

BAR BRIEFS

Official Publication of the Macomb Bar Association

September 2023

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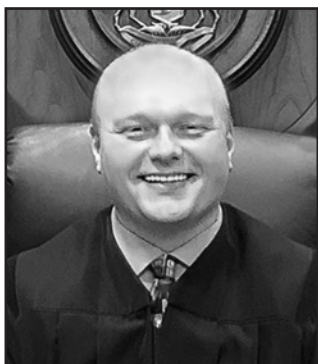
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Family Bonds

By Ryan Zemke, President of the Macomb Bar Association

I want to take time to thank everyone who came out to my installation event at CJ Barrymore's. More importantly, I want to thank everyone who brought their family to the event. Some people believe that having a successful and happy life revolves around having a loving family and healthy relationships – having a strong effect upon our physical and mental health.

In times where it can be so difficult to find a healthy work-life balance, it was nice to be able to combine the two for a few hours and get to know everyone on a more personal level rather than a strictly professional one which can often be the case at events geared towards lawyers. In a time where we have seen a continued decline in civility and professionalism, we have an opportunity as a local association to reverse that trend and be a model for other associations to follow.

While each of us has our own story, our own history, and our own family traditions, together we find ourselves making up another family of sorts as the Macomb County Bar Association. Let's face it – just like every other family out there we are not perfect, and we have moments that are both good and bad but we each bring something to the table that makes our family unique and amazing in its own way.

The bonds we share with each other throughout our experiences within our profession are ones that

perhaps are understood by our colleagues better than our own families. The pressures of handling the next big case, the stress of dealing with the types of cases that we see, prepping for trials, running a business – these are things that we all lean on each other to get through.

At the same time, we can also celebrate our victories together and share positive news and thoughts in conference rooms and hallways before returning to the daily grind. While the bar association may

not be what you traditionally think of when you hear the word “family,” we all come together to strengthen our community and improve the profession for future generations.

When you think of Macomb County you can easily think of family names that have

been pillars of the legal communities for many years. We have members of both the bench and bar who have roots that tie deep into Macomb County history and we have members who are just starting to watch their seeds start to grow but in the end we all know that this is a place that we want to work, live, and play while leaving it better for future generations and develop our own paths and our own legacies.

I believe that together as members of the Macomb County Bar Association that we can continue to improve our profession by getting to know one another and I look forward to developing stronger bonds with each of you throughout the remainder of my term.



Installation Celebration at CJ Barrymore's, July 20, 2023

Updates From The Macomb County Prosecutor's Office



Prosecutor By Karpel

The Prosecuting Attorneys Coordinating Counsel along with the Prosecuting Attorneys Association of Michigan (collectively referred to as "PACC/PAAM") is phasing out the antiquated software systems used to track cases for adults and juveniles.

The Macomb County Prosecutor's Office is adopting the most widely used case tracking software, known as Prosecutor By Karpel ("PbK"). PbK is active in 32 states, 600 offices, and has over 16,000 users. Currently, 16 other Michigan counties use PbK, with another 3 going live by the end of December 2023, and 23 more counties in 2024. Approximately 50% of Michigan's population has a county prosecutor using this system.

PbK will help achieve Prosecutor Peter J. Lucido's goal of keeping current with technology while improving access to information for assistant prosecutors benefitting crime victims, law enforcement and others throughout the justice system.

Internship Program

The MCPO's internship program continues to attract a wide array of undergraduate students with varying majors/concentrations as well as law school students with an interest in learning from our highly skilled Macomb County Assistant Prosecuting Attorneys.

The Macomb County Prosecuting Attorney internship program is thriving. The undergraduate program provides administrative assistance to the Prosecutor and staff in areas ranging from communications, constituent relations, and general office administration, while having the opportunity to learn

and experience the prosecutorial process through daily office activities and occasional attendance of court hearings.

The law school student program provides the unique opportunity to gain "hands-on" experience with the responsibilities and duties of a Macomb County Assistant Prosecuting Attorney. Pursuant to Michigan Court Rule 8.120, student interns are given authority to appear and represent the People of the State of Michigan in court proceedings.

Though intern duties will vary based upon the day to day needs of the office, student interns typically engage in activities such as plea negotiations, bench trials, formal hearings, case review, interacting with victims, legal research, and appellate brief writing. Some may appear at various family court proceedings, and Probate Court involuntary mental health committal hearings. Student interns may also have the opportunity to prepare and conduct one or more jury trials. This program is geared toward students interested in court room and appellate experience.

Internships last approximately 10-12 weeks depending upon each student intern's academic calendar. These positions are unpaid, at-will and each student intern serves at the pleasure of Macomb County Prosecutor Peter J. Lucido. The student intern is responsible for the coordination of any academic, scholarship, or grant benefit as a result of participation in the program. Upon entering the program the student intern will be required and must agree to participate with any and all security measures similar to those required by a new Assistant Prosecuting Attorney.

The student intern shall also cooperate with any requirements imposed by the Macomb County Human Resource Department. Furthermore, upon acceptance

into the Macomb Prosecutor Internship Program the student intern understands the requirement to learn and abide by all office policies, and comport themselves consistently with Michigan Professional code of conduct. Internships provide terrific opportunities for those interested in the legal profession. Interested applicants please submit a resume and cover letter to:

Intern Coordinator

One South Main

Mount Clemens, MI 48043

Email: ProsecutorInternship@macombgov.org

Evidence.com

Earlier this year, the Macomb County Prosecutor Office implemented a new digital evidence management platform to benefit the entire legal community. The Macomb County Prosecutor's Discovery Unit has never been this current, this consistently, this long.

With Evidence.com, Defense Attorneys no longer need to travel back and forth to the prosecutor's office for digital discovery or pay for DVDs. Furthermore,

there is no more two-step discovery process for digital media for defense attorneys, or delay in picking up DVDs / USBs, once uploaded to Evidence.com. Instead, this system provides access discovery on your laptop, tablet, or smartphone. This system includes a discovery verification report to ensure defense attorneys have all available discovery in a timely fashion. Currently, the Discovery Unit is processing discovery requests at a rate faster than ever before (approximately 2-3 business day turnaround time compared to several weeks). With a quicker discovery time, Evidence.com may reduce the number of discovery-related adjournments per case. With Evidence.com, defense attorneys now have immediate access to digital evidence and potentially speedier case resolution.

Visit Our Website For More

Prosecutor Lucido continues to hire talented prosecutors with experience, talent, and enthusiasm for victim advocacy. For the latest list of unit chiefs and staff, please visit our website. <https://prosecutor.macombgov.org/Prosecutor-Home>.

MCBA'S Diversity & Inclusion Future Meeting Schedule

Every 3rd Wednesday of the month at 5:00 pm, for about 1.5 hour

Location:

O'Reilly Rancilio
12900 Hall Road, Suite 310
Sterling Heights, MI 48313

Any location change for a future meeting will be communicated via email blast in advance

July 19, 2023
August 16, 2023
September 20, 2023
October 18, 2023
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Risk Management

By Aaron J. Hall, Editor-In-Chief

Earlier this year, several mismanaged regional banks, particularly those sensitive to rising interest rates, were on the brink of collapse. I remember consuming all the news when this happened, and I just can't seem to let it go. There are so many comparisons to our profession.

Initially, lawmakers had to assure the public that this scenario was limited to a handful of regional banks and would not impact community banks or global systemically important banks ("G-SIBS"). Specifically, this was unlike the always emotional bank run scene from *It's a Wonderful Life* (yes, the weather is starting to turn, but it's still too early in the year to rewatch the Jimmy Stewart classic). So what can our country's most recent banking crisis teach us about the practice of law?

By way of background, Nick Maggiulli (Chief Operating Officer of Ritholtz Wealth Management LLC and best-selling author) published a terrific entry to his immensely popular finance blog "Of Dollars and Data." It's titled "Concentration Is Not Your Friend." (As an aside, I strongly recommend his blog as well as his book *Just Keep Buying*, especially for young professionals.) His post provides detailed financial charts and analysis explaining the collapse of Silicon Valley Bank.

Essentially, Silicon Valley Bank did not properly appreciate the risk of their investment decisions in a rising interest rate environment. But if the thought of reviewing financial data for leisure reading material leads you to dread (and I promise Mr. Maggiulli's work is so palpable, even us lawyers with PTSD of elementary arithmetic can understand it), just read the opening paragraph:

*"There's an old saying that goes, 'Concentrate to get rich, diversify to stay rich.' The idea being that you should put all of your assets into one (or a few) investment(s) to build your wealth and then spread your capital around later in life to preserve it. However, the longer I've been investing the more I've come to despise this phrase. Because while concentration can lead to riches, it can also lead to ruin."*¹

This instantly reminded me of a conversation I had with an experienced local attorney who had to shift his entire legal practice because of a change in the law. He talked about how he knew the change was imminent, but because he was so immersed in it, he never took the time to prepare his practice for success when the law went into effect. Everything came to a halt. "It was like the faucet stopped running," he told me. Fortunately (and due to no other choice), he was able to reevaluate his practice and thrive in a brand new environment.

Lawyers make the same mistakes as bankers.

Overly concentrated risks can lead to ruin.

Lawyers make the same mistakes as bankers. Overly concentrated risks can lead to ruin. We, too, are susceptible to the cliché: "don't put all your eggs in one basket."

Perhaps the volatile trend in financial markets over the last few years should cause us to reflect on our own profession. Let's step back and think, "What are the risks?" What if we lose that big client that is a majority of our book of business? What happens if the law changes? Are we too narrowly focused on one or two specific practice areas? Is artificial intelligence going to obscure us into oblivion?

The answer, just as in finance, is diversification. Tantamount to investing, it is almost always better to contribute to an index fund of hundreds of companies in a variety of industries as opposed to betting it all on one. Otherwise, just go to the casino.

The most tracked index, Standard & Poor's 500 Index ("S&P 500"), is an index of approximately 500 leading publicly traded companies in the U.S. There's a reason \$15.6 trillion (with a "t") in assets are benchmarked or indexed to the S&P 500.²

So how do we diversify our legal portfolio? Of course, we can't become experts in 500 areas of law. That's ridiculous. But even within a specific field of practice, we can spread out our knowledge base little by little. We can take continuing legal education courses, attend seminars (preferably in person), sit with a mentor on a different topic, and learn skills outside of our comfort zone.

There are so many opportunities for career development, and the perfect time to start exploring is now. Broadening our concentration incrementally will diminish unnecessary risks and pay major career dividends.

¹<https://ofdollarsanddata.com/concentration-risk/>

²<https://www.spglobal.com/spdji/en/indices/equity/sp-500/#overview>



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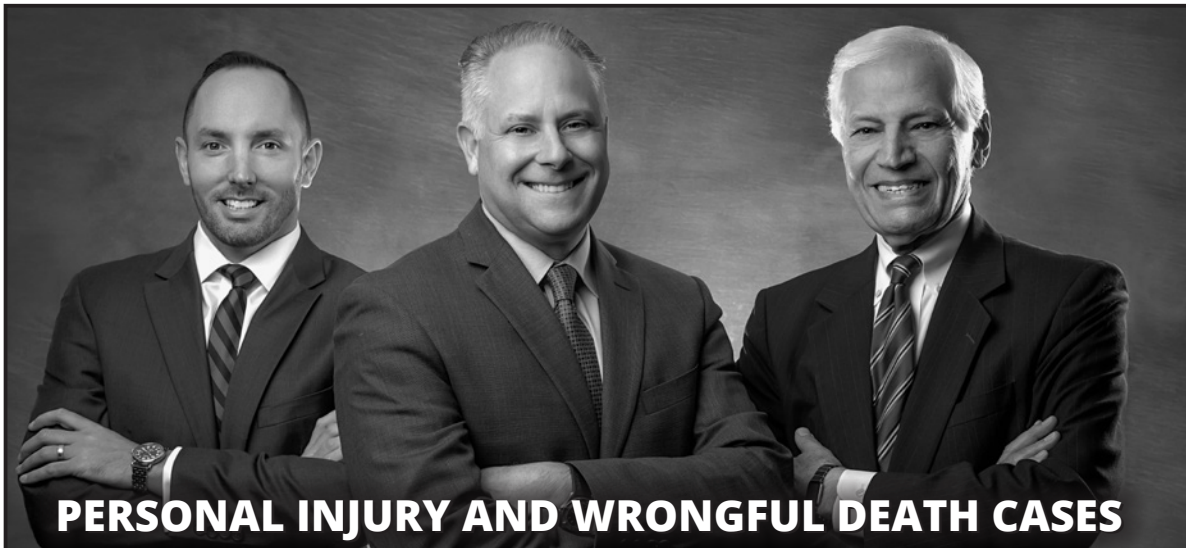
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Aaron J. Hall, of the Macomb County Prosecutor's Office, is the District 1 (Macomb & Wayne) Executive Council Member for the Young Lawyers Section of the State Bar of Michigan. He is the MCBA's Immediate Past YLS Chair. He now serves on the Board of Directors for the MCBA.



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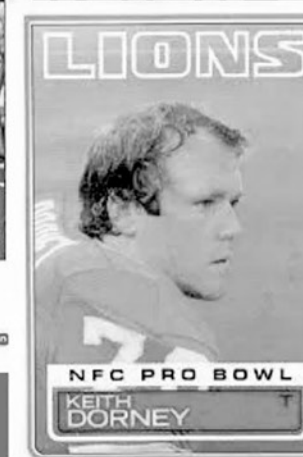
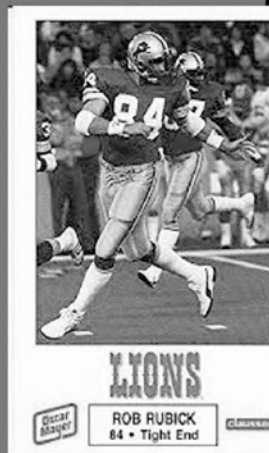
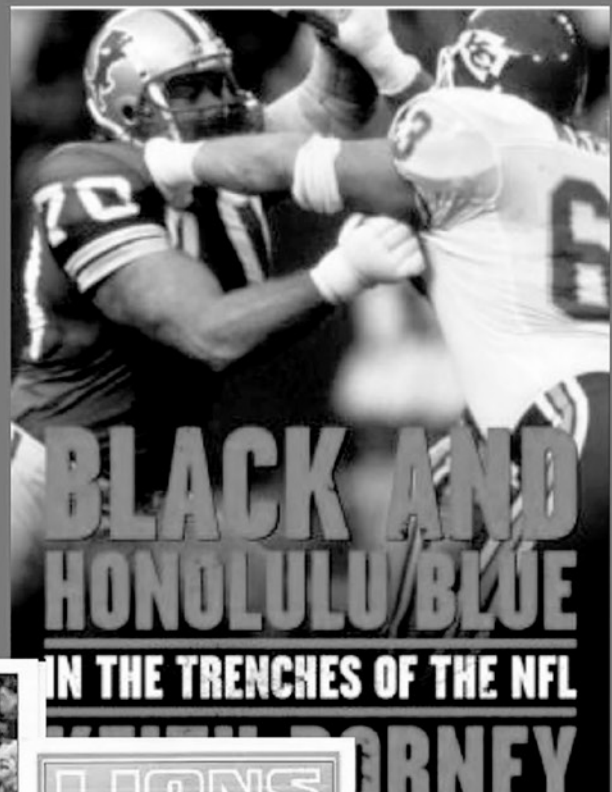
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Equitable-Parent Doctrine Extended to Same-Sex Couples

By Timothy P. Flynn and
Frank L. Briguglio, Clarkston Legal



Last April, oral arguments took place at the Michigan Supreme Court in a landmark child custody case, *Pueblo v Haas*, that examined the equitable-parent doctrine.

Earlier this month, the Michigan Supreme Court issued its opinion in the case. *Pueblo* is important because it expands the equitable parent doctrine on constitutional grounds with an emphasis on a family court's equitable powers.

Here in Michigan, the equitable-parent doctrine holds that a person who is not a biological parent of a child nevertheless may be considered one under certain legally enumerated circumstances where the person desires to continue in the position of a parent and is willing to bear parental responsibilities such as paying child support.

In family court, custody is statutorily determined pursuant to the “best interests” of the minor child; a family court is also empowered to make findings and rulings in equity; and all courts in Michigan must make rulings that are constitutional. These foundational family court principles converged in the *Pueblo* case.

Carrie Pueblo was in a same-sex relationship with Rachel Haas prior to the era of marital equality ushered in by the 2015 SCOTUS decision in *Obergefell v Hodges*. During their relationship, the lesbian couple decided to have a child through invitro fertilization; Ms. Haas was selected to be the biological “mother” of their child.

After the couple split, Ms. Pueblo filed an action for custody and parenting time of the minor child. Ms. Haas disputed this cause of action, asserting that Pueblo – lacking any biological or adoptive connection with the child– did not have standing to bring the case and failed to state a claim on which relief can be granted.

Prior to their break-up, the couple unsuccessfully attempted to place Ms. Pueblo on the child's birth certificate; unsuccessfully applied for adoption; and participated in a civil commitment ceremony which featured an exchange of rings. They could not get married due to the unconstitutional ban on same-sex marriages that existed in Michigan prior to the 2015 *Obergefell* decision.

The Michigan Supreme Court found that Pueblo's allegations that she cultivated the development of a parent-child relationship over an appreciable period, and



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that she desires to have parenting time and is willing to pay child support were sufficient to advance her claim. Accordingly, they reversed the lower family court and the Court of Appeals, remanding the matter to the lower court for additional proceedings.

In its ruling, the Michigan Supreme Court held that an extension of the equitable-parent doctrine was appropriate for same sex couples. Prior to *Obergefell*, the equitable-parent doctrine was used to award custody and parenting to a husband or father who parented a child within the context of his marriage/relationship without knowing lacked any genetic connection to the child. Since *Obergefell*, family courts fielded custody disputes over children raised by same-sex partners who were previously disallowed to legally marry under Michigan law.

The Pueblo Court established the rule that a former member of a same-sex couple seeking custody of a child to whom they did not give birth, and with whom they share no genetic connection, is entitled to bring a claim for equitable parenthood and thus establish standing to bring a custody action. The High Court held that to do so, the party must establish by a preponderance of the evidence [a relatively low threshold] that the same-sex parties would have married prior to the child's conception but for Michigan's now-abandoned prohibition on same-sex marriages.

The non-biological parent can prevail once they can present evidence on the following relevant but not necessarily controlling factors:

- whether the couple took advantage of other extra-marital options to recognize their relationship, i.e., a civil commitment ceremony or public ring-exchange;
- whether the couple had children during the relationship;
- whether the couple held themselves out as a married couple;
- whether the couple shared child rearing responsibilities;
- whether the couple comingled their financial resources;

- whether the couple made significant joint financial decisions;
- whether the couple resided in the same household; and
- whether the couple sought to adopt any of their partner's children.

These factors are not an exhaustive list but are important points on which to offer evidence at a Pueblo hearing. The rationale behind the doctrine is that it is in the child's best interests to continue the already existing but heretofore not legally recognized relationship of one-half of a same sex couple.

Justice Kyra Bolden, the newest gubernatorial appointment to the High Court in Michigan, concurred with the majority but wrote separately to emphasize that the legislature should amend the Child Custody Act and other legislation to conform to the SCOTUS ruling in *Obergefell*.

Justices Brian Zahra and David Viviano wrote in dissent to question the validity of the equitable-parent doctrine and to warn that a "legally unsupported extension" of the doctrine would result in unanticipated consequences going beyond the Child Custody Act. Nor did this conservative pair of justices like the "but for" test fashioned in the majority opinion [whether a couple would have been married "but for" the now-unconstitutional ban on same-sex marriage]. Their stated fear is that the test will be applied in an over-broad manner. Like Justice Bolden, the dissenters emphasized that Pueblo's remedy lies with the legislature, not the courts.

While it is true that a professional legislature should be able to conform key statutes impacting custody (starting with the Child Custody Act), such legislative initiatives often get choked-out by political initiatives and a complete lack of legislative focus. In the future the legislature may codify equitable parent doctrine.

Clarkston Legal is a group of attorneys practicing in the areas of Family Law, Probate and Criminal Defense centrally located in Northern Oakland County. The firm is only minutes away from Oakland County Circuit Court and practicing in all adjacent counties.



UPCOMING SEMINARS

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

Register at <https://cdam.wildapricot.org>

SKILLS TRAINING 101 (IN PERSON)

September 21-22, 2023 9:00am
Oakland County Bar Association
1760 S. Telegraph Rd. #100, Bloomfield Twp.

RULE 21: LAW PRACTICE SUCCESSION PLANNING AND THE INTERIM ADMINISTRATOR PROGRAM BY APRIL ALLEMAN (ZOOM)

October 5, 2023 11:00am-12pm
REGISTRATION CODE: FREEPLANNING

A IS FOR ATTORNEY (IN PERSON)

November 9, 2023 9:30am
Shanty Creek
5780 Shanty Creek Rd., Bellaire, MI
REGISTRATION CODE: MOL49

CDAM 2023 FALL CONFERENCE (IN PERSON)

November 10-12, 2023 9:00am
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