

January/February 2014

# BARBEAT

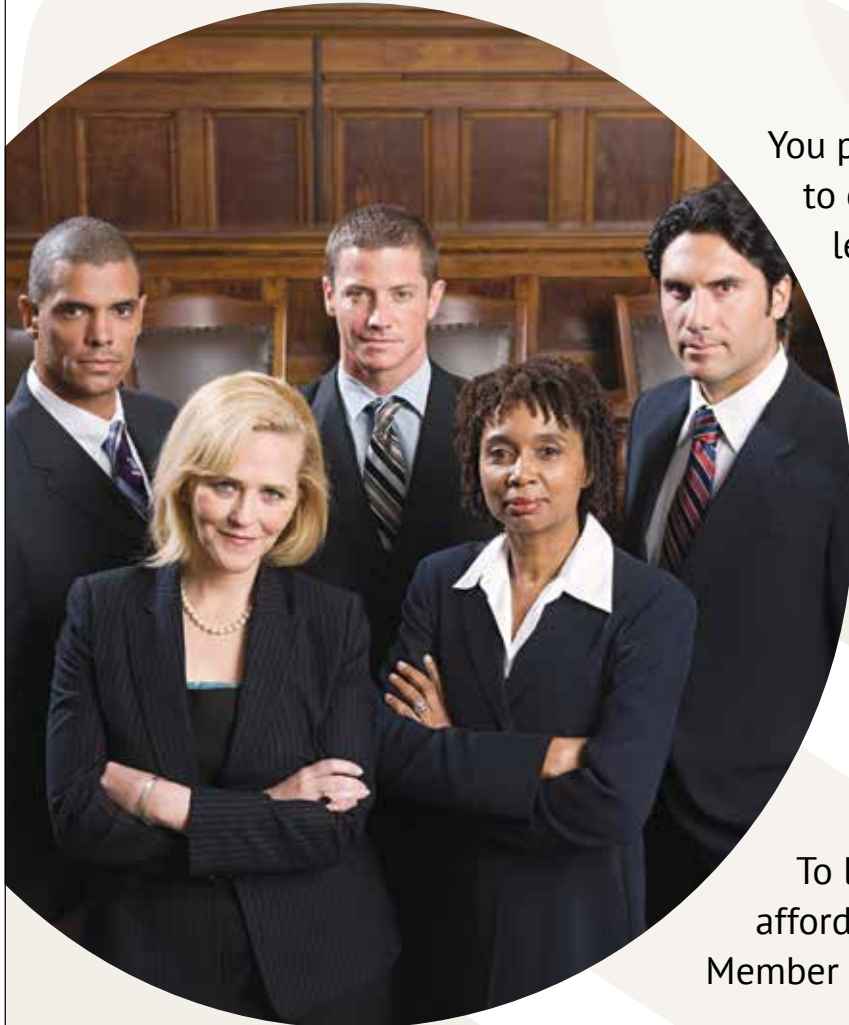
Genesee County Bar Association



*Photo by Eileen M. Harris*

Meet Your Board of Directors  
Another Good Deed Well Done!!!  
Specialty Courts—A Seminar Summary  
LJAP Offers Assistance on a Broad Range  
of Concerns  
Dividing IRAs  
Who We Are: Julia L. Black  
In Memoriam  
Annual Computer Update Resolutions  
A Guide to Michigan Campaign Finance  
Three Roadblocks to an Equitable Divorce

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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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## Meet Your Board of Directors



James N. Bauer



Sherri L. Belknap



Angela N. Wheeler



Kyle R. Riem



Michael P. Parillo

### James N. Bauer - 2016

**Family:** Wife, Jill; Children, Zachary, Haleigh, Jackson.

**Undergraduate degree and school:** B.A. English, University of Michigan, Ann Arbor, 1989

**Law School and grad year:** Thomas M. Cooley Law School, 1999.

**Bar Association Member since:** 2001

**Area(s) of practice:** Probate Court Administrator.

**Contact info:** 900 S. Saginaw St., Flint, MI 48502; (810) 424-4426; jbauer@co.genesee.mi.us.

**Committees, activities, State Bar involvement:** Probate Committee.

**Reasons you believe in service to the GCBA:** I believe in the mission of the GCBA that includes service to lawyers and the public.

### Sherri L. Belknap - 2016

**Family:** Mojo, 8 year old chocolate lab.

**Undergraduate degree and school:** Bachelor of Science in Business Administration with Management and Accounting Majors, Central Michigan University, 1995.

**Law School and grad year:** Thomas M. Cooley Law School, 2000.

**Area(s) of practice:** Estate planning, real estate transactions and litigation, bankruptcy and civil litigation.

**Bar Association Member since:** 2001

**Contact Info:** 5125 Exchange Drive, Flint, MI 48507; 810-257-0430 ext. 230; sherribe@uawlsp.com.

**Committees, activities, State Bar involvement:** Law Day Committee, Legal Aid Committee Bar Beat Committee and Business.

**Reasons you believe in service to GCBA:** The GCBA's success is based on the level of participation of its members. I serve because I receive a benefit from being a member of the GCBA by being a part of a great organization that promotes our legal community in a positive way through Ask the Lawyer, Law Day, and other activities and seminars. The interaction with the public through Law Day or community seminars is a great resource for attorneys. These positive events cannot take place without the service of our members.

### Angela N. Wheeler (formerly Watkins) - 2016

**Family:** Spouse, James Wheeler, Jr.

**Undergraduate degree and school:** BA Criminal Justice, Indiana University, School of Public and Environmental Affairs (SPEA), 1996.

**Law School and grad year:** Michigan State University-DCL, 2002.

**Area(s) of practice:** Municipal Law, civil, criminal.

**Bar Association Member since:** 2002

**Contact Information:** 624 S. Grand Traverse, Flint, MI 48502; (810) 584-5789; wheelerlawfirm@gmail.com.

**Committees, activities, State Bar involvement:** Big Brothers Big Sisters (Big Sister).

**Reasons you believe in service to GCBA:** My parents taught me by example to serve the community well.

### Kyle R. Riem - 2016

**Family:** Wife, Jill; Children, Nichole, Zackery, Paige, Jake.

**Undergraduate degree and school:** BS Criminal Justice, University of Wisconsin, 1988.

**Law School and grad year:** Thomas M. Cooley, 1991; Wayne State University, LLM, 1994.

**Bar Association Member since:** 1999

**Area(s) of practice:** Labor law, general litigation.

**Contact Info:** 8137 Embury Road, Unit 1, Grand Blanc, MI 48439; (810) 694-5678; kyle@saboriem.com.

**Committees activities, State Bar involvement:** State Bar of Michigan, Standing Committee on Professional and Judicial Ethics, 1993-2002; SBM Standing Committee on Judicial Qualifications, 1999-2006; Life Fellow, Michigan State Bar Foundation, 2003-present.

**Reasons you believe in service to the GCBA:** Bar involvement is important at all levels to promote the practice of law, the legal community as a whole, and most importantly, to improve the delivery of legal services to those in need.

### Michael P. Parillo

#### Flint Trial Lawyers Representative

**Family:** Wife, Tammy; Son, Joey.

**Undergraduate degree and school:** BA, English/History

(double major), Michigan State University, 1993.

**Law School and grad year:** Ohio Northern University, 1996.

**Area(s) of practice:** Personal injury.

**Bar Association Member since:** 1997

**Contact Info:** Waun & Parillo, PLLC, 10683 S. Saginaw St., Ste. D, Grand Blanc, MI 48439; (810) 695-9600; mparillo@parillowlaw.com.

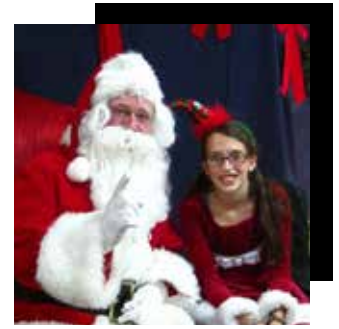
**Committees, activities, State Bar involvement:** Flint Trial Lawyers Association, Michigan Association for Justice, Downtown Flint Optimist Club.

**Reasons you believe in service to GCBA:** I am proud of being from Flint and working in Genesee County. I think it is important to support our community and our local bar association.

## Another Good Deed Well Done!!!

By Brian M. Barkey

Well, we have our 23<sup>rd</sup> Annual Holiday Dinner behind us and nothing puts me in a better frame of mind. GCBA members and their families served about 1,250 people, and over 450 children received Christmas presents and had their pictures taken with Santa. I swear, Santa was so filled with good will after hearing the Christmas wishes of so many that he could not hear a preliminary examination for several weeks. It was one of those long nights that you did not want to end.



Santa and Manya

The Dinner has grown in other ways. It seems like every year one of our volunteers has a good idea that takes off. Several years ago, a member noted that several children went home from the Dinner on a cold night without hats. Every time that member saw hats and mittens on sale that winter, the memory of those cold children came to mind, and she bought some to give our guests. That year, the demand was pretty dramatic and we ran out quickly. This idea caught on with others, however, and we have been adding hats and mittens to the shopping list as a result.

A former member got this effort organized for the 2013 Dinner. She contributed yarn to the GCBA, which encouraged our members to knit hats. She had to buy yarn three more times to keep up with the demand. The members that could not knit bought winter hats and mittens and by the time the Dinner was held, we had enough to distribute nearly 400 hats or sets of mittens to people who needed them. And it was a cold night.

I am proud to be a part of an organization that includes these good hearted people in its membership. Thank you all for your unreserved support of this worthwhile project.



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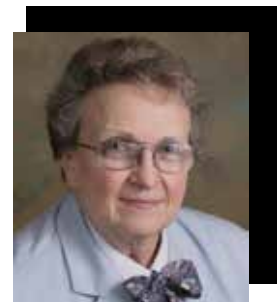
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# Specialty Courts—A Seminar Summary

By Roberta J.F. Wray



Roberta J.F. Wray

On November 1, 2013 the Affiliates Membership, made up of legal support staff in courts and law offices, presented an excellent seminar featuring the ten specialty courts in Genesee County. The presiding judges highlighted the efforts and impacts of these courts, some of which have been operating for nearly 15 years. They range from the recently mandated Business Court to the longer-standing Drug and Sobriety Courts and the award-winning “Baby” Court.

*Business Court*, under Judge Judith Fullerton, is designed to expedite cases involving business or commercial disputes with several defined exceptions. The exceptions include residential landlord-tenant and foreclosures, wrongful discharge, personal injury, wrongful death and malpractice, among others. The amount in controversy must be \$25,000 or more. The entities involved may be for-profit or not-for-profit, but religious organizations are excluded.

The gateway to the Specialized Business Docket is determined by the statute and the presiding judge. Since September when this specialty court was established there have been more than 20 cases accepted. Satisfaction with the court is still being assessed.

Within the *probate* court are three specialized courts: *Adult Mental Health Court*, *Juvenile Mental Health Court*, and *Veterans Treatment Court*. Each requires referral from Genesee County Community Mental Health with approval of the appropriate prosecuting authority. The Veterans’ Treatment Court also requires involvement of the Veterans Administration.

The objective of these courts is to try to deter repeated criminal behavior that has its roots in mental health issues, such as failure to take prescribed medications. Judge Jennie Barkey says the VA has provided plenty of money to fund the Veterans Treatment Court program, but the funding for the Mental Health Courts and the other locally funded courts is not so generous.

Each of the specialty courts requires extensive involvement by the defendants, their families, legal counsel and the judge, along with professional support from VA, GCCMH, probation officers and others.

Drug and Sobriety Courts have been around for a few years. Their gateways are well established, requiring criminal behavior, guilty pleas, and an intense desire to change in exchange for an opportunity for reduced sentences or, in some cases, ultimate dismissal of the original charges that brought the defendants into the system. 67<sup>th</sup> District Court Judges Larry Stecco and Mark Latchana preside over *Sobriety Court* and *Adult Drug Court*, respectively.

The family court specialties include *Juvenile Drug Court*, *Neglect Drug Court*, *Attendance Court* (for serious truancy issues), and *Infant/Toddler Treatment Court* (also known as Baby Court). They all strive to improve family relationships that might otherwise lead to loss of parental rights. Sometimes they fail. Often enough, the intervention of court and social workers in an intensive fashion results in healthy relationships that benefit both the children of disputes and their parents. Judges Duncan Beagle, John Gadola and David Newblatt all experience great satisfaction from their roles in these specialty courts.

The gateways and the techniques utilized by the various judges to achieve success are extremely important. Equally so are the expectations and dedication of everyone involved from the defendants to the judges to the support staff. Each court has an intensive supervision structure. Each requires weekly, or more often, interaction between defendants, judges and support staff. Each involves both positive and negative reinforcement, depending on the nature of the transgression of the defendants/participants. They also involve participation by parents, spouses, and/or other family members in encouraging the desired changes.

The common thread leading to success in all of these specialty courts is the sincere desire on the part of the transgressors to change their lives for the better. Their successes motivate the judges and support staff to continue their efforts on behalf of others who come to their courts.



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# *LJAP Offers Assistance on a Broad Range of Concerns*

By Tish Vincent, MSW, JD, LMSW, ACSW, CAADC  
State Bar of Michigan LJAP Program Administrator



Tish Vincent

**P**roactive, expansive, confidential, and free are all words that describe a very important State Bar member service. The Lawyers and Judges Assistance Program (LJAP), one of the oldest lawyers' assistance programs in the country, employs a total wellness approach in assisting individuals who are faced with issues related to depression, gambling, substance use disorders, stress, marriage and family issues, career transition, life stage adjustment, and other general wellness issues. Since 1979, the program has been a confidential source of guidance and support to attorneys, judges, and law students throughout the State of Michigan.

Through LJAP's confidential toll-free phone line lawyers or those concerned about them can receive information about ways to address substance abuse and other mental health issues impacting a lawyer's ability to ethically practice law. This includes referral information and the opportunity to schedule an in-person conversation that may lead to assessment and treatment recommendations.

In recent years LJAP has shifted its focus from merely reactive to preventive measures. By providing education and support for individuals, families, law schools, and employers, LJAP can assist in circumventing trouble, and/or begin to assist program participants toward health through difficult times, minimizing harm to individuals, families, and the community.

Highly skilled professionals, experienced in dealing with substance use and mental health disorders as well as general wellness issues, are working to ensure that bar members and students are supported and the public is protected. The LJAP staff of Program Administrator Tish Vincent, Clinical/Administrative Assistant Jen Clark, and Case Monitors Molly Dean and Molly Ranns are devoted to helping individuals get back on track before they begin to experience formal consequences related to difficulties that they face. Where formal consequences have come to fruition, LJAP is ready to provide assistance via its Attorney Monitoring Program.

MCR 9.114 (B) allows a lawyer who has been investigated for professional misconduct relative to a mental health and/or substance use disorder to enter into "contractual probation," which is an agreement with the attorney in question that is implemented by the Attorney Grievance Commission and facilitated in cooperation with LJAP. Under MCR 9.114 (B) a lawyer may consent to a period of probation not to exceed three years. Every attorney

referred by the Attorney Grievance Commission to LJAP has an opportunity to address what may be the underlying cause of misconduct. For many, the probationary/monitoring experience results in lasting and positive transformation.

Similarly, law students sometimes incur legal infractions that may be related to substance use and/or mental health disorders. Some students get referred to LJAP as a result of reporting these infractions to their law schools. Others may be referred once they have begun the bar application process and learned that those offenses will impact their character and fitness evaluation. Because law students are the future of the legal profession, LJAP has sought to extend its preventative education to this population. By continuing to develop and deliver preventative educational programming for students, LJAP seeks to support the students' strengths and help them to eliminate any budding difficulties before they can impact their abilities as lawyers representing clients.

LJAP is a service for State Bar members that is supported by member dues. The LJAP staff recognizes that the issues that bring lawyers, judges, and students to the program are deeply personal and must be handled with the utmost discretion. All inquiries and services are handled in accordance with applicable federal and state privacy guidelines.

For more information about the LJAP program and its services, view our website at <http://www.michbar.org/generalinfo/ljap> or call our confidential help line: 1-800-996-5522.





# Dividing IRAs

By Barbara C. Dawes



Barbara C. Dawes

**D**uring a divorce, parties generally divide retirement accounts, including Individual Retirement Accounts, (IRAs). Because an IRA is not subject to ERISA, a QDRO is not necessary to divide an IRA. The easiest way to divide an IRA is simply identify the IRA in the Judgment. For example the language could state:

IT IS HEREBY ORDERED Plaintiff, John L. Doe is hereby awarded 50% of Defendant Jane M. Doe's Prudential IRA, Account Number \*\*\*\*5987 as of February 24, 2014, including any market fluctuations from the date of this Judgment until segregation.

If the Judgment language is not acceptable, then the owner of the account will need to sign a *Letter of Instruction* and the person receiving the funds from the account will need to sign a *Letter of Acceptance*. These letters must be very specific. When possible, the letters should be obtained from the holder of the account.

If you have to draft the letters, each letter must be addressed to the holder of the account and identify each person's name, address, date of birth, and social security number. The *Letter of Instruction* should then state the amount or percentage the opposing party is to receive from the account; the *Letter of Acceptance* should state the amount or percentage the party is receiving from the account. Both letters must identify the account by the name of the company holding the IRA and the account number. The letters should include the effective date of the transfer and whether the transfer is subject to market fluctuations.

## Letter of Acceptance

I, Jane M. Doe of 357 Elms Drive, Flushing, MI 48433, Date of Birth 01-02-1960, Social Security Number 123-54-7698, hereby accept from Prudential a transfer of fifty percent (50%) from IRA Account Number 14325987 as of February 24, 2014 from John L. Doe of 246 Oak Drive, Flint, MI 48532; Date of Birth 12-03-72; Social Security Number 321-45-8967. This transfer shall include any market fluctuations from February 24, 2014 until segregation. This transfer is pursuant to the Judgment of Divorce entered in the matter of *Doe v Doe*, Genesee County Court Case Number 13-123546-DO.

Signature:  
(signature line, typed name, medallion guarantee)

## Letter of Instruction

I, John L. Doe of 246 Oak Drive, Flint, MI 48532; Date of Birth 12-03-72; Social Security Number 321-45-8967 hereby instruct Prudential to transfer fifty percent (50%) from IRA Account Number 14325987 as of February 24, 2012 to Jane M. Doe of 357 Elms Drive, Flushing, MI 48433; Date of Birth 01-02-1960, Social Security Number 123-54-7698. This transfer shall include any market fluctuations from February 24, 2012 until segregation. This transfer is pursuant to the Judgment of Divorce entered in the matter of *Doe v Doe*, Genesee County Court Case Number 13-123546-DO.

Signature:  
(signature line, typed name, medallion guarantee)

Please note these letters require a medallion guarantee for the signatures. (Available at most banks; there may be a fee.)

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# Who We Are: Julia L. Black



Julia L. Black

## Why did you decide to become an attorney?

When I got accepted to University of Michigan's Graduate Program in Psychology my mother advised me that I should not listen to people's problems all day long, so I went to law school. I really do not know what she was thinking. Now I have their problems and their paperwork, as well as receivables! How funny. Also, my father owned a bar when I was growing up and his best friends were judges and lawyers who frequented his place of business. I remember him being really complimentary of some of the young female attorneys who were there and I think in the back of my mind I thought it would make him proud.

## What areas of law do you practice?

I do general civil litigation and domestic, as well as a little bit of criminal and minor estate planning.

## Which area of law do you like the best and why?

I like litigation of all types when the lawyers and clients are easy to get along with because, even though there is an adversarial process, the cases can still be challenging, rewarding, and fun.

## What do you like best about being an attorney?

I like the autonomy of the profession. I like the fact that there is something new every day and that you can make a difference in people's lives.

## What part of being an attorney can you do without?

I can do without the long hours, chasing accounts receivables, and the unnecessary types of aggravation, such as attorneys and clients that are difficult.

## What words of advice could you offer to new lawyers?

Make sure you communicate with your clients and always keep them in the loop and make them feel like you care. Also, realize that part of your job is giving people advice they do not want to hear. Make sure you are well prepared because a good reputation is difficult to build but very easy to ruin. Also remember that ambiguity is not good so the more clearly you can write things, the better off your clients will be.

## What suggestions do you have to improve the legal system?

Although I know it is difficult for judges because they are elected officials, I wish they would really hammer home civility between the lawyers in all of the courtrooms and find a way to penalize those who make it more difficult so it does not give other lawyers unwarranted poor reputations. In family law, I would also suggest that there be more hard and fast rules, with spousal support for example, because things

vary so much from courtroom to courtroom and county to county.

## Offer one suggestion for improving our local Bar?

Our bar does a very good job.

I hate to harp on civility but it seems like if more lawyers banded together to dissuade poor behavior by others, instead of looking the other way as most of us do, then maybe we could make a difference.

## Tell us about your life outside the law.

I love spending time with my two-year-old and nine-year-old nieces. I play basketball with other attorneys and some of our judges. I play co-ed and women's softball. I also do Latin and ballroom dancing. I am really active in the Albanian community.

## If you had not become an attorney what career would you have chosen?

Sometimes I wish I had been tall enough and good enough for a WNBA career. However, really I think I might have taught third grade.

## Is there anything else you would like us to know about you?

A few years back I led a group of 400 people to Albania and had dinner with the President and Prime Minister of that country. It was quite exciting and different.

## In Memoriam

2013

*Hon. Harold Resteiner*

*Sander Simen*



GENESEE COUNTY  
PROFESSIONALISM SINCE 1892  
BAR ASSOCIATION

# Annual Computer Update Resolutions



LindaLee Massoud

By LindaLee Massoud

Even though we're a little past the New Year, it is still a good idea to establish an annual routine for updating your computer system. With due credit to the original author (see link at bottom), here are 10 resolutions to apply to your law office (and home) computers.

1. Update your malware program. This would include anti-virus, anti-spam, anti-rootkit, and a cleaning program.
2. Install Windows Updates regularly (or automatically) to help protect against security breaches. (Also update software programs.)
3. Keep hard drive in good condition: free of unneeded files and regularly defragmented.
4. Test the restore function to be sure it works. Be sure backup copies are rotated off-site.
5. Remove unneeded programs, both because they waste space and because they could be a security risk.
6. Change all passwords. Be sure they are strong passwords and not left lying around.
7. Use two-factor authentication wherever it is offered.
8. Be doubly wary of email links and downloadable attachments, even from a known source. They can contain viruses.
9. Use an Uninterruptable Power Supply (UPS) (AKA battery backup) on all equipment to regulate the electricity so fluctuations won't damage the equipment. (Be sure the UPS is strong enough to handle all equipment plugged into it.)
10. If using Windows 8.0, upgrade to Windows 8.1 at no charge. If you are using Windows 7, however, there is no particular need or rush to upgrade. Windows XP is now "obsolete" so there is no support and no updated security protection.

Add this list to your tickler file to be reviewed each year. The original article is available at <http://www.ricksdailytips.com/10-resolutions-for-computer-users/>.

# A Guide to Michigan Campaign Finance



Peter J. Hoyos

By Peter J. Hoyos

A new reference manual has been published for the politically ambitious and those who seek to influence and advise the politically ambitious. *Michigan Campaign Finance* is a first-edition treatise, written by Eric Doster. Mr. Doster is a Lansing-based attorney who has served as general counsel to the Michigan Republican Party since 1992. The book is designed as a guide to understand the Michigan Campaign Finance Act (MCFA), MCL 169.201, et seq, its relationship to federal election law, and how our state and federal bureaucracies regulate political activities.

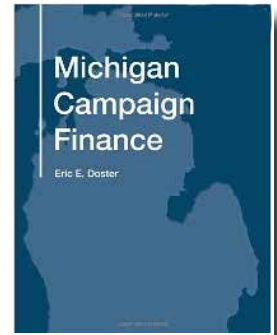
"This book is not just for lawyers," Mr. Doster said. Politicians, accountants, lobbyists, and activists who aspire to join in the political process need a reference manual to navigate government regulation of political speech and fund-raising for political activities. "[People] often jeopardize their political activity by breaking the rules, or just as unforgivable, not taking full advantage of the rules . . . ."

One might ask why government should regulate political fund-raising because such activities are naturally associated with the freedoms of speech and assembly. Mr. Doster explained that the underlying constitutional principal behind Michigan law is that the legislature has a duty to enact laws to maintain the "purity of elections". Const 1963, art 2, sec 4. To that end the State of Michigan and other constitutional governments attempt to enact laws that protect the integrity of elections and emphasize open and honest disclosure of political contributions and expenditures. In Michigan the Department of State is responsible for civil enforcement of the law, and criminal matters are referred to the Department of Attorney General.

The book is organized into twenty chapters that break down the MCFA and its regulatory scheme. Chapter 10 discusses the role of corporations, companies and labor organizations. Chapter 13 explains the regulation of paid advertising through identification or disclaimer notices. Section 13.5 contains a rather amusing list of campaign items that are exempt from the requirement of printed identification or disclaimer notices (e.g. pencils, knives, ice scrapers, and golf tees). Chapter 14 is especially useful for accountants and campaign financial managers. It explains the various campaign disclosure documents: contribution and

expenditure schedules, statements, and reports. Mr. Doster has included charts and tables that describe how ones should file, with whom one should file, and for how long one should save disclosure documents. Chapter 15 is about public funding of campaigns, and chapter 16 discusses the limitations of participation by out-of-state individuals, organizations and groups. Chapters 17 and 18 outline the offenses and penalties associated with enforcement of campaign finance law.

*Michigan Campaign Finance* is available through amazon.com. The author, Eric E. Doster, may be reached at the firm of Foster, Swift, Collins & Smith, P.C., 313 South Washington Square, Lansing, MI 48933.



## *Three Roadblocks to an Equitable Divorce*

By Amy L. Geer, CPA, CVA

**D**ivorce can be costly, time-consuming and sometimes ugly. Courts strive for equitable asset splits, but many roadblocks stand in the way. Let us look at three in particular.

### **1. Inadequate discovery**

A spouse who controls a business is often reluctant to release certain information, such as financial statements, tax returns, business plans, contracts and marketing materials. Some divorcing couples may be unscrupulous and hide assets or income. Others may simply argue that giving an appraiser access to this information breaches security and interrupts business operations.

When valuing a business, an appraiser needs access to information known only to insiders. Involve your financial expert early on to improve the scope of discovery. Ask the expert for a comprehensive list of documents and procedures needed to complete the job.

### **2. Concealed assets and income**

Sometimes a spouse will hide assets in anticipation of an impending divorce. A business owner might delay reporting income or overstate expenses until his or her divorce settles.

For example, Mrs. Smith opened a bank account under her adult daughter's name and set aside \$50,000 over two years. She suspected Mr. Smith was being unfaithful. Mrs. Smith wanted to squirrel away some funds in case her husband left her, but this amount legitimately belongs in the Smiths' marital estate.

If you suspect foul play, the scope of an assignment may need to be expanded to investigate financial misstatement and asset misappropriation. Financial experts in divorce proceedings often have forensic accounting backgrounds, so be sure to tap into their expertise.

### **3. Subjective opinions**

Divorce cases are fraught with subjective issues. For instance, it may be unclear whether discounts for lack of control and marketability, which are common in Tax Court cases, apply in divorces. Thus, it is necessary to look at applicable case law in the appropriate state.

The parties also might argue whether it is appropriate to subtract built-in capital gains tax liabilities when the marital estate includes C corporation stock. In a volatile economy, parties might argue over whether the filing date or the court date is the more appropriate "as of" date for valuing stock, retirement accounts and other marital assets.

Such points of contention can slow down divorce cases and add an element of uncertainty to court-imposed settlements, especially since judges may differ in their interpretations of these issues.

### **Different ball game**

Divorce cases are not the same as other types of litigation. It is imperative that your expert know how to navigate through—or around—the many roadblocks of this tricky niche.

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**Friday, April 25**

**Law Day**

**Watch for further details**

