

January/February 2005

BARBEAT

Genesee County Bar Association



Vail, Colorado

Jerome F. O'Rourke
Lawyer Interviews and the ADA
Meet "Mr. Wright"
Young Lawyer: Amy Kline
Len Shulman on Patrol

NOTICE

Nominations are open for the GCBA Board of Directors.

Richard M. Barron, Nominating Committee Chairman of the Genesee County Bar Association, has announced that names are being accepted for the position of Vice President, Secretary, Treasurer and four (4) Board of Directors seats for the Association. A nominating petition must be completed and submitted by Monday, March 7, 2005 at 4:00 p.m. Elections are typically by slate and will take place at the Bar Association's Annual Meeting scheduled for Tuesday, May 24, 2005 at the Flint Golf Club. For more information or to receive a nominating petition contact the Genesee County Bar Association at (810) 232-6012.



L-r: Julie Olvin, Judge Geoffrey Neithercut, Nancy Pridgen, Kevin Cox, Jeffrey Mitchell at the November 2004 Swearing-in Ceremony



2004-2005 Genesee Association of Legal Professionals Board of Directors. Top row l-r: Sandi Brill, PLS, Treasurer, Lorraine Nemecek, CLA, PLS, V. Kay Rushton, CER, PLS, Executive Advisor. Bottom row l-r: Lythia Lucia, PLS, President, Ruth DeMaria, PLS, Christine Eaton, PLS, Governor

NOTICE

The Michigan Rules for Professional Conduct and the Standards for Imposing Lawyer Sanctions are under review and critical changes are proposed. You may access the proposals at the address below and send comments to Bill Reising, Representative Assembly, at wreising@plunkettcooney.com by 1/18/05 or directly to the Court by 2/1/05. <http://courts.michigan.gov/supremecourt/ResourcesAdministrative>, scroll to 2003-62



If Bob Segar catches an 11-pound Northern Pike on Walloon Lake and no one sees him, will this photo convince Len Shulman?

Genesee County Bar Association

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Bar Beat Editor

Francine Cullari

Genesee County Bar Association

315 E. Court St. Flint, Michigan
48502-1611 (810) 232-6012

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On the Cover

Town of Vail, Colorado, where Vail Resort reigns as the Number 1 ski resort in North America for the third consecutive year and the 13th time since SKI Magazine began ranking resorts in 1988. Photography by Jack Affleck of Vail, Courtesy of Vail Resorts, Inc., www.snow.com, (888) 222-9324.

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- ❖ **Publications**—"Private Mediation," Bar Beat, July 1995; "Facilitative Mediation," April 1996 and "Michigan Mediation Update," June 2004, Michigan Lawyers Weekly

GCBA's Excellent Chairpersons

by Susan Philpott Preketes, President

The Bar Association has been blessed this year with a host of excellent committee chairpersons. Each one was not only willing to serve but was eager to do so and graciously accepted my invitations to be appointed.

Larry Day chairs the ADR Committee. A member of GCBA since 1976, Larry is an aerial photographer, swimmer extraordinaire and expert in the field of Alternative Dispute Resolution. He is a mediator certified by the State Bar of Michigan and Harvard University. Larry also chairs the Circuit Court Civil Mediation Committee. He will work closely with Dean Yeotis, Chairman of the Circuit Court Committee, in order to provide the Circuit Court Bench and Bar with an effective facilitation process.

Barb Foley is the Chairperson of the Bankruptcy Committee. A member of the Association since 1996, Barb is a Staff Attorney/Office Manager for Chapter 13 Trustee Carl Bekofske. Barb has extensive experience in bankruptcy law and practice and recently co-authored a Bar Beat article entitled "The Two Income Trap."

Speaking of the Bar Beat, Francine Cullari serves as chairperson/editor of the Bar Beat for a second year. Francine is a Past President of GCBA and has also been very active in the State Bar, serving on numerous committees including responsibility for the Michigan Bar Journal. Thanks to Francine, we have a more colorful and entertaining Bar Beat.

Anthony Mainprize will serve a second term as chairperson of the Business Law Committee. Tony is experienced in the practice of business law and has been working closely with ICLE in order to provide GCBA members with invaluable seminars.

Dean Yeotis is chairperson of the Circuit Court Committee. Dean has

been a member of the Bar Association since 1990, and is, of course, the Honorable Thomas C. Yeotis's son. He has extensive trial experience and a very active Circuit Court practice.

Fred Meiers is off and running as chairperson of the Criminal Law Committee. He has two criminal law seminars in the works. Fred is a long-term member of the Association, having joined in 1985. He has been an active member for years on the Bench and Bar, Criminal, and Family Law Committees.

LindaLee Massoud, member since 1987, has once again assumed an active roll chairing not only the Technology Committee, but the Continuing Legal Education Committee as well. This is Linda's third year as a committee chair. Linda is a frequent contributor to Bar Beat and a professor at Mott Community College. Linda is also a pilot with multiple talents and interests.

Like father like son, Jeremy Piper is the ideal candidate to serve as chair of the District Court Committee, as he spends a great deal of time in District Court. Jeremy specializes in real estate law, delinquency matters and sports law. Jeremy has been active in the Young Lawyers Association and the Holiday Dinner.

We are very fortunate with the return of Kathleen Buckley-O'Neill as chairperson of the Family Law Committee. Kathy is an excellent family law attorney, obviously blessed with her late father's trial skills. Thanks to Kathy and Barb Dawes, the Family Law Committee has already conducted its first highly successful seminar of the 2004-2005 season. Kathy has been very active in the Bar Association and is most interested in providing our members with affordable learning opportunities. She is a Past President of the Bar Foundation and continues to



Susan Philpott Preketes

serve actively on its Board of Directors.

The not so long lost Federal Law Committee is back in business thanks to Greg Gibbs's willingness to chair it. Greg's extensive federal practice and vast experience in matters involving civil rights have served our Association for many years. Greg is a regular Law Day and Holiday Dinner volunteer. In fact, Greg can't seem to say no to GCBA, having recently served as a panelist for our Brown v. Board of Education Community Forum.

Having chaired the Golf Committee for a number of years, I am well aware of the work involved in having a successful outing, which serves as the Association's largest fundraiser. Chairperson Jeff Clothier, a fine criminal attorney, is anxious to make it the best outing ever. Jeff has been an Association member since 1996, and we welcome his more active participation. Knowing Jeff's penchant for working hard and having fun, I have no doubt that the 2005 Golf Outing will be a great success.

We welcome Donna Ullrich as Chairperson of the Law Day Committee. After serving on the Law Day Committee for many years, she was reluctant to serve as the chairperson because, in her words, "she doesn't practice law." Donna is a grant writer and public relations and marketing specialist for Wayne State University. It was her idea that the Bar Association host the highly successful Brown v. Board of Education Community Forum. I am confident that the 2005 Law Day activities will be a success with Donna at the helm.

If you need to have something

done and done right, Kurt Brown is your man. Kurt has served as LRIS chairperson for the past three years and continues while also serving as Secretary of the GCBA Board of Directors. Kurt has been instrumental in ensuring that the LRIS complies with ABA standards and recommendations. Kurt's wife Marlana devotes many hours to the Bar Association as our professional shopper. She shops 24/7, 12 months a year purchasing children's gifts for the Holiday Dinner.

What would we do without Jean Carl? I don't believe she has ever turned down a Bar Association request for help, and believe me, she gets numerous requests. Jean will chair the LRIS Review Committee. Not only was Jean the second female President of the Bar Association, but she has chaired almost every Committee of the Association. There is no question about it, Jean is the Bar Association's biggest supporter.

Nancy Abraham serves her second year as the Legal Aid Committee Chairperson. Nancy has collaborated with the Probate Committee to establish the Nursing Home and Hospice Program, a source of pride for GCBA. Nancy is on the Board of Directors for Legal Services of Eastern Michigan and is an Assistant U.S. Attorney who is hard at work on the Federal Weed and Seed Program.

David Lattie chairs the Municipal Law Committee. David is a second-generation member whose fresh face and approach we can all appreciate. David's practice centers primarily on the practice of municipal law, and he also shares his father's love of sailing. Welcome aboard!

This is Sharon Miner's second year as chairperson for the Probate Committee. She has given everyone that extra gentle "push" needed to make the Nursing Home and Hospice Project a great success. Sharon has served on the Bench and Bar and Professional Practice Committees. Sharon followed in her father Stanton Miner's footsteps to become an attorney.

Joan N. Pierson is serving as chair-

person of the Professional Practice Committee. Joan is on the Board of Directors and has served on the Circuit Court, Bench and Bar and Nominating Committees as well as co-chair of NITA. Joan joined GCBA in 1992, and this will be her second year serving as a committee chair. This past spring, Joan's committee hosted a seminar with approximately 100 attendees, the largest number of participants since the EPIC seminar in 2000.

Chairing the Marketing Committee this year is J. D. Winegarden. Jerry has more ideas than just about anyone in the Bar Association, and since he stepped up to chair this committee, he knows we expect great things. It was Jerry's idea to go to the U. S. Supreme Court for an Admissions Ceremony. Four years ago, it was Jerry's idea to purchase our own building. Now six years later, we are planning our third trip to Washington D.C., and in 2001, and we became the only local Bar in the State with our own building.

What can we say about Brian M. Barkey, who will once again serve as chairperson for the Foundation Holiday Dinner? It will be a very long time before anyone else will have the opportunity to serve as chairperson, as Brian has signed on to be the Holiday Dinner chairperson for the rest of his life.

Finally, thanks to Judge McCabe for chairing the Ad-Hoc Bylaws Committee. He accomplished a complicated task in just three months.

I look forward to a very productive and successful year as we have a wonderful and hardworking group of committee chairpersons. I am quite certain that the Bar Association will benefit greatly from all their efforts.

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Circuit Court Briefs: Concurrent Jurisdiction Plan

by Barbara Menear

All the state courts located in Genesee County have entered into an agreement referred to as the *Concurrent Jurisdiction Plan*. It authorizes judges to be cross-assigned to preside in any court. The cross-assignments include district, probate and circuit judges.

The Michigan Supreme Court encouraged local courts to develop plans to better utilize judicial resources. The goal is to expedite the resolution of cases and better serve the community.

The local plan provides that circuit court civil actions that receive a case evaluation award of less than \$25,000 will be screened for referral to the district courts. Venue of the cause of action will determine whether the matter is referred to the 67th or 68th District Court. Once received at the district court, the matter will be assigned to a district judge for all purposes. Juries will be selected from a countywide pool.

This plan is different from the former "Removal Trial Docket". In the former plan, district judges accepted assignments on a monthly basis. However, if the case was not reached for trial, it was returned to the removal trial docket calendar for re-assignment. The current plan provides that the district judge will remain on the case. Circuit Judge Richard B. Yuille has been instrumental in revamping the removal trial docket and will be reviewing all cases before transfer to a district court.

A second part of the Concurrent Jurisdiction Plan will provide that district judges will be authorized to accept guilty pleas on felony cases in which the defendant is incarcerated. This is designed to save jail bed days by eliminating the need to schedule a circuit court appearance for arraignment and guilty plea. A circuit court judge will impose sentence. The courts acknowledge the assistance of the prosecutor, county clerk, adult probation and defense counsel is implementing this protocol.

Continued on page 7.

The Future and a Bit of the Past

by Ramona Sain, Executive Director



Ramona Sain

Happy New Year! Every year I contemplate whether the Association is busier the first half of the year or the latter. Actually, it is about an even trade, but I find the beginning of the year much more enjoyable. Works in progress for January include a Parliamentary Procedure Certification Class and an Ethics Seminar on Witnesses, featuring Jim Wascha. On February 23rd, a forum on Affirmative Action, sponsored in partnership with the Flint Public Library is scheduled. A series of legal educational seminars on criminal law, civil practice in federal law, and dealing with the media are being developed to begin in March. In April, we have an exciting lineup of Law Week activities that will be detailed in the next issue of *Bar Beat*.

Before we look too much to the future, allow me to reflect on the past. In October we lost a distinguished member of our bar, Jerry O'Rourke. I was fortunate to have known Jerry since I was quite young and enjoyed many political discussions with him during my employment with the local Democratic Party. But it was not until my employment with the Bar Association that I began to appreciate Jerry's legal expertise and command of people.

In the late 1980s, I was recruited to run for one of two seats on the Mott Community College board. My two opponents were Jerry O'Rourke and Al Koegel—both highly respected leaders in our community. At the time it seemed like a great idea. In retrospect, it wasn't.

I lost the election. About two weeks afterward Jerry called my

office. The conversation went something like this: "Hi kid. I'm still waiting." I paused, not certain what he was referencing. "For what?" I replied. Jerry did not mince words. "My congratulatory telephone call. I won. You lost. You owe me a phone call." "I didn't know that's how it worked," I responded. Jerry inquired, "How could you not know?" "Well," I defended myself, "the DNC and State Party manuals teach you how to win elections, not what to do when you lose them!" "But you must have seen on television where the loser always calls the winner to congratulate them," he retorted. "Jerry," I rebutted, "I'm usually either in bed by that time or stuck in a campaign office still working and too busy to watch television." "That's no excuse," he bluntly replied. He was right. "Jerry, hang up the phone," I told him. "Why," he asked. "So I can call you back and offer my congratulations." His response? "It's over. By the way," he continued, "you beat me in Beecher. Congratulations." He hung up the phone and I felt great—I did beat him in my childhood town of Beecher!

I never called Jerry back to congratulate him. Instead, I sent a note. But our conversation typified Jerry. He saw an instance where something was not done properly and took the steps to correct the oversight, even when it was not his own. He had the good grace to let me off the hook with my dignity intact and then with my pride still smarting from his "set-down", gave me a pat on the back. He was a good politician, an exceptional attorney and an incredible man.



Jerry Winegarden

The Winegarden Letter

by Jerry Winegarden

Never have I been more proud of being a lawyer than on Election Day 2004. As Chief Counsel for the Michigan Democratic Party Voter Protection effort in Genesee County, I had the uplifting experience of recruiting poll watchers, our protectors of the constitution.

The Democratic poll watchers who are members of GCBA were Rex Anderson, Carl Bekofske, Mike Behm, Kurtis Brown, Orene Bryant, Jeffrey Chimovitz, Tom Donnellan, Gregory Gibbs, Henry Hanflik, Jeffrey Himelhoch, Morgan Jakeway, Timothy Knecht, Danielle McCluskey, Patrick McCombs, Robert Segar, Glenn Simmington, Scott Stensaas, Anthony Vance, Angela Watkins-O'Connor and Barry Wolf. GCBA Executive Director Ramona Sain took a vacation day to perform the monumental task of coordinating 200 precincts.

Attorneys, both Democrats and Republicans, kept voter intimidation, improper challenges and inappropriate procedures to a minimum.

The majority of the people spoke on Election Day and attorneys across the country protected the right of all to do so. Now it is time to move forward and work together for the good of all Americans.

Ed. note: The list of Republican poll watchers was not available at the time of print.

Jerome F. O'Rourke: A Lawyer's Lawyer

by Dennis R. Lazar



Jerome F. O'Rourke

To me, he was "Mr. O". The consummate professional. A great trial lawyer who served on various committees of the State Bar, as a Trustee for Mott Community College, as Past President of the Genesee County Bar Association, and a Founding Member of the Genesee County Bar Foundation. The list goes on and on.

As an Assistant Prosecuting Attorney, I had the privilege of trying several cases against Jerry. He was always to the point and his cross-examination compared to a skilled surgeon, doing what was necessary to accomplish the objective. How fortunate I was to see first hand what superb lawyering was all about. He was a gentleman in and out of the courtroom.

I began my legal association with Jerry in January of 1993. At that time I had been in practice 18 years and was well aware of his legal reputation. During the past 11 years I learned so much more about him, simply by watching and listening. Jerry truly loved the law. He was protective and proud of our profession.

When I was sworn into the practice of law, one of my favorite judges, Phillip Elliott, spoke at my ceremony. He closed his comments with a phrase that remains with me to this day. He said, "The law is a jealous mistress." To Mr. O, the law was indeed his mistress. He devoted 53 years to her and was practicing until the day he died. Just prior to leaving the hospital for the last time, Jerry met with good friend and co-counsel for the *Flint Journal*, James Stewart. Jerry was discussing pending cases during Jim's hospital visit. Jim's intent was to visit a dear friend who was seriously ill; Jerry's intent was to discuss legal strategy.

Throughout his illness Jerry had good days and bad days. He clearly did not feel well and some days were more difficult than others. Not once did I hear a complaint. There was no self pity. Each day was a gift and he never forgot how blessed he had been. He faced his last days with dignity and grace. What else would we expect.

Jerry was as loyal as the day long. He had a wit that would just break me up. He was passionate about his family, his God, and the law. He didn't broadcast his feelings or his efforts to help the less fortunate. That was his way. As Father Douglas Osborne said during his eulogy at Jerry's funeral, every year at Christmas time a check from Mr. O would be given to Father. There were only two conditions: "Give this to someone who needs it. You know who it is. And it must remain anonymous."

I have had the pleasure of knowing and associating with one of Genesee County's great lawyers. He was my mentor. I will miss him deeply. I will treasure the time I spent listening to what he said and watching what he did. I, and hopefully others, will put forth the effort to dignify the practice of law as he did. Thanks, Mr. O, you are still "The Man".

Circuit Court Briefs:

Continued from page 5.

The plan also provides that circuit judges will accept guilty pleas on misdemeanor dispositions that are reached at the circuit court. In some instances, a misdemeanor disposition is reached once a case is bound over to the circuit court. If a probationary term is contemplated or a pre-sentence report needed, the matter may be remanded back to the district court for imposition of sentence.

This phase of the plan encourages a circuit judge to accept a guilty plea at the earliest opportunity. The circuit judge may impose sentence if a pre-sentence report or community supervision is not contemplated.

Because of the cross-assignments

Continued on page 13.

When Value is a Question



Alan R. Rohde, CPA, PFS,
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Lawyer Interviews and the ADA

by LindaLee Massoud



LindaLee Massoud

Lawyers have to pay for sign language interpreters?! In a word, yes. An attorney is considered to operate a “place of public accommodation” under the Americans with Disabilities Act (ADA)¹, and sign language interpreters are considered to be a reasonable accommodation at the attorney’s expense. A recent settlement between the United States and Gregg Tirone, Esq.² clarified this responsibility.

Attorney Tirone represented a hearing-impaired woman in a family law matter. He used an interpreter while in court, at court expense. In his office, however, he used a combination of pen and paper, facsimile, lip reading, and the telephone relay service. Although all of these methods might be appropriate, it is the deaf person who has the right to decide on the best method or combination of methods of communication and the attorney must abide by that request.³

The attorney was found in violation of the ADA because he did not provide the client with the client’s effective communication of choice, a sign language interpreter. The surprise was that the attorney not only must provide a skilled interpreter when requested, but the attorney must pay for it, and not charge the client for it.

Practical tips to help comply with the Tirone case:

Interview—Determine from your client what accommodation s/he prefers. If you represent the client over several months, periodically ask the client if s/he thinks the accommodation(s) are meeting his/her needs.

Search—Locate an interpreter locally through an interpreter referral center. Protect client confidentiality by searching for an interpreter *after* your client indicates a preference for an interpreter. The reason is that interpreter referral centers know many of the

hearing-impaired, may have provided your client an interpreter in the past, and can expedite selecting the correct interpreter. If your client needs an interpreter at the first interview, consider sending a confidentiality waiver in advance of the interview or finding the first interpreter without divulging your client’s name. Two Genesee County referring agencies are Communication Access Center at (810) 239-3112 and Expressions in Sign at (810) 720-4846. Once you have identified an interpreter (the client can suggest one), you might ask if the client has a relationship with the interpreter other than professional to maintain interpreter neutrality.⁴

Hire—Use a *professional* interpreter rather than a family member, friend, or neighbor. First, family and friends are not impartial. Second, the ability to converse in a language is not the same as the ability to interpret between languages. Third, the public has difficulty understanding legalese. A professional interpreter should have had at least some general legal training. Hire a *skilled* professional interpreter. Hiring an interpreter with “*national certification*” is the safest. An interpreter with a Michigan “*qualification*” may be qualified to interpret in very simple situations or for a highly educated deaf person. Do not use a *qualified* interpreter for complex matters. Certification requires a significantly higher level of skill than qualification.

Document—Have your client sign and date a form with her/his preference. Include a statement that you will use the client’s name when searching for an interpreter. Note in the file that you asked about the client’s relationship with the interpreter and that there is no familial, marital or other connection (or have the client sign a form if s/he insists on a related interpreter). Have your client initial

and date the original form each time you ask if the system is working. Write a file memo regarding your search, including the skills you sought and how you found the interpreter. Make a copy of the interpreter’s certification or qualification card for the file.

Pay—Budget for interpreter services for your hearing impaired clients. Consider it part of overhead expense, just like the phone bill. You may decide to increase your hourly rate slightly to spread the cost among all of your clients, but do not directly bill your hearing-impaired clients. Interpreters generally work on a contract basis at \$50 per hour more or less with a two-hour minimum, so plan to keep the interpreter busy for that time by getting as much done with the client, or with two clients separately, during that time.

All attorneys are encouraged to read the cases cited to develop his/her own compliance system. An unanswered question is whether an attorney must accept a hearing-impaired client in the first place. As you ponder the answer, be mindful that law offices are considered places of public accommodation.

Footnotes

¹ ADA, 42 USC §2188

² US vs. Gregg Tirone, Esq., Dept of Justice Complaint #202-53-20. Also see Aikins v. St. Helena Hospital, 843 FSupp 1329, 1994 US Dist. LEXIS 1644; 94 Daily Journal DAR 2467; 3 Am Disabilities Cas (BNA) 29, 1994

³ Title III of the ADA: Provision of Auxiliary Aids, www.nad.org/infocenter/infotogo/legal/ada3aux.html

⁴ The tips for selecting foreign language interpreters in the *ABA Journal*, Nov. 2003 (p. 24) can also apply to interpreters for the hearing-impaired.

Meet "Mr. Wright"

by Norman Gottlieb

Going in to his eighth decade, John M. Wright is acknowledged as the current Dean of the GCBA. Recognized throughout the State of Michigan as an expert in probate and family law, and now in active practice as a lawyer for almost sixty years, Jack is still in the game.

Because I have known him and been his friend and admirer for over fifty of those years, I jumped at this opportunity to introduce him to those of our younger brother and sister lawyers who have not yet had the pleasure and good fortune to meet him as the extraordinary lawyer he is. In light of the recent passing of so many of our "old-timers", many of whom also became "special" to us over the years, and whom we have seen honored by

friends in memorials published here, it is my particular pleasure to know that Jack is still here to read this himself!

The caliber of Jack Wright as a topic warrants a Bar Beat issue of his very own but space is limited. So, in lieu of the "full treatment" he so obviously deserves, I must limit his congratulations to the following highlights, any ONE alone of which would give a lawyer bragging rights!

At the inception of WWII he enlisted in the US Army as a foot-soldier (rejecting a commission) and subsequently saw action at the Bridge to Far Battle (Holland) and the Battle of the Bulge (Germany), in the course of which he was seriously wounded and spent six months in army hospitals for treatment of shrapnel injuries to his



John M. Wright

spine. Although he was awarded several medals while serving with the 104th Infantry Division, Jack modestly describes his ribbons as "those commonly given to combat troops". Jack's brothers Jim (Air Corps) and Dick (Navy) also served in WWII. Their father, John A. Wright, was seriously wounded on D-Day in the Omaha Beach landing as a member of the 1st Infantry Division. He died from those wounds after the war. Jack is now writing for publication a book describing the Wright family in WWII.

Following in the footsteps of his father, a GCBA member, Jack entered

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the U of M Law School. He earned his JD degree "with honors", despite the fact that he had missed six weeks of classes when he entered the U Hospital for surgical removal of shrapnel in his spine. Still four months from his graduation, only 23 years old, he finished first on the Bar Examination.

He has written and published a dozen papers, texts and treatises on specialty subjects ranging from a probate court practice manual and a CLE family law textbook, to articles on law practice economics and on fiduciary fees featured in the Michigan Probate and Estate Planning Journal. These were written during a time when he was also lecturing and chairing seminars and continuing education programs across the state, and as far afield as Arizona and the Canadian provinces. Those academic exploits did not inhibit his active involvement with our state and county Bar Associations, which included stints as GCBA president, membership in the SBM Representative Assembly and Board of Commissioners and as chief counsel of our state district grievance hearing panel. And all while he has been working in a busy full time law practice!

In October, 1945, Jack hitchhiked home from Ann Arbor to marry "Miss Grand Blanc." He credits whatever success he may have attained to the support and encouragement of his wife Elaine.

Turning to his "spare time" endeavors, he and his wife raised a fine family of three sons – John and Craig, who are lawyers, and Gary, an architect. Jack was equally active in athletics! Although highly successful in college boxing and football, he was most prominent in baseball. Before the war, he was a pitcher for the Brooklyn Dodgers in the Eastern League, but his wartime injuries finished his professional career. Those wounds, however, did not keep him from playing in the county and City of Flint "amateur" leagues until he was 65, including the Old Detroit Tigers exhibition games in Arizona and Florida, to which he has been invited annually. He then founded the Flint Senior 35

and Older Hardball League and played until recently.

Jack served as Chief Assistant Prosecuting Attorney for eight years under both a Democrat and a Republican. Jack said, "I chose not to run for prosecuting attorney because I didn't want to give up the right to put my foot in my mouth". He was a member of the Schwesinger, Wright and Salim partnership for 20 years.

Jack is still in full-time practice with his son Craig. Jack opines, "Unlike so many father-son law partnerships, we get along because I have the big ego and Craig has none."

Finally, I must call your attention to the Wright Law Office located in the classically refurbished Cornwall House, a Civil War mansion located on downtown's old residential South Grand Traverse Street. This historical treasure is now scheduled to be gifted to the City of Flint as a museum, when its use as the Wright family's law office is closed.

If you can take the time to drop by to say "hello" to Jack, I am sure that he would make the time to show you through the home. That alone would be worth your trip since you would enjoy the pleasure of seeing two of Flint's "living landmarks" at the same time!

Ode to Dr. Norman Gottlieb

by Jack Wright

Norman Gottlieb, not I, should be the subject of a Bar Beat story. He retired at the zenith of his legal career instead of "just fading away" like some of us who are still "in the game." Recalling a memorable event in my life twelve years ago defines Norm better than compiling a list of his admirable accomplishments.

Norm became my mentor shortly after my doctor informed me I had prostate cancer. Having survived the same ordeal a few months earlier, he knew the path I was treading. Shortly after daylight one summer day in 1992, a grim medical team began to push my bed from the pre-op room at McLaren Hospital toward the large foreboding doors bearing the warning "Operating Room – Authorized Personnel Only." As we approached the doors, the silence was interrupted by an authoritative voice, which decreed, "I am Dr. Gottlieb and I am here to see my patient, Mr. Wright." As he marched toward my bed, the medical crew abruptly stopped at the doors. He leaned over me, whispered a short prayer in my ear, kissed me on the cheek, hugged me, and turned away announcing, "Don't let him take over the surgery."

His support, caring, and wit helped me survive the dark days after my surgery. Most of you know Norm Gottlieb as a fellow lawyer. I know him as my blood brother.



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Preparing Your Client and Yourself for Court Ordered Mediation

by Richard Barron

If it has not happened to you already, one day soon you will receive a notice from a court ordering you and your opponent in a case to participate in facilitative mediation by a date certain. You will also be directed to promptly select a mediator and advised that if you don't, the court will select one for you. You may scratch your head as to how to proceed but eventually you will go to MCR 2.411 for answers. You will verify that under MCR 2.410(C) the Court has the right to require you to mediate. You may be surprised to learn that, in accordance with MCR 2.410(B), your County Circuit and Probate courts have a detailed ADR plan which, among other things, sets up a roster of qualified mediators. You also find that you must bring your client and anyone else needed to agree to a settlement. So you select an experienced mediator, set a date for the mediation and then ask yourself: "How do I prepare for mediation so that it will best serve the interests of my client?"

The following are some time-tested personal suggestions for counsel who find themselves in this situation.

Make Sure You Will be Able to Know the Value of Your Case. Determine whether there is some vital information that you need to value the case but which you definitely will not be able to obtain at, or before, the scheduled mediation. If this is the case, you may want to ask the Court to adjourn the mediation.

Contact the Mediator. Find out his or her philosophy of mediation (facilitative v. evaluative). Determine how they normally conduct a mediation and how they see the role of counsel (active v. passive). Ask if a written mediation submission is expected, and, if so, what it should contain. Discuss the advisability of a pre-mediation counsel conference (in-person v. by telephone). Advise the mediator of any key documents that

you need and have not been able to obtain from the other party. Make sure you understand how the mediator calculates his or her fee and how it is to be divided among the parties.

Get your case together. Research the basic cause of action as well as any evidentiary or procedural issues that have come up or are likely to arise. Try to obtain documentation (affidavit or deposition transcript) of any pivotal testimony. Have copies of any documents you plan to present to your opponent for the first time. Have fair valuation settlement range and some objective basis for calculating that range.

Be Prepared to Listen and to Negotiate. Mediation takes a radically different mind-set than litigation. Be prepared to make that shift. This is a no-risk procedure given the total confidentiality of mediation. You should be willing to show your "best cards" and to acknowledge that your side does have some problems. You should be prepared to, perhaps for the first time, listen intently and silently to the other party and their counsel.

Prepare Your Client for Mediation. You need to meet with your client in advance of the mediation to discuss the nature of mediation, the mediator, the strengths and weaknesses of your case and the interests of your client that need to be addressed in any mediated agreement. Make sure that your client understands the downside risks, ambiguities and costs of continuing litigation. Your client should be dissuaded from going into the mediation with the attitude that "this is my bottom line; take it or leave it". They should be prepared to articulately present their position in an honest fashion. They should understand that you are there to explore settlement possibilities not to attack the other side. Their focus should be on the future rather than



Richard M. Barron

on the past. You should discuss the option of either you or they, or both of you, caucusing with the mediator. You should reassure the client that you will be setting next to them throughout and that they can consult with you in private at any time. Remind them that the mediator can not force them into a "deal" that they do not accept. You should also remind them that if no settlement is reached, you will return to preparing to try the matter in court for them.

Prepare Your Core Case and Strategy. Understand that you will not really be speaking to the mediator; rather you will be speaking to the other party. Be prepared to explain your best arguments in a forceful yet respectful manner. Be prepared to respond to objections and questions about your case. Understand what is really most important to your client. Discuss with your client possible non-traditional methods of settlement. Agree between yourselves how much the client should participate, bearing in mind that, normally, the client will be expected to present their position and to directly respond to questions and suggestions. Explain the wisdom of parties using the mediator to "float" possible offers or resolutions to the other side without committing themselves. Advise your client regarding his/her right to meet privately with you; or for you both to meet privately with the mediator. Agree with your client as to the key points to be made in your "opening statement".

Make Sure You Will Have a "Quorum". It is aggravating and pointless to conduct a mediation only to discover that some key person is not present. Key persons include the trial

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Getting to Know a Young Lawyer:

Amy Kline

by Francine Cullari

Amy Kline is a young lawyer who is yet to have a spouse and children. But she certainly has a very special second family.

In January 2001, Amy became a bone marrow donor for an anonymous recipient. All she was told about the donee was that he was in his forties and suffered from leukemia. She received updates now and then from the marrow donation center that he was doing well, but was not allowed to contact him. The center did provide the recipient with Amy's contact information but she did not hear from him. Not until Thanksgiving, 2002, that is, a particularly appropriate date. She learned her recipient is Jean-Francois Sierra and his leukemia is now in complete remission. He owns a French import store in Rockport, Massachusetts, a beautiful island north of Boston. A native of France, he recently became a US citizen.

In the summer of 2003, Amy traveled to Boston to meet Jean-Francois. He is now like a brother to her. Now that he has Amy's bone marrow, his body produces *her* DNA, so he is genetically like a son to her, albeit a fifty year old one! Amy finds that quite weird, but not the friendship that has developed between them. She thinks of him as a brother now and relishes his calls and letters. They talk on the phone often and are planning a trip to France so that Jean-Francois's mother and sisters can meet Amy, their new "sister".

The procedure for the donation is a surgery which required some recuperative time and many steaks to rebuild Amy's iron! But in retrospect, Amy finds it was a small price to pay to save a life. Having an "adopted" family that she never dreamed of made the experience even more worthwhile. As an attorney, Amy started a solo criminal defense practice in July, sharing office space with her mentor, Frank Manley,

whom she considers a fantastic teacher. Her focus is primarily on criminal defense, everything from public defender work to traffic tickets, Driver's License Appeals Division review hearings, and appeals. Amy previously worked as a judicial advisory assistant (law clerk) for Judge Yuille from January 2004 to July 2004. She had first begun as a law clerk for Judge Ransom from January 2002 to December 2003, then was transferred to Judge Yuille in one of the county's strategic budget-saving measures. Prior to and during her employment with Judge Ransom, Amy taught Applied Legal Theory and Analysis (a mandatory first-year legal writing/oral argument course) at University of Detroit Mercy School of Law. Although teaching law was a great experience, she decided to learn about the law firsthand before re-entering the classroom.

Amy graduated from University of Detroit Mercy School of Law in May 2001, *cum laude*. She served on the Executive Board of Moot Court and as a title editor on the Law Review. As an law school intern, she taught a high school law class at Swartz Creek High School and coached the Law Day team.

Amy is a Flint native, born at McLaren Hospital, raised in Swartz Creek, graduated from Swartz Creek High School in 1994. She received her B.S. from Central Michigan University in 1997, with a major in history and minor in art history.

Amy enjoys her travels – she aims to get plenty of passport stamps. While in law school, she spent a summer in Australia and fell in love with Sydney (the city, that is). No doubt she will fall for Paris (the city, that is) as well. In addition to walking on her travels, Amy is very active physically stateside with kickboxing, rockclimbing, and participating in almost all the run/walk events in the area, including the Crim.



Amy M. Kline (center) with her "adopted brother" Jean-Francois Sierra and his cousin Alain Rabault

Traveling allows Amy to engage extensively in a special hobby – she is an avid photographer with her own darkroom for black and white prints. She has sold several of her prints and one photograph has been printed in the Flint Journal. The photographs are mostly close-ups of flowers, landscapes, trees, and architecture. She is considering an exhibition of her works. Although none are presently for sale, she has accepted a few commissions. Some prints are in other lawyers' offices and you can stop by Amy's office to see a few.

Court Briefs...

Continued from page 7.

authorized in the plan, the family division judges will continue to be assigned mental commitment hearings. Chief Judge Allen J. Nelson, Probate Court, will continue to be authorized to exercise jurisdiction over ancillary civil matters that arise after the filing of a decedent's estate. Judge Nelson also presides over adoptions and designated juvenile cases.

The Concurrent Jurisdiction Plan is administered under the auspices of the Genesee County Judicial Council. The Council is comprised of the chief judges, chief judges pro tem and court administrators. The county clerk, prosecutor, and president of the Genesee County Bar Association are non-voting members. Chief Judge Christopher R. Odette, 67th District Court, currently serves as the Executive Chief Judge of the Council.

Len Shulman on Patrol

by Francine Cullari



The first snowfall arrived on Thanksgiving 2004 and Len Shulman hurried to the ski shop for the newest wax on the market. Even though recent health issues have induced Len to retire from the practice of law, he hopes and intends to ski until he can "go out with my boots on".

Len began skiing at age 21 with five other college men at Boyne Mountain for a weekend, none of whom had ever skied before. "Somewhat of a disaster", says Len, "but an experience nonetheless." An experience that landed him on the slopes only infrequently until his return to Flint in 1966. Friends were already involved in the Ski Patrol at Mt. Holly and they roped him in, inducing him to apply for ski patrol and involving him in skiing on a more serious basis.

The first patrol requirement was advanced first aid training followed by a year as a "candidate". Once he passed the year-end test (first aid, toboggan handling, and skiing ability), he spent a year as a "basic" patroller followed by another test involving the same skills. He advanced to "senior" patroller and has continued for over 35 years, with yearly refreshers in first aid, toboggan handling, chairlift evacuation, CPR, and other training. After a few years at Mt. Holly, Len transferred his patrolling activities to Boyne Highlands.

The National Ski Patrol (NSP) is a search and rescue organization but Len also finds it to be "involved in public relations-keeping skiers happy and cooperating with ski area management. The first mission, however, will always be to treat injured skiers." The ski patrol commitment is alternate weekends during the ski season, as well as many days as possible over the Christmas holidays. "Commitment is not a burden to those of us who love skiing. It also enabled my entire family to ski free and everyone in my family is an excellent

skier." His wife Gail skis with Len, his son does moguls on Telemark skis, his daughter was a professional instructor at Vail for five years and his son Dan skis with everybody.

Len and Gail found ski vacations to be a fine opportunity for the family to be together for a week each winter, visiting various ski areas in western United States and Canada.

The ski patrol itself is Len's "second family". He has now skied with the same core group of men and women for over 35 years. When younger and in their earlier years, that "second family" managed to be rowdy enough to be asked not to return to most of the nicer watering holes of Northern Michigan. Len has always claimed that it was not him but the other family members who were responsible for that.

As an avid skier, one would expect Len to have a string of awards. He claims only one and is rather proud of it - "the "Golden Trickle" award, which is an annual award to the patroller who does the most to piss off the public." The award originated when a patroller standing at a urinal became distracted and wet a customer standing next to him. Len was a bit more genteel when he won his award. He was taking a toboggan through a mogul field and managed to flip it. The victim, a skier with an already dislocated shoulder, rolled onto his dislocated shoulder. Len reflects, "He was not happy. Luckily he was not re-injured. Even more luckily it occurred before most people thought about lawsuits."

Len is quite pleased with an award he did not win. He is delighted to announce that "I have never won the "Dunlop" Award, an annual award given to the patroller whose belly "done lop" over his belt the most!"

On a serious note, over the years Len has rendered first aid to many

injured persons involving fractures of arms and legs, sprains and strains of the various joints, lacerations and some more serious spinal and head injuries. The injured skier with whom he had the most empathy was a twelve-year-old girl with braces on her teeth, who kissed a tree, at speed. She wanted to cry but couldn't because her upper lip was caught in the braces. Once Len got the lip unstuck, the young girl let loose.

Did Len have a life outside skiing? To be sure. Born and raised in Flint, Michigan, he graduated from Flint Northern High School 1956 as Senior Class President. In 1960, he achieved a BBA from the University of Michigan and in 1963 obtained a J.D. also from Michigan.

From June 1963 through March 1965, Attorney Shulman was employed by the United States Department of the Navy, Washington D.C., where he drafted specifications and supervised the bidding process for the procurement of war ships (destroyers, nuclear submarines, nuclear carriers).

From March 1965 through October 1966, Len worked for the U.S. Department of Justice, Civil Division, Fraud Section. During that time, he traveled extensively preparing cases against various defendants who had been involved in fraudulent schemes against the government, such as FHA housing scams and Department of Agriculture Grain Subsidy Programs fraud. He was also "on loan" to the Civil Rights Division and sent to Bogalusa, Louisiana, where he participated in the preparation of a civil rights case against the Chief of Police and the Su-

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Mediation...

Continued from page 11.

attorney for each client, each party, a representative of any potentially liable insurance carrier, and any other person whose approval would be required for a comprehensive settlement of all claims and interests. If you represent a corporate or institutional client, make sure that you have a person with adequate authority to consent to a settlement who has knowledge about the case and with whom you have discussed settlement options. Make sure the mediator knows who this person will be, what their institutional position is and what their general range of authority will be. Having "the home office" available by telephone is generally unsatisfactory. Make sure the mediator understands up front if any mediated agreement will have to be finally approved by your client's governing board.

Come to the Mediation with a Positive Attitude. The attorney who tells the mediator "We want to settle but the other side is not going to be reasonable" often is indicating that he or she has a firm settlement value in mind and has given-up on the other side simply because it has not accepted *their* valuation figure. This is

a self-defeating strategy. The attorney who has a studied judgment as to the reasonable range of value of their case and understands that it is in the interest of their client to reach a quick and final (i.e. non-appealable) settlement in or near that range is much more likely to get their client what they need in mediation. The secrets to success at mediation are, I submit:

- Knowledge of your client's needs
- Knowledge of all the facts
- Knowledge of the relevant law
- Knowledge of your opponent's needs and "hang-ups"
- Knowledge of, and acceptance of, the mediation process
- The ability to actively listen
- The ability to subordinate your ego to the real interests of your client
- The ability to trust and utilize the mediator to help your client
- The ability to negotiate openly, fairly and creatively
- The ability to help draft a mediation agreement that clearly resolves all issues, present and future.

These tips should assure that you will be well prepared for your next facilitative mediation.

Len Shulman...

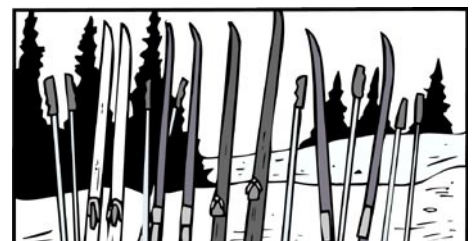
Continued from page 13.

perintendent of Public Safety. The case was tried in Federal Court in New Orleans, covered by Walter Cronkite whom Len had the opportunity to meet at that time.

Fed up with the federal bureaucracy, Len returned to Flint in the Fall of 1966 where he "hung a shingle", rented from Killeen, Trembley, Bueche, & Failer, 930 Beach Street. He practiced solo for three years until 1969, when he joined the law firm of Leitson, Dean, Dean, Segar, & Hart (and eventually Shulman), where he remained for 25 years as associate, then partner. The firm primarily handled plaintiffs' personal injury litigation. Shortly after joining the firm, Len found that Max Dean had obtained a subscription to the English language version of Peking Review in Len's name. Len shrugs, "A not surprising event for those of you familiar with Max."

In 1994, Len moved his practice to Detroit, where he headed the litigation department at Keywell and Rosenfeld, P.C. doing primarily commercial litigation, supervising four other lawyers. In 1998, he returned to a solo practice in Flint where he remained until his retirement on November 1, 2004.

During the foregoing period of time two important things happened to Len. First, he met and married Gail with whom he had three children, David (Financial Analyst – Silicon Valley, San Francisco, California), Elaine (Project Manager – Denver, Colorado) and Dan (Attorney, Counsel to the House Transportation Committee, Washington, DC). Second, he became involved with ski patrol. He still skis with his family and his "second family". Len's story has come full circle, with ski patrol running through most of it.



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Len Shulman on ski patrol at Boyne Highlands



Dick and Wanda Cooley, skiers for forty years, and their children, Scott and Courtney, at Boyne Highlands



Len Shulman with daughter Elaine, center, and wife Gail ready to ride the lift to the top at Vail



Jonathan Hartman and Tony Saxe snowshoe at Aspen



Fred Schmolz at Beaver Creek, Colorado 2002



Elaine Shulman and her dad Len soak up the sun after a great day of skiing at Vail



Nordic skier Dick Barron at Stokley Creek Ski Area pauses to spot any St. Bernard with a rum cask

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