January/February 2012



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(Left to Right) Laura A. Johnson, Zachary Tucker, and Terry W. Van Allen signing the "Red Book" at the October Admission Ceremony sponsored by the GCBA Make 2012 Your Best Year!

Back to the Courtland

Who We Are

New Member Profile

Defined Contribution Plans and Market Fluctuations

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Make 2012 Your Best Year!

By Karen L. Folks, President

take this opportunity to thank all of you for your contributions of time, talent and treasure to the Association and Foundation in 2011 and wish you a very healthy, joy-filled and prosperous 2012!

While 2011 brought with it the continuation of some tough economic challenges, your generous support of time and expertise allowed the GCBA to steadfastly continue to deliver high quality services to its members at very affordable prices and to the community, free of charge.

Before 2011 dims in the rearview mirror, it's a good time to recognize some of your hard work. Outstanding educational seminars for our Bar included topics on family law, criminal practice and procedure, probate/elder abuse prevention Q & A, and the Ask the Lawyer Free Community Seminars on everything from bankruptcy to child custody issues.

Other activities included Law Day, informative Lunch N' Learns and the monthly luncheon meetings that introduced us to speakers from around the State. You made it happen and we are all grateful for how your generosity of spirit continues to bless and impact the Greater Flint community.

A special thank you to Brian Barkey and the 179 volunteers who worked to ensure a flawlessly executed 21st Annual Community Holiday Dinner for a record-breaking 1,230 guests. It was held on the Tuesday before Christmas. Once again, this legal community exceeded its fund raising goal even though we had a large number in attendance. Many thanks to our generous Temple partner, Larry Battiste, and his family, for partnering with the GCBA/GCBF to provide this holiday gift to the Greater Flint community. In mid-2011, the GCBA embarked upon a multifaceted strategic planning process which is now being crystallized into a meaningful plan to guide the GCBA for the next three or more years. Thank you for taking the time to give us your thoughtful input whenever and however you were asked. You have been heard!

January 2012 has kicked off with a fun courtroom drama event, special showing of 12 Angry Men. A big thank you to all the volunteers and to our dynamic speakers, Judge Joe Farah, Ken Karasick, and Mary Fortino, for making the GCBA's special showing of 12 Angry Men a real success!

Congratulations to the GCBA and its annual Community Holiday Dinner initiative for being nominated for a "Children's Champion Award" by Priority Children! In January 2012, the GCBA was notified of this distinguished nomination in recognition of our support for the children we serve through our Community Holiday Dinner initiative. The Children's Champion Awards breakfast will take place on Friday, February 10th. Be assured that Brian Barkey, together with a number of GCBA members, will be front and center at this award ceremony. This year alone, we served 531 children with dinner and a wrapped gift. Thank you for a nomination that celebrates the GCBA as an organization that helps to make Genesee County a great place to raise children.

Although 2012 has barely begun, there are numerous GCBA sponsored opportunities to learn, network and have fun that you will not want to miss. Be sure to place these dates on your calendar: February 8th for the Probate Seminar, March 20th for a Family Law Seminar, each of the up-coming



Karen L. Folks

monthly GCBA membership luncheons, the 34th Annual Golf Scramble on June Ist and many other opportunities yet to be announced.

One final thought as we embark upon a new year. The one thing we can count on is that a new year always brings changes, some expected, some not. For those of us who prefer to have a little control over our universe, check out Jim Lobaito Performance Group's practical list of things you can control during transition and change (http://www.huffingtonpost. com/ariane-de-bonvoisin/things-youcan-control-du_b_205901.html).

There are some good tips on how to protect one's time, make the most of it and live up to one's potential. Go make it your best year yet!

In Memorian. 2011 Robert H. Bellairs Robert A. Burchfield James D. Cole John R. Moynihan M. Karry Piper GENESEE COUNTY BAR ASSOCIATION

Back to the Courtland

By Sherri L. Belknap

$A^{t the}$

Courtland Center, you can purchase clothing, hand lotions, jewelry and shoes



Sherri L. Belknap

as well as exercise, have your nails done, and watch a movie. On one fall day, shoppers could even "shop" family law.

On October 15, 2011, the Genesee County Bar Association (GCBA) "Ask the Lawyer" Community Seminars opened shop for a one-day appearance at the Courtland Center. The Courtland allowed GCBA to use an empty store front as our "store" with store hours of 11:00 a.m. to 1:30 p.m.

Our very qualified store workers were Attorneys Barbara Dawes, Jade Edwards, Suellen Parker, and Linda Pylypiw. They answered questions regarding divorce, paternity, child support and custody. During the "store" hours, shoppers were able to meet one-on-one with an attorney and ask their individual questions in a private conversation.

Despite the Michigan/Michigan State game as our competition, our "store" had a steady stream of shoppers asking questions. In fact, we had one shopper drive from Livingston County in order to participate in the event. Overall, it was a successful day at the Courtland.

The Legal Aid Committee of the GCBA is always looking for suggestions on topics for future "Ask the Lawyer" Community Seminars. If you are interested in presenting a topic, please contact the GCBA office.

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Update your GCBA Member Record

Do you know that the GCBA web site maintains a public record of your contact information? It is a good way to make your name known to your fellow attorneys and the public who might be trying to contact you.

At *http://www.gcbalaw.org*, on the menu bar, under Members, choose Member Information Update to update your information online. (This is separate from the database that the GCBA office keeps.) Please update your record today!

Who We Are: Adrienne A. DeFord

Why did you decide to become an attorney? I became an attorney pretty much on a whim; I received my bachelor's degree and applied to law school. In my first summer I worked in a small town general practice and loved all the excitement and challenges that came with taking any case we could get our hands on. I loved helping people, and I knew at that point I had found a very rewarding career.

In what area(s) of law do you practice? At Legal Services of Eastern Michigan we handle cases related to the basic needs of poor people: housing, utilities issues, public benefits, family law, and senior law. I am currently the Recruitment & Development Director, so I'm mostly involved in developing new projects and coordinating our volunteer activities in all areas. I do take cases as needed on an on-call basis, so I get a good mix of different areas. Which area of the law do you like the best and why? I definitely like estate planning best. It's great because generally clients leave with peace of mind, and they are mostly pretty happy clients to have.

What do you like best about being an attorney? I love helping people.

What part of being an attorney can you do without? Time keeping and paperwork. When I left private practice, I stopped having to collect money from clients, but I still have to keep detailed time records and deal with all the menial paperwork.

What words of advice could you offer to new lawyers? Ask for guidance when you need it. We have all been in that boat, and I find most attorneys are more than willing to help new lawyers.



Adrienne A. DeFord

What suggestions do you have to improve the legal system? I think we need to work harder to increase access to the legal system for everyone. There are many attorneys who do pro bono work and community legal education, and I get to see firsthand how that type of work changes the lives of poor people who would otherwise not have access to justice.

Tell us about your life outside of the law. My husband and I have a I-year-old son who takes up all of my time outside of work!

If you had not become an attorney, what career would you have chosen? I'm pretty sure I would have become a teacher.

Why did you choose to go into the field of law?

To fulfill my ambition to achieve a professional position of respect; to acquire specialized knowledge for the purpose of helping others in their personal, entrepreneurial, business and financial affairs; to earn a decent middle class living; and to feel like I am a positive contributor to the common good of society.

What has been the most surprising aspect to practicing law? It has fulfilled all my reasons for entering the profession. What has been one of the most embarrassing or funniest moments in your legal career? I wish I had a better sense of humor about it. In keeping with my overly serious make-up, the stand-outs are moments of humiliation and embarrassment upon receiving unfavorable results from the judge with my client standing next to me.

Who have you admired or what attorney has always treated you with utmost respect even when you didn't have a clue as to what you were doing? Judge Thomas



Scott Stensaas

Gadola was extremely gracious in my early forays with probate; Dennis Haley and John Lindholm were great mentors in my early practice years in Flint.

If you had not become an attorney, what career would you have chosen? If I couldn't practice law, I would be a tour guide because I enjoy being around people who are on vacation!

New Member Profile: Thomas J. Mitchell

Thomas J. Mitchell is the Senior Vice President and Director of Personal Trust for Citizens Bank Wealth Management. Over his career, Mitchell has worked with the wealth management division of several financial institutions, including Old Kent Bank, First of America Bank, Comerica Bank and First Citizens Bank in Raleigh, North Carolina. He also practiced law with the Varnum Riddering firm in Grand Rapids and was a partner in a registered investment advisor firm.



Thomas J. Mitchell

Originally from Grand Blanc, Mitchell is a graduate of the University of Michigan and the Detroit College of Law.

Mitchell has served on several boards, including: The Michigan Shakespeare Festival, Jackson Youth Symphony, North Carolina Contemporary Art Museum and the Triangle Radio Reading Service for the Blind.

Notes N' News

The GCBA's electronic newsletter communicates information on members, continuing legal information seminars, congratulatory announcements and upcoming events. Sign up today at http://www.gcbalaw.org.



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Defined Contribution Plans and Market Fluctuations

By Barbara C. Dawes

ne type of retirement account is a defined contribution plan, such as a 401K account. When a defined contribution account is divided in a Judgment of Divorce, the Judgment and QDRO should address the issue of market fluctuations from the valuation date through the date the plan administrator segregates the Alternate Payee's share. Although MCL552.101(5) provides that for cases filed on or after September 1, 2006 an assignment of rights to a pension, annuity or retirement benefit shall include a proportionate share of all components, market fluctuations are not considered a component. A case directly on point is Smith v Smith, No. 295243; for publication: May 26, 2011.

In this matter, the parties entered into a Property Settlement Agreement (PSA) on August 25, 2009. The PSA divided all the parties' assets, including all retirement accounts. During negotiations, the parties used the value of Husband's IRA as of February 2009. Unknown to Wife, by the time the parties signed the PSA in August, the value of the IRA had increased by almost \$1.4 million.

One of the issues before the Court of Appeals was whether Wife was entitled to a share of the increase due to the market fluctuations between February 2009 and August 2009. Applying contract principles, the Court of Appeals determined that Wife was not entitled to any increase



Barbara C. Dawes

based upon the market fluctuations. The Court determined that it is well known that stocks fluctuate on a daily basis. Furthermore, the parties were able to fix the values on any date and the parties could have provided the retirement accounts were subject to modification due to market fluctuations. However, the parties did not do so. The Court of Appeals determined that there was no mistake regarding the PSA entered into between the parties; therefore, the parties must be held to their agreement. Therefore, the Court of Appeals did not grant Wife any relief.

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Credibility is Vital in Business Valuation

By John W. Haag, Sr., CPA, CVA, CFF

n a battle over whose business valuation report is "the right one," the appraiser or expert witness has one key weapon: credibility. Credibility should be an expert witnesss' main focus. Detailed financial analysis, complicated discounted cash flow models, 50-page dissertations on the economic and industry climate and years of experience can quickly become meaningless if the appraiser is determined to lack credibility. Assuring the credibility of a valuation report prepared by your expert witness is essential to winning the case.

What factors affect the credibility of a report? Use the following points as a checklist to identify weaknesses that may lead the reader to determine that the report lacks credibility.

Advocacy

("Go team, go!")

There is no better way for an appraiser to damage his or her credibility than by advocating for a client's position. Although appraisers are hired for their expertise, they are also hired for their independence, objectivity and credibility. Once an appraiser begins advocating for a client by adjusting numbers based on their client's opinions they are no longer independent and objective, and subsequently their credibility is damaged.

Standards

("Stop and ask for directions")

Does the report follow generally accepted appraisal practices in the United States? With the creation of the American Institute of Certified Public Accountants Statement on Standards for Valuation Services (SSVS No. I), all Certified Public Accountants are required to comply with those standards when performing valuation services.

Fortunately for readers of business valuation reports, the standards are easy to read and understand. In fact, the standards read like a list of directions of what must be included in a valuation report. Comparing a valuation report to this checklist is a simple way to highlight deficiencies within a report. (Contact a member



John W. Haag, Sr.

of the Yeo & Yeo Valuation Team for a copy of the standards.)

Disclosure

("Follow the bread crumbs")

Is there adequate disclosure about the appraisal process? The appraiser's assumptions, analysis, calculations and conclusions should tie into the overall conclusion of value. There must be adequate disclosure of the relationship between the process and the development of the conclusion. A reader should be able to follow the appraiser's thought process throughout the report and be able to duplicate the results.

Relevance

("Great calculations, bad methods")

Did the appraiser choose the correct method, procedure, or standard? Did the appraiser use fair market value when fair value should have been used? Perhaps they relied upon the income-based method capital-intensive for a company when the asset-based method was more relevant. The appraiser may have done an outstanding job of explaining a particular method, and their calculations may be appropriate; however, if the method they choose is not relevant to the business being valued, then the report is not credible.

Reliability

("Great methods, bad calculations")

Relevance relates to "which method was applied," whereas reliability refers to "how it was applied." In other words, the appraiser could choose the appropriate



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valuation approaches and methodology, but fail to apply those methods correctly. Included in the topic of reliability is basic editing skills. If a reader finds grammatical or mathematical errors in a valuation report, the reliability of the report is greatly damaged and, likewise, so is the credibility.

Transparency

("Smoke and mirrors")

Transparency within a valuation report is very important to ensure that the reader is truly seeing the whole picture. Transparency refers not only to what *is* included in a valuation report, but what *is not* included. Reports that omit certain data or ignore financial periods or transactions lend themselves to appear not credible, as if the writer is picking and choosing which data to include and exclude in order to achieve a desired result.

Conclusion

As you review business valuation reports prepared by expert witnesses, ask yourself the following questions: Does it follow applicable standards? Is it objective? Is there adequate disclosure? Is it relevant? Is it reliable? Is it transparent? If the answer to any of these is "no," then it is appropriate to raise the question of the report's credibility.

The next time you are provided with a business valuation report, contact a valuation specialist to assist you with the analysis.

John W. Haag, Sr., CPA, CVA, CFF, is accredited as a Certified Valuation Analyst with the National Association of Certified Valuation Analysts. He is a Senior Manager in the business consulting group in Yeo & Yeo's Midland office, and a member of the firm's Business Valuation and Manufacturing teams. He holds a Bachelor of Business Administration and a Master of Science in Accounting from Eastern Michigan University. He is a graduate of Leadership Midland.

Juvenile Drug Court

By Carol A. Jaworski

The Juvenile Drug Court was created in 2001 in response to the high volume of juvenile commission of crimes or violations due to underlying substance abuse addiction. Program eligibility requires a non-violent petition authorized by the court, a documented substance abuse history as determined by a medically dictated substance abuse evaluation, screening by the juvenile probation department, a willingness to change, and caregiver support.

Program participation consists of three phases. Phase I requires regular drug screens, substance abuse counseling as prescribed by the evaluation and weekly judicial review hearings. Phase II requires continuation of counseling and drug screens, and bi-monthly judicial review hearings. The final phase, Phase III, continues counseling and screening with monthly judicial review hearings. Program capacity is 20 youth.

Each participant enters into an agreement that outlines program goals and expectations. Agreements are signed by both the youth and primary caregiver as it is their commitments to full participation and attendance. Varying modalities of substance abuse treatment are provided based upon medical need, including outpatient, intensive outpatient, day treatment and residential treatment. Youth are subject to graduated sanctions for violation of program rules and judicial orders. Sanctions may include, but not be limited to, community service, tether, loss of privileges, increased drug screens and court appearances,



Carol A. Jaworski

short-term detention, or out of home placement. Incentives are provided as youth reach program milestones and success.

Every case assignment includes supervision by a juvenile probation officer and treatment by a certified substance abuse clinician. Judge John A. Gadola is the presiding judge of the Genesee County Juvenile Drug Court.

Judge Gadola shares with us these insights:

The Drug Court participants enter Drug Court with the likelihood of success being statistically very low. However, there are many success stories of juveniles choosing to live drug and alcoholfree lifestyles, as well as improving their family relationships and academic effort.

The success in Drug Court is the result of the outstanding coordinated efforts of dedicated human services workers. Jamie Bielert from Juvenile Probation always goes above and beyond for the juveniles; the MST program is at the leading edge of family involvement in the juvenile's recovery; and Corcoran House offers excellent outpatient treatment, right in our community.

—Information provided by the very helpful juvenile probation staff, Judge Gadola, and the court administrator office.

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