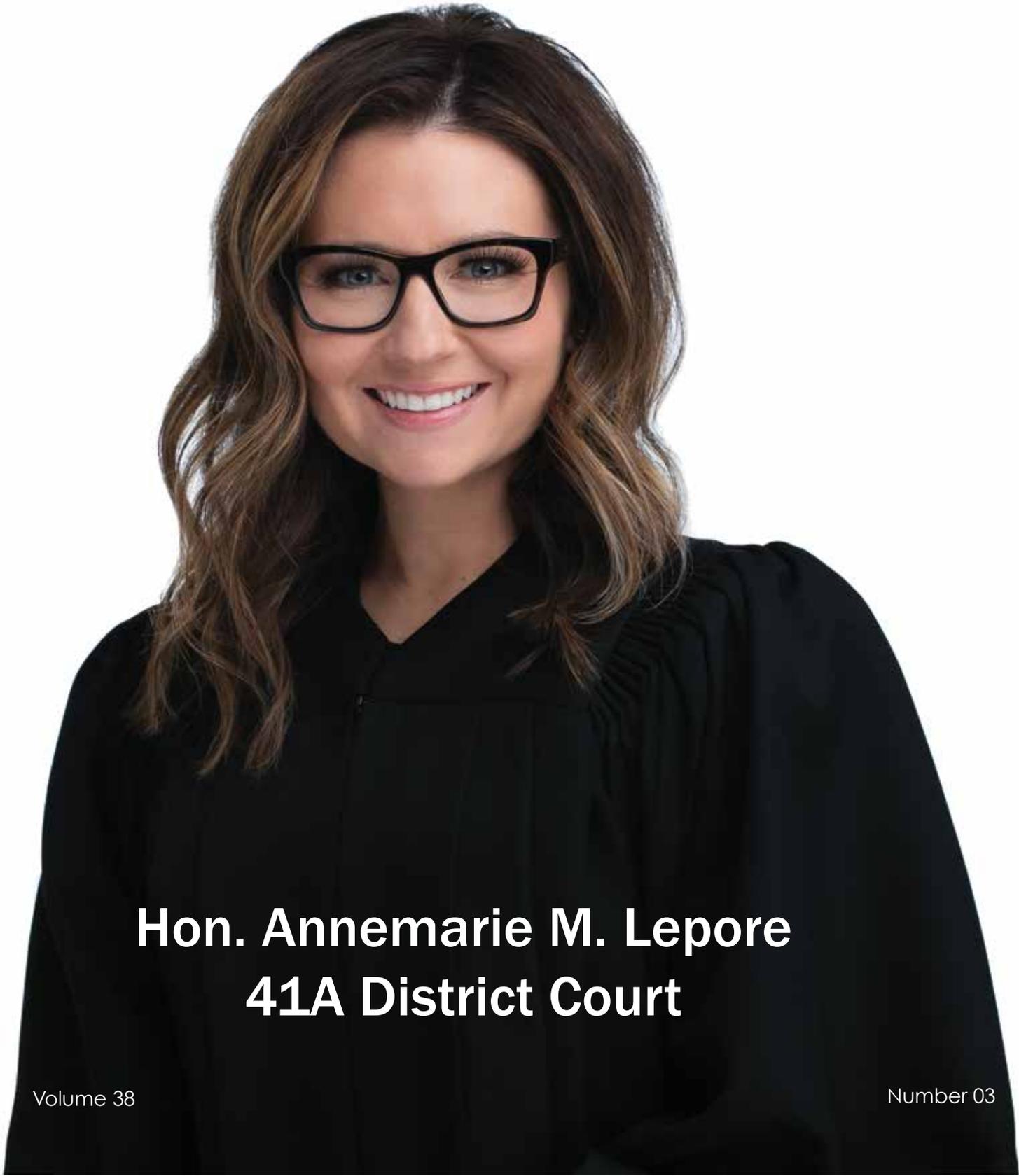


Bar Briefs

Official Publication of the Macomb County Bar Association

September 2019



Hon. Annemarie M. Lepore
41A District Court



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CALENDAR OF EVENTS:

- September 13 **Criminal CLE - Drug Recognition Experts**
12:30pm-4:30pm
Macomb Community College University Center 1
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5:30pm
Three Blind Mice, Mt. Clemens
- October 11 **Criminal CLE - "Crawford v Washington": Interpretation and Application"**
Part 1 - 8:00am-12:00pm
Part 2 - 1:00pm-5:00pm
Macomb Community College University Center 1

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Hon. Annemarie Lepore 41A District Court Judge

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

You were appointed to the 41A district Court bench in December of 2018. What was that process like? Where were you when you got the call?

The process was intense. Judge Maceroni announced his retirement in May 2018, but the application was not posted by the governor’s office until October. I quickly realized that this was truly a campaign to earn this appointment and I worked on it daily. I personally met with judges in the community, local politicians, and other community leaders to seek their support for my candidacy. I poured over the application multiple times making sure it was perfect. After the applications were in, I was called in for an interview with the Judicial Qualifications Committee in Lansing. For that interview people told me that I would be sitting at one of the largest conference tables I had ever seen, and it totally lived up to the hype. A couple weeks later I had a second interview with the governor’s legal team, which was much more intimate. It was actually a really fun interview; we talked about my family, the things I would miss about practicing law if appointed and *Game of Thrones* theories.

I finally received a call on the morning of Friday, December 21st – the last business day before the Christmas weekend – and was told “someone”

at the Governor’s office would be calling at 3:15pm. I watched the clock all day while at my office in downtown Mt. Clemens. My former colleague, Ben Aloia, walked in my office at 3:10pm to listen in and insisted he was going to video tape the phone call. I’m glad he did because the moment was a blur



and somewhat comical since I was wearing a Christmas sweater with twinkling lights on it while speaking to the Governor. Needless to say, I was emotional and relieved.

You took the bench on January 2nd. What was that like? Was it a difficult transition? What was your first docket like?

The transition was so much more than I expected in so many positive ways, it just happened really fast. I was officially sworn in on December 26, 2018, by Justice David Viviano, in what is

now my courtroom at 41A District Court in Sterling Heights. Fun fact, when I was an intern at the Macomb County Prosecutor’s Office in 2008, I went on the record for the first time in Judge Maceroni’s courtroom. It was quite amazing to be standing in that same courtroom taking my oath of judicial office.

After that, I had basically 2 days to wrap up my practice, re-assign my cases and contact all my clients. My old firm was a big help with that process. I reported to court on January 2nd and then almost immediately went to new judge’s school in Lansing. My first docket was on February 4th and it was a city

criminal/traffic docket. Sitting on the bench for the first time was an incredible moment because I felt comfortable and exactly where I was meant to be.

You handle both civil and criminal matters? Which do you prefer? What are the best parts about being on the bench?

I love having both a criminal and civil docket. I practiced in both concentrations for many years and I continue to enjoy the challenge and diversity of issues. I love coming to work every day. I have wonderful colleagues that have been so helpful and welcoming, including the entire staff at the court. I also really enjoy speaking with the attorneys in court and meeting new attorneys that I didn't get to work with while practicing.

What advice can you give to attorneys appearing in your court? What court procedures or practices would you like to share with the bar members?

Over the course of my career I was impressed by the practices of so many of the judges I appeared before, now I have the privilege of implementing what I consider the best of those concepts, practices and procedures in my own courtroom. Some of the best advice I received when practicing was to be prepared and be on time, which is still true from my point of view on the bench. I always strive to be mindful of those that appear before me. It is my goal to be fast, fair, efficient and thorough. I want attorneys and litigants, after they have left my courtroom, to always feel that they were given sufficient time to make their case, receive a fair ruling, and that they were treated with courtesy and respect.

What are your pet peeves? What should attorneys do or not do?

That's a tough one. I always respect and admire when attorneys are prepared and on time. However, on those occasions when perhaps they are running late or have an emergency, I appreciate when they take the time to notify the court of their circumstances. That assists me in keeping my docket moving in the most efficient manner.

To lighten things up and provide some fun I want to ask you the following questionnaire. (If you don't want to answer any of these please no pressure)



What do you consider your greatest achievement?

Some of your questions are easier than others, this is an easy one. I consider my greatest personal achievements as being the wife to a wonderful husband and father, and the mother to a beautiful and bright little boy. Professionally, it's

even easier. Being appointed to the bench has been the highlight of my career. I feel so honored and blessed to be in this position. I have been driven my entire life to be the best person, attorney, wife, mother, and friend that I could be, but I would be remiss if I didn't mention and thank all the people in my life whose contributions helped me become who I am today.

What is your idea of perfect happiness? My idea of perfect happiness is simple, and probably sounds boring, but a healthy family, a beautiful day, and an almond milk latte from Starbucks.

What is your current state of mind? Grateful for this incredible opportunity. Honored to have been

entrusted and selected by those that supported me in my appointment. Responsible to provide the highest level of service from the bench to the community, including the litigants and attorneys that appear before me. Eager to get my judicial goals accomplished like implementing a treatment court at 41-A.

What is your most treasured possession?

My grandmother's recipes. Growing up I would watch my grandma make her incredible cookies, her delicious homemade bread, her light as a feather cannoli shells and her amazing sauce. She never pulled out a recipe book; no measuring cups were needed or necessary because she had

have been married for 12 years and he supports every dream of mine as if it were his own. He has provided me with infinite support and the greatest joy in my life, our son Antonio.

What is your favorite journey?

Parenthood – never a dull moment.

What is your greatest extravagance? No surprise for those that know me best, I love shoes.

Which talent would you most like to have?

The ability to speak many different languages.

Where would you like to live?

Exactly where I do now.

of all the women I developed relationships with through WLAM - Macomb over the years. They have been such a big part of my support system as a female in the legal profession.

Who is your favorite hero of fiction?

Currently, Arya Stark. Couldn't resist, huge *Game of Thrones* fan.

Who are your heroes in real life?

There are too many to name. But their characteristics are all very similar; honesty, integrity, strength, compassion, and loyalty.

What do you consider the most overrated virtue?

I'm going to answer this differently; I think most virtues are underrated.



everything in her head. I have made it my mission to preserve as much of her knowledge as possible by writing her recipes down and learning her secrets because so much of her legacy and my family's traditions are carried on through her cooking.

What or who is the greatest love of your life?

My husband. We

What is the quality you most like in a person?

There are so many traits I admire in people, but first and foremost is kindness.

What do you most value in your friends?

I so appreciate their loyalty, love, and unique individual characteristics. It needs to be said, I am so fortunate to have and have had the support and friendship

Which words or phrases do you most overuse?

Awesome.

What is your motto?

"Small but Mighty."

Jonathan C. Biernat



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For questions call MCBA Executive Director Rick R. Troy (586) 468-2940 or CDAM Executive Director Ramona Sain (517) 579-0533

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Biernat Brothers Lead Lawyers League All-Star Game

*by Rick R. Troy, Executive Director,
Macomb Bar Association and Macomb Bar Foundation*

August 4. It was a hot and humid Sunday afternoon at the Mt. Clemens Memorial softball field. The Macomb County Sheriff's softball team arrived early and took to an adjacent field for an hour of pre-game practice. The Lawyers League All-Star team did not.

As the One O'clock scheduled game time crept closer, it looked like the Lawyers All Star team would be short a few players. Emergency calls to the Hon. Michael Servitto and others bolstered the lineup just in time. With the big green monster lurking in the outfield, the earth rumbled as the Sheriff's team walked on to the field.

In the time honored tradition, the two teams lined up along their respective baselines to pay respect to the red, white and blue flying in left field as Macomb Bar member Jordan Lindsey sang a beautiful rendition of our National Anthem.

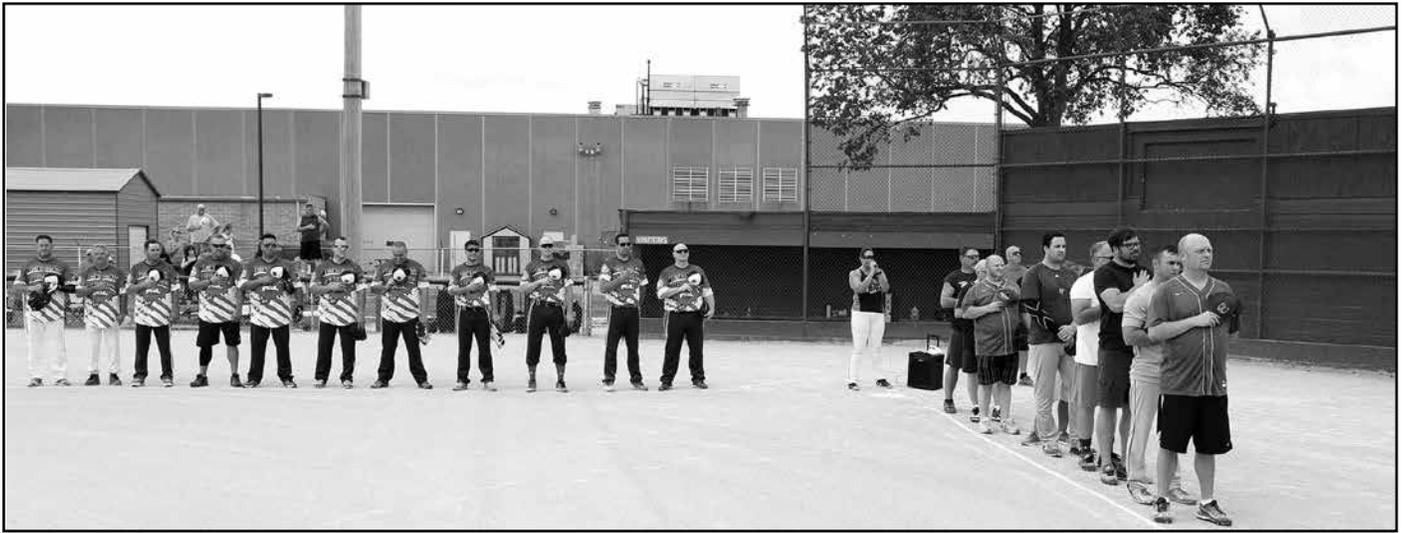
Not that they would need the hammer, but the Sheriff's team won the coin toss and selected to be home team. Charles Trickey III, former Bar President and Lawyers League commissioner extraordinaire, put together a lineup that featured new Macomb Bar President Jonathan Biernat in the lead off position. A surprising screaming single to deep right field boosted the team's confidence. In the next at bat, Chief Judge James Biernat, Jr. managed a line shot to right center. Another hit by 41-B Magistrate Ryan Zemke and another by member

Robert Penrod put the Lawyers up 3-0 at the top of the first inning. Confidence was soaring. At the end of three, the score was Sheriffs 5, Lawyers 3.

"The game is within reach," or was it "at least we are not getting slaughtered" was something heard in the Lawyers dugout. As the game literally heated up, it would be the Biernat brothers who would go on to lead the Lawyer's team offense. Jon Biernat ended the day with a perfect on-base percentage while the Chief Judge went 3 for 4. And, it was the Biernat Brothers bruising style of defensive play that wowed the crowd. President Biernat's Usain Bolt like sprint to the fence to catch a foul ball sparked the team, for a while. Not to be overshadowed by his brother, Chief Judge Biernat led the team with seven of

the game's eighteen put outs in right field. None of which were "easy outs." Sprinting, diving, rolling, and shoelace catches..., if only the cameras were rolling we would have an outfield training film! Former Bar President Stephen Becker gave it his best shot from the pitching plate. Even though he managed to talk a Sheriff Deputy into a pop up, once, it wasn't enough to stop the Deputies from reaching the one home run per inning limit. The Honorable Julie Gatti, a past Bar President herself was in attendance with her husband and daughter and had this to say about the game, "This was fun to watch. Everyone gave it their all. All for the charities." The





Hon. Mary Chrzanowski also came out to watch the game and support the fundraiser but found herself starting behind the plate. Retired Friend of the Court Lynn Davidson came out to support the cause too. After the game she said, “it was an interesting and entertaining game and a lot of fun catching up with judges and colleagues.”

A ginormous thanks to the Macomb County Sheriff Deputies who demonstrated sportsmanship and a whole lot of restraint while giving up a Sunday afternoon to raise funds for the Macomb County Bar Foundation’s Law Day program and their own school back pack program. A great bunch of guys and a top shelf softball team. If they will have us again next year, we will bring in some ringers to give them a proper challenge!

If you feel inspired to contribute to the cause, feel free to send a check to the Macomb County Bar Foundation and write “softball charity” in the memo line.

Thank you to all of the participants and fans!

Lawyers All Star Team: Charles Trickey III, Hon. James Biernat Jr., Jonathan Biernat, Hon. Michael Servitto, Hon. Mary Chrzanowski, Mag. Ryan Zemke, Stephen Becker, Dan DeBruin, Robert Penrod, Jordan Lindsey, Rick Troy

Sheriff’s Team: Dominic Gabriel, Aaron Amshay, Scott Gallus, Eric Oke, Tim Ruskowski, Andrew Ackerman, Jacob Stark, Zach Harmon, Matthew Van Lacken, Jared Suminski

A very special thank you to our sponsors of the game:

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Money raised is being used to support the Sheriff’s back to school back pack program and the Macomb County Bar Foundation’s Law Day program that features 1st to 8th grade students. Direct donations are being accepted. Please make check payable to the Macomb County Bar Foundation and mail to Macomb Bar - 40 N. Main Mt. Clemens, MI 48043

Circuit Court Corner

by Macomb County Circuit Court Administration

In light of changing legal research styles, the Court will now be providing one public access Westlaw Terminal at the County Law Library. Use of this Westlaw account will be free to members of the Bar and to the public at large. Due to anticipated demand, we request that you limit sessions to 30 minutes when others are waiting to access the terminal. The County Law Library is located on the 13th Floor of the Old County Building, 10 N. Main Street, Mount Clemens, MI, 48043. In addition to the public



Westlaw terminal, the County Law Library also contains a small print collection and the Macomb County Michigan Legal Help Self-Help Center, which is staffed by volunteers on a limited basis. The Law Library is open during the building's regular hours, from 8 am to 4:30 pm, Monday through Friday. For more information on the Law Library, please visit: <https://circuitcourt.macombgov.org/CircuitCourt-Departments>. For more information on the Self-Help Center, please visit: <https://macomb.michiganlegalhelp.org/>.

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Some Evidence

*by Hon. Carl Marlinga,
Macomb County Circuit Court Judge*

As regular readers of this column know, when I hear or learn of misapplication of the hearsay rule, it takes every ounce of resolve for me to keep from writing about it. I have tried to busy my mind with other rules of evidence, but two recent actual evidence questions have seared themselves on my brain, and I find I can no longer resist. Of course for hearsay rule fans, this is good news. For all others, please try to understand and forgive.

The first scenario involves a request by a plaintiff to amend the complaint to add a count of fraud. The case was not new, so, after reading the motion I was

not so sure that I would allow the amendment. The oral argument, however, produced an unexpected argument from the defense. The attorney for the defendant argued that the amendment would be futile because it was based upon plaintiff's alleged reliance on an out of court statement. The alleged facts were that a wife told her husband that they should transfer \$130,000 to the wife's son from a previous marriage, so that the son could have the money to take care of them both. The alleged fraud was that the wife knew at the time that her son would keep the money for himself as repayment of a loan which she owed

him. After her death, the husband sued the son and his wife's estate for repayment of the money on the grounds that he understood the transfer to have been made as a trust for his and his wife's benefit. The defense attorney for the wife's estate boldly asserted that there was no point in allowing the amendment because there was no evidence of the conversation

between the husband and wife, other than the husband's testimony of what the wife allegedly said; and, according to the attorney, that would be hearsay. I asked politely, how is this hearsay?

Taken aback by my question, the defense counsel repeated his position

several times, stressing (as if he were talking to a child) that this was an out of court statement, not under oath, not cross-examined, and offered for the truth of the matter asserted. From his demeanor, I concluded that he was serious. I respect this attorney and was impressed with his skill and diligence in his many appearances before me when I was a probate court judge. Of course, he was absolutely wrong, but on a personal level, I realized that he appeared to be genuinely convinced that I was the one who was wrong in not recognizing what he clearly and honestly believed was rank hearsay.¹



The second scenario arises from a tale of an argument in district court. An assistant prosecutor was asking questions of a witness who lived next door to an alleged victim of domestic violence. The witness was expected to testify that the alleged victim cried out, “Help me, call 911” as she ran from the house. The man pursuing her was yelling, “I’m not going to jail for this.” The defense attorney, incredibly, objected (strenuously) on the grounds that these statements could not be admitted because they were hearsay. The judge correctly ruled that the statements were not hearsay, but the defense attorney – much like the attorney in the case before me – was stunned that the judge could not understand that these out of court, unsworn, un-cross-examined statements were clear hearsay.

At this point, I realize that some of you might have some anxiety because you are thinking that, perhaps, each of these defense attorneys might have had some rational basis for his objections. This is the reason why I am writing this column. Trials are rather infrequent, so that even good lawyers have some difficulty from time to time to remembering all the details of the rules of evidence; and the hearsay rule is so often misunderstood and misused, we can become easily confused when a totally absurd objection is raised. Some of us simply give up and resign ourselves to the likelihood that if a statement is made out of court, not under oath, and not cross-examined, it will probably be regarded by the judge as inadmissible hearsay. We tend to concede too quickly and proceed without the contents of the challenged out-of-court conversation because it is not worth the fight, and, often, other evidence is available to make the point anyway.

I, personally, do not want to give up; and, of course, ethically and legally as a judge, I am not permitted to do so. With that obligation in mind, this is how each of the two scenarios should be analyzed and decided.

In the first scenario, there are multiple reasons why the statement is decidedly not hearsay. Probably, the most obvious one is that the statement is not offered for the truth of the matter. Rather, it is offered for the opposite reason – namely the untruth of the matter asserted. It is always permissible, and never hearsay, to offer a statement in which the declarant

is alleged to have told a lie or made a deceptive or misleading assertion. To be hearsay according to MRE 801(c) the statement must be offered “to prove the truth of the matter asserted.” Statements that are offered to prove the falsity of the matter asserted are not hearsay. *United States v Hathaway*, 798 F.2d 902, 905 (6th Cir. 1986); *United States v Porter*, 866 F.3d 562 (2018); *People v Hampton*, unpublished opinion of the Court of Appeals, issued April 4, 2019, (Docket No. 338418) [2019 WL 1494627].

Further, the statement is not an assertion of a fact that could be either true or false. The statement, “Let’s give out money to my son, so he can take care of us,” is a wish, or a statement of intent, or a plan. It is not an assertion of a fact. To be hearsay, a statement must be an assertion of a past fact – which is capable of being true or false. Agreements to do something or attempts to persuade a person to do something, are, therefore, by definition not hearsay. In general, most of the things that are said by human beings are not hearsay: such as agreements, wishes, greetings, commands, directives, prescriptions, orders, threats, regrets, expletives, complaints, questions, and expressions of joy, pain, sorrow, or similar human emotions. See generally, *People v Jones*, 228 Mich App 191, 579 NW2d 82 (1998); *People v Bennett*, 290 Mich App 465, 802 NW2d 627 (2010); *People v Johnston*, unpublished opinion of the Court of Appeals, issue Jan. 51999 (Docket No. 201652) [1999 WL 33455146]. The proffered testimony is not even close to being hearsay and no reasonable, well-educated lawyer could think otherwise.

Whether or not the out of court declarant actually made the statement is a credibility issue for the jury to decide. Calling something hearsay so that the jury does not even get to hear the evidence is error.

As to the second scenario, I did not learn the name of the attorney, nor do I want to. That attorney has some serious remedial training in his future. Neither the cry for help (“Help me, call 911.”) nor the threat uttered by her pursuer (“I’m not going to jail for this.”) is an assertions of fact capable of being true or false. These are not hearsay statements according to the basic definition of MRE 801(a) because they are not assertions. Further, anybody licensed to practice law with at least a few months experience

would instinctively recognize that these utterances could easily fall under one of the holy trinity of the first three exceptions to the hearsay rule under MRE 803; i.e., a present sense impression under 803(1); an excited utterance under 803(2); or a statement of a then existing mental, emotional, or physical condition under 803(3). Although these exceptions are not necessary, since the utterances are clearly not hearsay in the first place, it is inconceivable that a licensed attorney could honestly entertain the notion that there were valid grounds for exclusion.

This brings me, then, to the question of what we should do, as the bench and bar, about lawyers who either do not know the rules of evidence or who, in spite of knowing the rules, make frivolous objections with the hope of getting a judge to make a mistake.

I realize that the rules of evidence can be difficult to master, especially if we do not go to trial on a regular basis. Even experienced lawyers and judges make honest mistakes. Judge Rick Caretti tells the story of our mutual friend, the late, great Jim Robinson, who argued an evidence question in front of a very well known and well respected federal judge.² The judge ruled against Jim and the trial went on. Ever the gentleman, and not wanting to introduce argument extraneous to the rules and case law, Jim held his comments about the ruling until the end of the trial. At the conclusion of the trial, Jim had a brief conversation with the federal judge. Jim pointed out that, by happenstance, this exact same evidence question was on the most recent bar exam. As the author of the question, Jim was able to then tell the judge that his ruling, according to the Board of Law Examiners, was not the law and the judge would have gotten zero credit if he had sat for the test.

With this Jim Robinson anecdote in mind, I tend to forget and forgive if an attorney makes a heated argument, and is simply wrong. Still, I believe that we, as lawyers and judges have a duty to hold ourselves to a higher standard when it comes to the rules of evidence. We would not think much of a lawyer who vehemently insisted that oral contracts for the sale of land must be given effect, nor would we think much of a lawyer's acumen if he or she indignantly argued in a criminal case that the Fourth Amendment had no application in state prosecutions.

So too, the rules of evidence are matters which require and deserve an honest and accurate presentation by thoughtful and well-prepared attorneys.

There remains the possibility that some lawyers may make objections or argue positions which they know to be false. Such conduct would be an ethical violation under Rule 3.3(a)(1) and (2) of the Rules of Professional Conduct. While the lawyer who appeared before me was badly mistaken, I continue to believe that he was arguing in good faith. The unidentified lawyer referred to in the domestic violence case in district court is another matter. It is hard to believe that someone could be so lacking in legal knowledge as to make the argument that he did. He certainly owes the court an apology and should either report himself to the Grievance Administrator for his misconduct in arguing a position he knew to be contrary to law, or he should seriously enroll in some continuing legal education classes so that, next time out, he will know the law.

Footnotes:

¹ Mixed in with the argument on hearsay, I believe I also heard some analysis that would harken back to the "dead man's statute" codified at MCL 600.2166. The dead man's statute says that a witness cannot testify to a transaction where the adverse party involved in the transaction is unavailable to testify because of death or incompetency. MRE 601 supersedes the dead man's statute. *James v Dixon*, 95 Mich App 527, 291 NW2d 106.

² James K. Robinson, III, was a partner at Honigman, Miller, Schwartz, and Cohn in Detroit. He also served as the United States Attorney for the Eastern District of Michigan and, later, as an Associate United States Attorney General. He taught evidence at the Wayne State University Law School and also served as the Dean of that law school. He ranks as one of the best attorneys to ever practice law, and an evidence teacher that nobody will ever match. When I was a kid lawyer at Honigman, he would catch me when I was trying to leave early at about 9:00 p.m. each night and quiz me with the exam questions he was preparing for his students. Anything I know about evidence I owe to him.



Collaborative Law Process in Michigan

by *Randall J. Chioini,*
Family Law Committee Chair

Collaborative law is an area of practice that continues to evolve and the bounds of its application seem limitless. However, many practitioners are not aware of the rules that apply to this type of ADR, specifically in domestic cases. Michigan was the tenth state to pass the Uniform Collaborative Law Act (UCLA), MCL 691.1331 et. seq. Since 2014, over 18 states have incorporated the UCLA. Some states have even expanded this type of practice to be used in non-family law litigation. This article seeks to provide an overview of the rules that govern collaborative law relative to domestic proceedings.

The collaborative law process was recently outlined in the Michigan court rules, specifically MCR 3.222 and MCR 3.223 (effective April 2019). To corroborate the new court rules, the Michigan Supreme Court Administrative Office approved new forms for collaborative cases. The collaborative law process forms include SCAO form CCFD 22 (Joint Motion and Order to Stay Proceedings (Collaborative Law Process)), CCFD 23 (Status Report/Notice (Collaborative Law Process)), CCFD 24 (Petition (Collaborative Law Process)), CCFD 25 (Petition (Consent Judgment)), and CCFD 26 (Notice of Request to Enter Consent Judgment).

MCR 3.222(A)(1)(c) defines *collaborative law process* as a “procedure intended to resolve a collaborative matter without intervention by a court in which persons sign a collaborative law participation agreement and are represented by collaborative lawyers”. This type of process can be initiated before filing of a family law case or within a pending case. MCR 3.222(B)(1). The participation agreement is required for the process to begin. The participation agreement must: (1) be in a record (either in writing or in open court); (2) be signed by both parties; (3) state the parties’ intention to resolve

a collaborative matter through a collaborative law process; (4) describe the nature and scope of the matter; (5) identify the collaborative lawyer who represents each party; and (6) contain a statement by each collaborative lawyer confirming the lawyer’s representation of a party in the collaborative law process. MCL 691.1334.

Collaborative lawyers generally prefer to file a complaint after the collaborative process has concluded and there is a settlement. Under MCR 3.223, if cases are settled prior to filing, the parties can file the SCAO form CCFD25, “Petition (Consent Judgment)”. CCFD 25 is fairly similar to a complaint for divorce. The petition must state at minimum: the grounds for jurisdiction, the statutory grounds to enter the judgment, and a request to enter the judgment of divorce. MCR 3.222(2). Additional requirements are provided for in MCR 3.223(C)(2)(a). In a collaborative case, the parties are not labeled “Plaintiff” and “Defendant”, they are labeled as “Party A” and “Party B”. The intent for this label is to take out the adversarial nature of the matter. The six-month waiting period does still exist in cases with minor children, but it can be waived with leave by the court. MCR 3.222(C)(1)(vi). This case is finalized after the parties file Form CCFD26, “Notice of Request to Enter Consent Judgment”. MCR 3.222(2). Depending on the local rules and the preference of a particular judge, there may still be a *pro confesso* hearing to conclude a settled case. MCR 3.222(D).

Parties who have pending family law cases can still enter into a collaborative participation agreement. MCR 3.222(2). The parties must file a signed Form CCFD22, “Joint Motion and Order to Stay Proceedings (Collaborative Law Process)” and a notice of the signed participation agreement. Depending on the local rules and the preference of



a particular judge, the proceedings may be stayed either without a hearing or after a hearing within 28 days after the motion is filed. MCR 3.222(B)(2)(a). The court may require the parties involved to file a status report on the collaborative law process via Form CCFD32 to keep track of whether the case has settled, is still ongoing, or has concluded. Once the parties have concluded or ended the collaborative law process, they must file notice with the court and a proposed final judgment or proposed final order that complies with MCR 3.2111 and a judgment information form (JIF). MCR 3.222(2)(e). Under MCR 3.222(E), the court may dismiss an action for lack of progress, especially if the parties have not filed a proposed final judgment within 28 days after the statutory waiting period has expired. The parties may also dismiss the action under MCR 3.222(F).

If, for whatever reason, the collaborative law process breaks down and there is no settlement, the collaborative lawyers and the other members of the team are disqualified from further representation. MCL 691.1339. The attorneys can very rarely continue to represent their clients if the matter has to go to court due to their prior engagement. Though, the attorneys are expected to help with transferring the case to another attorney. MCL 691.1339. If the participation agreement was signed before initiating the case, a

party will have to go the traditional route and file a complaint of action with the court. If the participation agreement was signed during a pending case, the parties will have to essentially start over in the court. This could also involve dismissing the action and filing a new complaint at a later time.

Lawyers that support collaborative practice firmly believe that it can be less expensive, less time-consuming, and can limit the emotional toll that accompanies traditional litigation. On the other hand, litigation-minded lawyers may recognize that ADR can play an important role in many cases, but many remain cautious on the expansive use of collaborative process. They are also grounded in their belief that parties should have independent representation and follow a more traditional litigation format. Whatever your position is on this topic, most agree that the collaborative approach to domestic matters is no longer in its infancy and will continue to evolve. At a minimum, we must acknowledge that this alternative approach exists and may be a good fit for certain cases. If you are interested in becoming a collaborative lawyer or want more information, see the Collaborative Practice Institute of Michigan's website. This Institute provides annual trainings to get certified as a collaborative lawyer.



Working Mothers in the Legal Profession (Attorneys, Judges, and Mothers- Oh My!)

*by Alecia Golm, Secretary of the Young Lawyers Section
of the Macomb County Bar Association*

As I sit at my kitchen table adding the finishing touches to this article, I can't help but laugh and look around at the toys spread across the floor (that I've already picked up once), my work files on the table, and my "best mom in the world" coffee mug in front of me. I would be lying if I told you I had a "work/life balance." I would be lying if I told you my house was spotless, that my toddler behaves, or that I made every litigant happy at work today. What I can tell you is the truth; and the truth is that I don't have any of this under control but, I know I'm not alone in this struggle.

For this article, I wanted to do something different and show a different side to some of the female attorneys and Judges we practice alongside of every day. I set out to get the viewpoint of different women, holding different positions, and with children of different ages. I was lucky enough to sit down with:

These women have made large strides in the field, have amazing reputations as professionals, and have accomplished all of that as a working mother. I asked each of these women their experience being a working mother, their thoughts on "mom guilt," and for some advice to other working mothers out there trying to make it happen.

Finding Child Care Arrangements/Scheduling

Hon. Rachel Rancilio: (son 11, daughter 9)

Being self-employed definitely helped with that. I worked with 3 great guys who understood what that's like and treated me like a little sister that way.

They enabled me to be able to go to Court, reschedule my appointments, and go home to be with my kids if they were sick. I also had a sitter come to my house if I had to. When you have to go to Court all the time, and your kid is sick and you can't take them to daycare, it sucks. Sometimes you have to go to work and get things done.



Emily Calabrese - Director of Litigation: (daughter 2, son 11 months)

My kids are in daycare 4 days out of the week. I work full-time and so does my husband at his firm. I am very grateful for my husband. He does so much and helps so much. He does most



of the pickup and drop offs at daycare, he does a lot around the house, he's a great partner especially when it comes to caring for the kids. But there's still

times I miss work or he does if they're sick... the beauty of daycare.



Rosemary Davis-Senior Attorney

(son 20, daughter 18)

I have worked part-time since my children were born until one was well into high school and one had graduated high school. Working part-time was the absolute best thing for me and I am lucky enough to have worked at 2 great firms that allowed me

to work that schedule. I felt like I could still partake in activities with the kids and volunteer at school, as well as still work and be an attorney. My daughter was very involved in school and gymnastics and meets all over the state and in different states, and my schedule really allowed me to go with her and support her without a lot of or even any disruption to my work schedule.

How the Job Impacts the Family

Rachel: My kids definitely thought [being Judge] it was cooler in the beginning, now it's like "big deal." I remember walking in parades and my daughter looked at me and said, "I don't want to do this anymore." We were in the middle of the parade and she quit. They humble you. They're like this is my world, you're just visiting it, and I don't care what your title is.

Side Question: How does being a mother affect you on the bench?

Rachel: I think it makes me way better at my job. I personally have gone through this. I'm a single mom, and I understand that push and pull of wanting them to love the other parent but having your own feelings toward that person.

I also know what I'm capable of as a divorced parent. I now kind of hold my litigants to

that standard. There's a level of decency that you owe your ex-spouse or partner and I expect you to observe that. It's not easy for me either, but if I can do it, then you can do it too.

Emily: For my job, I handle the day to day functioning of the attorneys in 11 litigation offices. I oversee the litigation, supervisors, management, etc. I work from home a lot, it doesn't stop at 5:00pm or whatever time I walk out of the door most nights. There are some days where I just can't do it all. Some days I'm a great attorney and a not so great mom. Other days I'm a great mom, and okay as an attorney. I'm starting to become okay with it and it's important to recognize my limits at work with having children. I need to be there for them too.

Rosemary: With working part time, it wasn't as big of a struggle with the kids, but there were struggles, and it definitely got harder as they were older and had more commitments and couldn't drive. At any age the kids were at, bigger emergencies and illnesses did tend to fall on me. But when I only worked 3 days a week, sometimes my husband would have to step up on days so I could actually work. Working part-time I think really helped my kids and even helped myself and Jeff with networking. The more time I was able to volunteer and be around other parents with the kids, they would talk, see that Jeff and I were attorneys, and it even got him some client referrals.

"Mom Guilt"

Rachel: When my kids were younger, I definitely had it. Now that they're older and in school it isn't as much. For me, mom guilt isn't so bad anymore because I'm showing them what they're capable of doing, especially my daughter. You can be many things to many people. You don't have to be just a mom, you can have something for yourself and at the same time being a great mom.

There's a time and place for mom guilt but there has to be a point where it's enough and needs to stop. I almost quit at so many points and I'm so glad that I didn't. You have to release yourself of that guilt and try and be present in the moment and do

what you can to the furthest of your ability.

Emily: I definitely feel it. You can't do it all and yet women do have that pressure to do it all. I realized when I was in medical malpractice that I just can't perform what was required of that job with the traveling and workload with a baby. My husband didn't have to change his job, it was me that felt I had to do that. I felt it was too much and too much on my family and I feel as women we get that burden harder than men.

I think women have this burden not to be weak because we're women and moms, but we need to move away from that burden and mindset. Without women in the workplace, this world will not reach its full potential. We need to keep advancing, keep progressing, and moving forward.

Rosemary: It's definitely different now. When my kids were growing up, there were definitely less female attorneys as most were quitting to stay home and leaving the field. Now with this newer age group, there is so much more involvement, so many more women, a great showing and a great support system now.

It was exhausting when the kids were little and I had days where I didn't feel like I was doing either one great. It's difficult to do both and take your hat off and be mom, and put your hat on and be attorney in the same day or same week. There was definitely a stigma for me being a part-time attorney and how I was looked at as a part-time attorney, but that's what I needed to do and it worked for my family. Mom's definitely work harder, we have more work and more pressure on our plate and it needs to be recognized.

Final Advice

Rachel: You can't be everything to everyone. Sometimes you have to miss a work event for the kids, sometimes you have to go to work when your kid is sick, it's going to happen. Your work will be there the next day, it's not going anywhere. When you're at home, put the phone down and the work down and be present in the moment.

Just know that in this profession that there's

a sense of understanding among us of how hard it is to just get out of the door and get there sometimes. Even the females that don't have children, even the men, it's an understanding and camaraderie and in this Court and this County, and I'm grateful for that.

Emily: Don't be afraid to ask for what you need. The best thing for me and what really helped was going back to work part-time after I had my kids. It helped me adjust and deal and I'm very grateful that Lakeshore is a family friendly organization that allowed that to happen.

Just recognize that it's going to be hard, but worth it. Use what's available to help you, including reaching out to other working women in the field. Use your support system. Realize that you're going to be a good mom one day, and not feel like a good mom the next day. It's normal, it's a normal feeling, just keep going and it will all be worth it.

Rosemary: There are so many more female attorneys now and working mothers in our field. Take advantage of that. Reach out to other attorneys and other working mothers and reach out for support or advice or just to vent. I think it's important to support each other and share the stress with each other and try and find a good solution to work through these problems together.

Sometimes it's okay to worry about yourself. Sometimes it's okay to change hats and just be with the kids and be what they need. It's difficult and it's going to feel difficult but just remember, you ARE doing it and it's worth it. I loved being a working mom, I loved working part time, and it definitely satisfied me enough to get to where I am today.

Alecia: Signing off with my "final advice." I can say that I relate to each of these women and the struggle of doing it all. I also came back to work part-time, had to have a sitter at the last minute, and have my daughter in daycare 4 days a week. There are days where I feel like I just suck at my job or suck at being a parent, and there are other days where I feel I nail it. But what is important is that I'm doing it, I'm doing what I love, and I like the example I'm setting for my daughter to show her what women are capable of.

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