

November/December 2005

BARBEAT

Genesee County Bar Association



Almar Orchard and
Michigan Reindeer Farm

From the Riker Retirement Home,
Boarding House and Spa

Honorable Donald R. Freeman

Roughing It

SSN Privacy Act

Rules of Statutory Construction



2004 Annual Holiday Dinner

GCBA thanks the many lawyers and families, staff, and friends who helped with the 13th Annual Holiday Dinner. Special appreciation goes to the Battiste family and staff of the Masonic Dining Room, which has provided meals for the dinner every year at cost.

Over 750 people were served and 375 children received gifts. We had 125 volunteers, who gave their time and donations of \$8,500.



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

Reflections

by H. William Reising, President

Halloween is behind us, and we are fast approaching the Holiday Season. The members of this association have much to be thankful for, given the devastation along the Gulf Coast, which has been so vividly brought to our attention. It is fair to say that living in mid-Michigan has rarely looked as good as when we were watching the tragedies in Florida, Louisiana, Mississippi, Alabama, and Texas. While this part of the country may have an occasional tornado or flooding, the catastrophic consequences of a hurricane are almost beyond comprehension.

The generosity of people from Michigan, and in particular the generosity of members of this association, for the victims is gratifying. As an example, and only one example, my law firm and its employees contributed over \$35,000 to help the victims of Katrina.

On a local level, please keep in mind that the upcoming Holiday Dinner will be more important than ever this year. It is anticipated that there will be an even greater need than in past years, given the continued high unemployment rate in this county, and the number of individuals who are at or below the poverty line.

The "godfather" behind the annual Holiday Dinner is our own Brian Barkley. He is as obsessed about the Holiday Dinner as he is about the Crim. I encourage you all to contribute whatever you can toward the fund for this public service and to volunteer with Brian. This is one of the very best ways that the Bar Association can show that it cares about the underprivileged in this community. The experience is well worth the time and effort—a total "feel good" experience.

The various committees of the association are up and running. By the time you receive this issue of Bar Beat,

many of those committees have begun their 2005/2006 program schedule. In particular, I am pleased to report a new Strategic Planning Committee, co-chaired by former Presidents Cliff Hart and Randy Piper. I have great confidence that the Committee will develop a mission statement and strategic plan to assist this organization in the future.

At the heart of the committee system are the attorneys who serve uncompensated. Volunteerism is the lifeblood of GCBA, and the dedication of individuals has made this organization "tick" and flourish. As the Holiday Season approaches, I encourage each of you to re-dedicate yourselves to this spirit, and do whatever you can to assist GCBA and other community organizations, which rely upon volunteers to achieve their goals.

During the Holiday Season, I urge you to remember the members of our Armed Forces who are all volunteers. To say the least, Thanksgiving, Christmas or Hanukah in Iraq or Afghanistan cannot be fun. Consider a contribution to either the U.S.O. or the Red Cross to supply our troops with holiday cheer of some type. I am certain that anything they receive would be very much appreciated.

The Bowl season is also upon us. Predictions are difficult, and with the lead time involved with this article, it is literally impossible to predict what team will be playing in what Bowl. However, at least based on early season experiences, it appears that those who favor green and white are going to be much happier than those fans who hang out at the Big House in A.A. But one never knows about that, as the fates of football are fickle, and it may come down to an arm-wrestling contest at the Bailiwick between Cliff Hart and Jerry Winegarden to determine



H. William Reising

who goes where between those two teams.

I wish you all a very Happy Holiday Season, and beyond that the best for 2006.

P.S. Your Bar Association anticipates making an announcement shortly of a reception at the FIA in early 2006. Watch for the notice.

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New Web Page Launched

by Ramona Sain, Executive Director

If you have not had an opportunity to take a peek at the new GCBA website, do so as soon as possible at www.gcbalaw.org. As Francine Cullari said, "We are now officially in the 21st Century!" She's right. Features of the site include a lot of the new and still a little bit of the old.

New features include an interactive calendar of events, the ability for online registration and payment of fees for seminars, membership meetings, committee registration, membership dues and special events. It includes previous issues of Bar Beat available through Adobe Reader and we are currently working on a member "list-serv."

Most important, the site includes a comprehensive membership directory. The directory allows attorneys to complete an online member profile form, which is e-mailed to the GCBA for authorization and then posted online. Members may also include a head shot photograph of themselves. If members do not have a photograph, GCBA staff can use a current photo on file at our office from previous pictorial directories.

Features from the previous website are still included, but presented in a different format. This includes the history of the GCBA, information from area specialty bars, a photo gallery, Lawyer Referral and Information Service, and the Genesee County Bar Foundation. The site enables lawyers to also make online contributions to the Foundation in memory or honor of a family member, friend or colleague.

Special thanks goes first to the Genesee County Bar Foundation for making a generous \$750 donation to help offset development costs. The second thanks goes to Foundation Past

President Bill Coppel, who for three years allowed his secretary, Nancy St. Onge, to develop and maintain our previous web site. Bill never charged the Association a cent, and in fact, I suspect it cost him a pretty penny since the work was done during business hours. (Yes, our members are awesome!) However, Bill retired, as attorneys are wont to do, and we lost Nancy as well. It was a double blow. After a unsuccessful year-and-a-half search to find another "Bill and Nancy", we researched various web development companies and contracted with Chard.Net, a company that works with many other associations across the state.

If you have any website suggestions, please feel free to contact the GCBA by e-mail (you can use our website) or by phone. We are interested in your feedback.



Ramona Sain

As this issue goes to press, many hours will have already been spent working on preparations for the Annual Holiday Dinner. If you see Brian Barkey and other members of the committee, please give them a pat on the back. They deserve it.

Finally, thanks to M. Cathy Dowd, Karen Folks and John Streby, our most recent Sustaining Members.

Happy Holidays & Happy New Year!





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Roughing It

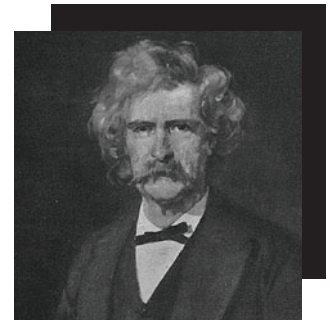
By Mark Twain

The mountains are very high and steep about Washoe valley, so when the snow gets to melting off fast in the spring, the disastrous landslides commence. The reader cannot know what a landslide is unless he has lived in that country and seen the whole side of the mountain taken off some fine morning and deposited down in the valley, leaving a vast, treeless, unsightly scar upon the mountain's front.

General Buncombe was shipped out to Nevada, to be United States Attorney. He considered himself a lawyer of parts, and he very much wanted an opportunity to manifest it. Now the older citizens of a new territory look down upon the rest of the world with a calm, benevolent compassion, as long as

it keeps out of the way - when it gets in the way, it snubs it. Sometimes this latter takes the shape of a practical joke.

One morning Dick Hyde rode furiously up to General Buncombe's door. He told the general that he wanted him to conduct a suit for him, and would pay him five hundred dollars if he achieved a victory. With violent gestures and a world of profanity, he poured out his griefs. He said that for some years he had been farming in Washoe District, and that Tom Morgan owned a ranch immediately above it on the mountain-side. And now the trouble was, that one of those hated and dreaded landslides had come and slid Morgan's ranch, fences, cabins, cattle, barns, and everything down on top of his ranch and exactly



Mark Twain

covered up every single vestige of his property. Morgan was in possession and refused to vacate the premises - said he was occupying his own cabin standing on the same dirt and same ranch it had always stood on.

"And when I reminded him," said Hyde, weeping, "that it was on top of my ranch and that he was trespassing, he had the infernal meanness to ask me why didn't I stay on my ranch and hold possession when I see him a-coming! Why didn't I stay on it, the blathering lunatic - by George, when I heard that racket and looked up that hill it was

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just like the whole world was a-ripping and a-tearing down that mountainside - splinters and cordwood, thunder and lightning, hail and snow, odds and ends of haystacks, and awful clouds of dust - trees going end over end in the air, rocks as big as a house jumping 'bout a thousand feet high and busting into ten million pieces, cattle turned inside out and a-coming head on with their tails hanging out between their teeth!

Never in all the world, perhaps, were a man's feelings so outraged as the general's. And he said there was no use in going to law - Morgan had no shadow of right to remain where he was - nobody in the wide world would uphold him in it, and **no lawyer would**

take his case. Hyde said that right there was where he was mistaken - Hal Brayton, a very smart lawyer, had taken his case; it was to be tried before referee ex-Governor Roop at two that afternoon.

The general was amazed. He said he had suspected before that the people of that Territory were fools, and now he knew it. But he said rest easy, rest easy and collect the witnesses, for the victory was just as certain as if the conflict were already over.

Court Convened

At two in the afternoon Referee Roop's court opened. Presently the general elbowed his way through the crowd of spectators, with his arms full of lawbooks. The witnesses were called - legislators, high government officers, ranchmen, miners, Indians, Chinamen, Negroes. Three-fourths of them were called by the defendant Morgan, but no matter, their testimony invariably went in favor of the plaintiff Hyde.

Then the Morgan lawyers made their speeches, and seemed to make singularly weak ones. And now the general, with exultation in his face, got up and made an impassioned effort; he pounded the table, he banged the lawbooks, he shouted, and roared, and howled, he quoted from everything and everybody, poetry, sarcasm, statistics, history, pathos, bathos, blasphemy, and wound up with a grand war whoop for free speech, freedom of the press, free schools, the Glorious Bird of America, and the principles of eternal justice! [Applause.]

Ex-Governor Roop leaned his head upon his hand for some minutes, thinking, and the still audience waited for his decision. Then he walked the floor with long, deliberate strides, his chin in his hand, and still the audience waited. At last he returned to his throne, seated himself, and began, impressively:

"Gentlemen, I feel the great responsibility that rests upon me this day. This is no ordinary case. On the contrary, it is plain that it is the most solemn and awful that ever man was called upon to decide. Gentlemen, I have listened attentively to the evidence, and the overwhelming weight

of it is in favor of the plaintiff Hyde. I have listened also to the remarks of counsel, with high interest and commend the masterly and irrefutable logic of the distinguished gentleman who represents plaintiff.

Gentlemen, it ill becomes us, worms as we are, to meddle with the decrees of Heaven. It is plain that Heaven chose to move this defendant's ranch for a purpose. If Heaven has chosen to favor the defendant Morgan in this marked and wonderful manner; and if Heaven, dissatisfied with the position of the Morgan ranch upon the mountainside, has chosen to remove it to a position more eligible and more advantageous for its owner, it ill become us, insects as we are, to question the legality or inquire into the reasons. No - Heaven created the ranches and it is Heaven's prerogative to rearrange them, to experiment with them, to shift them around at its pleasure.

The Verdict Is In

Gentlemen, it is the verdict of this court that the plaintiff, Richard Hyde, has been deprived of his ranch by the visitation of God! And from this decision there is no appeal."

Buncombe seized his cargo of lawbooks and plunged out of the courtroom frantic with indignation. He pronounced Roop to be a miraculous fool, an inspired idiot. In all good faith he returned at night and remonstrated with Roop upon his extravagant decision and implored him to walk the floor and think, and see if he could not figure out some sort of modification of the verdict. He walked two hours and a half, and at last his face lit up happily and he told Buncombe it had occurred to him that the ranch underneath the new Morgan ranch still belonged to Hyde, that his title to the ground was just as good as it had ever been, and therefore he was of opinion that Hyde had a right to dig it out from under there and -

The general never waited to hear the end of it. He was always an impatient and irascible man, that way. At the end of two months the fact that he had been played upon with a joke had managed to bore itself, like another Hoosac Tunnel, through the solid adamant of his understanding.

Ed. note: The passage has been shortened in the interest of space. For the full version, see [Roughing It](#) or contact the editor. Appreciation goes to Judge Elliott for providing the idea.

A Tale of Two Lawyers

By Richard Barron

Our first lawyer, Peter Proff, receives a notice from the court that, pursuant to MCR 2.411, his new case has been ordered into mediation. Peter is pleased because his client, the plaintiff, was reluctant to litigate and would like to “cash out” and get on with her life without the stress and expense of litigation. Peter realizes that because mediation was Court-ordered he does not have to worry about looking weak by suggesting early settlement negotiations. He believes that a good mediator should be able to settle the case with a fair payment to his client.

Peter immediately contacts opposing counsel, Debbie Doe, to decide upon a suitable mediator. Both counsel agree to retain Paul Placid, an experienced and well-respected local mediator who charges \$150 per hour.

Paul contacts both sides by phone to learn about each side’s view of the case, to determine what additional information is needed, to discuss mediation strategy, and to set a mutually convenient date in the near future.

Both attorneys appear with their clients on the date set for mediation, after having previously had a lengthy conversation with each about mediation and how to use it as an effective settlement tool. After a few hours of bargaining, the parties reach a formal settlement of the action.

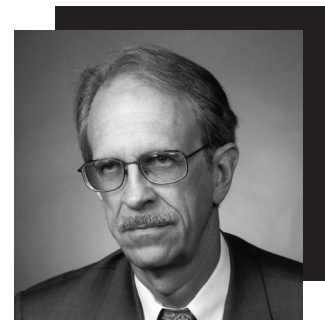
Result for Case #1: The case is over and both clients are delighted and very pleased with their attorneys. The mediator spent about five hours in resolving the case at a cost of under \$400 per party.

Our second lawyer, Paula Procrastinati, also receives an order in her case requiring mediation under the court rule. She, however, becomes angry and tells herself that the case will never settle and that mediation

is stupid and expensive. Rather than call Barry, her opposing counsel with whom she is feuding, she disgustedly throws the Mediation Order into her in-basket and continues to work on her current case.

Barry calls her about selecting a mediator but she does not return his call. The Court, noting that over two weeks had expired without the designation of a mediator by the parties, designates Hy Roller, a mediator from Oakland County, to mediate the case. Hy charges \$300 per hour. After many telephone calls to the parties, Hy finally gets the parties to agree upon a date for mediation but Paula calls the day before and says that she has a conflict the next day. The mediation is then reset, to the aggravation of the mediator and the other participants.

When the mediation date arrives Paula is 20 minutes late. She almost immediately gets into a shouting match with opposing counsel and states that



Richard Barron

she is about to file a motion for summary disposition. Paula instructs her client that he is to say nothing and let her do all the talking “to protect him”. She basically repeats all the allegations in her answer and accuses Barry of acting in bad faith by not accepting her “generous” offer. In spite of the prodigious efforts by Hy, Paula refuses to increase her initial settlement offer in spite of a strong legal and factual presentation by her opponent. Not surprisingly, the case fails to settle.

Result for Case #2: There is no settlement. The substantial time devoted to mediation was unproductive and both sides have to prepare for trial and possible appeal. Both the lawyers are frustrated and their clients are both unhappy with their counsel. The

Continued on page 14.

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Social Security Number Privacy Act

By Linda Pohly

The Michigan Legislature imposed additional duties on lawyers when it enacted the Social Security Number Privacy Act, MCLA §445.81 et. seq. in 2004. The effective date was March 1, 2005, although some requirements are effective January 1, 2006. The Act applies to every lawyer who obtains social security numbers in the course of business, and it will have an impact on business and municipal clients. Most conscientious lawyers should have no problem complying with the Act, as their policies now in effect to protect client information should also prevent unauthorized disclosure of social security numbers. Lawyers should take note of several provisions that do impose additional obligations.

Section 3 of the Act contains the primary substantive provisions. The section prohibits “persons” (defined to include every imaginable legal entity) from “intentionally” using or disclosing social security numbers in particular, carefully defined, ways. Most of the prohibitions concern account numbers, membership cards, and other uses of social security numbers, which will not affect the business operations of most lawyers, but lawyers should be alert to at least two of the prohibitions. First, a person may not “publicly display” more than four sequential digits of a social security number. The term “publicly display” includes open view on a computer screen.

Section 3(g) is the most likely to cause problems for lawyers. Effective January 1, 2006, a person may not include more than four sequential digits of a social security number in any document or information “mailed” to another person. The term “mailed” includes courier services as well as the U. S. Postal Service.

Fortunately, there are a number of

exceptions to the prohibition of mailing social security numbers, including use of a social security number that is authorized or required by law or required by law to appear in the document, and documents disclosed “pursuant to legal discovery or process.” Further, the statute permits mailing of a document containing a social security number by, or at the request of, the person whose number appears in the document. Therefore, it would be permissible to mail a copy of a Will identified with a social security number to a client who made that Will. Other exceptions include use of social security numbers in the ordinary course of business to investigate credit, verify identities, enforce legal rights, or administer employee benefit programs.

The statute provides that beginning January 1, 2006, every person who obtains one or more social security numbers in the ordinary course of business must have a written privacy policy for social security numbers. The policy must prohibit the disclosure of social security numbers, limit access to the documents containing the numbers, describe a means of proper disposal, and provide for penalties for violation of the policy. The policy must be published in an employee handbook or similar document.

Section 6 is the penalty provision of the Act. Intentional violation of the Act with knowledge that the conduct violates the Act is a misdemeanor, punishable by fine and jail time. Section 6 (2) authorizes a civil action for actual damages, and authorizes the recovery of attorney fees for a “knowing” viola-

tion. Given the potential loss from a successful identity theft, the exposure to damages for violation of the Act could be substantial.

Lawyers are already charged with the protection of client confidences, so it should not be difficult to establish procedures to protect social security numbers, even if they are not the numbers of clients. Careful lawyers can use implementation of the Act as an opportunity to enhance existing procedures for the protection of client confidences. Suggested precautions include checking “sight lines” in reception areas, to ensure that computer screens are hidden from public view, and shredding materials containing social security numbers obtained through discovery. As lawyers prepare the written policy required by the Act, they can remind employees of the obligations with respect to other information passing through their hands. Most SCAO forms have now been updated to remove unnecessary references to social security numbers; lawyers should do the same.

The prohibition against mailing documents containing social security numbers will cause the most compliance problems. As lawyers are protected by the “discovery” exception, if a document contains a social security number you should insist that the person seeking the document issue a formal subpoena or request for production of documents. This will prove to be another unfortunate hindrance to the “old school” practice of informally and cooperatively exchanging documents in civil litigation in lieu of formal discovery. A violation of the Act might even occur if a lawyer mails copies of materials lawfully obtained through the discovery process to the lawyer’s own client, although handing the same ma-

Continued on page 10.



Letter to the Editor: The End of the Story

After seeing my name sullied in letters by Misters Segar and Kasle, I believe it appropriate to "set the record straight." As to Mr. Segar, Dennis Haley was correct! After hours, days, weeks and even months at his "spot," Mr. Segar has met with only limited success. A broken clock is right twice a day.

The so called "Big Fish" picture that began this imbroglio has been discovered by a reputable photo company to have been digitally diddled, therefore casting serious doubt on the credibility of the "catch." (Whereas my big catch, of which Misters Segar and Kasle are very jealous, was photographically documented by the Minister of Court Street Methodist Church.)

As to Mr. Kasle, his letter can be best described as pure fiction. First, Mr. Kasle found "the spot" by spying on Mr. Segar across the lake with binoculars, and then motoring over and anchoring 20 feet away. Second, Mr. Kasle himself is the individual who was bribed by Mr. Segar. At least he has now publicly acknowledged that his nefarious conduct deprived me of the award to which I was rightfully entitled.

Third, Mr. Kasle is the fisherman who believed his rod was broken, when in fact his line broke and he lost his hook. I know, because he asked me if his rod could be repaired, and I simply tied on a new hook.

Finally, I do need to protect my backside, since Mr. Kasle publicly admits he would try to intimidate me by attempting to influence his former partner, now Prosecutor, David Leyton. Luckily, Mr. Leyton's moral fiber is several cuts above that of Mr. Kasle.

As a postscript, I apologize for the necessarily harsh nature of this response, but the truth often hurts, and aspersions have certainly been cast at me by two individuals whose credibility is at best suspect.

Len Shulman

Ed. note: This letter was found on Len Shulman's desk after he passed away on July 24. For a celebration of his life, see Bar Beat, Jan-Feb, 2005. His son David reports that his Dad's need to continue this debate has ended – Len has found another spot to fish – year round.

SSN Privacy Act

Continued from page 9.

materials to the client would be perfectly permissible. The prudent course will be to treat all materials containing social security numbers as client confidential material, even if you obtained those documents through the discovery process, and to keep those materials out of the mail.

Linda Pohly is a sole practitioner in Flint Township. Her practice includes taxation, estate planning, probate and business transactions. She is Administrator of the Centennial Chapter, American Inns of Court, on the GCBA Board of Directors and the Flint Estate Planning Council, and represents the Seventh Circuit in the SBM Representative Assembly.

* * *

War Story of the Bar

Every attorney errs. An excellent seasoned attorney recently reported one of his most painful mistakes. He represented a bank in a case where a customer alleged the bank breached its fiduciary duty and wrongfully interfered with a contractual relationship. The customer had applied for a mortgage to purchase a piece of investment property. The bank turned down the loan, approached the seller on its own behalf, and purchased the property.

Plaintiff issued a deposition notice duces tecum to the Senior Vice President of the bank. The officer appeared with many documents, none previously reviewed by the bank attorney. Therein the error. The Plaintiff's attorney questioned the officer about the officer's notes from a meeting regarding the customer's application. In the lower corner was a hand-written comment the attorney could not decipher so he asked the officer to read it. The officer hemmed and hawed until the attorney demanded to know the language. Most sheepishly, the Vice President said: "Oh, what a tangled web we weave, When first we practice to deceive." The case settled shortly thereafter.

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Honorable Donald R. Freeman

By Hon. Thomas Yeotis

In the words of St. Paul, Judge Donald R. Freeman fought the good fight, stayed the course, and kept the faith.

A highly intelligent and complex man, Don was an unbelievable fighter for causes he believed in. Both an engineering and law school graduate of Wayne State University, he was truly a Renaissance Man with superb intellect and a wide assortment of interests. He was a living legend, one of a kind, unlikely to be duplicated. He was multifaceted, a brilliant lawyer and judge, an outstanding orator and eulogist, a connoisseur of the arts, had a strong sense of history, political smarts, a charismatic presence, and the courage of a boxer.

My association with Don Freeman began by chance in 1956, when as a young lawyer I rented an office in the old Genesee Bank Building to begin my practice. Don's office was next door to me and he befriended me by providing me with one of my first clients and the use of his secretary. His mentoring was invaluable and his interest in politics rubbed off on me.

In 1957, after a vigorous campaign he was elected Municipal Judge of Flint, and through his help and others, I succeeded him as Municipal Judge upon his election to the Circuit Court Bench in 1966. Four years later I joined him on the Circuit Court Bench, serving in adjoining court rooms for over 25 years.

We were sort of the "odd couple." Don, who envisioned himself as Tony Randall's sophisticated, meticulous and dramatic stand-in, proudly exhibited Tony Randall's autographed photograph in his office. My role was reduced to playing Tony Randall's sidekick Jack Klugman and wishing I were Al Kaline or Sparky Anderson.

Don Freeman was a populist judge, whose primary venues outside the courtroom were union halls, church

suppers, hospitals, bowling alleys, and funeral homes. By all accounts, he was probably the best known judge in Genesee County.

He was also active in numerous social agencies and worthy causes, including the Sam Duncan Memorial Scholarship Fund, National Council of Alcoholism, International Institute, and the Historical Society of Genesee County. Don was a recipient of numerous awards for his efforts, the most recent and one of his favorites was a year ago when he was inducted into the Flint Bowling Hall of Fame for meritorious service, even though he was not a bowler. The high esteem he held for bowlers included their numerous financial contributions to worthy causes and services to others in our community. The Judge Freeman Award that he provided to the bowling community for many years honors recipients for their contributions to the less fortunate.

He was the "Florence Nightingale" of our community, spending countless hours visiting the sick, consoling them and bringing a smile to their faces. Don would often be called by a friend to the funeral home and would extemporaneously give the family support by expressing his condolences in a moving and heartfelt manner. He truly was Flint's "Eulogist Laureate."

Don was also the ultimate political strategist and campaigner with unbounded zeal and energy. He was not content to limit his enthusiastic campaign style for just his own benefit. As a political "talent scout," he encouraged qualified people to run for public office, working tirelessly to assist them. Many of us, myself included, benefited politically by his friendship and support.

His commitment to improving the courthouse library and the courthouse



Donald R. Freeman

restoration project were two of many endeavors he undertook for the benefit of the legal community, but ones for which he will be most remembered.

Anything said about Judge Freeman would not be complete without mentioning his legal and public relations team of Diane Baker, his longtime secretary, friend, advisor, and Administrative Assistant for most of his judicial career, along with his court officer Clyde Williams. Don did not only know how to lead a team but he knew how to pick a team.

Controversial at times, he overcame numerous obstacles to achieve an inordinate amount of success, attributable in part to his loyalty, which far exceeds the dictionary's definition. He was loyal to his family, friends, staff, profession and to his adopted community.

Success to Judge Freeman included his family, devoted wife Harriett, and outstanding and caring sons, medical doctors, Neal "the Ophthalmologist" and Marshall "the Neurologist," as he referred to them. His service to the community was a success, as exhibited by his 40 years on the bench as the longest serving judge in our county's history and leadership. He was successful in his loyalty to the worthy causes he assisted and believed in.

I shall forever remember his family values, endless energy, competitive spirit and courage that kept him going until the end, as well as the undying love and care that he received from his family.

May his memory be eternal.

Gone Too Far

Ever fearful of litigation, or in response to litigation, businesses are using warning labels that sometimes go “over the top”:

Sears hairdryer: Do not use while sleeping.

Fritos: You could be a winner! No purchase necessary. Details inside. (The shoplifter special.)

Swann frozen dinners serving suggestion: Defrost. (But it’s just a suggestion.)

Dial soap directions: Use like regular soap.

Rowenta iron: Do not iron clothes on body.

Tesco's tiramisu dessert, printed on the bottom of box: Do not turn upside-down.

Marks & Spencer bread pudding: Product will be hot after heating.

Nyctol sleep aid warning: May cause drowsiness.

Boot's children's cough medicine: Do not drive a car or operate machinery after taking this medication.

Most brands of Christmas lights:

For indoor or outdoor use only.

Japanese food processor: Not to be used for the other use. (Which is?)

Sainsbury's peanuts warning: Contains nuts.

American Airlines packet of peanuts instructions: Open packet, eat nuts.

Child's Superman costume: Wearing of this garment does not enable you to fly.

Swedish chain saw: Do not attempt to stop chain with your hands or genitals.

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Rules of Statutory Construction I'll Bet You Didn't Know (or Maybe Forgot)

by Richard J. Figura

How many of you are aware or have forgotten that rules of statutory construction for Michigan statutes are set forth in – where else? – the statutes: Section 3 of RS 1846, Ch. I [MCL 8.3] provides: “In the construction of the statutes of this state, the rules stated in sections 3a to 3w shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature.” Additional rules are provided by MCL 8.4 through 8.8.

MCL 8.3 through 8.8 provide some of the rules you’ve always heard or wondered about but weren’t sure of their source. But now, when arguing a point of statutory construction, there’s no need to search for a case to support your argument. Your source could be in the statute.

What is the rule, for example, for computing a period of days? We all know how to do it, but now we know that the authority for the method is in MCL 8.6, which provides, as to statutes and administrative rules: “In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday or legal holiday, the period or day is extended to include the next day which is not a Saturday, Sunday or legal holiday.”

Or how about the following? “Every word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number. Every word importing the masculine gender only may extend and be applied to females as well as males.” You always knew that, but now you know that the authority for that rule is MCL 8.3b.

Of special interest to public corporation attorneys is MCL 8.3d, which provides as follows: “All words purporting to give a joint authority to 3

or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.”

The cited sections also provide rules of statutory construction for such terms as grantor, grantee, inhabitant, real property, month, year, oath, person, preceding, following, writing, and many more. As to “year,” lest you forget the religious beliefs of our forefathers, MCL 8.3j provides: “the word ‘year’ alone shall be equivalent to the words ‘year of our Lord.’”

When you see a reference to statutes connected by the word “to,” such as “MCL 8.3 to 8.8,” you always knew the reference was to all of the sections from 8.3 through and including 8.8, right? Well, you can now be confident in that interpretation because MCL 8.3w specifically says that’s how you interpret such a reference.

You’ve also wondered, I’m sure, about what happens to a statute that is repealed if the statute repealing it is itself later repealed. Wonder no more. MCL 8.4 provides: “Whenever a statute, or any part thereof, shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the repeal of such subsequent repealing statute.”

You have known for as long time that the catch line heading of any section of the statutes that follows the act section number is not a part of the section or the statute, nor can it be used to construe the section more broadly or narrowly than the text of the section would indicate, but can you cite authority for that? Now you can, it’s MCL 8.4b, which points out that such catch lines are inserted only for purposes of convenience.



Richard J. Figura

My personal favorite, however, is MCL 8.3g, which provides: The words “insane person” shall be construed to include an idiot, a non compos, a lunatic and an otherwise distracted person. Obviously, political correctness was not a concern when this section was enacted, but I’d stay away from the terms “idiot” or “lunatic” today. At the same time, if simply being “otherwise distracted” is a test, we’ve all been insane at one time or another. The legislature, in its wisdom, has so determined.

Notice Regarding Schedule Conflicts

Attorneys are advised to let judges know at the earliest opportunity when a trial scheduling conflict becomes evident. Pursuant to MCR 2.501(D), the courts and counsel shall strive to resolve conflicts. In the event that the matter cannot be resolved with the individual courts, the judges shall consult directly to resolve the conflict.

Archie L. Hayman
Chief Judge
Genesee County Circuit Court



Not finding enough work in Genesee County, Jim Wascha has opened an office in Oscoda. Changing a letter in his name did not fool *Bar Beat*.

A Tale of Two Lawyers

Continued from page 8.

mediator spent about 12 hours trying to resolve the case at a cost of \$1,800 per party.

Moral: Both lawyers were right about mediation!

Richard Barron experienced a delayed mid-life crisis this year as a take-no-prisoners litigator in the Genesee County Corporation Counsel's office. He has reinvented himself as a zen-inspired mediator in Flushing.

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From the Riker Retirement Home, Boarding House & Spa

Q: How long have you been a member of the Bar?

A: The State Bar of Michigan honored me as a 50-year member in 1999.

Q: How long were you on the bench?

A: My service extended from January 1969 through December 1985 (also from May to December in 1986 for Lee Vera Lloyd).

Q: What do you not miss?

A: I do not miss the frustration of not having the system work properly.

Q: Who did you admire while you were on the bench?

A: I respected the good practitioners, who were prepared, on time, and respected the system, as well as judges who were prepared and on time.

Q: Have you been involved in any volunteer activities since retirement?

A: I am helping to install a Model Circus in the new \$6.5 million Tibbals Learning Center at the John & Mabel Ringling Museum of Art, and I am on the Board of Directors of the Circus & Traveling Shows Retirement Project (CATS), seeking to establish low cost housing and a retirement center for circus and traveling show personnel.

Q: Have you been employed after retirement?

A: I did some bench work in Genesee County Circuit Court, Flint District Court and other Michigan courts, both criminal and civil.

Q: Why do you live in Sarasota, Florida?

A: Sarasota is as close to Paradise as I will get, and is Circus Town, USA (fortunately we bought before the present boom in real estate).



Dale and Evelyn Riker at the Big Apple Circus in Chicago



Q: Do you visit Flint?

A: We generally visit about once a year, but only after June 1 and before October 1.

Q: Tell us about your family.

A: My wife Evelyn was a secretary in the Athletic Department at Mott Community College for many years. We have six children, all well and employed or retired, in Texas, Arizona, California, Washington, Flint and Auburn Hills, Michigan. We have a family reunion planned for July in Seattle, where most of the family will be present, including ten grandchildren, two great-grandchildren, and one great-grandchild due in July.

Q: Where were you educated?

A: The Army provided my undergraduate work (ASTP at the University of Michigan), followed by the Detroit College of Law, class of 1949.

Q: Are you a Flint native?

A: My birthplace was a home at 1715 Milbourne Avenue, Flint, yet to be designated a historic place, but I am sure someone is working on it!

Q: We all remember the extensive circus memorabilia you had in chambers. How did you become interested in the circus?

A: My first recollection of seeing a circus was about 1934 at the Detroit Shrine Circus, which at the time was the Winter Ringling Bros. Show, featuring most of the famous performers of the time. However, my first experience in the backyard of the Ringling Brothers Barnum and Bailey Circus in 1954 in Flint started our serious interest in the circus. It has been a rewarding hobby, which brought us to Sarasota. Clowns are only a part of the hobby. I did some clowning early on, but have since thrown away the grease paint.

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