

May/June 2021

# BARBEAT

Genesee County Bar Association



Hon. Judith Fullerton and Hon. Arthalu Lancaster

What a Long Strange Trip it's Been . . .

Medical Marijuana, Legal While on Probation

Changes to No-Fault Law (Part 1)

Civility – Pay It Forward

Law is the Family Business: Local Attorney Families

Family Law Committee Update

Along the Way

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COVID, Remote Work, and the  
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# What a Long Strange Trip it's Been . . .

By Michael A. Tesner, President



Michael A. Tesner

**When you get into a tight place and everything goes against you ... never give up then, for that is just the place and time that the tide will turn.**

**--Harriet Beecher Stowe**

When I started my tenure as your President, we had just entered our fourth month of pandemic and the GCBA offices had been recently flooded. The past year has kept us at a "social distance," wearing masks, and "gathering" remotely. It has been a year of social upheaval as well, with public attention finally drawn to face systemic racism, an election season marred by political uncertainty and civil unrest, and the multitude of economic challenges, health concerns, and personal sacrifices and tragedies growing out of the Novel Coronavirus pandemic.

It has truly been a long, strange trip. But through it all, we have persevered, and there is hope for the future.

We adjusted to the conditions as best we could, and through great efforts of our GCBA staff, our Board of Directors, and our committee chairs, we have done quite well. Many of the committees continued to meet and we were able to hold certain events either by Zoom or in person. The **GCBA Golf Scramble** was held in September, with perfect weather and a large turnout. The **Amy K. Harris Criminal**

**Law Seminar** was held remotely in November and December with the usual high-quality presenters. The **Family Law Committee** and the **ADR Committee** met regularly and presented informative and vital CLE and practice information to their members. The **Bar Beat Committee**, and the hard-working editorial staff, persevered through numerous challenges to continuously publish our association's journal. And, thanks to Vice President Bill Brickley, we continued to hold our **monthly membership meetings** with outstanding speakers on pertinent topics and even a judicial candidate forum prior to the fall election. Over the past year we have continued to contribute to the community through our volunteer and charitable efforts. I am humbled by your generosity in support of the **Holiday Community Giving Project** and the **Food Bank**, as well as your volunteerism with the **South Flint Soup Kitchen** and efforts at **Catholic Charities**.

As of April, the GCBA offices have finally been restored. With vaccinations, the pandemic looks to be winding down to something manageable and there is light at the end of the tunnel. I see I am leaving the Presidency in the excellent hands of Bill Brickley, with a new executive board including incoming Vice-President Nancy Chinonis, Treasurer Craig Fiederlein,

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and Secretary Angela Wheeler. I have worked with all of these fine lawyers for several years now and have no doubt the future of the association is strong.

As a parting thought, after we have successfully weathered the storm of the pandemic, we all need to reassess past practices and priorities. We should not be complacent with doing things the way we always have in the past, but must consider if old ways and outlooks give us value and whether there is anything we can do differently to further our goals. This applies equally to us as individuals, in our practices, and in the organizations with which we associate.

As we move into our next chapter, please continue to support the GCBA not only with your time, talents and

treasure, but with your ideas for a new era that embraces those aspects of our history we wish to carry forward, while moving in a way that is more diverse and inclusive, and better sees and serves all our members. If we are to continue to lead in the “new normal,” we must first honestly assess the ways in which we’ve fallen short of our goals and intentions as an organization, then set out boldly to be of better service to our clients, our fellow members, and our community. I look forward to continuing to work with each and every one of you as we find our way out of this period of prolonged darkness, and steer this storied organization toward its brightest possible future.

## *Medical Marijuana, Legal While on Probation*

By Jessica Mainprize-Hajek

### ***People v Thue, \_\_\_ Mich App \_\_\_ (2021) (Docket No. 353978)***

On Feb. 11, 2021, the Michigan Court of Appeals issued a significant published decision regarding medical marijuana use while on probation. While the opinion stems from a district court’s sentence of probation on an assault and battery conviction, the implications and the reasoning of the Court appear to reach much further. In *Thue*, the defendant was legally prescribed medical marijuana under the Michigan Medical Marijuana Act (MMMA). Under the terms of his probation, the use was prohibited. Defendant challenged the probation provision, which was denied by the district court.

Under the MMMA, “[t]he medical use of marijuana is allowed under state law to the extent that it is carried out in accordance with the provision of this act. . . [and] “[a]ll other acts and parts of acts inconsistent with this act do not apply to the medical use of marijuana as provided for by this act.” MCL 333.26427(a) & (e). MMMA further allows that “[a] qualifying patient who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act. . . .”

As an issue of first impression, the Court looked to prior case law interpreting the MMMA as well as the medical marijuana laws of other states for its analysis. Ultimately, the Court concluded that “the provisions of the Michigan Probation Act that allow a court to prohibit a probationer’s MMMA-compliant use of marijuana impermissibly conflict

with MCL 333.26427(a) and (e) of the MMMA and are unenforceable.” Revoking probation upon MMMA-compliant use of medical marijuana was held to be a “penalty” in violation of MCL 333.26424(a).

In sum, the Court of Appeals held that as long as a person is compliant with the MMMA, they cannot be penalized or terminated from probation. Simply put, the medical use of marijuana in compliance with all the requirements of the MMMA is allowed while on probation. Regarding the recreational use of marijuana, however, the Court added that “. . . the MMMA is inapplicable to the recreational use of marijuana, and thus, a trial court may still impose probation conditions related to the recreational use of marijuana and revoke probation for such recreational use, as well as for marijuana use in violation of the MMMA.” This language is interesting, considering that the Michigan Regulation and Taxation of Marihuana Act [MRTMA] has similar provisions to the MMMA’s: “. . . the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege . . .” MCL 333.27955(1). Clearly, a challenge to any probation provision that disallows even recreational use of marijuana is ripe.

It seems as if *Thue* cements the thinking that the medical use of marijuana is better left to the expert decision of a doctor rather than the court. However, *Thue* has left an



Jessica Mainprize-Hajek

*Continued on next page*

open question: What about specialty courts? Must medical marijuana be allowed in addiction treatment courts?

A defendant could clearly argue that a court order prohibiting medications cannot supersede that of a doctor. But similar prohibitions happen all the time in recovery courts, preventing use of many habit-forming narcotics even with a prescription. It is highly likely that a prosecutor will argue that an individual who needs to use medical marijuana while

on probation will not be medically eligible to participate in a treatment court. Much as a person with a controlled substance addiction who enters into drug court is prohibited from treating with prescribed controlled substances (or must find non-habit-forming alternatives), a person is not medically eligible for recovery court if they are prescribed medical marijuana. Only time will tell.

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## Changes to No-Fault Law (Part 1)

By Samantha J. Orvis

As you have probably learned by now, No-Fault law in Michigan as we knew it changed drastically in 2019. The original law was enacted back in 1973 under Governor William Milliken. The No-Fault system evolved over time with many interpretations of the law and guiding authority provided by the courts.

Our No-Fault system in Michigan was relatively unique in that it provided an avenue for injured parties to recover unlimited lifetime medical benefits for allowable expenses, which was very costly for insurers and in turn, for insureds paying auto insurance premiums. This is no longer the case for many with the recent amendments to the No-fault law, which allow policy holders to choose various levels of PIP coverage and opt out of certain coverages under very specific circumstances. The most recent amendments had three very important dates. Some took immediate effect as of June 11, 2019, and others not until July 2020. Still others do not take effect until July 2021. This article provides a general overview of only some of the changes and is not meant to be a comprehensive review of all of the changes to No-Fault in Michigan.

Under the No-Fault system generally, an injured party would seek most damages from their own automobile insurance carrier regardless of fault, with few exceptions to include mini tort claims, excess economic and non-economic damage claims against an alleged at fault party which met a certain injury threshold. Those injuries, called "threshold injuries," had to result in permanent serious disfigurement, death, or serious impairment of body function, to be legally compensable. MCL 500.3135 governs such claims. Now, injured parties can recover excess economic damages to include all future allowable expenses, work loss, and survivor's loss. Since PIP benefits for allowable expenses for medical care will no longer be unlimited in all cases, there is now the potential for some

significant excess economic damage claims for medical expenses.

With respect to claims for non-economic damages mentioned above, the statute has codified the criteria outlined in *McCormick v Carrier*, 487 Mich 180, 795 NW2d 517 (2010), previously relied on by practitioners. MCL 500.3135(5) now provides a lengthier statutory definition of "serious impairment of body function."

The mandatory minimum coverage for residual liability insurance to cover those serious injuries and resulting increased excess economic and non-economic damage claims mentioned above has gone up with the changes to No-Fault, from \$20,000 per person/\$40,000 per occurrence to \$250,000/\$500,000, but the law provides an opportunity to opt out and obtain lower limits of \$50,000/\$100,000 as of July 2020.

Some of the more notable changes that took immediate effect included an express statutory cause of action for providers pursuant to MCL 500.3112. This was an area that had been the subject of ongoing dispute for quite some time. Medical providers had for many years previously pursued No-Fault benefits directly from carriers and after many legal challenges, the Court in *Covenant Med. Ctr., Inc. v State Farm Mut. Auto. Ins. Co.*, 500 Mich 191, 895 NW2d 490 (2017) held that they did not have a direct cause of action. Following this decision of the Michigan Supreme Court, providers simply started pursuing their claims independently in court by virtue of an assignment of rights from the underlying claimant/injured party. Changes to the No-Fault law have now codified the providers' right to bring a suit directly against the insurance carrier to obtain payment of bills.



Samantha J. Orvis

There were also significant changes to MCL 500.3114 and 3115. These sections tell us which insurance carrier injured parties should look to after an accident for payment of their first party benefits. The rules of priority for injured parties or claimants injured while occupants of motor vehicles or motorcycles, are covered in Section 3114. Those injured while non-occupants are covered in Section 3115. In short, the amendments in June 2019 resulted in

substantial changes to the priority rules for injured claimants without a personal or household policy. If an accident occurred on or after June 11, 2019, then claimants under both categories must look to the Michigan Assigned Claims Plan for payment of PIP benefits.

In closing, although we are starting to see the implications of some of these changes, there are still many unknowns. Look for the second part of this article pertaining to additional No-Fault Changes in coming editions of *BarBeat*.

## Civility – Pay It Forward

By Pamela Wistrand-Gardner

My first encounter with the legal system came when I was about 10 years old. My sister and I had been invited to attend one of Dad's jury trials -- a motorcycle accident case. He (D. Bruce Wistrand) was Plaintiff's attorney. If I recall correctly, Judge Ransom's father, Marvin Ransom, was defense counsel. This case was *extremely important* to us because my father hadn't cashed in on a single contingent fee case the whole previous year. Thankfully, we lived on a farm; between our livestock and our garden, it had fed us that entire time. However, Dad had *promised* that if he won this case, he would take us out for dinner and to the drive-in theater for a movie!

I don't remember the details of the case except that when my father gave his closing argument, he had tears streaming down his cheeks. During the rebuttal, defense counsel sternly admonished the jury: "Don't be fooled by those tears; they're just dollar signs!!" I was FURIOUS! I couldn't stand that man!! And it was even worse when the jury returned a verdict of NO CAUSE. Yet the memory of that moment pales in comparison to what happened after we all left the courtroom. The defense attorney walked up to my dad, patted him on the back, and said, "Good job, Brucie-boy. Better luck next time. Can I buy you a drink?" "Yeah, Marv, guess you're gonna have to 'cuz we both know, I can't afford to buy us one!" Then, I was in tears. *How could my father possibly be so friendly with that attorney after all he'd said about him in that courtroom?!*


Although I didn't understand it then, this would serve as one of the most "teachable" moments of my life; it would prepare me for the career that I didn't then fathom I would ever choose.

Fast forward to November 1971. I was sworn in as an attorney in Genesee County. Criminal defense work comprised a significant portion of my practice during my first 25 years. I recall a case I had with Assistant Prosecutor Leo Carey. My client was charged with Assault with Intent to Murder, and he begged me to visit the home of the complaining witness so


*Continued on next page*



Pamela Wistrand-Gardner



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that I would understand the “crime” could not have possibly happened the way she claimed. I approached Leo with my client’s request, and he obtained permission from his boss to accompany me there! While inside the woman’s home, Leo *patiently* waited while I sketched the scene.

No plea bargain was offered by the Prosecution, so we went to jury trial. During my cross examination, the complaining witness *admitted* that the incident had not happened the way she had told the police!!! It was the only “Perry Mason moment” of my career! It was a watershed moment, . . . and shed water I did! *Real tears* streamed down my face – so much so that Judge Washington had to stop the trial so I could compose myself -- and so that Leo and I could “resolve” the case! I have long remembered Leo for the *civil* and *just* opponent he always was!

Fast forward to Friday, January 23, 2009. It had been a long week. I was finishing with my last client when I caught my high heel in the sliding door track in my office and fell face first into my client’s lap -- fracturing my right ankle in three places

and severely spraining my left. They put casts on both legs. I was relegated to working from home for several weeks. Once the casts were removed, I had to use crutches to ambulate. What I particularly recall from that period is the treatment I received from many of my colleagues, particularly: Sandra Carlson who handled several cases for me; Shayla Blankenship who, as opposing counsel, assisted my court appearance by phone (no zoom then!); and Barb Dawes who drove me to court and transported my “file on wheels” when we were opponents in a very litigious divorce case.

Reflecting on these past 50 years since I was first sworn in as an attorney in Genesee County, there is a myriad of special times... events...cases...that remain fresh in my mind. But most of all, it is the civility and kindness of so many “special colleagues” that have made lasting deposits in the memory bank of my legal career.

CIVILITY. I pray that I have paid it forward, and I hope that you are doing the same!!!

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## *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.*



### **The Hamo Family**

The idea of service to others was ingrained in **George** Hamo at an early age. Working in the family Five and Dime provided George with the opportunity to understand and meet customers’ needs. Watching Perry Mason provided George with the idea that the law was also a way to meet clients’ needs. More importantly, George had the opportunity to intern with the Genesee County Jail Treatment Program which allowed him to see the law in action with real people.

After graduating from Grand Blanc High School George went on to Kalamazoo College majoring in Political Science. Law school was the logical next step and he attended Cooley Law School. He then had the distinct honor and privilege to work for Judge Thomas Yeotis, whom George credits not only as a great mentor and teacher but a remarkable human

being. Working with a circuit court judge allowed George to see many facets of the law and the skill levels of some very fine attorneys. He made the brave move to start his own practice at that time and while he was a general practice lawyer initially, he learned that he could best serve his clients by focusing on personal injury litigation, which he does to this day. George’s commitment to service did not only extend to the courtroom but also to the basketball courts. Over 20 years ago he co-founded Flint Affiliates, a youth basketball program which has not only been extremely successful in training Flint youth on how to play the game but also on how to live off the court as well.

As a youth, son **Alex** Hamo was not that interested in the law. After graduating from Flint Southwestern Academy he attended Eastern Michigan University and studied hospital



administration. At that time he began to assist his father in and out of the courtroom and after seeing the impact a good lawyer can have on a person's life, was bitten by the legal bug. He also attended Cooley Law School and in 2015, worked for other firms and legal organizations, and after considering other options, chose to join with his father in assisting those who were hurt and injured. He truly enjoys the opportunities to serve not only here in Genesee County but throughout the state.

### The Wistrand Family

**D. Bruce** Wistrand grew up in Flint wanting to be a lawyer. His legal education took him to study at Harvard, University of Michigan, Wayne State University and then he graduated from Detroit College of Law at the tender age of 20, still too young to take and pass the bar examination. His law practice centered on criminal defense and personal injury litigation. When a client needed a tough criminal attorney, he was the one people called. Among his notable cases was the 1955 decision in *People v Davis*, which confirmed the unreliability of polygraph exams and ruled them inadmissible.

Bruce took on many unpopular cases. In the 50's a group of Flint lawyers were summoned to appear before the House Un-American Activities Committee (HUAC) in Washington DC and he was at their side. The backlash was great, and he was even refused participation in the Bar Association because of his decision to represent the local group of attorneys.

Bruce's practice settled more on personal injury cases and specifically in medical malpractice. He was one of the preeminent plaintiff med mal attorneys in the state and had the knack for breaking his own records on the highest verdicts and settlements.

**Pamela** Wistrand remembers going to her father's office and seeing a replica of human skeletons and other body parts. Despite this, when she enrolled at Michigan State University her goal was to be a journalist. In her third year she took an opportunity to study in Italy and fell in love with the Italian way of life. Ever the negotia-

tor, her father suggested that if she would enter law school he would allow her to stay a second year in Italy. It was a deal she could not pass up.

Pam entered DCL as well, and after graduation in 1971 she joined her father's practice. She also practiced criminal defense and personal injury but also added other areas including family law, bankruptcy, and contract law.

In 1985 Bruce died at the age of 62. Pam began to limit her practice as well. She had the difficult task of defending a man accused of shooting and killing a police officer, and this in part led Pam to focus her practice on family law matters. In 1990 she was able to contract with the county to perform as a referee. Pam's practice continued to flourish until she retired in 2014. She has since returned to Italy on several occasions and is looking forward to honing her Italian speaking skills and reflecting on the miracles in her life.


### The Wright Family

**John A.** Wright entered practice by reading law with Flint Lawyer Maury Pelavin. As a Purple Heart-decorated veteran of both World Wars, time for formal education was short. In addition to his law practice, John A. served a term (1947-48) representing the Flint area in the Michigan Senate.

Son **John M.** Wright practiced law in Genesee County for nearly 68 years after his own education was foreshortened by World War II. He left college to enlist in the Army and served as an infantryman in the European Theater. He attended the University of Michigan Law School after the war ended and entered practice with his father in 1947. After John A. passed, John M. served in the Genesee County Prosecutor's office, and returned to private practice. John M. was a GCBA President, a State Bar of Michigan Commissioner, and a proud member of the Greatest Generation. John M. was also known for his passion for baseball, and occasionally appeared for bar functions fresh from the diamond, wearing his baseball uniform.

Grandson **Craig L.** Wright is winding up his 37-year practice, which has focused on probate law in Genesee County. He was attracted to the practice of probate law by meeting Probate Judges Frank McAvinchey, Luke Quinn, and Harold Resteiner as a child, and by working for his father beginning in his pre-teens. He attended Western Michigan University and Thomas M. Cooley Law School.



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# Family Law Committee Update

By Erica A. Vicari and Paul Scott, Co-Chairs

The 2020-2021 Family Law Committee held its first meeting on December 2, 2020 with a Q&A Family Law Forum with Judge Christenson. Approximately 25 GCBA members were in attendance with wide range of domestic relations topics being covered. The committee would like to thank Judge B. Chris Christenson for his participation and welcomes him to the Family Law Bench.

Meetings are typically held on the first Tuesday of each month at 12:00 p.m. Ann Kita, Director of the YWCA, served as our first guest speaker for 2021. Attendees were provided with information about the YWCA Services and a guide in supporting clients who are the victims of domestic violence. Our next meeting, held on February 2, 2021 featured George DeMeo from the Genesee County Prosecutors Office Family Division.

As for changes in the family law practice area, our members have been navigating a new and unique territory as relates to the adherence and enforcement of custody and parenting time orders due to the COVID-19 pandemic. Now, and probably more than ever, we need to collaborate with

our colleagues in seeking solutions during these unprecedented times while following legal principles and precedent. Additionally, the Michigan Court of Appeals rules in *Bofysil v Bofysil*, 332 Mich App 232; 956 NW2d 544 (2020), that the role of a parent working outside of the home to support the family should not be overlooked when deciding a child's established custodial environment. This case is an example of how case law has evolved to reflect changes in society when in many divorce cases both parents work outside of the home.

Join us on June 8th at 12 noon for our final meeting of this fiscal year. Our speaker Rebecca Shiemke from the Michigan Poverty Law Program will be presenting on perspectives of parental alienation in the context of domestic violence cases. Attorney Shiemke moderated a panel on this topic at the most recent Family Law Institute conference.

If you are interested in attending, email [gcbalaw.org](mailto:gcbalaw.org) for the meeting link.



Erica A. Vicari



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# Along the Way

By Craig L. Wright

As attorneys, we all know judges. Some are friends, relatives, spouses or parents. Conservatively averaging each appearance before judges over my career of 37 years, I have appeared before judges approximately 3,000 times and like to think I picked up a few pointers along the way.

- Being well prepared for a hearing, even if routine, is essential. The extra time in reviewing the file and anticipating the opposition's arguments makes you stand out from most other lawyers.
- One of my favorite tools is to mark existing Court Orders and reports in my file with tabs so when referred to, they can be removed from your file and shown to the judge to save them the time and effort in riffling through the voluminous court file to find it.
- Do not talk over the judge. I still see this happen and it is not only disrespectful, but that tactic will backfire at some point.
- Have at least two orders prepared for most hearings. I like to have one order granting my relief requested that can be presented at the hearing. The second order is denying the relief requested. Although somewhat selfish on my part, the main benefit is taking the wind out of your opponent's sail on their win.

- Also, tell the court what it is you want in your pleading. Don't be afraid to repeat it in an itemized, abbreviated form in the prayer which is handy for the judge to refer to.
- Lastly, my father, John M. Wright, during his nearly 70-year legal career, taught me to not gloat in your victories, never be a bad loser and have a hand shake for your opponent upon conclusion of your hearing. While these attributes do not come to lawyers easily, this is how it should be done.

I had the luxury of limiting my practice to Probate, thus appearing primarily in Probate Court for most of my career. It is in this court that I learned what it meant to truly be a lawyer. Judge Nelson was a fierce teacher from whom I learned many lessons.

However, my legal education was far from complete until Judge Jennie E. Barkey took the Probate Bench. Judge Barkey brought with her a good laid-back sense of humor mixed with her inexhaustible energy and compassion for those who appeared before her, attorneys and lay people alike. In doing so, she brought a very human side to the bench, often saying that she is still learning. Above all, she stands ready to tackle what comes her way.

*Continued on next page*



Craig L. Wright



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### Words from Judge Jennie Barkey

In December 2020, Judge Barkey was put to the ultimate test by a simultaneous COVID-19 diagnosis and a diagnosis that her cancer had returned after 13 years. In her usual way, she confronted the cancer head-on by receiving a series of aggressive chemotherapy treatments. I let Judge Barkey know that I was authoring an article for the *Bar Beat* and inquired if she had a few words to pass along.

She remarked that “as I approach the end of my chemo regimen, my shock has turned into gratitude.” Judge Barkey wishes to thank those in our legal system who have stepped up and gotten her through this situation. Sam Olson, the Probate Court Administrator, along with Barb Menear, Circuit Court Administrator, tended to the day to day worries and concerns so Judge Barkey could concentrate on her treatment. “All Judges in the Court Building have offered or are providing assistance.”

While it is not possible to acknowledge everyone in this brief article, Judge Barkey would like to particularly thank Judge Behm and Judge Latchana who have been handling most of her hearings. Judge Barkey also wanted to thank the Probate Court staff and the lawyers who practice in Probate Court who have been “marvelous.” “All this really brought to light to me what a wonderful legal community we have and I can’t thank you all enough.” Judge Barkey looks forward to returning to the bench in the near future when she receives a medical clearance to do so.

Footnote: This is my final article for the *Bar Beat* as Probate Committee Chair. I am retiring from the practice of law, thus concluding three generations of law practice in my family. Thank you.

## Turning Points

By Hon. Judith A. Fullerton

The recent passing of our friend and colleague, former 67<sup>th</sup> District Court Judge Arthalu Lancaster, brings to mind the importance of mentors and networking especially as a young lawyer begins his/her career.

When I arrived in Flint in January of 1972, the first thing on my mind was to take and pass the Michigan Bar exam. Although I had already taken, passed, and been admitted to practice in the District of Columbia, I had not been admitted long enough to seek reciprocity. Once that was accomplished, my task was to embark upon a career in law here in Michigan. In Washington I had been employed as an attorney with the Securities and Exchange Commission (“SEC”). Although there was an SEC office in Detroit, the prospect of a daily commute to Detroit was not appealing. The search took me to law firms and bank trust departments. Indeed, just as I was on the threshold of becoming employed in one of those areas, I was taken to the law offices of Arthalu Lancaster, Larry Stecco, and Don Wascha.

Within a short time Arthalu and Larry both decided I should consider a more “exciting” option and offered to take me over to the Genesee County Prosecutor’s Office where they had both previously served, not many years before, as Assistant Prosecuting Attorneys. Soon after their suggestion, we all met with the prosecutor and other members of the

staff. A job offer followed, and, *voilà*, my career took an unexpected but exciting and rewarding turn!

The highly satisfying work as a trial lawyer in Circuit Court was both intellectually challenging and demanding of my time and energy. I worked alongside several extremely knowledgeable and experienced attorneys, met a lot of interesting people, and handled a lot of interesting cases.

Another turning point occurred a few years later when, after meeting me and observing me in the courtroom of the late Circuit Judge Philip C. Elliot, then City Attorney Richard J. Figura offered me the job of Chief Assistant Flint City Attorney. The mayor at that time was James Rutherford, and the city was involved in numerous important activities: downtown development, airport expansion, and beautification, to name a few, in addition to the ongoing issues of municipal law, contract review, a large volume of city ordinance cases at district court, labor matters, and, of course, lawsuits. Another job with abundant issues and opportunities for professional growth.

The lessons are that you never know who you are going to meet, who is watching your performance, and where it may lead you.



Hon. Judith A. Fullerton



The contacts I had made and the experience I had gained after working in two important governmental offices gave me the impetus to run for the first opening in the 68<sup>th</sup> District Court since the inception of district courts in Michigan in 1969. In 1980 I was the first woman elected to the 68<sup>th</sup> District Court and was the only female judge of the twenty-two judges serving in Genesee County. (While Elza Papp had been a Genesee County Circuit Judge, she had retired in June 1972.)

When I was elected to the Genesee County Circuit Court in 1982, I was still the only woman judge in Genesee

County. In fact, I was the only woman Circuit Judge until the appointment of Celeste Bell in 2018. She has, of course, now been joined by Elizabeth Kelly, and the two Probate seats are held by women: Jennie Barkey and Kay Behm. In the meantime, several women have served in the District Court, including the late Arthalu Lancaster and the four current women district court judges. The composition of the Genesee County Courts has changed dramatically since 1973, when all the seats were held by men.

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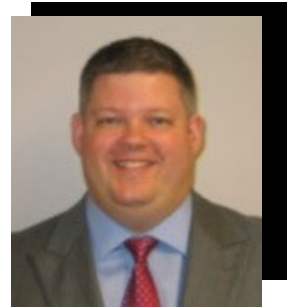
## *COVID, Remote Work, and the Unauthorized Practice of Law*

By K.C. Baran

The era of COVID brought many changes to our lives, both personal and professional. We are all familiar with the guidance from the CDC and local health officials about how to prevent the spread of the disease. Among these measures are social distancing and with that comes working remotely. Attorneys are used to working inside courtrooms or offices that are physically located in the state where we are licensed. However, many have now grown used to working remotely with the constant use of Zoom meetings and hearings from our home offices. Most have also learned that working remotely means we can be just about anywhere in the world and still be able to work and perform most legal tasks with little problem, as long as we have a phone, computer, and an internet connection.

Some attorneys work remotely while on vacation from out of state or even outside the United States. Early in the pandemic, I learned quickly that I could work remotely from the confines of an RV from another state handling courtroom Zoom hearings. Moreover, it was recently revealed that one of our Michigan Supreme Court Justices is working remotely from halfway around the globe in Israel and the United Arab Emirates.

Nonetheless, working remotely presents unique problems with our ethical requirements as attorneys. Practicing law from another jurisdiction has never been addressed before by the American Bar Association or the State Bar of Michigan. MRPC 5.5 covers the unauthorized practice of law and specifically states “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”



K.C. Baran

On December 26, 2020, the ABA issued Formal Opinion 495 regarding ABA MRPC 5.5, clarifying the issue of remote lawyering, which states:

Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction. This practice may include the law of their licensing jurisdiction or other law as permitted by ABA Model Rule 5.5(c) or (d), including, for instance, temporary practice involving other states' or federal laws. Having local contact information on websites, letterhead, business cards, advertising, or the like would improperly establish a local office or local presence under the ABA Model Rules.

Similarly, the SBM is working to adopt changes to MRPC 5.5 that will specifically permit attorneys to work remotely in Michigan from outside their jurisdiction. The SBM Standing Committee on the Unauthorized Practice of Law in conjunction with the Professional Ethics Committee proposed the

*Continued on next page*

following amendment to MRPC 5.5 to address attorneys practicing remotely:

(d) A lawyer admitted in another jurisdiction of the United States and not disbarred or suspended may remotely practice the law of the jurisdiction(s) in which the lawyer is properly licensed while physically present in the State of Michigan, if the lawyer does not hold themselves out as being licensed to practice in the State of Michigan, does not advertise or otherwise hold out as having an office in the State of Michigan, and does not provide or offer to provide legal services in the State of Michigan.

Thus, with the changes from the ABA and SBM, as long as an attorney does not advertise and hold themselves out to be an attorney practicing in the jurisdiction where they are visiting and working remotely, there should be less confusion regarding attorneys working remotely in another state.

**Editor's Note:** At its April 25, 2021 meeting, the SBM Representative Assembly adopted the revision to MRPC 5.5(d).



## Welcome New Members

**Attorney: Lisa H. Litton**

Employer: Kohl, Harris, Nolan & McCarthy, P.C.  
Undergrad School: University of Michigan-Ann Arbor  
Law School: University of Detroit-Mercy

**Attorney: Todd J. Stearn**

Employer: Law Offices of Todd J. Stearn, P.C.  
Undergrad School: University of Michigan  
Law School: Maurer School of Law (Formerly Indiana University – Bloomington)

**Attorney: Susan Payne Woodrow**

Employer: Retired  
Undergrad School: Hillsdale College  
Law School: Cecil C. Humphries Memphis State University

**Affiliate: Jenna Gardner**

Employer: Legal Services of Eastern Michigan

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