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Randall Levine Advocates for Family’s Right to Keep Property From Being Taken by Kalamazoo County

For the past few years, Managing Partner Randall Levine has worked with the Talanda/Johnson families in a land dispute with Kalamazoo County. Despite the ongoing court battles and attempts to take the family’s sliver of land in the northeast corner of the county’s Prairie View Park, Levine continues to advocate for the family’s right to keep their property, which has been family owned for over 70 years.

“They have paid taxes for many years on a small little slice of property that’s at the very far north end of the park,” Levine said during a live interview on WKZO’s Kalamazoo Mornings With Ken Lanphear. “They were there first. They were there before the county.”

The property, which sits along Gourdneck Lake, has been in the Talanda/Johnson family since 1949 – 14 years prior to the opening of the county park. When the county created Prairie View Park

in 1963, the families crafted an agreement with the county, allowing co-habitation as neighbors. But in 2017, the county began making attempts to take the property from the families. The county threatened to take the gate keys from the family, change the gate lock, condemn their property and issue Eminent Domain in order for them to take their property without any cause or reasoning. The family sued the county and won in court in 2017. Two years later, after learning the last living member of the original signors, Edmund Talanda Sr., had died, the county pounced on the family again, claiming “first right to purchase,” per its interpretation of the agreement between the original family owners and the county when the park opened in 1963. The families filed a second lawsuit against the county to prohibit an unconstitutional taking of property, and for violating the Open Meetings Act. The families won that lawsuit in Kalamazoo County Circuit Court.

Now, in 2021, Levine continues to help these families defend their property from the county.

“These are supposed to be our best years,” said Judy (Johnson) Heeter. “We never dreamed of spending our retirement money and committing so much time to save our cottage. But we’ll fight until the end to hold on to it.”

Levine believes the people of Kalamazoo County deserve to be informed on what the Kalamazoo County Board of Commissioners is doing with their taxpayer dollars.

“It’s government at its worst because elected representatives, the county commissioners, have forgotten who their constituents are, who they represent – the people, the citizens of Kalamazoo,” Levine said. “The county commissioners have decided to spend our taxpayer dollars in trying to grab this piece of property from its rightful owners when these folks have a constitutional right not to have their property taken without due process and without paying fair market value.”



COVID-19 Mask and Vaccine Mandates in the Workplace

In May 2021, the Centers for Disease Control and Prevention, Michigan Governor Gretchen Whitmer and the Michigan Department of Health and Human Services lifted mask guidelines for fully vaccinated people. Levine & Levine Attorneys at Law Partner Sharan Levine shared with FOX 17 that she was thrilled, but explained that some businesses are choosing to keep mask rules amid the loosened mandate.

“I think this news feels like a holiday, and we should all have a celebration. It’s been a very long time coming,” Levine told FOX 17 during an interview on Friday, May 14. “I think that it will have a big impact for businesses with the hope that they can return to some sense of normalcy.”

Levine said the pandemic has been “extraordinarily difficult” for her clients. She represents several local businesses and has been helping them stay afloat throughout all the state-mandated restrictions and temporary pauses. Some survived. Others didn’t.

However, Levine recommends looking at the new rules closely.

“I think we have to be really cautious about what the CDC said and what Governor Whitmer just said. There’s some nuances to this. If you’re vaccinated, you’re more liberated,” Levine said during a Zoom video interview with FOX 17. “The point is that people need to be mindful that both of these rulings came down, if you will, these new (regulations), but the exception is for businesses and state, local, and tribal government units. They are able to make their own rules and set their own guidelines.”

Levine suggested that going forward, restaurants and businesses should implement rules and

guidelines that are reflective of their own needs and their employees’ needs, to make sure everyone is safe in their establishments.

“There are some employees in businesses who are very concerned about their health and well-being, people who are working in business places who have sensitive health issues or have autoimmune diseases,” she told FOX 17. “It’s going to be up to these businesses to say this is our preference and the willingness of those clients and customers to comply.”

As employees return to the office for in-person work, Levine & Levine Attorney Anastase Markou spoke with national media outlets about whether business employers can require their employees to get the vaccine as it becomes readily available.

In Michigan, Markou was interviewed by WILX, in Lansing, and WNEM, in Flint, about the potential for the vaccine to be a major factor in workplace health and safety. Additionally, Markou was featured on KLFY-TV in Lafayette, Georgia; WMAZ-TV in Macon, Georgia; and KAUZ-TV in Wichita Falls, Texas

“The federal law requires employers to provide safe and healthy work environments for every employee. Absolutely required under OSHA. That means in certain types of environments, they’re going to have to require employees to take the vaccine,” Markou said during his media interviews.

Markou said he expects the vaccine will be mandatory in the medical field and jobs with a lot of personal interaction, like the restaurant industry.

“It sounds like it’s just legal battles waiting to happen. It’s going to have to be. This is really going to push the limits of the law on what OSHA requires employers to do and it’s going to push the law on what kinds of exceptions employees are allowed to use,” Markou said.



Sarissa Montague Wins Abortion Ruling with the Michigan Court of Appeals

Criminal Defense Attorney Sarissa Montague won her second Michigan Court of Appeals case where she argued on behalf of a minor seeking a waiver of parental consent for an abortion.



Sarissa Montague

Montague argued to reverse the decision of a state Family Court, which denied her client's right to waive parental consent for an abortion. Based on court testimony by a preponderance of evidence, Montague argued that her client, a teenage girl, was sufficiently mature and well-enough informed to make a decision regarding abortion independently of her parents or that it is in her best interest to make this decision independently of her parents.

The Michigan Court of Appeals agreed with Montague's argument, stating that Montague's client is sufficiently mature and well enough informed to make a decision about abortion independent of her parents, and that a waiver would be in her best interest. Therefore, the Court of Appeals issued an order that vacates the lower court's order, and granted Montague's client the right to petition for waiver of parental consent for an abortion.

"This is an important Michigan Court of Appeals case that institutes the rights of minors seeking legal abortion without parental consent," Montague said about her latest victory in the Michigan Court of Appeals. "As a criminal defense lawyer, we are called to defend the rights of those who find themselves in unfortunate circumstances. When it comes to controversial topics, such as abortion, we have to see beyond our personal beliefs and experiences, and put those who ask for our help at the forefront and look into what is best for them, including minors.

"I think it's just very important for everyone to understand there are legal procedures available in a number of different circumstances," Montague said during an interview with FOX 17. "This is one very, very small circumstance where there is a legal procedure available to help."

Montague won a similar case in the Court of Appeals in 2019.



Randall Levine Tells FOX 17 Trump Lawsuit in Michigan is a 'Spaghetti Lawsuit'

Managing Partner Randall Levine weighed in on an election fraud lawsuit filed in Michigan by the Trump Campaign in November 2020, referring to it as a "spaghetti lawsuit."

"This lawsuit is simply a rehash of baseless claims that have already been rejected by four courts. It's in the most polite way, nonsense," Levine told FOX 17. "It's what we sometimes jokingly as lawyers refer to as a 'spaghetti lawsuit.' Let's throw a bunch of spaghetti against the wall and see if it sticks. One of those strands of spaghetti thrown is the claim that the people couldn't observe, they were too far away, yet, on the other hand, they were close enough to be able to observe irregularities."

The Trump campaign had filed a lawsuit in the Western District of Michigan on Veterans Day, Nov. 11, and asked to stop the certification of results until the election process can be reviewed. They claimed irregularities and unlawful vote counting in a state the president lost by nearly 150,000 votes. The president's lawyers said Republican challengers were impeded in watching the processing and counting of ballots at the TCF Center in Detroit. They also claimed some election officials altered the date some ballots were received.

The Importance of Updating Your Estate Plan

Sharan Lee Levine

Change is the one constant upon which we can rely. Recently, we conducted an internal review of the estate plans maintained in our office. Our survey found that many of these estate plans are more than 10 years old, which means that many of our clients' estate plans were written before 2010.

In the space of the decade or longer all of us have experienced change. Some changes that you may have experienced since the original estate plan was created could include: who is expected to serve as your personal representatives or successor trustees, children have grown up and their care needs have changed, business ownership may have changed, or you may have experienced hardships. Often the original financial advisors move on, retire, or the family moved accounts to new advisors. Perhaps you don't own the properties that funded the trust – or other properties are left out of the trust. All of these factors add up, and, this doesn't even consider that original trust goals are now irrelevant or shifted.

To approach the project of updating your estate plan, set some goals and take small bites. Gather statements of accounts, collect the deeds from new properties, and identify who will manage your affairs if you are unable to do so yourself.

Do you have specific items that should go to specified loved ones? What are the birthdays of the children and grandchildren? Write down the names and complete contact information of your financial advisors or CPAs.

Life cycle events happen. Help to make the transition for your family members and beneficiaries efficient and smooth. If you have experienced changes that you believe affect your estate plan, it is important to record the changes, first, to make sure your quality of life continues as you get older, and second, to protect your assets and family members upon death.



Corporate Record Book Reviews

Sharan Lee Levine

One of the most gratifying elements of my work is helping small businesses navigate through changes that occur over the years. Like reading a property's title history, reviewing corporate record books tells a story about people, achievements, history, and productivity.

Corporations have a requirement to maintain annual meeting minutes that tell the story, while limited liability companies do not have the same requirement. Reflecting on the business annually doesn't take much time, but gives the business owner a perspective not achieved while running the day-to-day operation. Maintaining the corporate record book is important for several reasons. Reviewing the year gives business owners necessary pause to consider the changes that occurred, what issues need attention- and identify issues looming ahead. Preparing for change is much easier when planned for than when suddenly – sometimes tragically required.

If selling a business is under consideration, business succession planning takes more time than one would think. Keeping the corporate record book up to date is the first place to start. The next step is to calculate value; this requires the corporation be current on its annual meeting minutes, stock ledger, and related integral matters such as retirement plans, life insurance, employment practices, leases or real estate matters, and health care policies – just to name a few. Before most changes in business ownership or leadership can occur, in most instances, the corporate record book and related corporate matters need to be current. If your business records require updating, Levine & Levine can help make the experience positive.

New Legislation Causes Changes to Real Estate Transactions

Sharan Lee Levine

Michigan's Marketable Record Title Act is a 1945 statute, which was enacted to remove invalid outdated interests from impacting a property's title. The law was established to extinguish interests and claims more than 40 years old (except for certain specific interests – like mineral interests which expire after 20 years). Interests may be preserved, but the interested party must preserve the interest in property by recording a document with the county register of deeds.

Generally, deeds that convey real estate with the phrase: “subject to easements and building and use restriction of record,” or similar words, have up until now – preserved plat restrictions and restrictive covenants far older than 40 years that are expected to be “running with the land.” Because this phrase was relied upon so extensively, the statute Marketable Record Title Act was essentially inoperative.

These old restrictions or subdivision restrictions – long disregarded – became a thorn for commercial development. In commercial transactions, title companies frequently “insured over” the old deed restrictions – eliminating them. On the other hand, most residential purchasers who purchase in a subdivision expect to have the restrictions remain enforceable.

In 2018, the Marketable Record Title Act was amended. Under the amendment restrictive covenants – more than 40 years old – can be removed from title unless certain steps are taken.

- When a deed conveys the property subject to the restrictions – the simple phrase “subject to restrictions of record” is NOT enough. The document purporting to preserve the restrictions must refer to the specific liber and page of the original restriction document.
- If a transfer was not recorded with this protective language, then in order to preserve the restrictions, one must file an affidavit specifically referencing the document within a two-year period. That two-year period originally expired on March 21, 2021.

This act created much concern in the legal and real estate community. The act contained ambiguities. Another amendment to the statute was passed to extend the deadline period for three more years,

meaning the act will not go into effect until March 29, 2024. In the meantime, much communication is ongoing in the Michigan legislature to resolve the ambiguities.

The work to clarify certain points will help to outline how to best preserve – and who has the right to preserve covenants and restrictions impacting on property use. For property owners wishing to preserve covenants and restrictions, there will be certain steps such as filing a notice or affidavit specifically identifying the original document that reflects the restrictions. The amendment will also confirm that subdivision restrictions recorded on property after January 1, 1950 will remain in full force and effect. But, if you live in a subdivision or plat with restrictions enacted before January 1, 1950, an affidavit or notice of claim will need to be recorded to preserve those restrictions. There will be well prescribed and defined ways to maintain the covenants. Levine & Levine will continue to track the progress of this important legislation.

How Michigan Could Open the Door for Expungement of Certain OWI Offenses

Criminal Defense Attorney Sarissa Montague, who has defended countless individuals charged with OWI, believes that education programs that all offenders must go through have helped lower the number of repeat offender cases.

Montague spoke with media about how a proposed Senate bill could allow individuals with first-time operating while intoxicated convictions to clear their records. Speaking with FOX 17, FOX 47, WZZM 13, WTOL and WKZO, she said Senate Bill 1254, which would have amended sec. 1(c) of 1965 P 213 (MCL 780.621), would have been an “important milestone.”



Sarissa Montague

“I strongly believe that those with a one-time offense of operating a vehicle while intoxicated should be eligible to clear their records,” said Montague. “These programs have served as a great deterrent. We need to acknowledge the success of this program and allow this scarlet

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letter permanently placed on individuals' records to be removed and to help them move on with their lives.”

That bill had passed the Legislature during 2020's lame duck session; however, it died when Gov. Gretchen Whitmer exercised what's known as a pocket veto by neither signing nor expressly vetoing it.

A new bipartisan legislative package to reform drunk driving expungement has since been introduced and passed by the House. It was approved by the Senate Judiciary and Public Safety Committee in April, and awaits a Senate vote.

Sharan Levine Shares Trust Agreements with Legal News and Grand Rapids Business Journal

Recently, Sharan Levine's commentary "To Deliver an Entire Trust or a Certificate of Trust Existence" was featured in the Legal News and Grand Rapids Business Journal.

Trusts are routine estate plan vehicles used for many reasons. They are used to identify how assets, which are held in a trust for specific purposes in the near and distant future, are to be used for specific beneficiaries. Trusts are also created to be private, and to avoid processing assets through the probate court.

Trust agreements are made between the person creating the trust – the settlor – and the person who serves as the trust's fiduciary – the trustee. Generally, the settlor is also the first trustee. When assets are deposited into a trust, the trust becomes the owner of the assets.

Because a Trust Agreement is a private document, a settlor/trustee should not give a copy of a trust document to anyone except as specifically required, but instead should consider whether to offer a Certificate of Trust Existence and Authority.

The Certificate of Trust Existence and Authority is the settlor, trustee or your lawyer's affidavit representing as true certain relevant provisions of the trust agreement. The Certificate of Trust Existence and Authority is important because this

document outlines the trustee's authority to act, sign documents on behalf of the trust, to transfer ownership of assets and other relevant tasks associated with the trust. The Certificate of Trust Existence and Authority provides the recipient with the following information:

- The name and date of the trust
- The name and address of each current trustee or co-trustee
- The powers and authority of the trustee(s)
- A copy of the signature page and the first page of the trust agreement

The Certificate of Trust Existence and Authority does not include your directions regarding how and when trust distributions are to be made and to whom.

Upon receipt of the Certificate of Trust Existence and Authority, the institution may rely on it regardless of whether it includes wrong information. The institution has authority to enforce the transaction in reliance on the authenticity of the certificate. Sometimes, an institution may provide you with a copy of their Certificate of Trust Existence and Authority form. If you receive this form, please review it carefully before signing it.

Additionally, institutions should beware that the Michigan statute governing the Certificate of Trust Existence and Authority goes a step further to provide that if they demand a copy of the trust agreement, the institution may be liable for damages, costs, expenses and legal fees if a court determines that the person who made the demand had no right to do so.

Michigan's New Clean Slate Act Takes Effect

Criminal Defense Attorney Sarissa Montague was featured by FOX 17, Grand Rapids Business Journal, WLNS TV6, WOOD TV8, and WWMT Channel 3 about how Michigan's new Clean Slate Act will eliminate barriers caused by old convictions.

“It is shameful for many people to have to check the box that says ‘yes, I’ve been convicted of something’ when their current life does not represent the person that they were when they made those bad choices,” Montague told FOX 17. Montague, who was featured twice by WOOD TV8 about the new law, said she looks forward



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to standing next to her clients in court when their records become expunged.

“This is a really big deal and really an amazing thing for people who have gotten in trouble in the past, but are no longer making bad choices that bring them into the criminal justice system,” Montague told WOOD TV8. “And they’ve made changes and haven’t made mistakes in a number of years, and so this gives them the opportunity to move forward with their lives.”

“Up to this point, essentially, any person who had more than one felony conviction on his or her record could never seek to have any of their convictions expunged. If you had more than two misdemeanors on your record, you could never seek to have any of your convictions set aside,” Montague said during another interview with WOOD TV8, explaining that those convictions often prevent people from securing housing and getting jobs. “If a company is looking to hire and someone has been convicted of a crime and somebody hasn’t, I think very often they went with the person who hadn’t (been convicted of a crime) and that was a problem.”

In an interview with WLNS, Montague said: “How it works is people who have previously been ineligible to seek expungements are now able to file applications with the court they were sentenced by and go back to the judges who sentenced them and ask the judge to set aside the conviction or convictions that were not previously eligible to get set aside.”

“The Clean Slate Act provides an opportunity for people who have made the effort to better their lives to no longer be stigmatized by the decisions they made, years, if not decades, before,” Montague told the Grand Rapids Business Journal.



Montague, Levine, & Markou

Levine, Markou, and Montague Share Legal Expertise in Plot to Kidnap Gov. Whitmer

Levine & Levine’s criminal defense team, Randall Levine, Anastase Markou and Sarissa Montague each spoke with media regarding the legal aspects in the plot to kidnap Michigan Governor Gretchen Whitmer. The three attorneys are not involved in the case, but shared their legal expertise to media.

As three of the five men accused in the case made their first appearance in federal court in October 2020, Levine and Markou spoke with WZZM 13 and FOX 17, respectively, about what a possible defense strategy could look like based on the U.S. Constitution.

“The prosecutor has to prove various elements of each crime alleged in order for the person to be found guilty,” Markou told WZZM 13. “And when you look at elements involving a federal case, one of the things they have to prove is that somehow or another the actions involved here invoke or involve federal jurisdiction. So, for instance, if everything was done within the state and nothing was done through interstate commerce in any way, then that’s one possible offense.”

“This is a conspiracy charge. A conspiracy is an agreement by a number of people – more than one person – to commit an unlawful act,” Levine told FOX 17. “That the defense opposed will involve claims that the speech was protected by the First Amendment and/or it was merely speech and it did not contain overt acts sufficient to constitute a crime.”

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Later that month, Montague spoke with MLive about the possibility of claiming a citizen's arrest as a potential defense strategy.

"In order for defendants in the Whitmer kidnapping case to claim they were making a citizen's arrest, they'd have to prove 'that a felony actually had been committed and that any reasonable person acting without passion or prejudice would have fairly suspected' the same," she said.

Markou also spoke with MLive in March 2021 following a federal judge's denied request from the U.S. Attorney's Office to share secret grand jury testimony on the kidnapping plot with the Michigan Attorney General's Office.

With two distinct prosecutions, the U.S. Attorney's Office sought to streamline efforts by making the rarely granted request, but U.S. District Court Judge Robert J. Jonker said the government's arguments were too weak.

Markou, who's practiced federal criminal defense for 27 years, told MLive he's not sure why the federal government wanted to provide the information to state prosecutors, since the state has "multiple other ways" it could obtain the same information, including subpoenaing witnesses.

"I've never had this experience where there's been a request from the federal government to release grand jury testimony to a state prosecutor," Markou said, "never seen it."

Randall Levine Leads Defense Strategy for Former Snyder Aid in Flint Water Crisis

Managing Partner Randall Levine, who is representing Rich Baird in the Flint Water case, has filed a motion to have Baird's case remanded to the Genesee County 67th District Court for the preliminary exam. Several attorneys representing defendants in the case also filed separate concurrences in the request for relief sought.

"The government chose to rely on the archaic one-man grand jury statute in an effort to shroud the proceedings in secrecy," Levine said. "The defendants have yet to be fully informed of what the government claims that they did wrong.

"The government expected the indictments issued would allow them to circumvent the statutory rights that defendants in Michigan have to a preliminary examination and proceed directly to trial," he added. "However, the motion seeks to prevent that by requiring the government put forth evidence, in open court, before a district court judge who must find there is probable cause before the case proceeds to trial."

Preliminary examinations in the original Flint Water cases were held. Several defendants were awaiting a decision by Circuit Court Judge Farah who had been requested to quash (dismiss) the informations based on an improper bind over, Levine said. The day before that ruling was expected, the new prosecution team chose to dismiss the case and launched a renewed investigation.

"The government chose to use the one-man grand jury statute in that investigation," said Levine. "Defense lawyers claim that the statute, which provides for a one-man grand jury, also entitles them to a preliminary examination."

Baird, who served as an adviser to Michigan Governor Rick Snyder during the Flint water emergency, was raised in a single parent blue collar home in Flint. When the Flint water crisis hit, Baird created a water credit relief program that returned \$42 million in credits to the people of Flint who could not use their water. He worked relentlessly for Flint residents in order to implement lead service line replacements, and led the negotiations with concerned pastors resulting in keeping water distribution pods open until testing showed that the water was safe to drink.

