

May/June 2020

BARBEAT

Genesee County Bar Association



Law in the Age of COVID-19

GCBA Bylaws

2020 May Mastering Criminal Defense: Current
Issues with the Pandemic and the Practice of
Criminal Defense

Courage is a Quiet Virtue: Max Dean

Lawyer Referral and Information Service (LRIS): A
Hidden Resource

Virtual Art: Alternative Arts Programs for Youth in
Detention

New Board Member Juanita L. Massey

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Law in the Age of COVID-19

By Michael A. Tesner, President



Michael A. Tesner

As I enter into my term as President of the GCBA, I am humbled to have been selected by my peers to lead during these uncertain times. I have been honored to work with some incredibly capable and dedicated mentors and friends in my time as a director and as a member of the executive committee, and I look forward to working with our officers and board members, as well as the exceptional staff of the GCBA, over the next year. Under Immediate Past President Sherri Belknap's leadership and the steady hand of our Executive Director, Tina Burroughs, we are weathering the storm of COVID-19 and the flooding of our offices, and we are in the process of adapting to the new normal of running a large organization under the necessity of social distancing, remote operations, and an increased online presence.

Over the next year, I would like to focus the GCBA organization on increasing and improving our online presence, both to be more effective and to reach out to new lawyers and community partners. In this way I hope to strengthen our organization while providing networking opportunities and support common interests with the community. We are one of the preeminent local bar associations in the state and consistently provide exceptional CLE programming that garners attendance from outside our legal community. By expanding to include an online presence we will attract even more statewide participation. Further, as necessary, we will move our monthly membership meetings online, and even after we are

able to meet again in person, we can maintain an online presence for those who can't attend due to court or other commitments. Vice-President Bill Brickley has some exciting programs planned and I can't wait until we meet again in September.

Another important way that the GCBA operates is through its committees. This is an important way that you, our members, can participate hands-on in shaping the organization, proposing new and interesting ideas, and helping to put them into action. As any group, we are only as good as our members. We need you to be involved and active in our committees. Especially in these dynamic times, we need your input on how we can enhance our service to our members, to the community, and to the field of law. We need you to identify what needs to be changed, new directions we might follow, and new technologies that can enhance our abilities. So bring your ideas, comments, and suggestions and join a committee!

Finally, I cannot emphasize enough the importance of our association of lawyers. In these strange times of global pandemic and civil unrest—social distancing practices clashing with our First Amendment rights to public protest and election year politics—the role of lawyers in our society is as great and necessary as ever. It is a year in which we celebrate

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the 100th anniversary of the 19th Amendment, but events have shown us that the work in guaranteeing civil rights to all citizens and legal residents, and the human rights to all within our borders, is unfinished. It is a continuing duty of our profession. As Robert Kennedy said, “Lawyers have their duties as citizens, but they also have special duties as lawyers. Their

obligations go far deeper than earning a living as specialists in corporation or tax law. They have a continuing responsibility to uphold the fundamental principles of justice from which the law cannot depart.”

As an organization of lawyers, these are our standards. It is the difference between a business group and a profession. Let us live up to the promise of our calling.

GCBA Bylaws

By Sherri L. Belknap

Since March, business has not been business as usual for the Genesee County Bar Association (“GCBA”). COVID-19 posed new threats and problems that our organization has never dealt with before. These threats and problems have caused the Board of Directors to revisit the bylaws in order to maintain safety for our members.

Our Bylaws provided that all meetings had to be in person. In fact, our Annual Meeting had to be held in person in either May or June of each year. Further, only those present at the meeting could vote on the slate of officers and board of directors or any other voting matters.

Due to COVID-19, we needed alternate means to hold our meetings and votes in order to properly practice social distancing. The revisions allow for our Annual meeting and any other meeting to be conducted via video or telephone. Further, we are authorized to find alternate ways to cast votes as long as the alternative is a fair and impartial election.

Since we were already amending the bylaws to address our meetings, we renewed discussions on two additional

types of membership. When the Honorable Jessica Hammon was President, she suggested adding a membership for students who attended an accredited undergraduate program who were interested in a career in the law. Adding undergraduate students would further our mission of educating the public about the law and the role of lawyers. Second, we have received interest from businesses who would like to be affiliated with our organization. By adding the Business Affiliate membership, we are able to generate more income for the Association as well as assist our members with networking with other individuals or businesses within Genesee County.

On June 24, 2020, GCBA held its required Annual Meeting in order to comply with the existing Bylaws. With an in-person quorum of over 45 members, the Bylaws were approved with overwhelming support.



Sherri L. Belknap



2019-2020 Executive Committee: (L-R): Secretary Nancy C. Chinonis, Treasurer William J. Brickley; Vice President Michael A. Tesner, President Sherri L. Belknap, and Immediate Past President Jessica J. Hammon.

2020 May Mastering Criminal Defense: Current Issues with the Pandemic and the Practice of Criminal Defense

By Jessica Mainprize-Hajek



Jessica Mainprize-Hajek

After a year-long hiatus, May 2020 brought back the Mastering Criminal Defense Work Group for Defense Attorneys in Genesee County – the brain child of our very own and very missed Amy K. Harris.

This MCD dealt with technology and the issues currently faced by the defense. While the pandemic has brought efficient video pretrials and Probable Cause Conferences (PCC's), it has also given rise to questions and pitfalls that should concern us all.

Though technology has its advantages, when it comes to substantive court proceedings, the limitations are endless: Are you effective without sitting directly next to your client to answer his/her questions? Is the witness being “confronted” via video? Does a witness understand the importance of the proceeding when they are testifying from home behind a computer screen? Can you guarantee sequestration – especially considering courts are livestreaming proceedings via YouTube? Is a witness being coached behind the computer screen? Can the trier of fact truly determine credibility when

we lose those in-person social cues -- body language, eye contact, etc.?

Objections are forthcoming and there is no clear answer at this point. For those interested, look to MSC AO 2020-6 [extended by AO 202-12], which expands remote proceedings but mandates a confidential space for attorney and party, and guarantees the procedures are consistent with a party's statutory and Constitutional rights. See MCR 6.006; MCL §766.11a; *Maryland v Craig*, 497 US 836; 110 S Ct 3157; 111 LEd 2d 666 (1990); *People v Buie*, 391 Mich 294; 817 NW2d 33 (2012); *People v Heller*, 316 Mich App 314; 891 NW2d 541 (2016).

I look forward to continuing MCD monthly via Zoom and seeing all criminal defense attorneys in attendance! Join us for our next MCD on Thursday, August 13, 2020, the topic is Other Act Objections – Motions in Limine against 404b and 768.27 evidence. Register at www.gcbalaw.org.

Courage is a Quiet Virtue: Max Dean

By Joan Dean Marroso with John A. Streby

Attorneys deal with every aspect of the human condition, and our own judgment, integrity, and character are often put to the test. Popular culture exalts macho behavior, as evidenced by the legendary status of the “tough guys” of cinema: John Wayne, Gary Cooper, Bruce Willis, Tom Cruise, and Harrison Ford, to name a few. But courage and related virtues aren't always flamboyant and grandiose, as demonstrated some years ago by a lawyer named Max Dean (1922 - 2018), who was balding, soft-spoken, and restrained in dress and manner. Deeply thoughtful and generous with his time and advice, he often drew younger lawyers into his office for discussions on case law and precedent. Studious in constitutional law, he looked at each new case with an eye to development of the law as a positive force.

Max often pursued offbeat causes and strategies with an energy that astonished his jaded colleagues and prevailed often enough to earn their admiration. Civil rights, civil disobedience, and Vietnam draft cases filled his docket. At times, the trunk of his car was filled with copies of the autobiography of Lyndon La Rouche, a perennial third-party presidential

candidate, and Max would give one to anyone expressing an interest. His success in court would have earned him a comfortable career on the lecture circuit, were it not for his preference to serve others rather than himself.

Max's expertise was often needed in handling constitutional law issues, which he could find in even the most mundane criminal cases. It was just such a case that brought the entire firm of Leitson, Dean, Dean, Segar, Hart & Shulman to the brink of tragedy.

The partners had generated a war chest that allowed the firm to acquire half of the 16th floor of Genesee Towers, the newest and tallest office building in Flint, Michigan, back when big city concerns such as crime and violence rarely intruded into the offices of downtown lawyers. The suite extended over the entire south and east walls of the Towers, allowing every lawyer a room with a view. The walnut furniture, marble inlays, and artwork created a subdued elegance. As the newest associate at the firm, I was surrounded by luxurious quarters, brilliant mentors, and major cases.

One spring afternoon, the pastoral quietude was pierced by a strange noise, like the scream of a small animal hit by a car. There was immediate silence; no one spoke or moved. When I gingerly stepped into the waiting room, a man was waving a gun at the ceiling and screaming, "This is for the God-damned lawyer who I'm going to kill!"

My only thought was that I would never see my children again. In that fraught moment, I knew that everyone around me was wondering the same thing. *How will this end? Will we be alive?* The anger on the man's face was terrifying.

At that moment, Max walked out of his office toward the gunman, his hands raised submissively, his voice soft. "Let's talk," he said, as he walked into the line of fire, and gently guided the visitor to the empty waiting room. Max knew enough psychology to recognize that a low-key approach, rather than a macho challenge that might tempt a desperate man to shoot, was more likely to calm the situation.

Courage and professionalism sometimes call for ostentatious bravado, but more often require a refined approach. A lumberjack works with a chainsaw, a surgeon with a scalpel. Professional instincts, enhanced by legal and factual research, help determine the proper approach. Yet Max didn't have the luxury of careful deliberation, leaving him with only instincts to guide him. But if those instincts were wrong, he would likely have been the first victim. Max proved himself to be not only wise, but very brave.

As I edged back to my office, softly shut the door and prayed, I had no way of knowing what happened in that quiet waiting room. Outside my door, I could hear the muffled weeping of the nearest secretary, but no other sound.

Sometime later, I could hear calm voices assuring everyone that the man had gone. We were all safe. The office staff had been dismissed earlier, but Max was back in his office fighting the good fight, as usual.

Lawyer Rreferral and Information Service (LRIS): A Hidden Resource

By Kurtis L.V. Brown, LRIS Committee Chair

For many years, the concept of a local bar association having a Lawyer Referral Service was not even discussed. It was assumed that only an organization as large as a state bar association could organize and then scale the operation of such a service. The GCBA Lawyer Referral and Information Service (LRIS) has been around since 1977, under the supervision of the American Bar Association and State Bar of Michigan and endorsed by the Michigan Association of Bar Executives.

However, during my time on the GCBA Board of Directors, the ABA began marketing the concept of a new LRIS to bar associations smaller than just the state level. In 2001, I attended a presentation by a few representatives of the ABA about this program, scaled for county bar associations like ours. Fortunately, a member of the GCBA staff attended with me. Changes included reducing the number of panels from forty-nine to thirteen; developing Basic, Experienced and Low Fee Panels among other things.

Thereafter, the GCBA Board authorized the formation of the new and current Lawyer Referral panel format. We began in 2001 with an organization that established various areas of the law for which we could make referrals. At the same time, members of our Bar were recruited to staff the LRIS panel.

Conceptually, it was seen as a community resource for Genesee County residents that also had the potential to provide some revenue for the organization. In order to be accepted for LRIS, the attorney must be a member of the GCBA, pass a screening into their background, training, and experience and then pay a modest fee to the GCBA.

When a member of the community calls the GCBA Lawyer Referral line, a member of your GCBA staff does a wonderful job of getting key facts and information.

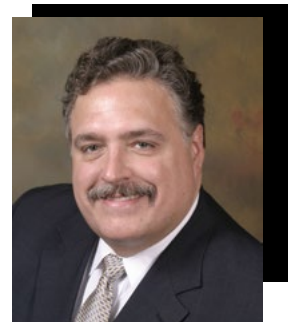
The potential LRIS client agrees to pay a modest fee (\$30) for their first consultation. The matter is then referred to a lawyer on the committee list and that initial consult is set up.

If the lawyer and the LRIS client agree to a further relationship, a retainer is executed and the GCBA receives an agreed upon referral fee out of the fee obtained for work on the file.

This concept provides a positive experience for Genesee County residents who, too often, are drawn outside of our county for legal representation. It highlights the exceptional legal talent from right here at "home" and promotes improved business relationships within our community. The clients are frequently residents who may not otherwise qualify for "Free Legal Aid" from organizations such as Legal Services of Eastern Michigan because they have a legal need but too many financial resources to get "Legal Aid."

For the lawyer on the LRIS panel, it provides another way to obtain both clients and valuable legal experience, building skills that can last a lifetime.

In these trying times, being a member of the LRIS provides not only a way to gain business, but also build relationships within the Genesee County legal community. If interested in learning more about how to become an LRIS attorney, please reach out to Eileen M. Harris at (810) 232-6000.



Kurtis L.V. Brown

Virtual Art: Alternative Arts Programs for Youth in Detention

By Shelley R. Spivack



Shelley R. Spivack

Since 2011 Youth Arts: Unlocked (YAU) has brought the arts to youth at Genesee County's juvenile detention facility, GVRC. Each week professional dancers, actors, poets, visual and yoga artists have shared their knowledge, expertise and love of the arts with the boys and girls ages 10-17 who have been court ordered into secure detention. The workshops have given these kids, many of whom never have had the opportunity to take any type of art class, the chance to create, express themselves, learn new skills and discover unknown talents. YAU's workshops have fostered a sense of self-worth and pride in some of Genesee County's most troubled youth.

Unfortunately, when COVID-19 made its way into Michigan restrictions were put into place prohibiting anyone other than GVRC staff to enter the facility. This resulted in the suspension of in-person visits by families and attorneys, religious services, in-person school classes and YAU'S arts

workshops. Despite Michigan's re-opening, these restrictions remain in place to ensure the health and safety of the youth and staff at GVRC.

While the stay-at-home orders have impacted us all, youth in detention are particularly vulnerable to experiencing the negative effects associated with isolation. Realizing this, YAU co-director Colette Legault-Fields immediately began thinking of ways to continue the arts programming without entering the building. Working with Juvenile Court Administrator Rhonda Ihm and GVRC staff, Legault-Fields and her team of teaching artists developed a comprehensive plan to deliver arts programming to youth in detention during the pandemic.

By the first week in May, YAU was back in business offering virtual theatre, dance, and yoga workshops each week through Zoom as well as weekly lesson packets in the visual arts and poetry. A HOPE grant from Michigan Humanities provided funding for the purchase of recording equipment as well as funds to create new programming. The extraordinary teamwork exhibited by court, GVRC and YAU staff has placed the program in the forefront of a national effort to bring virtual arts programming to detention and correctional facilities.

In creating these virtual performing arts workshops, YAU teaching artists have faced numerous obstacles and challenges and have had to re-imagine how they teach. In addition to the inherent challenges of the virtual environment, the requirements of social distancing, masks, and the stress and trauma caused by isolation during the pandemic have further complicated teaching theatre, dance, and yoga to incarcerated youth.



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In the girls dance workshops, the teaching artists have chosen to focus on how dance has played a roll in keeping a level-head during the global pandemic, as well as in supporting the *Black Lives Matter* movement. *Engagement and moving together* have become the primary goal of each class with teachers using a variation of *TikTok* dance challenges to engage the students and keep them moving. By adding new pieces each week the students have created a dance piece over a minute long!

During the Yoga workshops, the focus has been on meditation and calming the mind through breathing activities. This process has also created an opportunity to build upon the success the yoga program has provided in terms of creative ways to regulate information, emotions, and physical activities.

The multiple challenges faced in the theatre workshops could easily have defeated a less determined group of teachers and students. Instead, they used the challenges to create an atmosphere in which the boys could 'let loose, laugh and

'have a lot more fun.'" By using story-telling and improvisational techniques the youth have learned to channel much of the anger and frustration associated with being locked up during a pandemic.

Since the COVID-19 restrictions were put in place, YAU has been the only outside group to bring programs and activities into GVRG. Staff have commented on the importance of the workshops noting that the youth look forward to and enjoy them and talk about what they did during the Zoom workshops. They believe that the workshops give the youth something constructive and positive to do with their time.

Since the pandemic, YAU has had to postpone several exhibits that had been planned for the spring. However, you can view a virtual gallery of the students' work on our website <https://www.youth-arts-unlocked.org> and also view our students' work in the GFAC Young Artists Today virtual exhibit at www.greaterflintartscouncil.org.

New Board Member Juanita L. Massey

Name: Juanita L. Massey

Family: Spouse, Barry Massey, 2 daughters: Toni Fugate and Alyssa Haynes; and a granddaughter (21 months old)

Undergraduate school, degree and grad year: University of Michigan-Flint, BA (dual major) Criminal Justice and Sociology, 1997.

Law school and grad year: Thomas M. Cooley Law School (nka: Western Michigan University Thomas M. Cooley Law School), 2000

Bar Association member since: 2006

Area(s) of practice: Family law and Bankruptcy (primarily)

Office location, phone number, and email address: Tri-County Lawyers, P.C., 5080 W. Bristol Road, Ste. 4, Flint, MI 48507; 810-600-1534; JuanitaMassey-Law@gmail.com



Juanita L. Massey

Reasons you believe in service to the GCBA: I believe that being involved with the GCBA is an important service, not only to our bar association, but to our community in general. I am at a point in my life and career that I can put more time and effort into service unto others, other than just the practice of law.

Law is the Family Business: Local Attorney Families

By William J. Brickley



The GCBA has a rich history of members who come from a family of lawyers. Many of our attorney families accomplish as much as the “big name” attorneys, but they do not receive the same public recognition. In each edition we will highlight a couple of our local attorney families who work hard to serve the Genesee County community.

Philpott Family

Born in Winnipeg Alberta, Doug Philpott's passion and skill for hockey brought him to the University of Michigan where he became an All American and two-time NCAA champion. On the verge of starting an NHL career with the Toronto Maple Leafs, Doug was drafted into the United States Army due to a quirk in his immigration status. Upon completion he became a United States citizen and used the GI bill to fund his legal education at Wayne State University.

Because of his desire to live in a smaller community Doug and his new bride settled in Flint to begin a long-standing and distinguished legal career. Over the years, he associated with Ray Brownell, Ted Brownell, Dale Andrews and Randy Piper. He developed a specialty of defending civil litigation and could successfully argue his case in less time than most lawyers took to say good morning to the Judge.

Two of his greatest successes were the birth of his daughter, Susan, and his son, Peter. Susan attended Michigan State University and then obtained a JD from the University of

Detroit Law School. Peter traveled to Kalamazoo to attend Western Michigan before going to Cooley Law School for his degree in the law. Both have taken their passion for the law in slightly different directions. Susan, while beginning her career in defending civil litigation, has developed a specialty in family law. Peter has a wide-ranging practice that includes criminal law and working for companies like GMAC and Allevy in trying to have people honor their promises to pay their loans.

Jakeway Family

It is hard to believe that Edwin Jakeway began his practice of law in 1961. He served as an assistant prosecuting attorney in 1962 and 1963 and survived as a successful personal injury attorney when comparative negligence could rob you of compensation for even the slightest level of wrongdoing. Ed's reach has extended far beyond Genesee County and he has co-counseled with the likes of Melvin Belli. What is even more impressive than his ability as a lawyer is the respect he has gained from the legal community as a whole. This culminated



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in 2000 when the Michigan Defense Trial Counsel awarded Ed with the Respected Advocate Award.

In 1994 Ed's sons, Craig and Morgan Jakeway, joined their father to create Jakeway Law. Both Craig and Morgan hold undergraduate degrees from Kenyon College and Juris Doctorate Degrees from the Detroit College of Law, now Michigan State University College of Law. Morgan Jakeway is a member of the Washington, D.C. Bar. Craig Jakeway served, before law school, in a Copyright and Patent law firm in Washington, D.C.

The Jakeways pride themselves on serving families seriously injured in difficult cases. They have been in the forefront criticizing solicitation by members of legal firms, usually in areas other than Genesee County.

McKone Family

Little did Charles "Chuck" McKone know back in those days as a butcher in New Lothrop that he would start a legal family. His passion took him to Detroit College of Law where he finished his studies in the early 70's. The Hon. Robert Ransom, then a successful attorney, convinced him to bring his legal skills to Flint, which Chuck did, working with some

of Flint's heavyweight civil defense attorneys. His associations with Ed Henneke and Scott Fraim developed and lasted years. While continuing in civil defense litigation he also began excelling in municipal law and allowed that to flourish to the point where he is supposedly retired now.

Chuck's son David became an Electric Engineer, collaborating on many high profile projects with the likes of GE and others. The legal bug surfaced and, after graduating from U of M Law School, David combined his talents to practice patent law. He had the honor of being named an Administrative Law Judge in the Patent Courts and sits in Detroit.

Matt's journey took him through DCL also, although at the time it was named DCL at MSU. Even before he was licensed, though, he was able to experience the law first hand with his father by serving as a clerk and was even allowed to participate in certain hearings as a law student. After his graduation in 2001 he continued to work with his father. In addition to picking up municipal work he also has a thriving general law practice in not only Genesee but also Shiawassee County. Being a very wise man Matt still consults with his father often on legal matters.

SCOTUS Surprises

By Roberta J.F. Wray

In a term that was extended beyond the traditional June 30 end, the Justices of the United State Supreme Court heard and/or acted upon 52 cases. On June 30, there were still eight decisions to be announced, including two involving access to financial records of the president. I'm calling this "the cliffhanger court" for obvious reasons. Not since 1996 have there been decisions held over into July. Disruption of the hearing schedule by the Coronavirus pandemic is primarily responsible.

Two opinions were announced on July 5th. The first, *Barr v. American Association of Political Consultants*, held that there are no exceptions to the ban on debt-collection robo-calls. There had been an exception for government debt collections. The second, *Chiafalo v Washington*, by unanimous decision holds that Electors in the Electoral College are not free agents, but may be punished for failing to honor their pledge to vote for the candidate chosen by the majority of a state's voters.

That leaves five opinions yet to be released as of this date including two regarding subpoenas by Congress and the State of New York for the president's tax returns and other financial records, two about religion clauses, and one about whether much of eastern Oklahoma is a Native American reservation.

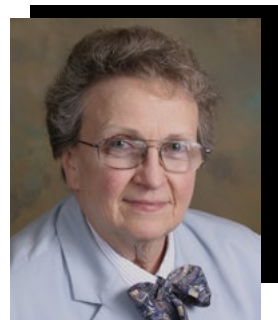
Outcomes that surprised many involved workplace protections for LGBT employees, abortion regulations imposed

by the State of Louisiana, and the attempt by the Trump Administration to terminate the Deferred Action for Childhood Arrivals (DACA) program. In those cases, Chief Justice Roberts joined the liberal wing, leading to speculation about whether the Court is realigning itself.

Respected Constitutional Law professor Laurence Tribe, in a *Washington Post* editorial on July first, says Chief Justice Roberts is living up to his pledge in his 2005 confirmation hearing to respect the precedents of the Court. Thus, his stand on abortion restrictions requires, not a balancing of interests, but the bright line test established in 1992 of whether the regulation placed "undue burden" on the right of a woman to choose.

In the DACA case, the Chief Justice and the Court said the "reliance interests" of other stake-holders as well as the "Dreamers" must be considered in accordance with administrative law.

Linda Greenhouse, in an opinion appearing in the June 19, 2020 issue of the *New York Times*, suggested the real message from the Chief Justice is that the president should not "take the Supreme Court for granted."



Roberta J.F. Wray

What to Do about Bostock: Suggestions for Employers

By Sean M. Siebigteroth



Sean M. Siebigteroth

The significance of the United States Supreme Court's June 15, 2020, ruling in *Bostock v Clayton County*¹ is difficult to overstate. In *Bostock*, the Court held that Title VII of the Civil Rights Act of 1964,² which prohibits employment discrimination "because of sex," protects gay and transgender employees.

Although the Equal Employment Opportunity Commission and the Michigan Department of Civil Rights had both taken the position that existing sex discrimination laws (Title VII and the Elliott-Larsen Civil Rights Act, respectively) protect lesbian, gay, bisexual, and transgender (LGBT) persons against employment discrimination, *Bostock* makes it clear that LGBT employees of most Michigan employers³ have individually enforceable rights to a workplace free from discrimination. Litigators can expect a "wave of litigation" initiated by employees and former employees, relying on, and testing the limits of, *Bostock*.⁴

What should employers do? The answer to this question depends, in part, on what employers have already done to promote tolerance of sexual orientation, gender identity, and gender expression in the workplace. Many employers proactively decided to adopt policies prohibiting workplace discrimination and harassment because of sexual orientation or transgender status. For those employers, *Bostock* probably imposes little additional burden. Employers who have not formally embraced protection of LGBT employees against discrimination have some work to do.

All employers should review their nondiscrimination policies to ensure that they include sexual orientation and transgender status as categories of persons against whom discrimination is forbidden. If their nondiscrimination policies do not, the policy should be revised and communicated to all employees in writing. This places all employees on notice and offers a valuable factual defense to a litigant's attempt to attribute an employee's discriminatory conduct to the employer.

The employer's antiharassment policy should likewise be evaluated and similarly revised if necessary. The antiharassment policy should include a process for employees to make complaints of sexual harassment to the employer without fear of retaliation. That process should be easy to follow and identify several employer representatives an employee can use to report sexual harassment. Again, this policy should be distributed to all employees, with a written record made of that distribution. Having a proper and properly pro-

mulgated antiharassment policy with these features is especially important because the policy can offer an affirmative defense to an employee's hostile work environment harassment claim, showing "that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior[.]"⁵

Because an ounce of prevention is worth a pound of cure in the human resources arena, employers should also strongly consider sensitivity training particularly focusing on LGBT persons. Training can help employees recognize conscious and unconscious bias and reinforce employer prohibitions of discrimination against LGBT coworkers. The George Floyd protests and continuing national discussion regarding race discrimination create a moment where discussions regarding all forms of workplace discrimination will be productive and likely well-received.

Employers especially concerned about litigation and its costs may consider having their employees sign an arbitration agreement as a condition of continued employment. Pre-dispute arbitration agreements are enforceable even as to claims of discrimination under federal and Michigan law.⁶ Arbitration provides a faster and cheaper resolution of claims than litigation, provides the employer with input into the adjudicator, and removes the possibility of a jury trial. In some cases, the existence of an arbitration agreement may deter an employee's representative from pursuing legal action altogether.

Endnotes

- 1 590 US ____ (2020).
- 2 42 USC 2000e - 2000e-17.
- 3 Title VII applies to employers with more than fifteen employees working more than twenty weeks in any year. 42 USC 2000e(b).
- 4 Schmidt, *After Landmark Supreme Court Ruling, Transgender Workers Stand up for Their Rights*, Washington Post (June 24, 2020).
- 5 *Faragher v City of Boca Raton*, 524 US 775, 780; 118 S Ct 2275; 141 L Ed 2d 662, 671 (1998).
- 6 See, e.g., *Moore v Ferrellgas*, 533 F Supp 2d 740 (WD Mich 2008).

Contact barbeat@gcbalaw.org to write a balancing, employee-focused article.

New Small Business Bankruptcy Law Provides Flexibility in Troubled Times

By Peter T. Mooney



Peter T. Mooney

Businesses that face financial challenges relating to the current pandemic have a new option to reorganize their businesses and manage their obligations.

Most people know that General Motors and Fiat Chrysler were able to navigate the financial crisis in part by filing Chapter 11. What is less well known is that Chapter 11 is available to businesses of all sizes and to individuals.

While Chapter 11 has always been available to small entities, getting through Chapter 11 successfully can be challenging. Chapter 11 requires that a person or company propose a payment plan, which can result in substantial reductions in the amount owed with the unpaid balance of the debt being discharged. A challenge that can stymie a debtor in a traditional Chapter 11 is that creditors have the right to vote to accept or reject a plan, and if creditors refuse to support a plan a case can fail.

Earlier this year a new type of Chapter 11 came into effect aimed at small businesses with total debt less than \$2,725,625.00. Under the CARES Act that debt limit was increased for a temporary period to \$7,500,000.00.

How does the new small business Chapter 11 bankruptcy make the process easier? A significant way is that the Court can now approve a payment plan that is “fair and equitable” even if the creditors do not support the plan. Also, in a traditional Chapter 11 the owners often have to invest additional, personal money into the company to retain their equity in the business. That is not the case in a small business chapter 11.

For closely held businesses under a significant debt burden a small business bankruptcy can be a way forward.

From Lake Michigan To Lake Huron- A Journey On Trails

By Shelley R. Spivack



Shelley R. Spivack

Traversing nine counties, 34 cities, towns, and villages, and 16 trails, Michigan’s new Great Lake-to-Lake Trails Route #1 is “the crown jewel of a state that leads the nation in non-motorized trails.”¹ The first of five proposed trails crossing the state, Route #1 begins in South Haven and ends 276 miles later in Port Huron. After 10 years of planning, the trail came to life on 9/13/19 with a six-day inaugural ride sponsored by Michigan Trails and Greenways Alliance.

After hearing about the inaugural ride, plans to cycle the trail began spinning in my head. Within a few days I had a group of 14 planning to join me on the trail. As most of the group were from the east coast, we decided to start in Holland and spend a day exploring the beaches and towns along Lake Michigan.

When COVID-19 hit this spring, the group of 14 slowly dwindled down to 1 – me. As Gov. Whitmer lifted the Stay at Home order, I began recruiting riders from the Midwest. By mid-June a group of four eager cyclists was ready to hit the road.

On June 27th we headed to Fennville, a small farming community a few miles south of Holland and spent two days exploring the roads, trails, beaches, and breweries around Saugatuck, Douglas, and Holland.

On Monday, we headed south to start the cross state journey. We cruised past the pristine lakefront estates marking the entrance to South Haven, once known as the “Catskills of the Midwest.” After dipping our back tires in Lake Michigan we dodged tourists and traffic to find the 33-mile Kal Haven Trail – a linear state park built along an abandoned rail line connecting South Haven with Kalamazoo. As we edged closer to Kalamazoo, the Kalamazoo River Trail brought us to our artfully restored 19th century Bed and Breakfast. The smell of bacon and homemade peach scones woke us up in the morning as we readied ourselves for the next leg of the journey.

Diversity in scenery, as well as trail type, defines the Lake-to-Lake Trail Route #1. On day two as we passed through



southwest Michigan, we rode the Battle Creek Linear trail, an urban trail connecting neighborhoods with the downtown riverfront, and the Calhoun County Trailway, a gravel hiking and biking trail cutting through a Biological preserve. Pulling into downtown Marshall for a mid-afternoon snack, the retro storefronts and historically preserved buildings made us feel as if we were living in a by-gone era. A few miles later, the Albion Trailway delivered us to another delightful Victorian Bed and Breakfast and a local brewery in Albion's downtown historic district.

As we headed east the "Falling Waters Trail" led us towards Jackson, where the MLK Equality Trail took us through the city. While I had been to Jackson many times to visit clients in the area's prisons, I had never explored the city and its history. The Michigan Theatre, an art deco structure built in 1930 with a lavish terra cotta facade, stood out in a downtown filled with modern architecture. Most interesting was the site of Michigan's first prison built in 1839. Here we learned of Michigan's first prisoners and the story behind the world's largest walled prison. With several of the original walls still standing, the site now houses several art galleries and a bicycle co-op.

One of the biggest surprises on the trip was riding through the metro Detroit area almost exclusively on trails. Staying in Whitmore Lake on our third night, we cycled on trails through Island Lake State Park and Oakland

County, landing in Auburn Hills for our fourth night. The Michigan Airline Trail, a newly-paved trail from Wixom to West Bloomfield, showcased art reproductions from the DIA, while the crushed limestone West Bloomfield

Trail hosted a variety of birds and wildlife as it meandered through a nature preserve.

The Clinton River and Macomb Orchard trails carried us out of metro Detroit and into Macomb's peach and apple country. Leaving the trail in Richmond, we then had to share the road with cars until arriving at Port Huron's Bay to Bridge Trail. As we cruised along the St. Clair River we were steps away from our destination – Lake Huron. Dipping our front tires in the lake by the lighthouse at Fort Gratiot, we finished a most delightful journey.

For more information about the trail: <https://greatlaketolaketrails.org>

To see more photos: <https://www.flickr.com/photos/shoshannarobi1n/albums>



Endnote

- 1 <https://greatlaketolaketrails.org>



Welcome New Members

Attorney: William Balcer

Employer: Self Employed
Undergrad School: University of Michigan - Flint
Law School: Western Michigan University – Thomas M. Cooley Law School

Attorney: Jason Jurelich

Employer: Jurelich Law Firm, PLLC
Undergrad School: University of Michigan
Law School: Thomas M. Cooley Law School

Attorney: W. Kevin Miller

Employer: Legal Associates
Undergrad School: University of Missouri
Law School: Thomas M. Cooley School of Law

Attorney: Paige Riem

Employer: 7th Judicial Circuit Court
Undergrad School: Michigan State University
Law School: Michigan State University College of Law

Attorney: Michael D. Vizard

Employer: Michael D. Vizard, PLLC
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