

March/April 2005

BARBEAT

Genesee County Bar Association



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Wicklow Mountains, Ireland

Where Are They Now?
High/Low Agreements
Sleep Well Tonight
EPIC Five Years Later
African-American Pioneers

“Lunch with Larry” at the Masonic Temple in appreciation for all of Larry Battiste’s work and that of his staff at the GCBA Holiday Dinner in December



(l-r) Jim Mitchell, Carol Battiste, Marlene Juhasz



(l-r) Morris Kent, Walter Griffin, Robert Schaffer



(l-r) Lynne Taft, Jim Draper



(l-r) Terry Bankert, Lynn Sorenson



(l-r) Jonathan Hartman, Judge Allen Nelson, Tim Knecht



(l-r) Kathleen Buckley-O’Neill, Dave O’Neill

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On the Cover

A waterfall in The Devil's Glen, Wicklow Mountains, County Wicklow, Ireland by Rod Tuach, a free lance photographer who has worked for magazines, books, theatre and films. To view his work, visit www.rodTuachphotographer.com and www.photos-spain.com. Rod Tuach Cronroe, Ashford County Wicklow Ireland Tel. 011-353-404-40517 rodTuach@eircom.net

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

A Full Schedule of Events: Law Week

by Ramona Sain, Executive Director



Ramona Sain

One of our most popular activities will usher in Law Week. On April 23-25, a group of fifteen members and their guests will participate in a swearing-in ceremony at the U. S. Supreme Court. This will be our third excursion and it is expected to be as exciting as the others.

The official kick-off of Law Week is the day we return from the Supreme Court. Not coincidentally, this is also the kick-off of the 1st Annual Motion Day 5K Run/Walk sponsored by the Association and Foundation. The run will begin in front of Genesee County Circuit Court at six o'clock in the evening, with walkers beginning a few minutes later. The race route will pass the Genesee County Bar Association office, go through the East Court Street area, and return to the Court. The committee, chaired by the Honorable John Gadola, has worked continuously since January to make this a fun, family event to raise money for the Foundation and to raise

the community profile of both organizations. Special awards will given to attorneys only: Best Briefs and Last Lawyer in Line. Look toward your monthly News & Notes for registration information.

The following two days will be the Mock Trials with high schools students at Circuit Court. This year we welcome two new schools to the program, Faith Baptist Academy and International Academy of Flint. Volunteer attorney advisors include Jeff Himelhoch, Dale DeGarmo, Dawn Weier, Jonathan Hartman, Karen Folks, Barry Wolf, Michael Edmunds, Kennan DeWitt, Tim Cassady, Kurtis Brown, Sean Siebigteroth, David Guinn, Shaun Marks, Randy Petrides, Jeremy Piper, Steve Beatty, Trachelle Young, Glenn Simmington and Joan Pierson. This is one Law Day activity that has a direct impact on our area students, thanks to all of our volunteers.

On Thursday, April 28, 2005, our Law Day Luncheon will feature Attorney Louis Kasischke, attorney &

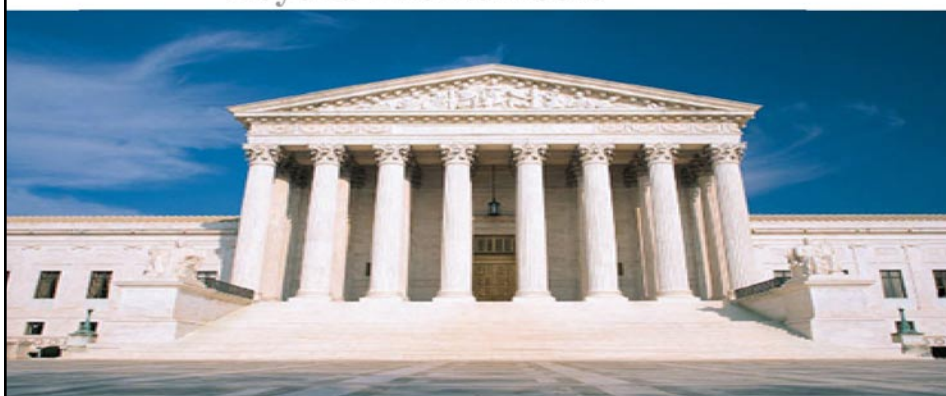
mountain climber. Kasischke's talk is entitled "The Power of Will: Decisions, Ambitions and Values, Mistakes and Judgments, Teamwork and Individuality." In 1996, after six weeks of an ill-fated climbing expedition to Mt. Everest, Kasischke survived in tragic circumstances where eight others did not. His story is very compelling and will include an audio/visual presentation of his journey. The lunch is at the Holiday Inn Gateway Centre at \$20 a person. Kasischke will also host a community forum that evening targeting sports enthusiasts. More information is forthcoming.

Other activities include a Mock Trial involving students from the Michigan School for the Deaf in collaboration with the Genesee Intermediate School District, and a poster contest for third, fourth and fifth grade students. The Law Day Committee will review the posters, narrow the list to the top ten, and members will vote on their favorites at the March 21st Monthly Membership Meeting. Each winner will receive a gift certificate to Border's Book Store. We are seeking billboard sponsors to publicize the Law Day posters and Law Day theme throughout the community.

As usual, Senior Outreach and Teens & the Law speaking engagements will be scheduled and coordinated with Legal Services of Eastern Michigan in April and May. If that is not enough, the Flint Optimists will host their Annual Law Day Lunch on Monday, April 25th, featuring Supreme Court Chief Judge Clifford Taylor. Tickets can be purchased for \$15 from Judge Joseph J. Farah's office, (810) 257-3262.

If you have any questions regarding these activities, please feel free to contact GCBA at (810) 232-6012.

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High/Low Agreements: Documentation and Validity

by Steven R. Gabel

Alternative dispute resolution (“ADR”) has become an important aspect of civil litigation. An ADR plan can be mandated by the court, or agreed upon by the parties.¹ ADR plans may include mediation or arbitration. Mediation is provided in MCR 2.411. Arbitration is governed by MCL 600.5001, et. seq. However, ADR can manifest itself in the form of a high/low agreement. This article addresses the drafting of high/low clauses, and the validity of such agreements.

Between plaintiff and defendant - Parties that are close to a settlement agreement may not be able to bridge the gap. Eager to capitalize on the progress made in settlement discussions, the parties may turn to a high/low agreement. The parties agree to a monetary range to determine the amount of compensation to be paid to the plaintiff. For example, if a defendant has offered \$100,000, while the plaintiff has demanded \$200,000, the parties can enter into a high/low of \$200,000/\$100,000. After the parties agree to the range, the agreement should be documented.

The case is then submitted to the finder of fact (jury, judge, arbitration panel) for a decision. If the award is less than the low end of the range, then the low figure is paid to the plaintiff. If the decision is above the high end of the range, then the high figure is paid. If the decision is within the range, then the exact amount of the award is paid to the plaintiff.

This type of agreement offers a measure of certainty to the parties in an otherwise uncertain enterprise. By definition, a high/low establishes the maximum and the minimum that can be paid in the case.

Documenting a high/low agreement - These agreements are binding if they comply with MCR 2.507(H). They should be reduced to writing, or

read into the record in open court. The language of this agreement is relatively simple. The following is a model for a plaintiff/defendant high/low agreement:

Plaintiff and Defendant agree that a “high/low” of \$200,000/\$100,000 shall be binding upon this [arbitration/trial] proceeding. That the terms of the “high/low” of \$200,000/\$100,000 are as follows:

A. In the event the [arbitration panel/trier of fact] renders an award from zero to \$99,999.99, then Defendant shall pay and Plaintiff shall receive exactly \$100,000 which shall be deemed to include all sanctions, costs, attorney fees, and interest.

B. In the event the [arbitration panel/trier of fact] renders an award from \$200,000.01 or above, then Defendant shall pay and Plaintiff shall receive exactly \$200,000 which will be deemed to include all interest, costs, at-

torney fees and sanctions.

C. In the event that the [arbitration panel/trier of fact] renders an award from \$100,000 to \$200,000, then the amount of the [arbitration award/verdict] shall constitute the exact amount to be paid by Defendant and received by Plaintiff, which will be deemed to include all interests, costs, attorney fees and sanctions.

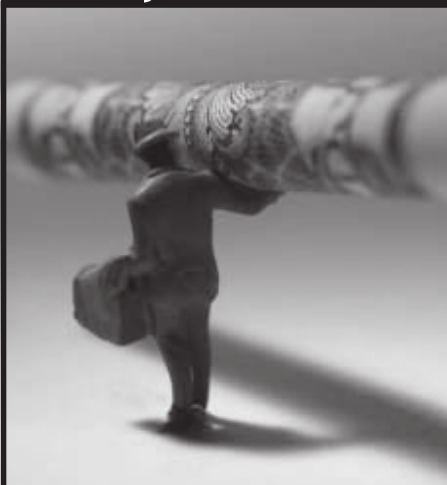
D. In the event that the [arbitration panel/trier of fact] renders a decision of “no cause”, then Defendants shall pay and Plaintiff shall receive exactly \$100,000, which will be deemed to include all interests, costs, attorney fees and sanctions.

Defendant-defendant agreements are also possible. If two defendants settle with a plaintiff for a given amount, but cannot agree to the percentage each will pay, they may enter into a high/low agree-



Steven R. Gabel

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ment. Percentages are used, rather than dollars, for example, a 75 percent high and a 25 percent low.

Validity of high/low agreements-Conversations about high/low agreements often turn to a discussion of "Mary Carter" agreements. Michigan courts favor settlements.² However, a court can void a settlement if it is a Mary Carter agreement. The essential elements of a Mary Carter agreement are (1) that it not act as a release, so the agreeing defendant remains in the case; (2) is structured in a way that it caps the agreeing defendant's potential liability and gives that defendant an incentive to assist the plaintiff's case against the other defendants; and (3) is kept secret from the other parties and the trier of fact, causing all to misunderstand the agreeing defendant's motives.³

In lawsuits with three or more parties, a possibility exists that a high/low arrangement may be deemed to be an invalid Mary Carter agreement. However, parties can take steps to make a high/low arrangement valid. Primarily,

the parties to the agreement should disclose the existence of the agreement and its terms. Once the veil of secrecy is removed, then the agreement should be valid.

There are Michigan cases that have dealt with purported Mary Carter agreements. One Court of Appeals decision found that the settlement agreement was not a Mary Carter agreement, and noted that the accord was not kept secret.⁴ In another decision, the Supreme Court relied on Black's Law Dictionary (6th ed) to define a Mary Carter agreement.⁵ The Supreme Court stated that Mary Carter agreements are structured in a way that caps the agreeing defendant's potential liability, the agreement gives that defendant an incentive to assist the plaintiff's case against the other defendants, and the agreement is kept secret from the other parties and the trier of fact causing all to misunderstand the agreeing defendant's motives. Evidently, the arrangement was disclosed. The agreement was not kept secret, and the

Supreme Court found that the agreement was valid.

In conclusion, courts prefer a bargained for agreement between parties to a dispute, rather than a decision foisted upon them. To that end, the parties should have as many tools available to them to reach a settlement, including high/low agreements. If such agreements are properly documented, and are disclosed, then they should be valid.

¹ MCR 2.410

² *Clery v Sherwood*, 151 Mich App 55; 390 NW2d 682 (1986)

³ *Booth v Mary Carter Paint Co.*, 202 So2d 8 (Fla App 1967)

⁴ *Smith v Childs*, 198 Mich App 94; 497 NW2d 538 (1993)

⁵ *Rogers v City of Detroit*, 457 Mich 125; 579 NW2d 840 (1998)

Steven Gabel is a trial attorney with The Law Offices of Paula J. Martin, a staff counsel office of CNA Insurance Company. Mr. Gabel has litigated cases for over 17 years, and has handled a variety of complex cases, including construction, malpractice, and general negligence matters. His first article on high/low agreements was published in the Michigan Bar Journal in 1994.

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Where Are They Now?



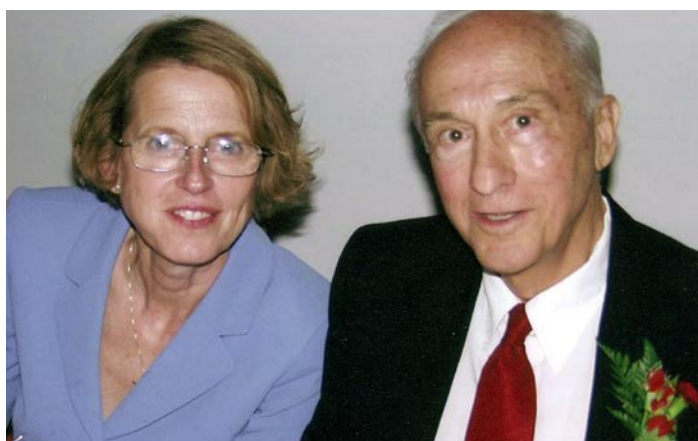
Stewart and Flora Newblatt

Stewart Newblatt

- **Term:** Circuit Court 1962-70; Federal District 1979-93 (senior status)
- **Retirement employment:** served as federal visiting judge from 1993-2000 in several districts around the country
- **Community activities:** cooks meals and delivers them to homes of hospice patients
- **Missed:** relationship with attorneys
- **Not missed:** stress of time limitations in light of severe damages caused by any delay
- **Family:** wife Flora, an attorney, sons David, a Circuit Court Judge in Flint, Robert, an national restaurant chain executive, Joshua, an emergency room physician, and eight grandchildren
- **Residence:** Glen Arbor in the warm months for its beauty with one of the finest National Parks in the country; Palm Desert, California in the winter in a valley surrounded by mountains; both are ideal for hikers and bikers, such as Stewart and Flora
- **Joys of retirement:** has taken Mexican cooking class; rides a recumbent bicycle 100 miles a week; hiking; bicycle trips to New Zealand, Maine/Nova Scotia, Illinois River, Ohio, and planning a bicycle/barge trip in Holland

Harold Resteiner

- **Term:** 1964-85 Probate Court
- **Retirement employment:** conservator for juvenile estates
- **Community activities:** tennis committee; computer club monitor; church activities
- **Missed:** camaraderie of Genesee County friendships, especially lawyers and judges; serving the community as judge



Leigh and Harold Resteiner

- and the challenging variables of the position; Bar activities
- **Not missed:** Michigan winters
- **Family:** wife Leigh and two children in Texas, daughter in Hungary
- **Residence:** initially Arizona desert for the dry warmth; now central Texas (Georgetown), which has seasons like Michigan summers and falls but no snow; it is like the Garrison Keillor community Lake Wobegon, where neighbors become friends and family
- **Joys of retirement:** traveling, biking, family, Doughboys Investment Club

Anthony Mansour

- **Term:** 1966-73 Circuit Court
- **Retirement employment:** private practice
- **Community activities:** Lake Association, board or committee of International Institute, American Arab Heritage Council (founder), Arab American National Museum
- **Missed:** the work of a judge; the opportunities to improve the justice system, such as revising the appointed counsel system to have a paid administrator
- **Not missed:** unprepared attorneys; an activist appellate court that led to re-trials
- **Family:** wife Muriel, sons Larry, professor of languages at West Point, Norman, electrical engineer at Northrup Aviation in San Diego, Christopher, Chief of Staff for Dale Kildee; ten grandchildren
- **Residence:** Holloway Lake for boating and swimming;



Anthony and Muriel Mansour

has never found a better place than Flint in all his travels

- **Joys of retirement:** traveling, including the Dominican Republic, Alaska, and St. John, authoring a book describing the Arab American pioneer's experience in the Flint area prior to WWII, including a three year survey; many wood and iron projects.

Phillip C. Elliott

- **Term:** 1964-66 Probate Court, 1966-91 Circuit Court

- **Retirement employment:** Deputy Chief Assistant Prosecutor (for the fun of it)

- **Community activities:**

writing for Bar Beat

- **Missed:** many fine prosecutors, such as John McGraw, Judith Fullerton, Jim Ake, Richmond Riggs, and most of the rest of the Bar, including great lawyers who have passed on - Walter Krapohl, John Beagle, Dave Magee, Fred Salim and Ed Joseph; the drama of trials, the courthouse gang; responsibility of using his brain and heart in public service.

- **Family:** wife Patricia, daughter Mary and her husband own Burns Pharmacy in Petoskey, son James in Clayton Twp. works at McLaren Hospital

- **Residence:** Petoskey to be near grandchildren, as his wife is the world's greatest grandmother

- **Joys of retirement:** attending grandchildren's hockey games and figure skating exhibitions; reading good books



Phillip C. Elliott

Luke Quinn

- **Term:** 1969-70, 67th District; 1970-89, Probate Court

- **Retirement employment:** visiting judge - District, Probate, Circuit, Family

- **Community activities:** none

- **Missed:** interaction with attorneys, opportunity to help litigants

- **Not missed:** stress of the judiciary

- **Family:** daughter in Grand Blanc schoolteacher with two grandsons in college (U of M and Wayne State); son in Bethesda financial mgr for a Toyota dealership; daughter in Washington, DC paralegal for prominent law firm with granddaughter; daughter in Hermosa Beach, flight attendant for Continental, with grandson

- **Choice of residence:** Grand Blanc, home for 30 years and no desire to move

- **Joys of retirement:** doing absolutely nothing fulfills a childhood dream to have no responsibilities; living "light" by not coveting material goods, thereby attaining freedom; horseracing, esp. Kentucky Derby; golf; casinos



Matthew Wolverton, Luke Quinn, Marcus Wolverton



Dee and Charles Mosier

Charles Mosier

- **Term:** 1970-92, 67th District, Davison

- **Retirement employment:** periodic private practice

- **Community activities:** Chairman of Advisory Board – Davison-Richfield Senior Center, "Seniors Unlimited" bus trips in Michigan and Canada, church activities at St. John's, Davison

- **Missed:** absolute privilege of serving the public and the profession; camaraderie and friendship of attorneys, colleagues, staff

- **Not missed:** endless challenge of the docket; wearing a tie every day!

- **Family:** wife Dee, married over 50 years, son Matt in Davison working at Victor George in Lapeer, son Mark, business consultant in Burton, nine grandchildren, new great grandchild born February 1

- **Residence:** Davison, a thriving community with family and many friends in the area

- **Joys of retirement:** family, friends, traveling, finding his way to a casino now and then; grandchildren's sports

Thomas Yeotis

- **Term:** 1967-98 Circuit Court

- **Retirement employment:** visiting judge in Genesee and Shiawassee Circuit Courts; six or so civil facilitations/mediations a year

- **Community activities:** founder and continuous Board member of Mott Community College Bruin Club, an athletic booster club, which has raised over \$1m for scholarships, fees, and team buses since 1958; Board member of The Hundred Club, founded to support police and fire departments since the 1950s, the IMA Children's Recreation Fund and the Genesee County Bar Foundation
- **Missed:** coffee hour the first hour each day with whichever attorneys stopped in before court to solve the world's problems. When Duncan Beagle settled in Judge Yeotis's old courtroom, Duncan held a ceremony and christened the meeting room the "Yeotis Coffee Shop"
- **Not missed:** bickering in divorce cases, particularly when children were used as pawns
- **Family:** Meg, wife of 45 years, son Dean, a Flint attorney, daughters Stephanie in suburban Chicago, and Georgeann in Chicago, four grandchildren
- **Residence:** hometown Flint, dear to him because it was good to his parents who came from Greece without formal education or English proficiency and to the entire Yeotis family
- **Joys of retirement:** spoiling grandchildren; visiting family; over-60 baseball games throughout Michigan; visiting Greece to see some family and the beautiful Greek islands; visiting California for the wedding of the son of a college roommate; stopping at his favorite spot, the Whitehorse Inn, which has numerous basketball and softball teams; attending athletic events, including MSU's national championship run in 2000 which included the Final Four in Indianapolis

Donald R. Freeman

- **Term:** 1967-97 Circuit Court
- **Retirement employment:** private practice, primarily securities law
- **Community activities:** Genesee County Historical Society (Board member), Flint Sesquicentennial Commission (Commissioner), Genesee Council of Social Agencies (Chairman); National Council of Alcoholism, Urban League, International Institute (Boards member); Genesee Council for Retarding Citizens (Chairman); Flint Tax Study Commission (Chairman); Sam Duncan Scholarship Committee (Founder), Genesee County Court House Restoration Society (Chairman), Citizen of the Year, Flint Council of Churches and Council against Pornography; Heritage Award from Genesee County Historical Society; Surgical Eye Expeditions, surgical assistant, Balkans and Bulgaria. Established medical clinics for war victims and poor patients in Sofia and Plovdiv, Bulgaria; Gregg Betts Cystic Fibrosis Foundation, Legal Advisor to Flint Blowing Commission; inducted into the Flint Bowler's Hall of Fame
- **Missed:** public contact; staff, county employees, police employees
- **Family:** Harriet, wife of 46 years and two physician sons, daughter-in-law and three grandchildren



Harriet and Donald Freeman

- **Residence:** Flint Township because he loves the City and Township of Flint, the people and the activities that are offered
- **Joys of retirement:** his family; induction into the Flint Bowler's Hall of Fame



The extended Evans family

William R. Evans, 67th District, Mt. Morris

- **Term:** 1969-97 (one of the original District Judges in Michigan)
- **Retirement employment:** during 1997, 1998 and about one-half of 1999, accepted assignments to sit in Circuit Court, Probate Court, District Court and Family Court
- **Community activities:** serves on Church Board and teaches Sunday School; teaches Bible classes at Flint Bible Institute; active in the Mt. Morris Kiwanis Club
- **Missed/not missed:** nothing specific
- **Family:** four children, 13 grandchildren, one great-granddaughter
- **Residence:** Mt. Morris to be near two daughters and their husbands, with nine of the grandchildren and the great-granddaughter, who live in Genesee County
- **Joys of retirement:** time to enjoy family, including three granddaughters at University of Michigan-Flint. Traveling to Ohio, North Carolina, Florida and all places in between to visit children and grandchildren. Taking all the grandchildren (except the two youngest family members) to the Biltmore Estate in Asheville, NC, Gatlinburg, TN and other places

Earl E. Borradaile

- **Term:** 1970-95 Circuit Court
- **Retirement employment:** none
- **Community activities:** reading and active at church, Flint Kiwanis and bridge playing
- **Missed:** seeing at-torneys and staff
- **Not missed:** nasty divorce cases
- **Family:** wife Janice - married 52 years; daughter Diane, a banker in Montclair, NJ, son David in Berkley working with a car parts company, John in Rochester managing Chili's restaurant
- **Residence:** after law school moved to Davison in 1955 and has friends in area
- **Joys of retirement:** visiting the addition to the Genesee County Courthouse at the formal opening, most impressed and particularly by the redecoration of his former courtroom



Janice and Earl Borradaile



The Val Washington family with his mother Vivian

Valdemar Washington

- **Term:** 1986-96 Circuit Court
- **Retirement employment:** running SETTLEmate® Inc. and a limited private practice; working on a start-up tourist based business, Roatan Rugged Rentals, on the Caribbean Island of Roatan
- **Community activities:** host for two Korean students boarding at Cranbrook
- **Missed:** people who worked so hard within the system to make the court run smoothly
- **Not missed:** Monday Domestic Motion Call!
- **Family:** wife Ada, son Val, freshman at Johns Hopkins

University, Baltimore, son Christopher, junior at Cranbrook Kingswood, Birmingham

- **Residence:** likes Flint and considers it home
- **Joys of retirement:** time for family and activities in the Caribbean



Arthalu Lancaster's golden retriever, Winnie

Arthalu Lancaster

- **Term:** 1989-2002, 67th District Court
- **Retirement employment:** none
- **Community activities:** Board member of a unique organization called Share Care whose mission is, through volunteer services, to allow older persons to live out their lives in their own homes; annual library book sale; local Democratic party.
- **Missed:** unquestionably, the attorneys who were, with few exceptions, consistently well prepared, strong advocates, and professional to the Court and colleagues. Often they were undercompensated public defenders. They belie the image of our profession currently projected in our society.
- **Not missed:** in the courtroom judges sometimes confront matters which evoke a myriad of human emotions ranging from empathy to outrage. Nonetheless, and rightly so, justice requires that judges appear to remain impassive. That eventually and inescapably takes a toll.
- **Family:** son Ed in Las Vegas, daughter Julie in Manhattan, daughter Susie in Libertyville, IL. No grandchildren, but many grandcats and granddogs!
- **Residence:** two locales, though very different, both incredibly beautiful. On the Leelanau Peninsula, surrounded by water and woods, and this winter, in the desert, surrounded by snow-capped mountains.
- **Joys of retirement:** easy access to colleges which offer a large selection of classes. Has taken two writing classes, and others on Mexican cooking, economics, duplicate-bridge; membership in a book club; water aerobics classes, daily walks with Winnie, her golden retriever.

Ed. note: If we missed any GCBA member who is a retired/resigned judge, let us know and we'll cover you in a future issue.

Sleep Well Tonight

by Randy Piper



Are you a courtroom litigator? Or an insomniac? Or are they the same thing? Lawyers learn early that insomnia goes with the territory. However, they are not like that mythical person who was not only an insomniac, but was also dyslexic and agnostic. No lawyer lies awake at night wondering if there really is a Dog!

Courtroom lawyers awaken in the middle of a sound sleep because of the problems of their clients. They lose sleep so their clients will sleep soundly. Attorneys assume the heavy mantle of seeking justice for loss of life, liberty or property, and that interferes with a good night's sleep.

Even when half-sleeping, the courtroom lawyer is dreaming and regardless of whether the attorney is giving voice to the state, an injured person or an innocent defendant, the client is the centerpiece of that dream. But there are courtroom monsters in the late night light of the lawyer's bedroom. The red light emitting diode of a clock radio on a nightstand turns into the rotating beacon on a police cruiser during an unexpected traffic stop. The moonlit silhouette of drawn curtain pleats mimic the dark and heavy bars of a state prison. The incessant howling of a neighborhood cat becomes the anguished scream of a mother who has just heard a jury foreman pronounce her beloved son guilty.

A courtroom is not a good place for the faint of heart or a light sleeper. While it is said that a clear conscience makes a good pillow, it is also said that morality, like many a great dream, comes in black and white. It's not true. Morality comes in shades of gray. Jurors and judges do not deliberate for days in situations where there is moral clarity. Crisp lines of conscience are not the luxury of lawyers. For if there were, there would be no need for trials. The

guilty would be dispatched to prison, the injured would be compensated, the innocent exonerated and the attorney would sleep like the proverbial baby.

Courtroom lawyers know that in their profession, sleep is the cousin of death. A good night's sleep in the middle of a hotly contested trial is unnatural and we accept that a sleepless night is the price we pay for the prize of justice. Unlike the mythological dyslexic insomniac, lawyers are not agnostic about their belief in the real purpose of their profession. It is to advance the concept that justice in the end must triumph. Losing a few hours of sleep in defense of people who cannot articulate their position is worth the price and the prize.

Meanwhile, for you who do not have a trial tomorrow, sleep well tonight!

Announcements

1st Annual Motion Day 5K Run/Walk Monday, April 25, 2005, 6:00 p.m., Circuit Court(Saginaw St.), \$18.00 pre-registration, \$22.00 late and same day registration. T-shirt included. Forty awards in many age categories, and attorney-only awards of "Best Briefs" and "Last Lawyer in Line." Contact GCBA at (810) 232-6012 for information and opportunities to sponsor activities.



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Epic: Five Years Later

by James Bauer, Probate Court Administrator

On April 1, 2000, the Estate and Protected Individuals Code (EPIC), the first major revision of the Probate Code in over 20 years, became effective. It was seven years in the making and went through numerous drafts by committees across the public spectrum. As a result, the probate landscape in Michigan has been permanently and positively changed in three key ways. First, EPIC requires less court oversight which makes it easier for citizens and practitioners to probate an estate. Second, it retains the popular process of administration without any court involvement (unless it is requested by an interested person). Third, it makes it easier for citizens who may not understand the legalities of creating a will have their intended will admitted.

In this article, I will elaborate on these changes and offer some suggestions for probate counsel.

EPIC involves significantly less court oversight than the old rules. For example, in an informal proceeding, property can be sold without court approval, annual accounts are not required, and the inventory may be merely presented - not filed. In the past, a proof of service was required for a plethora of documents. Under EPIC, the only proof of service required in an informal proceeding before the Probate Register is the sworn closing statement that ends administration.

EPIC is citizen-friendly, allowing the opportunity for court assistance when it is needed but not making it mandatory. Although administration

without court involvement is the most commonly used method, when a contest arises individuals may seek court assistance at any time during an informal proceeding. If there is an issue that needs to be resolved by the court, the parties can request a formal proceeding without asking for full court supervision and, after resolution, go right back to the informal proceeding before the Probate Register.

This has effectively eliminated the need for supervised administration, the only form of administration available before the Revised Probate Code of 1978. Often practitioners will open an estate formally before the Judge and obtain an Order of Formal Proceedings, and close it informally before the Regis-

Continued on page 14.

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African-American Pioneers

by Jean Neithercut and Barbara Menear

Claude W. Haywood appears to have been the first African-American admitted to the bar in Genesee County. He came to Flint from Raleigh, NC, and was admitted to the bar in 1919. In spite of some extensive research efforts, little more is known of him.

The Mallory, VanDyne, Scott Bar Association, formed in 1989, takes its name from three of the earliest African-American attorneys in the county. It is modeled after the National Bar Association. **Dudley Mallory** became a member of the bar in 1926, coming from Virginia. **R.M. VanDyne** became a member in 1927, arriving from Oklahoma. He was a popular trial attorney. VanDyne's nephew, **Elisha Scott**, came here from Kansas in 1946 to practice with his uncle and became very involved in civic organizations. Scott became Flint's first administrative law judge, serving at the Michigan Department of Labor. There is little background on these early "pioneers", perhaps a sign of the times in which they practiced, when law and lawyers were not in the foreground, and minority lawyers were small in number.

One of the most prominent of the area's African-American attorneys was the late **Otis M. Smith**. In the early 1950s Smith came to Flint to work at Buick. When he became an attorney, he joined the firm of Dudley Mallory. He was soon named an Assistant Prosecutor for Genesee County, then chairman of the Michigan Public Service Commission and, in 1959, Auditor General of the State. In 1961 Smith was sworn in as a Justice of the Michigan Supreme Court - at age 39. He was the first African-American to serve in that role, and the only Genesee County Attorney to achieve that position in the 20th century. He left the bench to begin service with General Motors, rising

to the position of Vice-President and General Counsel for the Corporation, a position he held until his retirement in 1984.

Ollie Bivens, Jr. was born in Flint and remained in the area until his death in 1999. He was the first African-American judge to serve three times: as a Municipal Law Judge appointed by the Flint City Council in 1968, as a 68th District Court Judge (1969-1972) and as a Genesee County Circuit Court Judge from 1972 until 1982. Bivens graduated from Flint Northern High School, Fisk University (1950) and Boston University School of Law (1953). He served in the United States Navy and was a World War II veteran. His early career started out with Dudley Mallory, one of Flint's earliest African-American attorneys. He joined the staff of the Genesee County Prosecutor in 1965 and became chief trial attorney in 1966. Judge Bivens served on the Board of Directors of the Genesee County Bar Association, Genesee County Legal Aid Society, Catholic Social Services and the Executive Committee of the Tall Pine Council of the Boy Scouts of America. After leaving the bench in 1982, he continued to be a visiting judge in Macomb County and Detroit Records Court. He engaged in the private practice of law for a short period of time, with a practice emphasis in criminal defense.

William Price III was the first African-American to head the Genesee County Bar Association in 1970-1971. Born in Oklahoma, he came to Flint in 1951, served as an assistant prosecutor and in private practice prior to his appointment to the bench in 1972. He was the second African-American judge in the county. Judge Price is a veteran of the Tuskegee Fighter Squadron, serving as a flight commander during World War II. He was active in a variety of community activities.

African-American attorneys prominent in the civil rights struggles of the '60s and '70s include **C. Frederick Robinson** and **A. Glenn Epps**. After extended service as an administrative law judge, Epps entered into private practice until his death in 2002. Robinson continues to practice in Flint.

At present, there are several African-Americans in the judiciary. **Archie Hayman** is Chief Judge of the Circuit Court and **Ramona M. Roberts** is Chief Judge of the 68th District Court, which also has Judges **Nathaniel C. Perry III**, **William H. Crawford, II**, and **Herman Marable, Jr.** All participate in numerous community activities.

Valdemar L. Washington, past president of GCBA in 1996-97, served on the Circuit bench for ten years before retiring in 1996. He was the second African-American to lead GCBA.

In 2004, **Kendall B. Williams** was honored with the Herbert A. Milliken Jr. Civility Award for serving as a professional role model of courtesy and civility. He was the first African-American to receive this award.

Touch of Class

The mother of a teenager struggling with cerebral palsy called the mayor's office in Burton to ask where she could obtain a gavel. Her son enjoyed court television programs more than any other shows and she wished to give him a gavel for Christmas. The mayor's secretary called Judge Richard Hughes who offered one of his own. When he learned the boy could not travel to the courthouse to receive the gavel, Judge Hughes, along with the mayor, delivered the gavel to the boy's home. Goodness is contagious. Sandy Weststock, one of Judge Hughes's clerks proposed that instead of Court staff exchanging holiday gifts, donations be made to a Burton family in need.

Letter to the Editor

Epic...

Continued from page 12.

Dear Editor and Members of the Genesee County Bar Association:

As a member of the legal profession, I have a duty to speak out to avoid the perpetration of injustice, fraud and other acts which, if allowed to go unchallenged, would hold the profession up to public scorn. I am therefore compelled to comment upon the remarks and photograph appearing in the January-February issue of *Bar Beat* which appear intended to leave the impression that Bob Segar caught a rather large fish. To say that I am skeptical would be the understatement of the decade.

I have been fishing with Bob Segar. He took me to his secret place. He used his trusty fishing rod which has apparently been in the family for generations. He used the Segar "secret rope anchor measurement technique" to mark the depth. He used the Segar "secret positional location technique" (he lined the spot up between his dock and Frank Castle's dock). When the master's techniques were all fully in place, we proceeded to fish—and fish, and fish. We fished for hours. It could have been days, or so it seemed.

We didn't catch any large fish, we didn't catch any small fish, we didn't have any nibbles, and I saw no evidence that fish were within in the same hemisphere. If this was the secret spot, I would not want to experience a crappy spot.

Bob's response was that our dismal experience was unusual, and that just the day before, he had caught the large pike that was displayed in *Bar Beat*. He says that he caught it on the same rod, with the same bait, at the same depth, and in the same position where he proved to me that there were no fish. Seriously, how gullible are we? I can go down to Donlan's Fish Market any day

of the week, have them pull out a large fish carcass, have a picture taken, and apparently I have become a fisherman. From personal observation, I doubt that Bob could catch a rubber ducky in a tub.

I am not the only one who smells something fishy here. Leonard Shulman also suspects that the real Baghdad Bob is not the former Iraqi Minister of (mis)Information, but sadly, one of our own.

In the future, I would suggest that before we allow our local bar publication as a vehicle for the perpetuation of myths, we act more like lawyers. The requirement of a single affidavit by an eyewitness (how convenient there was no one else on a very busy lake in the middle of the day in the summer to observe this miracle) would have prevented this piscatorial prevarication.

Dennis M. Haley

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Practice Pointers

•When selling real estate, beware of advising sellers to turn in a policy of title insurance to the title agent to receive a discount on the new policy. Once a new policy is issued for the benefit of the new owner, the seller's policy may be cancelled and the seller may have no residual coverage. If a subsequent claimant makes a claim against the then current owner and that owner (or title company!) sues your client, your client may have no liability coverage and no title insurance defense attorney.

ter using the Sworn Closing Statement. The opposite strategy is also common. The principal reason for this is there is no statute of limitations to object to a will admitted by a Register in an informal proceeding. If an Order of Formal Proceedings is entered determining testacy, the 21-day appeal period applies.

There are also more ways to get a will admitted to probate: a will can be admitted even if it does not meet the requirements of a holographic will and it has not been formally executed. If the petitioner can show by clear and convincing evidence that the document was intended to be a will, it can be admitted as a will.

I would like to close with a few friendly reminders to practitioners. First, file reports, accounts, and notices of continued administration timely so that your client is not delinquent and then suspended. Also, if you are no longer representing a fiduciary, file a motion to withdraw. If we do not receive an order allowing withdrawal, the attorney is kept on the file and expected to keep the file current. Finally, please put your name, address, and phone number on any document filed with the Court, particularly orders that you have drafted.

Despite all of these changes, the Probate Court caseload has remained consistent over the past five years. It is hoped that these changes have made things easier for the public and practitioners to utilize the services provided by the Court.

•Do you send your pleadings to news reporters? Consider telling them to get all pleadings at the courthouse instead. On October 20, 2004, the Pennsylvania Supreme Court held that the privilege protecting attorneys from libel and slander for accusations made in court does not apply to lawyers outside the courtroom. An attorney who faxed a copy of a legal malpractice lawsuit to a reporter for a newspaper that covers legal affairs in Philadelphia lost a summary disposition motion claiming "judicial privilege". <http://www.cnn.com/2004/LAW/11/04/lawyers.reporters.ap/index.html>

Lynne Taft's Dream

by Donna L. Ullrich

Attorneys are almost always more than we see at a courthouse or a Bar meeting or a deposition. We often, however, have no time to learn much about their personal lives. One attorney who has a rewarding life outside the law is Lynne Taft with sailing, art and mental acumen activities. Her extracurricular activities have led her to a spouse, to new clients and to a future.

Smooth Sailing

Taft met her then spouse-to-be Jim Draper at a Mensa meeting but they "fell in love on Draper's boat", Taft smiles. The boat has given them many hours of peace and joy, so much so that boating is the focus of their retirement goal. They plan to live on a boat and sail off the British Virgin Islands near Tortola. How do two sailors get ready for such an adventure? By joining the U.S. Power Squadron, a boating safety and education organization. They take such training as engine maintenance, marine electronics, and cruise planning.

From taking courses to leading the boating organization has been a natural transition for Taft and Draper, who have since involved themselves in the organization's safety and education programs, council, and state and national conferences. Both hold leadership positions with District 9 of the Squadron. As a result of their involvement, Taft has become the legal officer for the district's 25 squadrons covering Michigan and Indiana.

"People meet you in social and community settings get to know and trust you," When they need legal counsel they think of you first. It's a great way to generate clients without soliciting work," says Taft.

"By the way, community involvement and volunteerism almost always generates new clients," says Taft. For Taft though, it is just an afterthought...a



Jim Draper and Lynne Taft aboard their sailboat

secondary benefit of dabbling in passions and interests, giving to her community, and helping wherever she can.

Working with her husband who is a retired GM engineer, Taft volunteers with the Flint Institute of Arts (FIA) and serves on the Friends of Modern Art (FOMA) Board of Directors. She and Draper are co-vice presidents of the local Mensa chapter and proctor Mensa exams.

Art Smart

Taft credits attorney and arts devotee Linda L. Pylypiw with involving her in the FIA Art Fair 16 years ago. Since then, both Taft and Draper have chaired the fair, 1994 and 2001 respectively, and she now chairs the artists' dinner each year.

The event, she says, has turned into an office affair where everyone is involved. Attorney colleagues Michael Behm, Denise Fish, Jeffrey Skinner, Catherine Stalker-Gardner, and Shelley Spivack now volunteer, and Legal Assistant Sue Gregory chairs the concession operation. Following in Pylypiw's footsteps, Taft says she actively recruits volunteers and would like to see more attorneys involved with the FIA and FOMA.

"We love the Art Fair," Taft says referring to herself and Draper. "To be there on a Friday afternoon and watch the event grow into a community over three or four hours is an amazing experience."

Smart Move

Taft reports another benefit of being a "joiner" – she met her then spouse-to-be at a local Mensa meeting. The word "Mensa" means "table" in Latin. The name stands for a round-table society, where race, color, creed, national origin, age, politics, educational or social background are irrelevant, but members must pass an intelligence test. The Flint-area group meets monthly for casual social activities. Regional and national meetings offer additional opportunities for members to develop interesting friendships.

"It's another avenue to a social life beyond the legal community," Taft says. It also builds self-esteem. "I never gave myself much credit. Taking the Mensa exam gave a boost to my confidence."

Taft and Draper proctor the National Testing Day each October. She says, however, that she can administer individual exams at any time. Perhaps you might meet someone interesting at a Mensa meeting yourself!

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