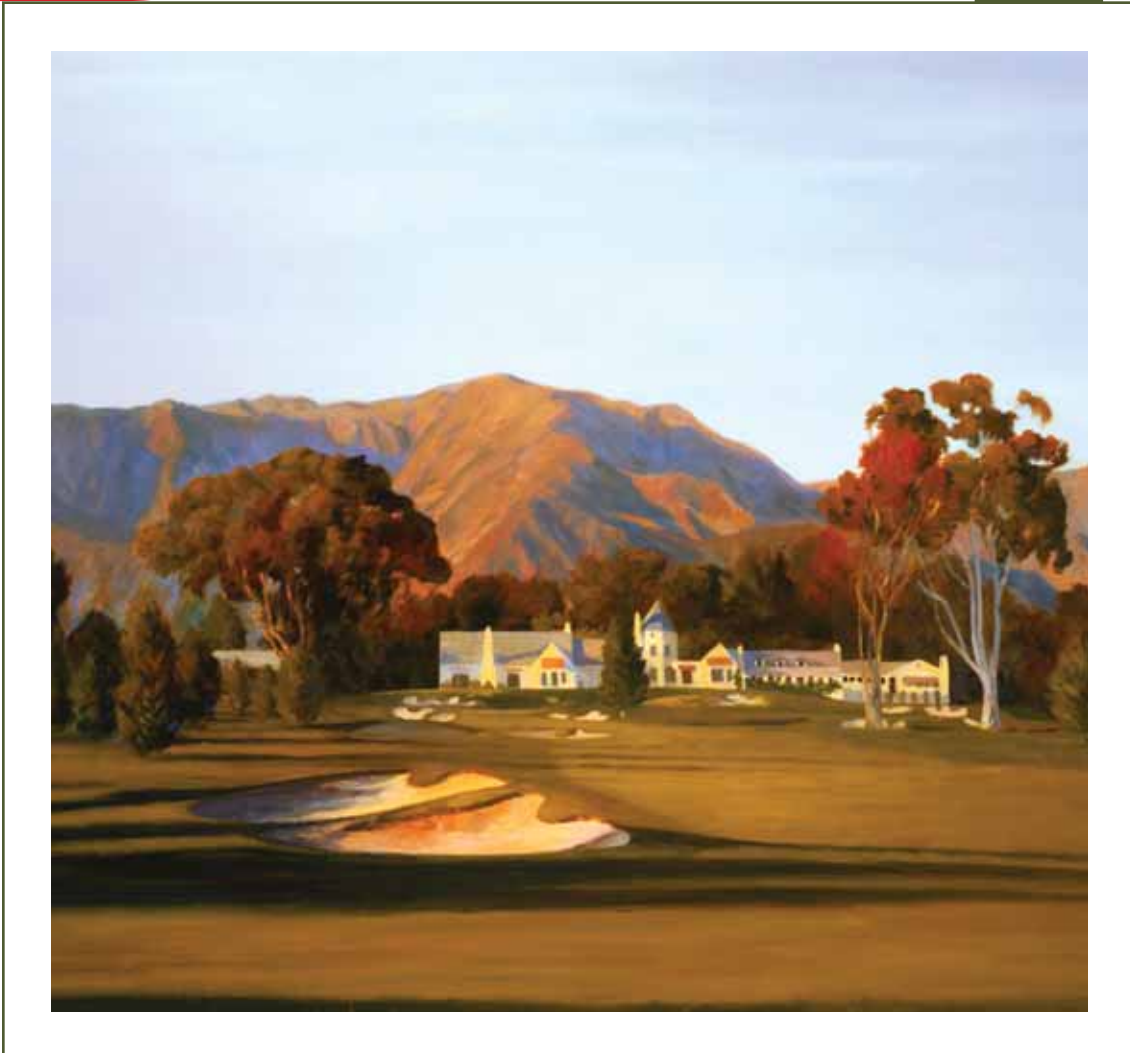


May/June 2006

# BARBE AT

Genesee County Bar Association



Afternoon Shadows at the Valley Club's 18

Attorney Discipline Board Service

A Tribute to GCBA Veterans:  
1950 to 2006

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BAPCPA And Family Law Issues

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### On the Cover

The Valley Club of Montecito, in Santa Barbara, California, painted by landscape artist Michael G. Miller, a former golf club director. For more information about Mr. Miller, see Bar Beat, May/June 2005, p 3. His paintings may be viewed at [www.golfspast.com](http://www.golfspast.com), and paintings and enhanced reprints may be purchased from the artist at 11105 Rose Ave. #102, Los Angeles CA 90034, [mgmart@sbcglobal.net](mailto:mgmart@sbcglobal.net).

Valley Club was designed by Alister Mackenzie and Robert Hunter in 1928. It is known for its unusual bunkers which have recently undergone a major restoration by Tom Doak, considered one of America's top golf course architects.

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# *It Was a Very Good Year*

by H. William Reising, President

The summer season is rapidly approaching, and alas, this is my last column in *Bar Beat* as president. As the old adage goes, "Time flies when you are having fun." That is exactly the way I feel about having the privilege of serving as president of the Genesee County Bar Association over the past year. At the annual meeting in June, I will be turning over the reins and the spoon to the next president of this organization.

Simultaneously with that turnover, there will be a day-long meeting to work on putting together a strategic plan for this organization to carry it into the next decade. As you might recall, the development of such a plan was one of the stated goals of my presidency. The planning process is going to involve numerous people, including a facilitator from the American Bar Association, and will take place offsite. Leading up to the June 15 meeting, I will work closely with the other officers of the association, the board of directors, and Executive Director Ramona Sain to make sure we have everything in place so that this meeting is successful. If any members have any ideas about what should be included in the strategic plan, please forward that information to Ramona Sain or me for consideration. From my standpoint, the more input the better.

As you might recall, the association paid tribute to members who served in World War II at the May 2005 monthly meeting. The meeting was a huge success, and was a very moving experience for all who attended.

With that in mind, the upcoming May 15 monthly meeting is going to recognize and honor our GCBA members who are post-World War II veterans. There are approximately 30 members who have served in the military since WWII. During that time, this nation

has been involved in the Korean conflict, the war in Vietnam, the Gulf War, and, more recently, the war on terror to troop deployments in Afghanistan and Iraq. For those of you who are not aware, one of our members, Bob Swartwood, has just been activated, and will be spending 18 months in Iraq. We wish him well and Godspeed.

Certainly, this past year has been rife with controversy at the national political level related to the ongoing involvement of this great country with Afghanistan and Iraq. While this organization can, realistically, have little impact on that situation, I do urge all members of our organization to "stay the course" and to keep in mind that we have an obligation, as attorneys, to apply the rule of law and to make sure our system of justice continues to function in an appropriate manner.

In that regard, I would once again urge all members to give consideration to making a contribution to Access to Justice. If any of you want further information concerning that program, you may contact Francine Cullari. In her capacity as a commissioner of the State Bar of Michigan, she is serving as the area chairperson for Access to Justice. That program is a critical element to make sure that there is justice for all in Michigan.



H. William Reising

Although not part of my role as president of this organization, I am a huge proponent of wellness. One of our members, Brian Barkey, will once again spend his summers riding herd, if you will, on the Crim Training Program. This program is hugely successful and culminates with the annual Crim Day of Races on the last Saturday of August. From my point of view, it is truly the best day of the year to be in Flint. There is so much energy in Flint on that day that you can literally "float" through the race. Of course, I still recommend that you train if you are considering doing any of the races, especially the 10-miler. After a while, those hills can get to you. I look forward to seeing everyone who is training run through my neighborhood. That would include several members of our organization, and I intend to join them at every opportunity I have on my schedule.

Last, I want to profusely thank the Bar Association staff for their support during this past year. They do a tremendous job.

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# Strategic Go Ahead

by Ramona Sain, Executive Director



Ramona Sain

As previously reported by President Reising, the Association is working with the American Bar Association Division of Bar Services to develop and implement a strategic plan. The ABA conducts comprehensive strategic planning services throughout the country and has extensive experience in providing the technical expertise needed for a successful strategic plan. Within the past few years, the ABA provided the same services to the Women Lawyers of Michigan and the Detroit Metropolitan Bar Association, with very good results.

In fact, members should have received a survey recently prepared and distributed by the ABA. If you have not already completed the survey, the deadline to respond is the week of May 8. Responses will be compiled by the ABA and will serve as an important component when the Board of Directors meet for a daylong strategic planning session in early June. Shortly thereafter, the report will be completed and ready for review. We have great

expectations that our results will prove to be just as successful as with the other associations.

Please take a moment to look at a few of the Law Day coloring and poster contest entries. We received nearly 350 submissions from over a dozen area schools and the results are impressive. To view additional posters, Circuit Court and the Flint Public Library agreed to display the posters throughout the month of May in celebration of National Law Day.

We have more than just Law Day to celebrate in May. May is also the month our nation celebrates Memorial Day to honor our veterans. Thanks to the initiative by Bar Beat editor Francine Cullari, we also pay tribute to our post-World War II veterans. (If you recall, we recognized our World War II veterans last year.) Thanks to our members who contacted the GCBA to inform us of other veterans who were omitted from our original list. Howard

Grossman was "outed" by Mike Krellwitz, who was "outed" by John Nickola. You have to love small bar associations and the relationships that develop over the years. Seriously, though, from the onset, we compiled veteran information through requests in our monthly flyer and through e-mail. I suspect there have been additional oversights. If so, please accept our apologies and inform the GCBA of your military service.

I look forward to seeing you at the May 15, 2006 Membership Meeting.

## OTIS SMITH LEGAL MILESTONE

The State Bar of Michigan (SBM) has selected the University of Michigan – Flint campus as the site for a Legal Milestone honoring Otis Smith. A dedication ceremony and luncheon will be held on June 21, 2006 at 11:00 a.m. on campus. Please mark your calendars. GCBA members will receive invitations by mail.

Speakers for the event include Hon. Dennis Archer, former Michigan Supreme Court Justice, past president of the American Bar Association and the SBM, and former mayor of Detroit. Justice Marilyn Kelly of the Michigan Supreme Court, E. Christopher Johnson, General Counsel for General Motors and Olivia Maynard, member of the University of Michigan Board of Regents, will join Archer. Otis Smith's brother, Hamilton Smith, will also speak. Thomas Cranmer, President of the SBM, will serve as master of ceremonies.

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# Attorney Discipline Board Service

by Michael Krellwitz

I think it was 1987 when I received one of those dreaded envelopes with the old English printing of the return address indicating "Attorney Discipline Board." It was an unusually thin envelope, so perhaps they just summarily revoked my license. The letter inside began something like, "Thank you for your interest in serving as a panel member." Did that mean that I would sit in judgment of lawyers *and* be immune from further grievances? Well, yes and no. I would sit in judgment and, as I soon found out, it would not be a grant of immunity. Within a week of my appointment, I received a Request for Investigation from the Attorney Grievance Commission on a client I had represented more than 10 years previously. Fortunately, after many hours of searching (the file was gone) and a long response to the Attorney Discipline Board, the matter was dropped.

At any one time, there are about 30 Attorney Discipline Board panelists serving in Genesee County, and there are about 125 three-person panels throughout the State of Michigan. The panelists in Genesee County are dedicated lawyers who volunteer their time to help in a process that, in the end, protects both lawyers and the community. During the last 19 years, I have heard a number of interesting and occasionally controversial cases.

A couple of years ago a grievance was filed against a former Saginaw County Prosecutor, who had moved into private practice. He represented a person in a serious criminal matter. The attorney and client agreed, orally, to a \$10,000 fee if the matter went to Circuit Court. If it didn't go to Circuit Court, the client would get "a substantial refund." The attorney agreed to waive the preliminary exam and go to Circuit Court, where the case was dismissed because the complainant did

not appear for trial. The client wanted a substantial refund as agreed. The attorney said no, because the case did go to Circuit Court, thus inviting a grievance.

What made this case interesting was not the facts so much as the interplay among the panelists. I find that the issue of misconduct is almost always agreed upon, but the issue of discipline is where the disagreement arises. In this case, the misconduct was heatedly debated, and in a 2-1 decision, we found no misconduct. The minority wrote a long dissent that was, thankfully, ignored.

Our panel heard one of the more famous "inappropriate language" cases. It was actually the second of the cases that Genesee County panels heard. Our case involved a local lawyer and a lawyer from Saginaw County. The facts

were clear. The Flint lawyer used inappropriate language over the telephone, including name-calling. The panel found the Flint lawyer out of line, but not to the level warranting discipline. The case was appealed, and the panel decision was upheld.

Recently, our panel ordered a suspension of 30 months to a lawyer who had been entrusted with a fairly large amount of his client's money earmarked for mediation sanctions and costs. The money was commingled with his personal funds and spent on personal obligations. To cover up the transgression, the lawyer made an agreement with opposing counsel for installment payments on the mediation sanctions and costs. The installments were made in a timely manner, but the plot was uncovered and a grievance was filed. The panel had no difficulty finding misconduct, but deliberated with respect to discipline. We were faced with the ABA standards that call for revocation for misappropriating a client's money, though the lawyer committed no prior misconduct, and the client did not lose any money or incur increased fees or

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costs. As a matter of fact, there was some question as to whether the client even knew of the transgression. The panel finally agreed on a 30-month suspension. The lawyer appealed, and the suspension was increased to revocation.

There are many more cases to discuss, and each has its unique problems, but I wish to leave readers with a couple observations.

First, if you get a Request for Investigation (RFI), answer it promptly or ask for additional time. It is standard to receive additional time to answer.

Second, if the matter turns into a grievance, respond thoroughly and promptly. Again, you can receive additional time to answer. The importance of answering should be obvious. What is not so obvious is that failure to answer the RFI and/or grievance will result in an additional count of misconduct for something called "failure to cooperate." Our panel recently had a case where the lawyer self-reported his misconduct to the Commission, and when a RFI and subsequent grievance were filed, he failed to answer. An additional count of failure to cooperate was filed, though our panel *refused* to find misconduct for failure to cooperate since he had already provided all the necessary information in his self-disclosure.

Many cases are filed each year, but relatively few get to a formal proceeding. In 2003, more than 3,600 matters were filed statewide. The Attorney Grievance Commission eliminated nearly 2,700 of those cases without any action. All but 240 of the remaining cases were eliminated by a "cautionary letter" or "letter of admonition." The remaining matters went to formal proceedings.

### Flint Patent Service<sup>SM</sup>

**JACK E. TUBBS**

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## The Curtain Rods

She did not want a divorce, but her husband found a girlfriend to replace her. On the day the divorce was final, she spent the first day packing her belongings into boxes, crates, and suitcases. On the second day, she had the movers come and collect her belongings. On the third day, she sat down for the last time at the beautiful dining room table by candlelight, put on some soft background music, and feasted on a pound of shrimp, a jar of caviar, and a bottle of Chardonnay.

When she had finished, she went into each and every room and stuffed half-eaten shrimp shells dipped in caviar into the hollow of all the curtain rods. She then cleaned up the kitchen and left.

When the ex-husband returned with his new girlfriend, all was bliss for the first few days. Slowly, the house began to smell. They tried everything: cleaning, mopping, and airing the home. Carpets were steam cleaned. Air fresheners were hung everywhere. Exterminators checked vents for dead rodents and set off gas canisters while her ex-husband and his girlfriend had to move out for a few days. They even paid to replace the expensive wool carpeting. Nothing worked.

People stopped coming to visit. Repairmen refused to work in the house. The maid quit. Finally, they

could take the stench no longer and decided to move. A month later, even though they had cut their price in half, they could not find a buyer.

Word got out and eventually, even the local realtors refused to return their calls. Finally, they had to borrow a huge sum of money from the bank to purchase a new place.

One day, his ex-wife called and asked how things were going. He told her the saga of the rotting house. She listened politely and said that she missed her old home terribly and would be willing to reduce her divorce settlement in exchange for getting the house back.

Thinking his ex-wife had no idea about the smell, he agreed on a price that was one-tenth of the home's value, but only if she agreed to sign the papers that very day. She did, and within the hour, his lawyers delivered the paperwork. A week later, the man and his girlfriend stood smiling as they watched the moving company pack everything to take to their new home, including the curtain rods.

*Editor's note: The story above was taken from unidentified e-mails. If the author wishes credit, please contact the editor at fcullari15@cs.com.*

## SBM 50-year Members

Congratulations to the new 50-year members of the State Bar of Michigan. Earl L Borradaile, Shaker Brackett, Robert Mainprize, Jr., and Harold E Resterer joined the bar in 1956.

They will be honored at the Dearborn Inn, Dearborn, Michigan on Tuesday, May 16, 2006. The luncheon begins at 12:00 noon followed by a short program.

Anyone interested in attending, please contact Keira VanDenBrink at (517) 346-6339 or kvandenbrink@mail.michbar.org



**R. J. Antonsik**

Navy Reserve  
1962 – 1964  
Storekeeper Third Class (SK3), Supply Division. Participated in the Cuban Naval Blockade in 1962  
Visited many ports (Atlantic coast, Caribbean Sea, Mediterranean Sea, North Atlantic).

**K. C. Baran**

Army  
1988 – 1997  
USMA, West Point; Captain, Field Artillery; executive officer for the world's only Arctic airborne field artillery battery at Ft. Richardson, Alaska. Three Army Commendation Medals, three Army Achievement Medals, National Defense Service Medal, Overseas Service Ribbon. Graduated Jumpmaster School and earned Senior Parachutist badge with over 37 jumps.

**Douglas I. Buck**

Navy  
1951 - 1955  
Officer Candidate School in Norfolk, Virginia, Watch Officer, USS Iowa; Lt., All-Weather Combat Air Controller, Instructor at Officer CIC School, Glenview Naval Air Station; Naval Reserves Combat Korean Theater, blockade and bombardment action. Korean War Ribbon, two battle stars—Doug Buck's enlistment in the Navy came as the result of not only patriotism but admiration for his uncle, Admiral Maurice E. Curtis, a Flint native for whom the frigate USS Curtis was named. Admiral Curtis was stationed at Pearl Harbor at the outbreak of World War II and his tales of naval operations greatly influenced Doug.

**William Cavanaugh**

Marines  
1969-1971  
Corporal, Camp Lejeune, Camp Pendleton

**Bob Chimovitz**

Marine Corps  
1966 - 1968  
Comptroller's Office for the Second Division, Corporal, Camp Lejeune, North Carolina

**Howard D. Cline**

Army  
1957-1960;  
inactive reserves until 1965  
1st Lt., Judge Advocate General Corps in France 1958-1960

**Walter Griffin**

Air Force  
1970 - 1973 active duty; commissioned 1967 Intelligence Officer, 1st Lt. Denver and Cape Kennedy, overseas on temporary assignments in Asia

**Ronald Haldy**

Army  
1970 - 1972  
Infantryman, SP5, APC (armored personnel carrier) driver, Frankfurt, Germany—While awaiting orders in Frankfurt, Germany for Vietnam, Ron Haldy was plucked from the ranks by a Major and a 1st Sergeant to become the company clerk for a VIP helicopter company in Hanou, Germany. Ron says it is amazing what the ability to type and a few well-placed tickets to the Bob Hope Show can do for a guy's health and career!

**Dan Jaworski**

Marine Corps  
1965 - 1969  
Amtrac Crewman (amphibious vehicles), Sgt. E-5, Security Guard at National Security Agency, Da Nang, South Vietnam in combat

**Olof Karlstrom**

Army  
1952-1954  
Signal Corps, PVC, Germany and France

# A Tribute to GCBA Veterans

**Morris Kent**

Army  
1966-68  
Ben Hoa, Vietnam, E5

**Richard G. Koefod**

Army  
1966 – 1969  
Infantry Officer Candidate School, Fort Benning, Georgia Adjutant general corps officer in charge of the mental testing section of the Armed Forces Examination and Entrance Station, 1st Lt, Detroit, Michigan. While Detroit got to be a bit of a battle zone in June 1967, I was not involved in overseas combat. —Richard Koefold writes to thank *Bar Beat* and GCBA who actively and positively support our veterans and present-day military personnel. He says: "At the time in which I was involved in the service, we were not given this kind of support and were generally viewed as social outcasts. The way we were treated at that time, and for many years after, has left a lasting imprint in my memory and feelings. The way I see our organization responding has given me a much different and much more positive feeling."

**Michael Krellwitz**

1966–1972  
Army Reserves  
Fort Jackson, SC, Fort Ord, California, Fort Leonard Wood, MO, Ft. Campbell, KY

**John G. Mandelaris**

(formerly Manders)  
Army  
1955 – 1957  
Supply Sergeant of Battery B, 22nd Field



# 1950 - 2006

Artillery Battalion, 4th Armored Division, Fort Hood, Texas. Full-scale war games against the Army's 1st Armored Division in Louisiana



**Wendy J. Maxfield**  
1974 - 1976

Legal Clerk, Sp 4, Office of the Judge Advocate, Army Commendation Medal, Vietnam Era Service Medal, Good Conduct Medal, Certificates of Appreciation

**Lisa Murphy**

Army  
1989-1991  
Rank - E5  
Fort Jackson, South Carolina, and Fort Benning, Georgia  
Marksmanship medals

**Hon. Charles B. Mosier**

Army  
1953-1959  
Staff Instructor  
Nike Guided Missile Command, Ft. Bliss, Texas, USAR emergency Control Group



**John D. Nickola**

Army: U.S. Army Reserve; Michigan National Guard  
1961 - 1969  
Graduated Officer Candidate School; Commissioned Infantry Officer; Re-commissioned Armored Officer Military Instructor, Infantry Platoon Leader, Armored Squadron Leader, Sergeant Stateside

**Tom Pabst**

Army  
1967 - 1969  
Combat infantryman Sp4, Machine Gunner 4th Infantry Division, Purple Heart,

National Defense Service Medal, Expert (Rifle), Vietnam Service Medal, four Bronze Service Stars, Combat Infantryman Badge, Republic of Vietnam Campaign Medal

**Allan Parker**

Army  
1951-1953  
Korean War Special Agent in Counter-Intelligence Corps

**Gary Piggott**

Army  
1966 - 1968  
Seaman E-5 (serving as clerk) Vung Tau, South Vietnam; South China Sea

**Douglas Philpott**

Army  
1954-56  
Rank - 2P2, M.P. Railway Brigade  
Frankfurt, Germany

**Thomas H. Purcell**

Army  
1968 - 1970  
Staff Sergeant; Artillery Gun Chief, South Vietnam, along Cambodian border, combat duty



**Luke Quinn**

Air Force  
1953 - 1973  
Active and Reserve, Retired Lt. Colonel, New York, California, Michigan, Saudi Arabia (1 yr) and Oklahoma



**Daniel J. Rittman**

1968 - 1971  
Infantry, OCS at Fort Benning, GA, 2nd Lt Path finder school, parachutist school and other schools, executive officer of a parachute training company, Vietnam, 101st Division, Pathfinder Detachment, 5th Special Forces Group, Fort Devon, MA, Combat infantryman's badge

**Jeff Skinner**

Army  
1967- 1970  
101st Airborne Division, Sergeant 1st

Class, Army Reserves 1974 - 76; Assigned to 11th & 12th Special Forces Group

**Alan Smith**

Army  
1968 -1970  
Light weapons infantry, Sgt (E5), Central Highlands, Vietnam combat

**Scott Stensaas**

Army  
1970 - 1971  
Signal Corp., Sp-4

**Phil Swann**

Army  
1966 - 1972  
1st Lt. Infantry, Two Bronze Stars, Parachute Badge, Combat Infantry Badge, Cross of Gallantry of Bronze Foreign Award, Bronze Star with Valor, Bronze Star for Meritorious Services



**Robert Swartwood**

Air Force  
1969-73  
Army Reserve  
1973-present  
Military police officer, Colonel, 108th Division  
U.S., Korea, training for Iraq

**Jim Wascha**

Army  
1968 - 1970  
Personnel and Finance, Sp 5, Augsburg, Germany



**David Wecker**

Navy  
1980-1987  
Active and Reserve, Lt. Supply Officer, USS Sargo (submarine), in Hawaii



**Robin Wheaton**

Army  
1968 - 1970  
E4, Vietnam

# A Tribute to GCBA Veterans

Two Purple Hearts, Bronze Star with Valor, three Army commendation medals, Vietnam Ribbon

## Trachelle Young

1997 - 2001

Army Reserves

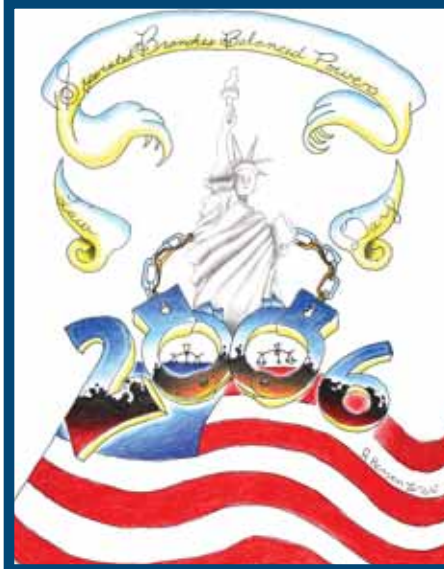
Mannheim, Germany, Administrative Law Attorney in Darmstadt, Germany, Legal Assistance Attorney in Fort Hood, TX

*Bar Beat* apologizes for omitting **Hon. Dale Riker** from the World War II veterans article in May 2005. Judge Riker served in the Army from 1942 to 1945. He went to Fort Custer with Dale Andrews, one of the first in the "limited service" category. After a short basic training, he was assigned to the Regimental Supply Office at the reception center. He worked a 9-5 job and was home every weekend except the period his unit was quarantined because the sergeants' "housemother" contacted scarlet fever. In early 1943, the Army, having drafted most of the college students, decided that they might someday need some college graduates. In July 1943, he was shipped off to Ann Arbor in the Army Specialized Training Program to take basic engineering and pre-med classes for six semesters. In January 1945, he was selected to attend basic training in the infantry and the Medical Corps. In June, he was assigned to Fort Riley, Kansas, to attend Mule Pack School. He spent the summer with a mule, graduated with honors, and received a short furlough. Dale reports that the day he returned to camp happened to be the day after we dropped the bomb, so neither he nor his mule were sent to Burma to fight the Japanese. He managed another two months of clerical work before honorable discharge as a PFC. Dale Andrews, with just slightly more time, ended up a major.

Information is not available for Howard Grossman, Frank Kasle, Sam Miscisin, and George Steel.

# LAW DAY 2006

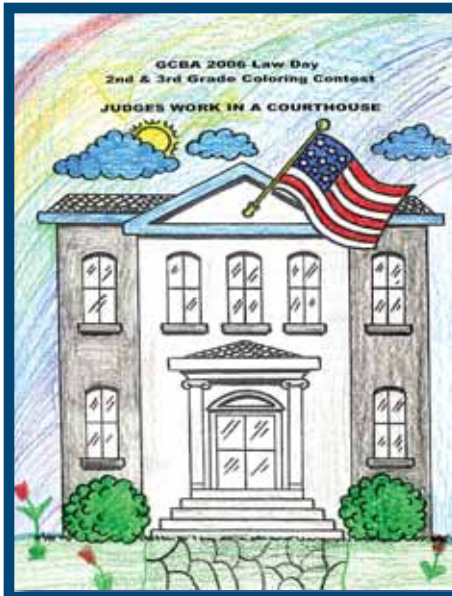
## Poster and Coloring Contest Winners



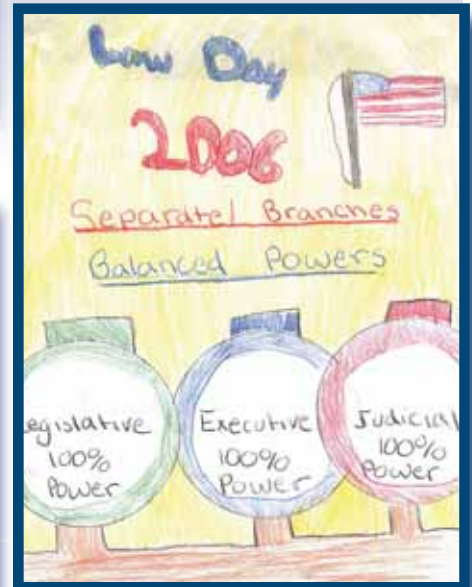
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Grade 3, Perry Center City School



Grade 5  
St. Robert's School



Grade 5  
Perry Center City School



Grade 5  
Perry Center City School



Grade 5  
St. Robert's School



# Been There, Done That, Folks

by Richard Morley Barron

In September of last year, Karen Folks decided to leave the practice of law to become the director of the YWCA of Greater Flint at a difficult time in its existence. Such a dramatic career change is nothing new for Karen, however.

She was born and raised in Grand Rapids, she received her BA in Music from Michigan State University in 1975. While at MSU, she developed her exceptional singing skills, and participated in the music department's opera workshop, and performed as the lead actress in several Gilbert & Sullivan operettas.

Upon graduation, she taught music, first in the Byron school system in Michigan, and then for Arlington County public schools in Virginia. She notes that it was not unusual for teachers to have as many as 27 different countries and languages represented by the Arlington student population. While teaching in Virginia, she became director for the first musical production of the prestigious Arlington Children's Theatre.

Her next calling was entrepreneurship. After reading a *TIME* magazine article about two Bostonians who developed a balloon bouquet business,

Karen decided that Washington, D.C. was ready for the innovative concept and launched a similar venture with another teacher. She claims to have delivered a bouquet to a VIP at the Pentagon while tap dancing. In her spare time, she became a licensed real estate agent.

Eventually, she heeded the call to return to Michigan and decided it might be fun to be a lawyer. She graduated *cum laude* from Cooley Law School in 1987. Acting on a tip that there was a circuit court clerkship in Flint, Karen applied for and was hired by Judge Fullerton. There are rumors that Karen, on occasion, opened court in an operatic fashion.

At the conclusion of her clerkship, she was hired by then-Flint City Attorney Tim Bograkos. In addition to performing a wide variety of municipal legal work in the district and circuit courts, Karen established and obtained funding for the Victim Advocacy Program. In partnership with the YWCA, the program provided a critical referral source for victims of domestic violence. She also assisted in developing the city's policy to avoid sexual harassment and workplace

discrimination, drafting and implementing its internal complaint and investigation program.

In 1996, she left the City of Flint to take an associate position with the firm of Neal, Neal & Stewart, an insurance defense firm, while continuing to provide legal services to the city. Upon request, Karen returned to the City Attorney's Office as chief assistant city attorney. As the city began undergoing unprecedented, historic changes under the state declaration of a financial emergency, Karen was appointed by then-acting Mayor Darnell Earley as chief legal officer. Karen reorganized and managed the City Attorney's Office and its 14 person staff under state-appointed emergency financial manager Ed Kurtz through the city's most difficult period. She cut operating expenses in half while disposing of the bulk of backlogged claims and suits. Karen successfully advocated to bring the Challenging Racism workshop to all City of Flint employees. In addition, she directed and oversaw the extensive update of nearly one hundred city ordinance amendments.

When the State of Michigan declared the end of the financial emergency, Karen left the City Attorney's Office and began the private practice of law, working again with Darnell Earley on a project for the City of Saginaw while she looked for another opportunity to write a new career chapter.

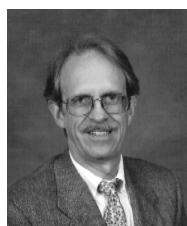
Karen is active as director of the Flushing Singers, which gives local concerts and performs in Flushing area nursing homes at the Christmas season. Karen has been a board member of the Genesee County Bar Association and served on various committees. Her life has obviously been a series of high notes.

Brava, Karen!



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# ***BAPCPA And Family Law Issues***

by Barbara Foley

When the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) became effective October 17, 2005, major changes were made to the treatment of debts arising from family relationships. The following is a brief discussion of the changes in bankruptcy law relating to family law matters.

## **BAPCPA and the Other DSO**

If you live in the Detroit area or attend the symphony, DSO is not a new acronym to you. However, the DSO under BAPCPA is not as harmonious as the Detroit Symphony Orchestra. Under the Act, DSO refers to domestic support obligations, which term includes a wider variety of debt owed

as a result of family obligations than was included in the prior bankruptcy law. Previously, the debts arising from family law obligations were generally limited to alimony, maintenance, and child support. Also, in some instances in chapter 7 cases, the debt division for some unsecured obligations of the parties assigned between the parties as a result of a divorce judgment could be contested.

Under the new act, however, the scope of family law debt has been greatly broadened. The definition of DSO in section 101(14A) includes a debt owed to or recoverable by a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative, or a governmental unit.

The nature of the debt can be alimony, maintenance, or support (including assistance provided by a governmental unit) of persons (or the government), without regard to whether such debt is expressly so designated. The debt can be established or subject to establishment before, on, or after the date of the order for relief in a case under the bankruptcy act by a separation agreement, divorce decree, or property settlement agreement, an order of a court of record, or certain determinations made by governmental units.

A remarkable change in the definition of domestic support obligation is the timing of the obligation which can "accrue before, on, or after the date of the order for relief in a case under this title." Also notable is the reference to the debt, regardless of the nature of the debt as listed in the divorce judgment or other documentation creating the debt ("without regard to whether such debt is expressly so designated").

BAPCPA changed the rule regard-

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ing the protection given to debtors filing while a DSO obligation exists. Under the law prior to BAPCPA, the automatic stay granted in the Bankruptcy Code in section 362 prevented any collection activity on any debt without the Bankruptcy Court approval. Under BAPCPA, there have been several changes to the automatic stay provisions. There are more exceptions from the automatic stay. The following actions may continue even after the bankruptcy is filed without additional Bankruptcy Court approval:

- a civil action or proceeding for the establishment of paternity, establishment or modification of an order for domestic support obligations, child custody or visitation matters, dissolution of a marriage (except the division of property that is property of the bankruptcy estate), and domestic violence matters;
- the collection of a domestic support obligation from property that is not property of the estate;
- the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or statute;
- the withholding, suspension, or restriction of certain licenses such as a driver's license, a professional or occupational license, or a recreational license under Social Security Act provisions;
- the reporting of overdue support owed by a parent or any consumer reporting agency under Social Security Act provisions;
- the interception of a tax refund under Social Security Act provisions or under an analogous state law; or
- the enforcement of a medical obligation under Social Security Act provisions.

Two additional changes are notable. The first relates to the discharge of certain unsecured debts in chapter 7 cases. Often in a divorce judgment, the spouses agree to split the liability for certain unsecured debt, for exam-

	Pre-BAPCPA	Post-BAPCPA
<b>Debt definition</b>	Alimony, maintenance, support 11 USC 523 a(5); 11 USC 12 (A)	Domestic Support Obligation 11 USC 101 (14A)
<b>Stay effect</b>	Prevented any collection action for child support/alimony/ maintenance	Several specific actions relating to divorce, paternity actions, support actions allowed even after the bankruptcy filing 11 USC 362
<b>Priority</b>	Priority, in most cases non-dischargeable (but see 11 USC 523 15(A)(B))	Priority and non-dischargeable
<b>Non-Dischargeable</b>	Alimony, maintenance, child support 11 USC 523	Any DSO except in chapter 13 cases and then only excepting some debts to spouse not in the nature of alimony or child support (property settlement debts) and also debts assigned or owed directly to institutions (11 USC 507(a)(1)(B) and 11 USC 1322 (a) (4))
<b>Additional disclosures</b>	None	In both chapter 7 and 13. Trustee must give notice of the filing of the bankruptcy to the recipient of the DSO and the state agency. 11 USC 704; 1302. In chapter 13, debtor must be current on post-petition DSO to receive confirmation and discharge. 11 USC 1325; 1328

ple, credit card debt. The wife might take three of the joint credit cards, promising to hold the husband harmless from collection, and the husband takes three with the same promise. When one spouse files chapter 7 bankruptcy, the credit card debt of the filing spouse is discharged as to the credit card issuers and the filing spouse, leaving the non-filing spouse with the liability for the debt. Prior to the changes in the bankruptcy law, the non-filing spouse would have to proceed against the filing spouse in bankruptcy court for judicial determination of spousal liability on the payment of credit card payment. Under BAPCPA, the test has been removed for determining which spouse is responsible for the credit card debt. Instead, the exception to discharge is for being a "domestic support obligation."

Of final note are the new duties of both the chapter 7 and chapter 13 trustees to notify the DSO recipient and state collection agency of the filing and the discharge of the bankruptcy. The trustee is also obligated to provide the DSO recipient with notice of the rights of the DSO recipient in collection of the DSO.


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# Chris Christenson: Promising Young Lawyer

by Craig Fiederlein



Like many of you, I met Chris Christenson while attending a bar function. We were paired several years ago for the annual GCBA golf outing, and a friendship ensued. We are both avid golfers and have played golf at Flushing Valley Country Club, where Chris is a member. We enjoy lunch and cocktails in the Flint area and have participated in many Young Lawyers events. One of those events included a Young Lawyers-coordinated event which Chris arranged for members to watch the Lions beat the Arizona Cardinals at Ford Field. I have also participated with Chris in various other bar association events, including a trip to Washington, D.C. to be sworn in by the Supreme Court of the United States, our participation in the Centennial Inn of Court, and the 2006 GCBA Golf Outing Committee.

Chris has not limited his involvement to the local bar. In 2004, Chris was elected to the executive council of the State Bar of Michigan (SBM) Young Lawyers Section, and at the conclusion of his first year of participation, the council elected him secretary/treasurer for 2005-06. The Young Lawyers Section is one of the largest sections of the State Bar, and Chris regularly participates in statewide events as well as putting together programs in Genesee County on behalf of the State Bar. At one such program, "We the Jury," which took place in the spring of 2005, high school students came to court to learn how the court system, specifically the jury system, works. The program won the SBM a first place national Award of Achievement from the American Bar Association. Chris coordinated the entire event, which was a tremendous success, and a repeat performance is being planned.

Chris serves as one of three GCBA appointees on the Board of Legal Services of Eastern Michigan with

Nancy Abraham and Dan Bremer. He was one of the Habitat for Humanity volunteer attorneys who constructed a home on East Bundy Avenue in Flint (featured in the Flint—Genesee County Legal News, October 31, 2003). In 2002 and 2003, Chris headed the local Young Lawyers Association and handled the Horn of Plenty program at Thanksgiving in 2002.

His non-legal community activities began years ago when he was involved with Leave a Legacy, which promotes-charitable giving in the Flint area. The program is a cooperative effort of many nonprofit groups, including the Hurley Foundation, United Way, American Red Cross, and Planned Parenthood, to name a few.

Not everything about Chris is good. Unlike the green blood I bleed, Chris is true blue (and maize). He loves the Wolverines, almost to a fault. While attending the U of M and the Thomas A. Cooley Law School, Chris worked in the construction industry successively as a carpenter, a superintendent, and a project coordinator. Chris is not afraid to roll up his sleeves and get his hands dirty, and I think that stems from his hard work as a carpenter.

Chris is an amicable guy and an adventure-seeker who has bungee jumped, whitewater-rafted, sky-dived from an airplane at 12,000 feet, and changed numerous diapers for his two daughters, Madison, now four years old, and Mia, now two, unassisted. Chris's spouse, Jennifer, his high school sweetheart, particularly liked those adventures.

Chris's background and education demonstrate a strong emphasis in real estate. He has worked for a real estate developer, ob-

tained his real estate sales license, his real estate appraiser's license, and a residential builder's license. His next goal is getting a residential real estate broker's license.

In his law practice, Chris is a bright solo practitioner attempting to concentrate on real estate, construction, criminal law and estate planning. Everyone knows this from his conspicuous signage at the I-69 on-ramp.

All kidding aside, Chris is the type of attorney all young attorneys could use as a role model. He is not afraid to ask questions of senior attorneys for mentoring advice and has been a supportive member of the local and state bar associations, along with his other legal activities, for some time. Imagine, if you will, the strength of the future of our bar association if all of our members contributed with the same enthusiasm as Chris Christenson.

*Attorney Craig R. Fiederlein of the law firm of Harry, McMillen & Fiederlein, L.L.P. is a member of the GCBA and the Centennial Inn of Court. He concentrates his practice in real estate, business, and probate/estate planning. He currently has a residential builder's license and will be seeking his real estate broker's license along with Mr. Christenson.*

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