

July/August 2014

BARBEAT

Genesee County Bar Association



Jeffrey J. Himelhoch, 2014-2015 GCBA President

My Opportunity to Serve

Annual Meeting Honors

Urban Farming Revisited

The Mindful Lawyer: A Mental Exercise
in "Floating"

Who's on the Bench?

Hon. Tracy Collier-Nix, 68th District Court

Flint Trial Lawyers Association

FOC Arrears Management Program

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New Member Profiles: David B. Roth and
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Published bimonthly by the State Bar of Michigan,
 306 Townsend St., Lansing, MI 48933, for the
 Genesee County Bar Association. For advertising,
 call (517) 346-6315.


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My Opportunity to Serve

By Jeffrey J. Himelhoch, President



Jeffrey J. Himelhoch

I am honored to be the president of our bar association. Our bar has 117 years of proud history, and we have continued to be strong despite the challenges of a tough economy. Our members like our bar's sense of community. None of this would be possible without our excellent executive director, Tina Burroughs, and staff, Eileen Harris and Star Estep.

Initially, I joined the GCBA because I thought it was the right thing to do, but I soon realized the value of being a member. I worked with Beecher Schools for 25 years as a Law Day mock trial advisor and found that very rewarding. All of us have made different types of commitments to our bar association.

I have asked myself what makes us such a strong organization. Why do so many past presidents continue to show up at luncheons? Why do we have 509 members? Why are there 16 committees with 114 volunteers, and why do 148

people volunteer for the annual holiday dinner?

We have a devoted, diverse board of directors with young lawyers included and ready to step into leadership roles. I recognize we are the focal point as an organization and the voice of our profession in Genesee County. Our bar association has done a good job of enhancing our reputation in the community. I will do my best to maintain that reputation.

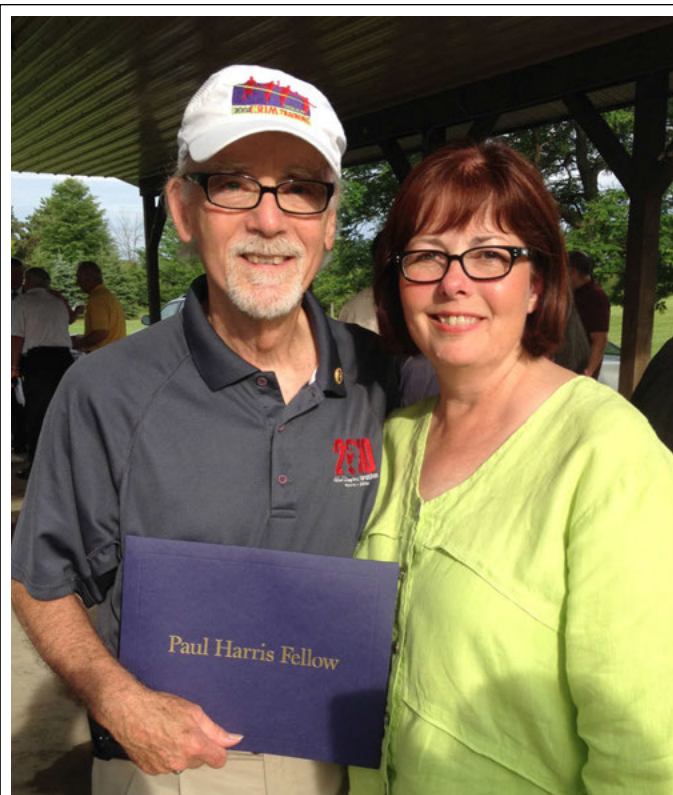
I would like to thank the following individuals who have already agreed to chair committees: Amy Harris, Criminal Law and Defender Program; Barb Dawes, Family Court; Sherri Belknap, Law Day and Bankruptcy; and Craig Wright, Probate; Jill Nylander, Legal Aid; Craig McAra, Professional Practice and Ethics; Kurtis Brown, Lawyer Referral; Linda Lee Massoud, Bar Beat; Brian Barkey, Holiday Dinner and Social Security; Vikki Bayeh Haley, Appeals; Abner Tansil, ADR; Jeremy Piper, District Court; Anthony Tomaszewski, Golf Committee; Gregory Gibbs, Federal Practice; Tamara Phillips, Bench 'N' Bar; and Jessica Hammon, Community Action Committee. Stay tuned for the charitable events for which you can volunteer.

I know we have many challenges in the next year: 1) mandatory or non-mandatory state bar dues, 2) mentoring young lawyers, 3) fiscal stability (our budget is always tight), and 4) more support for legal aid to provide legal services to the needy in our community. I am sure there will be many challenges of which I am not yet aware. Please feel free to contact me regarding any suggestions to meet these challenges.

Recently, I attended the State Bar Leadership Forum. Every bar association faces the challenges of maintaining membership and increasing young members' involvement. I happen to think our bar is exceptional, and my job has been made easier because of hard work and a foundation that has already been laid.

I look forward to working with Mallory, Scott, VanDyne Bar Association, Centennial Inn of Court, Flint Trial Lawyers Association, and Affiliate members, in improving the status of our legal community.

I anticipate having a great year. Thank you for having faith in me. I will do my best. Let's work together to make our legal and local communities the best they can be.



Congratulations to Brian Barkey, named Paul Harris Fellow by the Genesee Valley Rotary Club, recognizing many years of public service including the GCBF/GCBA Holiday Dinner and Flint Area Year Round Running/Walking Group. (Pictured: Brian & Dorie Barkey)

Annual Meeting Honors

By Roberta J.F.Wray

A perfect mid-spring day at the Flint Golf Club was the backdrop for this year's annual meeting and ritual passing of the "Spoon of Power." The occasion also served as the platform for honoring District Court Judges John Conover and Larry J. Stecco who are retiring at the end of this year because they will have reached the mandatory age barrier to seek another term.

This year's Jerome F. O'Rourke Advocacy award, presented by the Centennial Inn of Court, went to Philip Beauvais, III.

The Legal Services of Eastern Michigan Pro Bono Attorney of the Year award was presented to Erwin F. (Fred) Meiers, III.

And finally, James N. Bauer was chosen as the 19th recipient of the GCBA's annual Herbert A. Milliken Civility Award.

Succeeding to the presidency of the GCBA is Jeffrey J. Himelhoch, a member since 1982.

Other officers are: Shayla D. Blankenship, vice-president; Michael A. Kowalko, treasurer; and Jessica J. Hammon, secretary. Newly elected director for 2014-2017 is Michael J. Gildner. Directors Morgan R. Cherry, Craig L. McAra and Jonathan Poulos were reelected to new terms.

The transfer of the "The Spoon of Power" has become a tradition with GCBA. It is derived from an annual meeting at Crossroads Village in 1997. Then out-going president, Valdemar Washington, did not have a gavel to transfer, so he



Philip Beauvais, III



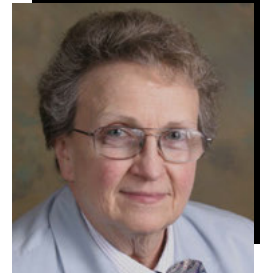
Erwin F. (Fred) Meiers, III



James N. Bauer



Jeffrey J. Himelhoch



Roberta J.F.Wray

picked up a plastic spoon to symbolize the gavel and handed it to incoming president, Ronald Haldy. Thereafter, the symbol of leadership of the GCBA became "The Spoon of Power." The "Spoon" itself has evolved. According to Mr. Haldy:

At the 1998 Annual Meeting I was the outgoing president and Walt Griffin was the incoming president. I thought that Val's impromptu "Spoon of Power" was a rather unique concept and thought that an attempt should be made to preserve it. However, I was sure that the life expectancy of passing the original plastic spoon (even if I still had it) would not be very long so I decided to create a more permanent one. In the process I purchased a sterling silver spoon (along with the rest of the mandatory place setting) and had a woodworker that I knew prepare the plaque, mount the spoon to it along with the engraved plate. The finished product was then presented to the first recipient, President Walt Griffin. It has been passed on to each incoming president by the outgoing president ever since.

Urban Farming Revisited

By Leon J. Letter

In the September/October 2013 *Bar Beat*, I discussed urban farming and the arguments regarding the application of the Right to Farm Act to those farming operations. In that article, I detailed the dispute over the “generally accepted agricultural and management practices” or GAAMPs, related to site selection for livestock facilities. I concluded the article with the following warning: “...attorneys advising urban farmers should be aware that this is a dynamic area of the law that can have implications for urban farmers, local governments, and residents living with this new reality.”¹ Since that article, the Michigan Department of Agriculture and Rural Development has amended the site selection GAAMP and resolved, at least for now, the debate.

In its April 2014 site selection GAAMP, the state reaffirmed its support of the local food movement:

There has been a significant increase in interest by individuals in more urban settings to grow their own food, and to grow food for sale. This includes a trend regarding producing protein sources from animals. The Michigan Department of Agriculture

and Rural Development supports the expansion of urban agriculture and livestock production across the state. The expansion of agriculture, whether for personal consumption or for local sale/distribution, will provide an opportunity for people to be closer to local food sources. It also creates an opportunity for the urban agriculture movement to be integrated with any local community’s plan for food hubs and/or farm markets, and will be reflected in the differences between communities.

The Generally Accepted Agricultural and Management Practices for Site Selection and Order Control for New and Expanding Livestock Facilities recognize this trend. It also allows for this to continue to grow based on the desires of the local urban community.²

In its attempt to promote local food and balance the local urban interests, the state created a new category of sites specifically addressing urban/residential areas. The new category, Category 4, is classified as “sites not acceptable for New and Expanding Livestock Facilities and Livestock Production Facilities.”³ It is described as “locations that are primarily residential and do not allow agricultural uses by right and are not acceptable under the Siting GAAMPs for livestock facilities or livestock production facilities regardless of the number of animal units. However, the possession and raising of animals may be authorized in such areas pursuant to a local ordinance designed for that purpose.”⁴

“Primarily residential” is defined as sites where “there are more than 13 non-farm residences within 1/8 mile of the site or have any non-farm residence within 250 feet of the livestock facility.”⁵ Therefore, in most urban areas sites would be locations defined as “primarily residential” and, thus, would be classified under Category 4.

If a site is classified under Category 4, the site cannot be used to raise animals and obtain the protections of the Right to Farm Act (i.e. defense from nuisance suits). This does not mean that urban farming is being terminated or prevented. Rather, these sites will now have to comply with local ordinances regarding the operation of a farm or raising farm animals.

For example, if you want to raise chickens in Flint, you cannot do so on any residential lot in the city.⁶ However,



Leon J. Letter

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you can raise those chickens (other than a rooster that crows)⁷ in certain other non-residential zoned areas as long as those chickens are confined in a yard, pen, shelter, or building that provides at least 25 square feet per chicken.⁸ You would also be required to make sure that the yard, pen, shelter, or building was at least 50 feet from any building used as a dwelling⁹ and cleaned at least once every day.¹⁰

Urban farming operations are now going to be dependent on complying with local standards rather than state standards. Although the protections of the Right to Farm Act will not apply, urban farming operations can still operate but will have to be more vigilant in their operations and pleasing to the locals and local authorities. Although more difficult, it is not an impossible task.

Endnotes

- 1 *BarBeat*, Genesee County Bar Association, September/October 2013, page 7.
- 2 *Generally Accepted Agricultural and Management Practices for Site Selection and Order Control for New and Expanding Livestock Facilities*, Michigan Department of Agriculture & Rural Development, April 2014, pages 2-3.
- 3 *Ibid.*, p. 5.
- 4 *Ibid.*, p. 11.
- 5 *Ibid.*, p. 11.
- 6 Flint City Code, §9-15.1.
- 7 *Ibid.*, §9-19.
- 8 *Ibid.*, §9-16.
- 9 *Ibid.*, §9-17.
- 10 *Ibid.*, §9-18.

The Mindful Lawyer: A Mental Exercise in “Floating”

By Terri L. Stangl

It's not what happens to you, but how you react to it that matters.

—Epictetus



Terri L. Stangl

I know an attorney who dreaded pretrial negotiations. She second-guessed herself, capitulating to anyone who became angry or impatient with her. She seemed to try to appease every irritated person. Needless to say, this did not help her clients or her confidence.

She wasn't sleeping, and she was exhausted from trying to accommodate her aging parents, her children, and her spouse. She blamed others for her stress and even fantasized about running away. Deeply frustrated, she came into my float center in Swartz Creek. After several sessions she began to relax.

When the human body is stressed, the mind has less circuitry with which to find solutions to that stress. With a clearer mind and after a few questions, she began to see how she was blaming other people instead of changing her own reactions. She could even see where her habit of appeasing others first began and how widespread it was in her life.

Blame is one of the most debilitating habits that I observe as a float facilitator. It creates stress because it

places solutions out of reach and into someone else's hands. When my colleague finally relaxed enough to see and deal with what was real, she was able to find her own solutions to what previously seemed unsolvable. That shift alone has brought her relief and made a difference in her dealings with clients and family members alike.

Assigning liability is necessary for the practice of law. But in everyday life, affixing blame denies our own role in creating problems – something that we must claim in order to fix those problems. So next time you're feeling stressed about something and before you react, why not take a few minutes to relax and slow down? You might be surprised at what happens when you do.

Terri Stangl recently retired as the Director of the Center for Civil Justice. She currently owns Great Lakes Flotation LLC and presents workshops on reducing stress and on breaking habits of thinking that produce stress. She welcomes comments and questions at terrinstangl@greatlakesflotation.com.

Who's on the Bench?

Hon. Tracy Collier-Nix, 68th District Court

By Roberta J.F.Wray



Hon. Tracy Collier-Nix

“I always wanted to be a lawyer,” said Judge Tracy Collier-Nix. It was a family thing. Two relatives were lawyers. She grew up admiring lawyers so it wasn't a hard decision. She attended school in Flint and graduated from Flint Northern High in 1968.

After completing her BS in Psychology at the University of Michigan she headed off to Howard University to follow her dream. But she hit a patch of doubt. A friend told her, “Make sure this is what you really want to do.” So she took a break and found a summer job working as a probation officer in 67th District Court.

That experience rekindled her love for the law. She returned to law school at Wayne State University then spent five years with UAW-General Motors Legal Services where she learned to manage a large caseload.

Her early interest was in civil rights law but she soon realized her real passion was for justice, a much broader area. As affirmative action officer for Genesee County and later as director of the Flint Civil Service Commission she found great satisfaction in being able to educate people about civil rights, diversity and other types of injustice. In those positions she helped implement ADA requirements and organized sensitivity training for employees in areas of sexual harassment and diversity.

In November 2008, Governor Jennifer Granholm appointed Collier-Nix to the 68th District Court to fill the vacancy created by the resignation of Judge Michael McAra.

Since her appointment and subsequent reelection, Judge Collier-Nix says her greatest frustration is in trying to handle the volume of cases efficiently and with the required attention to detail. She says, “Unfortunately, that just goes with the territory.”

But the other side of the coin is that lack of resources has resulted in implementing outside-the-box methods of dealing with people who have to be placed on probation. She says having probationers report directly to her has sometimes resulted in very satisfying outcomes. At the end of June she had a call from a young man who had been sentenced to a marijuana awareness program. He told the judge he had finally realized he couldn't function while using marijuana and that he was ready to make the changes necessary to turn his life around.

Judge Collier-Nix says she got her greatest inspiration from her mother, who required adherence to a set of values and made her realize that choices have consequences. She has a grown son, Noel Nix.

Flint Trial Lawyers Association

The Flint Trial Lawyers met at the Masonic Temple on April 17th for its spring meeting. The new officers were installed. They are Kraig S. Sippell, President; Brent Thomas, Vice-President; Christine Wasserman-Rathe, Treasurer; and Jarrett Pabst, Secretary.

The meeting was highlighted by honoring Tom Pabst as the Flint Trial Lawyers Advocate of the Year for his dedication to the practice of Employment Law and the incredible work that he continues to do in that area in achieving favorable verdicts for his clients.

The Trial Lawyers are involved in a wide range of topics in litigation, and especially currently the local and statewide political landscape and its effect on legislation and pending matters of all kinds. The FTLA meets bi-annually in the spring and fall. We invite all litigators, no matter their age

or area of practice to consider joining the association. The annual dues are a modest \$35, which supports all activities of the association.

The FTLA would like to extend a special thank you to the immediate Past President, Mike Parillo, for his considerable time and effort in guiding the association this past year. We also thank all of those involved in speaking, writing, and attending the various meetings throughout the state, thus providing valuable information to our members and the local bar. Their reports form the basis for our discussions and meetings.

For further information, please contact the Genesee County Bar Association, any FTLA member, or President Kraig S. Sippell, directly.

FOC Arrears Management Program (AMP)

By B. Connie Boniecki, Case Supervisor Genesee County Friend of the Court



B. Connie Boniecki

The State of Michigan recognized that there were millions of dollars in unpaid child support owed to the State that were uncollectible. Maintaining and enforcing uncollectible child support arrears takes Friend of the Court resources away from enforcement and collection efforts on other cases. As a result, two arrears management strategies have been introduced by the State of Michigan.

The Arrears Management Program (AMP) strategies are for individuals who have fallen behind on their child support obligation due to extreme financial difficulties, who owe child support to the state, and who have no reasonable likelihood that they will be able to pay off the debt. If eligible for the program, some or all of the arrears owed to the State of Michigan are discharged. Only child support arrears owed to the State of Michigan or state-funded foster care are eligible for discharge under the program. Obligations owed to the custodial parent (CP), medical support and birth expenses owed to the State of Michigan through the Department of Community Health are not eligible.

There are two different strategies available under this program. The first is the Lump-Sum Payment option. If the NCP does not have the ability to pay the entire arrearage, but has the ability to make a lump sum payment on the account, the State will give a dollar-for-dollar credit on the State debt. For example, if the NCP makes \$2,000 payment on the account, the State will match with a credit of \$2,000 toward the remaining State arrearages. The minimum payment required under this program is \$1,000. All monies collected will be paid to

the custodial parent if there is a child support arrearage owed to him/her.

The second option is the Arrears Reduction/Discharge Under Circumstances of Extreme Difficulty (Arrears REDUCED). This is an excellent option for NCP's who are experiencing extreme financial difficulty. The NCP must demonstrate an inability to pay as well as engagement with the child and/or the child support program in order to qualify. If approved for this program, Friend of the Court staff will strongly encourage the NCP to pay off their Friend of the Court fees and/or make payments on any remaining arrears. In addition, the program allows the Friend of the Court to administratively discharge all eligible state-owed arrears if the NCP and CP marry.

To determine eligibility for either program, the NCP must complete the appropriate application forms. A Request to Discharge State-Owed Debt application form (DHS-681) is used to determine eligibility for both programs, and an additional Request For "Matching" Payment (DHS-682) is required for the Lump Sum Payment option. These application forms require that the NCP provide information on the NCP's current situation, income, assets, expenses and debts, incarceration history, and general ability to reasonably pay the past due arrears. Forms are available at the Friend of the Court office as well as on their website (<http://www.gc4me.com/index.php>).

The program was implemented at Friend of the Court in April of 2013, and has been well received. Since the program started, a large number of NCP's in Genesee County have received discharge of all or part of their state-owed arrears. Many of these payers became delinquent because of physical disabilities that prevented them from working or the inability to obtain employment because of the area's high unemployment rate. Freeing those NCP's from the overwhelming financial burden has given them hope and allows them to move forward. Benefits to the child support program include the elimination of millions of dollars of uncollectible child support arrears statewide and the closure of many old, uncollectible cases allowing staff to redirect their enforcement efforts to other areas.

Individuals who owe child support to the State of Michigan and have minimal or no ability to repay the debt are encouraged to submit an application for consideration or contact the Friend of the Court for assistance.



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Appellate Practice Committee

By Vikki Bayeh Haley

On behalf of the Genesee County Bar Association, I am happy to announce the creation of a new Appellate Practice Committee. Membership is open to all members of the GCBA.

Trial attorneys as well as appellate practitioners can benefit from this committee. It can be difficult to keep up with day-to-day changes or modifications in Michigan law and procedure. Technological advances have changed how we file pleadings in the Court of Appeals, and the Supreme Court is expected to allow for e-filing in the near future.

The Appellate Practice Committee will serve as a forum to share knowledge about developments in the law as well as practical information on procedural and technical issues that arise in the appellate courts.



Vikki Bayeh Haley

We need your input as to how this committee can best serve the needs of our local bar. One idea is to develop a forum through a Yahoo or Google group to allow us to share thoughts, download files and share sample pleadings.

An organizational meeting will be held on Monday, September 8, 2014, at 12:15 p.m. at the Good Beans Café on Grand Traverse.

If you are interested in joining, please contact the Genesee County Bar Association at gcbalaw.org or email me at BayehHaley@gmail.com.

New Member Profiles: David B. Roth and Andrea Lynn Sebring

David B. Roth

David Roth attended Michigan State University and earned a Bachelors Degree in History in 2010. He continued his education at Michigan State University College of Law and graduated in 2013, earning his Juris Doctorate. David decided to attend law school based upon his interest in advocacy, the legal system's ability to preserve individual freedom, and the broad opportunities provided by a legal education. David is an Assistant City Attorney in the City of Flint Legal Department and is interested in Municipal and Labor & Employment Law. He and his wife, Alyssa, live in Grand Blanc, MI.



Andrea Lynn Sebring

Andrea (Drea) Sebring obtained her paralegal certificate because of a brush with the law in her younger days and "had no clue what my rights were." Her search for paralegal positions often resulted in her being passed over for a young lawyer. With the encouragement of some of her prior employers, she decided to go to law school. She has a Bachelor of Business Administration from Walsh College and obtained her JD from Thomas M. Cooley Law School. She has volunteered for several years as a Court Appointed Special Advocate for Children here in Genesee County. Drea has a grown son, Jared, three dogs, and a bird.



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Poetic Justice

By Erica D. Edgington



Erica D. Edgington

I found the following case in an appellate summary a while ago and thought it was worth some attention. In *Fisher v Lowe*, 122 Mich App 418, 333 NW2d 67 (1983) the Plaintiff sued the Defendant for driving his car into Plaintiff's oak tree, damaging the tree. The Michigan trial court ruled in favor of the Defendant and the Court of Appeals affirmed. Here is the Court's actual opinion:

Before BRONSON, P.J., and V.J. BRENNAN and J.H. GILLIS, JJ.

J.H. GILLIS, Judge.

We thought that we would never see
A suit to compensate a tree.
A suit whose claim in tort is prest
Upon a mangled tree's behest;
A tree whose battered trunk was prest
Against a Chevy's crumpled crest;
A tree that faces each new day
With bark and limb in disarray;
A tree that may forever bear
A lasting need for tender care.
Flora lovers though we three,
We must uphold the court's decree.
Affirmed.

Even better, the folks at West Publishing Co. took their own poetic justice when writing the headnotes. I thought this was worth checking out, so here's the rest.

333 N.W.2d 67 122 Mich.App. 418, 333 N.W.2d 67
(Cite as: 122 Mich.App. 418, 333 N.W.2d 67)

Court of Appeals of Michigan. William L. FISHER, Plaintiff-Appellant, v. Karen LOWE, Larry Moffet and State Farm Mutual Automobile Insurance Company, Defendants-Appellees. Docket No. 60732.

Submitted Nov. 3, 1982. Decided Jan. 10, 1983. Released for Publications May 6, 1983.

A wayward Chevy struck a tree
Whose owner sued defendants three.
He sued car's owner, driver too,
And insurer for what was due
For his oak tree that now may bear
A lasting need for tender care.
The Oakland County Circuit Court,
John N. O'Brien, J., set forth
The judgment that defendants sought
And quickly an appeal was brought.
Court of Appeals, J.H. Gillis, J.,
Gave thought and then had this to say:
1) There is no liability
Since No-Fault grants immunity;
2) No jurisdiction can be found
Where process service is unsound;
And thus the judgment, as it's termed,
Is due to be, and is,
Affirmed.



RETURN SERVICE REQUESTED

New Lawyers Swear

by Roberta J.F. Wray

Who can forget the feeling when you finally got the envelope from the Board of Law Examiners—afraid to look or couldn't wait to open it? Didn't want anyone else to be there when you opened it or didn't want to do it alone! The conflicts were finally resolved. The relief that the hours of study and the months of waiting for the bar exam results were over, or you hoped it was so. Then you couldn't believe you'd done it! When you got an invitation from GCBA to a swearing-in ceremony, it finally became real.

May 22, 2014, the GCBA and Genesee County Circuit Court Judge Archie Hayman joined in conducting the most recent ceremony admitting a new group of young lawyers to the practice of law.

"I do solemnly swear (or affirm): I will support the Constitution of the United States and the Constitution of the State of Michigan . . . ", a long oath promising respect for courts, colleagues, and clients and honesty and integrity in the practice of law.

Five new attorneys participated in the ceremony:

- **Kamilah Horne:** JD from Southern Illinois Univer-

sity; BA in Sociology and English from University of Michigan-Flint.

- **Julie Winkfield:** JD from MSU College of Law; BA in Journalism from Central Michigan; MA in Communication and Urban Studies from Michigan State University.
- **Timothy G. Stevenson:** JD from Thomas M. Cooley Law School; BS in Chemistry and Mathematics and Secondary Education Degree from Spring Arbor College.
- **Andrea Sebring:** JD from Thomas M. Cooley Law School; Bachelor of Business Administration, Walsh College; Paralegal Certificate, Oakland Community College.
- **Justin Zink:** JD from Thomas M. Cooley Law School; BS in Biology from Central Michigan University.

GCBA President Jeffrey Himelhoch says, "I was honored to move for admission of three (of these) new lawyers to the State Bar of Michigan soon after my election. I am impressed that our new admittees already recognize the importance of service to our public."

