or stimulate the deeper sense of individual responsibility to the end that citizens recognize their duties as well as their rights.

The deadline for nominations is March 1, 2009. Please contact Jessica Schirmacher at (517) 788-6290 or schirmacherlaw@sbcglobal.net to submit any nominations.

Annual Meeting

Our annual meeting is scheduled for Thursday, June 18, 2009, at Daryl's Downtown restaurant, 151 W. Michigan Avenue, with cocktails to start at 5:30 p.m., dinner at 6:00 p.m. Bar members are asked to contribute a monetary donation of \$5.00 minimum in order for their meal to be complimentary. All donations collected will be given to the Cascades Humane Society located in Jackson. Cascades would prefer that people write checks made payable to "Cascades Humane Society" for its records.

Scholarship

The Jackson County Bar Association Scholarship will be presented at the annual meeting in June. The scholarship nominees should be Jackson County residents, attend law school or college with the definite

intent to attend law school when he or she has graduated from college, and carry a minimum 2.5 GPA. The deadline for applications is April 30, 2009. Please contact Bree Vincent at (517) 787-4100, or bvincent@marcouxallen.com to obtain an application or if you have any questions regarding the nominations.

Golf Outing

The Bar Association golf outing will again be held this summer, with Bob Matyjaszek handling the event. No date is set yet. To contact Bob, please call (517) 787-0351 or matyjaszek@hotmail.com.

Inosencio Fisk

Bruce Inosencio and Kristina Fisk are pleased to announce that Kristina Fisk has made partner, effective January 1, 2009. As a result, the two have established a new law firm, Inosencio & Fisk, PLLC. The firm concentrates its practice on business, real estate and construction (commercial and residential) matters. Both attorneys are admitted to practice in the state and federal courts in Michigan, and Bruce Inosencio is admitted to practice in all state courts in Florida, as well as two of the three federal district courts in Florida (Central District and Southern District).

Girodat & Marienfeld, PLC

Effective January 1, 2009, Girodat & Associates, PLC became Girodat & Marienfeld, PLC, with the addition of Ronald L. Marienfeld II as a new

partner. Marienfeld has extensive litigation experience and the firm specializes in personal injury, wrongful death, accident claims, insurance disputes, probate and criminal law.

For Family Law Practitioners

With regard to relocation and geographic restrictions of parents with minor children, the Michigan Court of Appeals has decided that the "100-mile rule" must be determined by radial miles, and not road miles. *Bowers v. Vandermeulen-Bowers*, 278 Mich App 287, 750 NW2d 597 (2008).

Specifically, the parents may not change their legal residences with the child to a location more than 100 miles from the parents' residence as determined at the time the Complaint for Divorce was filed, unless the other parent consents to the change, if the Court orders the change, or if the change results in the parents' homes being closer to each other than before the change. Please note that Google Maps performs distance calculations in radial miles.

Special Tax Relief for Housing Still Available

Message from Thomas Richardson: Taxpayers looking to buy their first home and taxpayers who have recently lost their home to foreclosure or who have had to conduct a "short sale" still have time to take advantage of temporary changes to the Internal Revenue Code intended to deal with the housing market crisis.

The “First Time Buyer Tax Credit,” enacted late last summer as part of the Housing and Economic Recovery Act of 2008 offers eligible taxpayers a refundable tax credit of up to \$7,500 if they purchase a home between April 9, 2008 and July 1, 2009. Taxpayers are able to claim purchases closed in 2009 on their 2008 tax return, thus insuring a substantial and speedy refund. The credit must be repaid at resale or in annual installments of 6.67% of the credit received starting in 2010 – roughly \$20 per paycheck if a taxpayer receives the maximum credit. As the average residential resale in Jackson County in 2008 was \$84,000, the credit amounts to nearly 10% of a typical home price. For additional information on the credit, you may go to Topic 611 at www.IRS.gov or www.federalhousingtaxcredit.com.

Unfortunate homeowners who have suffered a foreclosure or “short sale” in 2008 remain eligible under the Mortgage Foreclosure Debt Relief Act of 2007 for a special exemption to the forgiveness of indebtedness income provisions of 11 USC Section 108. Under the provisions of this act, taxpayers do not have to recognize forgiveness of indebtedness income arising from the forgiveness of “original acquisition indebtedness” in connection with a foreclosure or a “short sale” of their principal residence. “Original Acquisition Indebtedness” is debt used to purchase, improve or build the taxpayer’s principal residence or a refinance of that debt. Mortgage

debt used for other purposes, e.g. refinance debt that was “cashed out” or used to pay off credit cards is not eligible. For additional information on this topic, see IRS Publication 4681 or IRS News Release IR-2008-17 at www.IRS.gov.

Thomas Richardson is the owner and general counsel of Liberty Title, with offices in Jackson, Chelsea, Brighton and Ann Arbor. He is a graduate of Harvard College and the University of Michigan Law School. He can be reached at (734) 665-4512.

Non-refundable Retainer

The Michigan Supreme Court ruled on December 12, 2008 that non-refundable retainer agreements are considered valid and acceptable. *Grievance Administrator v. Cooper*, SC 135053. A link to the opinion can be found at:

<http://www.michbar.org/news/releases/archives08/nonrefundableretainers.cfm>

State Bar of Michigan

Representative Assembly Awards

The Michael Franck Award recognizes an attorney who has made an outstanding contribution to the improvement of our legal profession. The Unsung Hero Award acknowledges a lawyer who has shown the highest standard for practice and commitment to benefit others. The nomination period for both of these awards is now open, with the deadline being March 13, 2009.

Nominees must be members in good standing with the Michigan State Bar and the candidate's contributions would have been made during the past year or through cumulative effort or service. Please include sufficient details of the nominee's accomplishments when preparing your nominations. The Nominating and Awards Committee will review those submitted, and issue its recommendation to the Representative Assembly, which will then make the final choice.

You may obtain an online application at:

www.michbar.org/programs/eventawards.com ,

or you may mail them to:

Anne M. Smith

Representative Assembly Awards, State Bar of Michigan

306 Townsend Street

Lansing, MI 48933-2012

If you have any questions, please refer to the State Bar of Michigan website, or call (517) 346-6374; (800) 968-1442, ext. 6374.

Representative Assembly Activity

Message from Susan Murphy:

The Representative Assembly (RA) meeting in September 2008 produced three proposed changes to the Michigan Court Rules. On December 3, 2008, these proposals were submitted to the Michigan Supreme Court (MSC). Again, for those who missed the September update, all three proposals focus on criminal litigation and provide the following:

First, the RA recommends that the MSC add a section to MCR 6.201(B) (discovery known to the prosecuting attorney) that will provide for the disclosure and preservation of electronic recording evidence. This new subsection would mandate that the prosecuting entity retain electronic recording evidence until all appeals are exhausted or all rights of appeal have expired. It also provides for a potential jury instruction that would allow jurors to presume the missing electronic recording evidence would be adverse to the prosecution.

Next, the RA recommends that the MSC amend MCR 6.610(F) to allow for adjournment of sentencing when the pre-sentence report has not been timely presented to the defendant or defendant's attorney. The proposed amended language sets the presentation at a minimum of two business days. It also requires that victim/witness sensitive information (address, phone, work, etc.) be deleted from the pre-sentence report.

Finally, the RA recommends that the MSC amend MCR 6.425(B) to include similar pre-sentence report disclosure to the defendant and the defendant's attorney and the deletion of victim/witness sensitive information from the report.

Anyone interested in receiving a copy of the exact language should contact Susan Murphy at: smurphy@cityofjackson.org, or (517) 788-4050.

Other proposals from the Assembly include an amendment to MCR 8.115 regarding the usage of cell phones in court facilities. The Assembly passed this proposed amendment in its April meeting last year and it is now open for public comment, through May 1, 2009. A public hearing has yet to be scheduled.

All attorneys are encouraged to submit their comments through the website address given in the Supreme Court Order. You may access the Supreme Court Order, ADM File No. 2008-35 at <http://courts.michigan.gov/supremecourt/Resources/Administrative/2008-35-Alt%20A%20&%20B.pdf>.

Further, the following is from the SBM Public Policy Update, Vol 7, Issue 3, released in January 2009:

"2008-35 - Proposed Amendment of Rule 8.115 of the Michigan Court Rules (Cell Phone Usage in Court Facilities)

Alternative A, submitted by the State Bar of Michigan but with several clarifying revisions, would allow attorneys to bring cell phones into a courthouse, but would limit their use in courtrooms during court proceedings. In addition, the proposal would allow a court to impose sanctions for failure to comply with cell phone usage restrictions.

Alternative B, similar to one submitted by the State Bar of Michigan, would allow attorneys to bring cell

phones into a courthouse, but would prohibit their use in courtrooms during court proceedings. In addition, the proposal would allow a court to impose sanctions for failure to comply with cell phone usage restrictions.

Bar Association Dues

Any attorneys interested in joining the Bar after this time should contact Bar Treasurer Brad Breliniski at (517) 787-9481. If you need another Dues Notice form, please contact Bar Secretary Marie Matyjaszek at (517) 787-0351. For Regular Members, the yearly cost is \$75; Young Members (those who have been practicing for less than 3 years) \$45; Lifetime and Honorary Members are free.

To have anything included in future Bar Newsletters, please contact Bar Secretary Marie Matyjaszek at (517) 787-0351 or e-mail: matyjasz@hotmail.com.

Jackson County Bar Executive Committee

Bree D. Vincent - President
Susan G. Murphy – 1st Vice President
Jessica J. Schirmacher – 2nd Vice President
Marie E. Matyjaszek - Secretary
Brad A. Breliniski– Treasurer
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