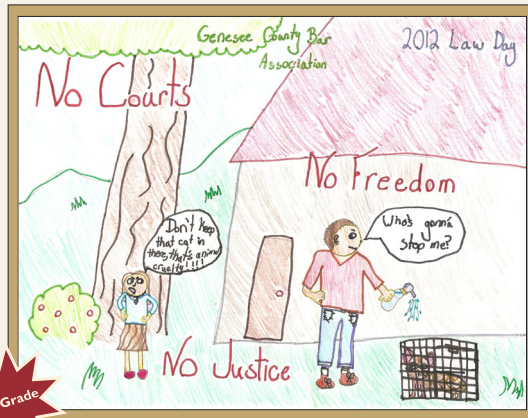


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Writing the GCBA's Next Chapter

By Karen L. Folks, President



Karen L. Folks

Friday morning, February 17, 2012, a cross section of about 15 members of the Genesee County Bar Association met as the Strategic Planning Committee. They had reviewed all of the opinions, concerns, suggestions and other information collected from our legal community through focus groups, attorney demographics, a lengthy legal community survey, 'your quick two cents', the 2006 strategic plan and status report, the GCBA by-laws and sample affiliate membership provisions from other bar associations.

With the wealth of input, there was much to discuss. However, by halfway through the morning and with the help of facilitator Anne Vrooman certain themes began to emerge: the necessity of using current technology as well as established communication methods to interact with our membership; more social and networking opportunities for all attorneys; sensitivity to making all such opportunities easily accessible, comfortable and non-intimidating; creating a GCBA affiliate membership category to harness the wealth of knowledge and skills of non-attorney legal professionals for the benefit of both; a desire to change or refresh long

standing networking opportunities like our monthly luncheon meeting; and a need to identify and implement strategies to increase the visibility of the GCBA and our members.

By the end of our strategic planning session, the following five GCBA Priority Focus Areas had been determined and recommended for adoption by the Board of Directors:

1. Attracting and retaining membership
2. Affiliate membership
3. Networking
4. Increasing visibility of GCBA, thereby increasing the value the public places on local attorneys which results in increased use of local attorneys
5. Education.

***Please take a minute to review (www.gcbalaw.org) the full 2012 GCBA STRATEGIC PLANNING REPORT AND RECOMMENDATION that was adopted by the Board on March 15th.

If you were at the March 19th monthly luncheon meeting at the Temple, you noticed that we have already made some changes: round tables so you can network, exchange information and otherwise get to

know your colleagues through great conversation; spotlight on a GCBA benefit; and our "2 X 2 X 2"= two attorneys, two tips, in two minutes each! We also provided members a copy of the proposed language to create an *Affiliate Membership* category in our GCBA by-laws. Members will have the opportunity to vote on this amendment to our by-laws at a special meeting preceding the regular Monday, April 16th meeting. (Watch your mail for notice of the special meeting on 4/16/12 at noon.)

Thank you again for your valuable input that assisted the Strategic Planning Committee in identifying our five priority focus areas. With your help, this is where we will concentrate our collective energy, time, and talent over the next three plus years. While our strategic planning has concluded, we find ourselves at the threshold of a new beginning. Armed with our priority focus areas, we are ready to write a new chapter in the 115th year history of this great Bar Association. I urge all of you to help further identify and implement initiatives that resonate relevancy in an ever-changing legal environment, to create springboards for members, to provide the greater Flint community with ever-higher quality legal expertise, to reflect innovation in member and community programming, and to make all GCBA activities just plain fun!



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A Narrow Road to a Second Chance: Setting Aside a Criminal Conviction in Michigan

By Jill L. Nylander



Jill L. Nylander

Many individuals who face barriers to employment and/or housing due to a prior criminal conviction are afforded the opportunity for a fresh start under the Michigan Expungement Statute, MCL 780.621 et seq. The statute allows past convictions to be set aside only in very specific instances, but it applies just broadly enough to benefit numerous applicants seeking to set aside their limited past criminal records. For those who are eligible to have their records expunged, the law treats them – in most cases – as if they had never been convicted.

The criteria for setting aside an adult conviction under the statute are very straightforward and are summarized in relevant part by the following inquiry:

- Has the applicant seeking to set aside the conviction been convicted of more than one adult offense (felony or misdemeanor)?
- Has the applicant seeking to set aside the conviction been convicted of more than two minor offenses in addition to the offense for which the applicant files application?
- Has the applicant seeking to set aside the conviction been convicted of a felony or an attempt to commit a felony that is punishable by life imprisonment?
- Has the applicant seeking to set aside the conviction been convicted of a violation or attempted violation of felony criminal sexual conduct (first, second, or third degree), or assault with intent to commit criminal sexual conduct?
- Has the applicant seeking to set aside the conviction been convicted for a traffic offense?
- Has it been less than five years

following imposition of the sentence for the conviction that the applicant seeks to set aside?

- If the applicant was incarcerated for the conviction they are seeking to set aside, has it been less than five years following completion of any term of imprisonment for that conviction?

MCL 780.621 et seq.

If the answers to all of the preceding questions are negative, the applicant may be eligible to file an application with the convicting court for the entry of an order setting aside the conviction.

A recent amendment added the provision that an applicant may also have one or two minor offenses and still be eligible for expungement. It is important to note that “minor offense” is defined as: one that is committed before age 21 and that carries a maximum jail time of 90 days and/or a fine of less than \$1,000.

For someone who is potentially eligible, applying for an application to set aside a conviction is simply a matter of securing verification of eligibility and filing the appropriate forms. To do this, applicants must first request a certified copy of their conviction or judgment of sentence from the convicting court. There will be a small fee for this document.

Next, they must acquire a copy of their fingerprints from a police station. It is important that the prints be provided on an R1 – 8 fingerprint card to ensure proper processing. Some police stations may charge for this service also. When the application is processed, the Michigan State Police will perform a national criminal background check using the finger print

card. The background check will officially confirm that the applicant is eligible to apply for set aside based upon the number of past convictions. The State Police require a money order made payable to them in the amount of \$50 for this service.

The application to set aside conviction, MC 227, requires most of the same information contained on the judgment of sentence and needs to be notarized. Once the application is complete, a packet containing copies of the application, the judgment of sentence, and any documents supporting rehabilitation from the past conviction (resume reflecting work history, drug or alcohol treatment certifications, and educational achievements) should be compiled and filed with the convicting court.

The application packet, fingerprint card, and money order must then be sent to the State Police for formal confirmation of eligibility through the national background check report. A copy of the packet needs to be served on the Attorney General and the Prosecuting Attorney for the convicting county.

The review standard at hearing is varied. Some courts may focus more than others on the documentation of rehabilitation since the past conviction. Some courts may also refuse to set a conviction aside for an eligible applicant if any restitution is still outstanding. If an order setting the conviction aside is granted, it is important to confirm that a copy is received by the State Police Central

Continued on next page

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A Narrow Road... Continued

Records Division to officially clear the applicant's criminal record.

Expungement is a simple and direct tool that practitioners can use to greatly benefit those clients who have encountered current barriers to employment, housing, or financing due to an isolated past transgression. Life infrequently offers a second chance, but through the expungement statute, the state legislature has carved out one of those rare instances.

Notice of Expungement Clinic

By Adrienne DeFord

Legal Services of Eastern Michigan is currently seeking pro bono attorneys for a new Expungement Clinic. This opportunity requires a small time commitment but will have a big impact for low-income individuals.

Clients accepted into LSEM's Expungement Clinic are low-income individuals with a past criminal conviction that is creating barriers to housing and/or employment. LSEM screens clients for eligibility under the expungement statute and helps them secure required documents before referral to the clinic. Pro bono attorneys are needed in two different stages of the process and can choose to assist with one or both stages:

- (1) initially to meet with clients at LSEM to provide advice and assistance with the petition paperwork, and
- (2) to represent clients later at expungement hearings after petitions have already been filed.

Pro bono attorneys not already familiar with the process will be given a brief training session on expungement law. Attorneys interested in getting involved in this pro bono project can contact Adrienne DeFord, Director of Recruitment & Development, at (810) 234-2621 x240 or adeford@lsem-mi.org

The Valuation Report: Opinion of Value vs. Calculation of Value

By Michael J. Oliphant, CPA, CVA



Michael J. Oliphant

As is the case in many professional disciplines, the realm of business valuation has no lack of complex terms and meanings. One of the areas of confusion and misinterpretation deals with the *level* of reporting on a valuation. The two primary levels of reporting on a business valuation are an *Opinion of Value* and a *Calculation of Value*. This article takes a deeper look at both levels of reporting and when one can (and should) be used over the other.

In 2008, the American Institute of Certified Public Accountants (AICPA) released *SSVS #1 - Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset*. This major valuation standard that covers all CPAs in professional practice defines the valuation reports as follows:

Opinion of Value (or Conclusion of Value): An estimate as to the value of a business, business ownership interest, security, or intangible

asset, arrived at by applying the valuation procedures *appropriate for a valuation engagement* and using professional judgment as to the value or range of values based on those procedures.

Calculation of Value: An estimate as to the value of a business, business ownership interest, security, or intangible asset, arrived at by applying valuation procedures *agreed upon with the client* and using professional judgment as to the value or range of values based on those procedures.

The major difference between a Calculation of Value and an Opinion of Value within the above definitions relates to the phrase “*agreed upon with the client.*” This language within the definition of a calculation clearly indicates that the valuation analyst and the client agree upon a specific

methodology to be used in the valuation approach. Looked at another way, this could be interpreted to mean that the valuation analyst is advocating a certain position for the client, or that the overall scope of the engagement is limited. One of the main attributes for which a valuation analyst (and in court, an expert witness) should strive is the protection of his or her objectivity. One way to challenge an expert’s objectivity is to focus on his or her position, especially if it shows a favorable outcome with respect to the client’s particular situation.

In a litigation setting, a *calculation report* would invite cross-examination of the expert witness. Since a calculation engagement does not include all of the procedures required for an opinion of value, opposing counsel should be able to capitalize on this information. A line of questioning that includes references that diminish the perception of a complete and accurate report would go a long way towards undermining an expert’s credibility on the stand. Further, recognizing the fact that a calculation is not the expert’s professional objective “opinion” of value, opposing counsel might focus on this limitation to indicate that the expert failed to perform the steps necessary to produce a complete and accurate report.

An *opinion of value* includes the analyst’s professional judgment in selecting the appropriate methods and procedures used in the determination of value. It includes a review of the national, regional, and local economic conditions as well as the specific industry information surrounding the valuation date. It also takes into account all three

Continued on next page

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valuation approaches (and methods therein) including the cost (or asset approach), the income approach, and the market approach. An opinion of value can be communicated in the form of either a Summary Report or a Detailed Report. The Detailed Report includes all of the aspects needed to complete a determination of value in a very detailed and logical manner, while a summary report is an “abridged” version of the detailed report, but still includes all aspects needed to render an opinion of value.

One of the first questions I am asked when I receive a call about a potential valuation engagement is, *how much is this going to cost?* Invariably, my answer is “it depends.” It depends on the business, the scope, the amount of work involved, the potential for litigation and a number of other factors. As I often feel obligated to indicate the different levels of service, the calculation vs. opinion of value

often comes up in that initial discussion regarding cost. Since a calculation is typically much less in scope than an opinion, it tends to be the “drawing in point” for the prospective client. As the low cost denominator, this is where most discussions usually start. Because of the objectivity issue described above, I will rarely perform a calculation and most always recommend an opinion of value.

There are, however, certain circumstances where a calculation is useful. A calculation could be used to support negotiations for an acquisition or sale of a business, or for limited settlement and mediation purposes. Moreover, a calculation can be useful where there may be only one valuation method appropriate in a given situation, such as determining the value of a customer list if this is the only asset being valued.

In determining the reporting level within the valuation context,

the importance of the *credibility and objectivity* of the valuation analyst cannot be overstated. There are certain limited circumstances where a calculation has merit, but for most valuation projects, an opinion of value, which includes the analyst’s independent assessment of value, creates a level of credibility that allows the analyst to remain an advocate of the final value and not that of a client’s specific position.

About the Author

Michael J. Oliphant, CPA, CVA, is a principal in Yeo & Yeo’s Kalamazoo office. He is a member of the firm’s Business Valuation and Litigation Support Team. His areas of expertise include business consulting, financial reporting, and tax planning and preparation with an emphasis in the construction, manufacturing, retail and professional services sectors. He is a Certified Valuation Analyst through the National Association of Certified Valuators and Analysts (NACVA).



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Genesee County Bar Foundation

By Walter P. Griffin, President



Walter P. Griffin

The Genesee County Bar Foundation was created November 18, 1988 to support worthy projects to improve the administration of justice, to promote the study of law, to continue education of lawyers, to educate the public about its legal rights and obligations, and to maintain the honor and integrity of the profession.

The Foundation works, in conjunction with the Genesee County Bar Association, on many projects. These include production of training videos, educational seminars, scholarships and Law Day.

In recognition of their foresight in establishing the Foundation, the founding members are listed below:

Duncan M. Beagle
John S. Beagle
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James R. Buckley
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Marvin Ransom
Reese W. Stipes

Since the creation of the Foundation the estate of former Judge Louis D. McGregor has made a considerable contribution to the Foundation for educational purposes, and the John S. Beagle Scholarship has been established.

The generous contributions from the initial founding members, founding memorials, and the many contributions throughout the years have allowed the Foundation to establish a strong investment portfolio with current total assets of \$684,494.

To continue the strong participation in the mission of the Foundation, future contributions will be needed. The Genesee County Bar Foundation is *your* Foundation, and it is important that its legacy continue.

The State Bar Benefits Greatly from the Contributions of Genesee County Lawyers!

By Candace A. Crowley, External Development Director, State Bar of Michigan



Candace A. Crowley

Members of the Genesee County Bar Association are actively engaged in moving the work of the State Bar forward. You are probably aware that your elected commissioner is Donald Rockwell, and your Representative Assembly members are Richard Morley Barron, Shayla

Blankenship and Amy Kline.

There are many other ways that Genesee County lawyers contribute to the work of the State Bar. Committees are the main vehicles for implementing the Bar's Strategic Plan. Nine Genesee County lawyers are currently serving State Bar committee appointments. An

additional eight are on the District Character and Fitness Committee. Francine Cullari is chair of the State Bar Publications and Website Advisory Committee and is

State Bar... Continued

a member of the Awards Committee. Jose' Brown is on the Judicial Qualifications Committee. Torchio Feaster is a member of the Criminal Jury Instructions Committee. Barbara Menear and Donald Rockwell serve the Character and Fitness Committee and Richard Morley Barron, Dolores Coulter, Gregory Gibbs, Paul Goyette, Ronald Haldy, Joan Pierson, Robert Segar, Lynne Taft and Angela Watkins complete the District Character and Fitness Committee.

State Bar members can voluntarily join a section to pursue excellence in a chosen area of law. Six hundred and one lawyers in Genesee County have voluntarily joined sections, and sixteen Genesee County lawyers have been

elected to section councils! Members of the Genesee Bar in State Bar section leadership positions include Dolores Coulter, council member and past chair of the Elder Law & Advocacy Section. David Leyton is on the Criminal Law Section council. Charles McKone is a leader of the Public Corporation Law Section and Richard Morley Barron is a long-standing leader in the Alternative Dispute Resolution Section. Rex Anderson, Richard Angelo, Lynnmarie Johnson, Thomas Waun, James Bauer and Alexandra Nassar are section leaders as well.

How did these excellent Genesee County lawyers get involved in State Bar work? (1) They put their name on election petitions for Commissioner, Representative Assembly and Young

Lawyers Section Council published in the March *Bar Journal*. (2) They submitted an electronic application for a committee appointment that is noticed in the March *Bar Journal* and arrives in your email box in early April. (3) They asked their commissioner to recommend them to the District Character and Fitness Committee for appointment. (4) They joined a section, supported section work and ran for section council at the section annual meetings that occur from June through September.

Of Michigan's 33,492 active attorneys, 760 are in Genesee County. Of those, 634 Genesee County lawyers have sought and obtained involvement with State Bar work.

Thank you to the many of you who serve the State Bar. To those who have not yet done so, please join us soon.

Who We Are: Rebecca Jurva-Brinn

Why did you decide to become an attorney? I decided I wanted to be an attorney when I was in third grade. We were talking about the branches of government in school and I thought the judicial branch sounded the most interesting, so I decided I would be a lawyer. I considered other career choices later on, but being a prosecutor always stuck out as a good fit for me.

In what area(s) of law do you practice? I am an assistant prosecuting attorney with the Genesee County Prosecutor's Office.

Which area of the law do you like the best and why? I like criminal law best. It is fast paced and never dull. I feel like I am making a difference in people's lives.

What do you like best about being an attorney? As a prosecutor I am always seeking justice, and that is a very high calling but very rewarding. At the end of the day I can go home and

feel good about what I do for a living. I work with wonderful people in the prosecutor's office, in the courts and in the defense bar. The Genesee County legal community is a great group of people.

What words of advice could you offer to new lawyers? As a young lawyer, having only been practicing about 6 years, I think that young lawyers need to remember that their reputation is everything in this field. Clients and cases come and go, but others in the legal community will judge you by the actions you take that reflect on your integrity.

Offer one suggestion for improving our local Bar. I would suggest the Bar offer more social events that allow people in different areas of the law to meet and interact with each other.

Tell us about your life outside of the law. I have been married to Brendan Brinn for about 3.5 years. We

have a beautiful 16 month old daughter. Brendan works in the computer industry in Oakland County. Outside of work our lives revolve around the baby. We take her to story time at the library, to swim lessons, and to play groups. We try to take a few minutes to relax now and then! I love to read and solve word puzzles and Sudoku.

If you had not become an attorney what career would you have chosen? I probably would have become either an actuary or an engineer. I was always really good at math and science and actually minored in math in college. I know lawyers tend to be bad at math, but I am an exception to that!



Rebecca Jurva-Brinn

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