

July/August 2016

BARBEAT

Genesee County Bar Association



Michael J. Kowalko, 2016-2017 GCBA President

Greetings from Your New President

Meet Your New Board Members

Flint Water Advocacy Coalition Update

21st Century Law in Michigan—The Future is Now
“RAISE THE AGE”

Michigan Supreme Court Raises Constitutional
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Greetings from Your New President

By Michael J. Kowalko, President

As your new President, my two main goals are to: (1) continue the traditions created and carried out by our many outstanding Past Presidents, and (2) increase the membership of our young lawyers.

The Genesee County Bar Association has always been a role model leading the way for other local bar associations with service to our profession and the community. One event, started by past Presidents Brian Barkey and Tom Pabst over 20 years ago, is the annual Holiday Dinner for the community at the Masonic Temple. This is a favorite event for both the legal community and the adults and children who attend. It has been a phenomenal success.

Our local legal talent is as good as anywhere in the State of Michigan – or the country – for that matter. For this reason, I want to continue the tradition of having more seminars by our local leaders¹ in their respective specialties to help all of us better serve our clients, the public.

I am also going to reach out as never before to the young lawyers in Genesee County. I recently had the privilege of attending a State Bar of Michigan leadership conference on Mackinac Island. One major concern of every single bar association throughout the state came through loud and clear: the lack of young lawyers joining.

Now that the “Spoon of Power”² has been passed on to me from Shayla Blankenship, whose outstanding service as President was inspirational, I pledge to do my



Michael Kowalko, Shayla Blanskenhip, and the “Spoon of Power”

best to continue the tradition, a tradition that makes the Genesee County Bar Association the best in the State of Michigan.

Endnotes

- 1 I was going to list a few here, but we have so many outstanding lawyers that I do not want to leave anyone out.
- 2 A tradition started by Past Presidents Valdemar Washington and Ronald Haldy.

Two GCBA members have published recent articles in other legal journals.

EVIDENCE IN DOMESTIC RELATIONS CASES

Hon. Joseph J. Farah

“The rules of evidence govern how cases are proven in court.

A well-prepared case involves not only knowing what to prove but *how* to prove it.”

With a mixture of his usual wit and wisdom, Judge Farah, in an article recently published in the *Michigan Family Law Journal*, provides readers with a concise and practical guide to evidence in family law cases. A link is provided courtesy of the State Bar of Michigan Family Law Council. <http://tinyurl.com/FLJ-Farah#page=13>.

ART WORKS FOR FLINT'S DETAINED YOUTH

Shelley Spivack, a GCBA member and contributor to *BarBeat*, recently had an article published in the *ABA Children's Rights Litigation Journal*. The article focuses on the Buckham/GVRC Share Art Project, an arts program she co-founded at Genesee County's juvenile detention facility, GVRC.

The Journal can be accessed at: <http://tinyurl.com/share-art-project>

Meet Your New Board Members

William J. Brickley

Family: Wife: Laura; Children: Two adult children.

Undergraduate school, degree and grad year: Eastern Michigan University, BS, Political Science w/ minor History, 1980.

Law School and grad year: University of Toledo College of Law, 1984.

GCBA member since: 1985.

Area(s) of practice: Primarily Civil Litigation Defense.

Office location, phone number, and email address: 10801 S. Saginaw Street, Grand Blanc, MI; (810) 685-3700; WBrickley@garanlucow.com.

Past GCBA committees and activities: Twice chair of Legal Aid Committee. Regular Holiday Dinner volunteer.

SBM involvement, if any: Presently sit on Character and Fitness Committee.

Reasons you believe in service to the GCBA: It is about enhancing services to the legal community and to the community-at-large. Over the years I have seen many people give of themselves in so many different ways, and I thought it was my turn to step up and get involved.



William J. Brickley

Reasons you believe in service to the GCBA: Our local bar stands out as one of the friendliest groups of attorneys I have encountered. The networking opportunities, continuing education opportunities, and opportunities to serve the community are what make the GCBA great.

Patrick J. O'Callaghan

Family: Wife; Deborah. Children; Andrea, Kimberly, Kaitlyn.

Undergraduate school, degree, grad year: Central Michigan University, BA, 1980.

Law School and grad year: Thomas M. Cooley Law School, 1985.

GCBA member since: 1985.

Area(s) of practice: General Practice, concentrating on estate planning and other family law issues.

Office location, phone number, and email address: Bueche, Failer, O'Callaghan & Zintsmaster, 6258 W. Pierson Road, Flushing, MI 48433; (810) 733-6960; Pat@bfoz.com.

Past GCBA committees and activities: Chair, Probate Committee.

SBM involvement, if any: n/a.

Reasons you believe in service to the GCBA: I have been practicing in this community for over 30 years. I have enjoyed my association with members of the Genesee County Bar, and I wanted to see if I could help the association in any way.



Pat O'Callaghan

Nancy K. Chinonis

Family: Spouse, Jeff Lauster.

Undergraduate school, degree and grad year: University of Michigan, Ann Arbor, BA, History, 2004.

Law School and grad year: Michigan State University College of Law; formerly Detroit College of Law, 2007.

GCBA member since: 2007.

Area(s) of practice: Employment and Labor Law.

Office location, phone number, and email address: Law Offices of Dean T. Yeotis, 611 W. Court Street, Flint, MI 48503; (810)767-6100; Nancy.Chinonis@gmail.com.

Past GCBA committees and activities: Golf Outing Committee.

SBM involvement, if any: Representative Assembly Member; Young Lawyers.



Nancy Chinonis

Connect with the GCBA



Our Website: www.gcbalaw.org

On Facebook

<https://www.facebook.com/pages/Genesee-County-Bar-Association/142757561178>

Flint Water Advocacy Coalition Update

By Jill Nylander and Madeline Sinkovich

The Flint Water Advocacy Coalition was formed with the mission of helping the Flint Community with legal needs arising from the Flint Water Crisis. It is comprised of representatives from the Genesee County Bar Association, the ACLU of Michigan, the Centennial American Inn of Court, the Mallory VanDyne Scott Bar Association, and Legal Services of Eastern Michigan. The goal of the Coalition is to address individual legal needs resulting from the water crisis and to serve as a point of referral on other matters.

The Coalition has met to put together community legal education events specific to the Flint Water Crisis. At a "Flint Water Advocacy 101" event in May, participants including social workers, pro bono attorneys, and law students, were briefed on how to spot and respond to common legal issues related to the water crisis. Presentations included: Lead Exposure and Health Risks, Disability Law and the Medicaid Waiver, Understanding Special Education Laws and Rights, and a panel on other top legal issues including immigration, housing, and family law.

In March, the Coalition held an "Ask a Lawyer" event at the Flint Public Library. A lawyer panel specializing in Housing & Renting was available to discuss updates and answer questions. Topics included ending leases to avoid water issues, withholding rent from landlords who refuse to install water filters, and questions on water credits. At an Inn of Court meeting, a separate panel also presented on both potential housing and family law issues.


The Recovery Group is a collective effort lead by the United Way and Red Cross to work toward a safer, healthier community by establishing and maintaining open lines of communication among the various relief initiatives in Flint. Coalition representatives participate in weekly Flint Recovery Group Community Partners meetings on an ongoing basis.

At the meetings, organizations and neighborhood groups across the community receive updates from the Environmental Protection Agency, Genesee County Health Department, and the Department of Health and Human Services on issues ranging from water filter usage and pipe flushing to applying for the Medicaid Expansion waiver. The Community Partner Meetings also have small workgroups dedicated to resource recovery, communication, physical health, community resilience, education, and coordination of efforts around the water crisis. The Recovery Group has developed a website to keep the community informed on water-related developments. It can be found at: www.Flintcares.org.

The Flint Water Advocacy Coalition plans to put together additional Community Legal Clinics in conjunction with schools, churches, and other partners. Initial steps include identifying common legal problems that Flint residents still face as the media coverage of the crisis slows down. The Coalition plans to work with the Flint Recovery Group Community Partners to identify pressing issues and organize the Community Legal Clinics. Interested volunteers and donors should contact Jill Nylander of Legal Service of Eastern Michigan for more information.




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21st Century Law in Michigan—The Future is Now

By Jill Nylander and Linda Girard

In a world of rampant technological innovation, how do we change a system that is rooted in precedent and tradition? This question was the charge of the State Bar of Michigan's 21st Century Practice Task Force. SBM President Lori Buiteweg shared a preview of the Task Force Report when she spoke at the GCBA April 2016 Membership Meeting. The State Bar presented a fuller summary of its work to the SBM Representative Assembly on April 30, 2016. The task force identified five key problems concerning the legal profession's ability to meet client needs while remaining responsive to change, and then recommended various solutions.

Beginning with the legal marketplace, the task force noted disconnections between the goal of justice for all and increasingly limited access to the legal system, along with the "significant percentage of lawyers who are unemployed or underemployed" (<http://www.michbar.org/FUTURE>). Recognizing that traditional legal services are driving up costs and that the Internet has been a source of misinformation, the task force envisions the Internet as a potential primary source of reliable legal information in the future.

Key innovations will include a unified online legal platform with a triage module, expansion of the Legal Self Help Centers and website, live assistance where needed, and standards and training for Self Help Center lay person navigators.

The task force identified five key problems concerning the legal profession's ability to meet client needs while remaining responsive to change, and then recommended various solutions.

Next, the task force addressed the distinct problems faced by new lawyers as well as new challenges for experienced lawyers. Some new attorneys lack "practice-ready" skills while their established colleagues may lack the skills to effectively use electronic case management tools and other legal software. The task force recommended that law schools use the State Bar's social media and membership platforms to reinforce a culture of mentoring and pro bono assistance. By providing individualized professional development, clinical and pro bono opportunities, and specialty certification, in lieu of mandatory continuing legal education, attorneys would have further incentives to update their practice and technology skills.

The resistance to change in litigation procedure, court rules, and business practices has led to the third problem: inefficient and overly complex legal processes. The task force recommends expanding specialty courts, piloting online dispute resolution programs, pretrial reform, and a quality improvement model of legal business practice.

The task force further noted that legal practice is increasingly intertwined with issues beyond the law, forcing lawyers to adapt, innovate and collaborate with non-legal professionals. Currently, existing legal practice business models are not readily effective in addressing these concerns. Recommended remedies include review of conduct standards, focus on technological expertise, and an unbundling system that would allow for limited scope representation.

The concept of attorneys making limited appearances in non-litigation contexts (unbundling) has been an informal practice for some time in Michigan. The focus of the SBM June 2016 Justice Initiatives Summit was on the prospect of formalizing this unbundling or limited scope representation arena. A report summarizing the Summit events can be found at https://www.michbar.org/file/programs/atj/pdfs/JI_2016_Summit-Report.pdf.

Finally, the biggest challenge noted by the task force is a professional and cultural resistance to innovation (or, as we like to call it, *stare decisis*). The strategies to promote persistent, value-driven change include a Judicial Innovation Center under the auspices of the state bar to advance the task force's recommendations and justice innovation guidelines for their implementation.

The task force notes that change is inevitable, even in the legal profession. Their overall recommendation? Attorneys should—and—must control that change.



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“RAISE THE AGE”

By Shelley R. Spivack



Shelley R. Spivack

When does a child become an adult?

In Michigan, as in most states, the law looks at the age of 18 as the age of majority. At 18 you can vote, sign a contract, get a tattoo, marry, and buy cigarettes. This is the age when a parent’s legal responsibility for a child ends and the adolescent becomes responsible for his or her own care and upkeep.

However, in Michigan, as in seven other states, there is one major exception: criminal responsibility. If the 17-year-old who cannot legally buy a pack of cigarettes, goes into a convenience store and steals those same cigarettes, he or she could be arrested, tried as an adult, face up to 91 days in the county jail, and accrue a criminal record. If that 17-year-old were to steal several cartons of cigarettes, he or she could be sentenced to incarceration in a state prison and upon release would be considered a “felon” - a label that would significantly impair his or her ability to obtain employment.

A package of bills recently passed by the Michigan State House of Representatives and currently pending in the Senate may soon alter this scenario. “Raise the Age” legislation, which would raise the age of juvenile court jurisdiction from 16 to 17, was signed into law in the states of South Carolina and Louisiana in June of 2016, and is currently pending in five additional states, including Michigan. If passed, this legislation would reform our laws so that Michigan would no longer be within the dwindling number of states that automatically hold 17-year-olds criminally responsible for their delinquent behavior.

Just as the move to develop separate “juvenile courts” focusing on rehabilitation rather than punishment came about in the early 20th century as a result of emerging medical and social science research, the move to “raise the age” results from recent neuro-scientific studies as well as extensive data compiled by criminal justice researchers. Medical researchers tell us that as adolescent brains do not fully develop until closer to age 25, the average 17-year-old does not possess the impulse control or judgment of an adult. The U.S. Supreme Court was swayed by this evidence in the recent cases of *Miller v Alabama*, 567 US ____, 132 S Ct 2455 (2012) and *Montgomery v Louisiana*, 136 S Ct 718 (2016) in which the Court banned mandatory life imprisonment for those under the age of 18.

Criminal justice researchers have found that locking youth up in prison generally leads to more crime. For example, one study which compared teens sent to criminal court with those tried for similar crimes in the juvenile system found that those in the adult system were more

likely to re-offend. Other studies have shown 17-year-olds in the adult system are more likely to be victimized and have higher rates of depression and suicide than those who are in the juvenile system. On the other hand, the research suggests that 17-year-olds in the juvenile system respond well to the rehabilitative programming and counseling offered in juvenile courts.

If passed, the legislation would have a significant impact for youth in Genesee County. It would mean that 17-year-olds who are detained would be placed in the Genesee Valley Regional Center (GVRC), where they would have the opportunity to attend school daily and work towards a diploma or GED as well as participate in programming specifically designed to meet the needs of delinquent youth, rather than being housed in the overcrowded county jail. It would also mean that 17-year-olds would have the chance to benefit from the specialized services offered by Genesee County’s numerous juvenile treatment courts, as well as work with our county’s highly experienced juvenile probation staff.

As all 17-year-olds may not be appropriate for juvenile court, the bills would still give prosecutors the option to charge 17-year-olds accused of violent crimes such as murder, rape, and armed robbery, as adults. Judges would also continue to have discretion to waive 17-year-olds charged with lesser offenses to adult courts.

While support for the change has been bi-partisan, the Michigan Association of Counties (MAC) and the Prosecuting Attorneys Association have opposed the legislation as currently written. While MAC has not taken a position on the concept of treating 17-year-olds as juveniles, they believe that “the proposal would require time, funding and other resources to be developed properly -- none of which is addressed in the current legislation.”

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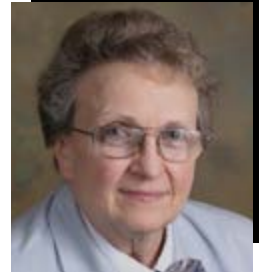
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Michigan Supreme Court Raises Constitutional Questions About MIDC

By Roberta J.F.Wray



Roberta J.F. Wray

On June 1, 2016, the Michigan Supreme Court conditionally approved the first four standards regulating the appointment of counsel for indigent criminal defendants. In a press release, the Court expressed concern about the constitutionality of the act that established the Michigan Indigent Defense Commission (MIDC), citing “its ongoing authority to establish, implement, and improve professional standards” as reflected in Administrative Orders No. 1981-7 and No. 2004-6. The press release states, in part:

The Court took this action to enable the legislatively-approved process, which is intended to promote the goal of providing effective assistance of counsel for indigent defendants in criminal cases, to continue without disruption. Although the Court shares the Legislature’s goal of providing effective assistance of counsel for these defendants, the Court’s approval is subject to and contingent on legislative revision of the Michigan Indigent Defense Commission Act (the Act) to address provisions of uncertain constitutionality. These provisions include:

- The Act places the MIDC within the judicial branch without providing the Court the ability to supervise and direct the commission’s activities and employment. This may contravene the general principle of separation of powers (Const 1963, art 3, §2) and impinge upon the constitutional function of the Court to supervise the judicial branch.
- Enforcement mechanisms in the Act that allow the MIDC to develop and oversee implementation, enforcement, and modification of minimum standards and to assure compliance might present an unconstitutional usurpation of the Court’s authority to “have general superintending control over all courts.” (Const 1963, art 6, §4)
- The Act arguably allows the MIDC to regulate the legal profession; however, the Constitution exclusively assigns regulation of the legal profession to the judiciary. (Const 1963, art 6, §5)

Barbara Menear, Administrator of the 7th Circuit Court in Genesee County had these comments about the order:

What will the local impact be?

It is too early to tell what the local impact will be. A local compliance plan will be developed and timely submitted. It is likely that state funds will be necessary to comply with some aspects of the first four standards. The Genesee County Defender Program supports standards for the delivery of legal services for indigent clients, as well as fair compensation for those attorneys who serve.

Do you believe that the legislature usurped the authority of the Court?

I have no comment except to say that the Michigan Supreme Court raised fundamental questions about the authority of the judiciary and how the legislature can work in concert with the judiciary for the common goal of improved delivery of legal services for indigent defendants.

The Court imposed a deadline of December 31, 2016 for the legislature to address and act on their concerns.

The conditionally approved standards and requirements cover 1) attorney education and training; 2) the initial interview with defendant, including timing, setting (for confidentiality), preparation, and determination of the ability of the client to participate in his/her defense; 3) investigation and experts; and 4) counsel at first appearance and subsequent critical stages. They can be found in full in the Michigan Supreme Court Administrative Order No. 2016-2.

The next meeting of the MIDC is scheduled for August 9.

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Planning Your Next Adventure in Cabo San Lucas, Mexico

By Stephen Kaslik



Stephen Kaslik

The pounding of snow in January, the frigid air of February, and the fickle nature of March are all reasons to pack your bags and head south. If I may make a destination suggestion, I would choose Cabo San Lucas, Mexico.

It was a pleasant surprise to discover the ease of travel to this area of Mexico. There are direct flights to Cabo San Lucas out of Detroit Metro Airport. After three and a half hours, the hot desert air greeted us as we disembarked. The airport is compact, well designed, and efficient. I had been advised to hire a shuttle company ahead of time to avoid the mass of fervent shuttle drivers offering the “best deal” in Mexico. It also is a guarantee of safe, reliable transportation to and from your lodging.

Though Hurricane Odile inflicted \$1.22 Billion in damage upon the Mexican state of Baja California Sur in September 2014, it was not readily apparent. There is a construction boom occurring in Cabo San Lucas, and this makes resorts more competitive in seeking your business.

My wife and I found an incredible all-inclusive experience. Situated on a small hill above the marina, our balcony room offered views of gorgeous yachts, sea lions coming to rest at night, and the most breathtaking sunsets against the backdrop of the mountains. “Fun coordinators” offered a variety of activities, including paddle boarding, snorkeling, pool volleyball, morning yoga, fitness classes, and variety shows in the evening. We were pampered with culinary delights, caught up on the books we had been meaning to read in the last year (I can finally

discuss the plot twist in *Girl on a Train*), nursed a few sunburns from our solar indiscretions, and took in a sunset whale-watching cruise complete with dinner and dancing. Needless to say, it was pretty cool. The proximity of the resort to downtown Cabo San Lucas made it ideal for us to take a sunset walk. However, it is important to keep in mind that behind the glow of tourism there are many individuals

struggling to make a living in Cabo. It is hard to walk ten steps without an offering of Cuban cigars (everyone carries the same orange box), silver jewelry “for your pretty wife,” children offering candy for a price, or just a straightforward request for any spare money you may have to give.

The city of Cabo San Lucas is an interesting mix of posh and poverty. The downtown marina district, while still populated by street

merchants and beggars, is a mostly luxurious resort area and has been completely rebuilt/repared following the destruction of Hurricane Odile. A strong security presence made us feel safe. Security aside, street merchants politely stepped away when given a sincere “No, gracias.” It is readily apparent that Cabo San Lucas is recovering well from Odile and eager to host visitors. It’s not too soon to start planning.

[Editor’s Note: Even though it is summer, we are including this article now so you can start planning your get-away now.]



Centennial American Inn Of Court and the Genesee County Bar Association Awards Evening



Congratulations to Charlie Boike the LSEM Pro Bono Attorney of the Year Award recipient.



Congratulations to Hon. Duncan M. Beagle, the Brian M. Barkey Community Service Award recipient.



Congratulation to Edward B. Davison the Herbert A. Milliken Jr. Civility Award recipient.



Congratulations to John A. Zintsmaster the Jerome O'Rourke Advocacy Award recipient.

Not pictured:

Congratulations to Timothy H. Knecht the Centennial Inn of Court Outstanding Program Award recipient.



Spring Admission Ceremony



(Left to Right) Chadd O'Brien, Shayla D. Blankenship, Craig Datz, Donyele Darrough, Christopher Hobolth, Hon. David J. Newblatt, John Harb, Adam Leyton, David Leyton.

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