

July/August 2013

BARBEAT

Genesee County Bar Association



Erwin F. Meiers III
2013-2014 Genesee County Bar
Association President

Stepping Out as Leaders in Our Community

Meet Your Executive Committee

Adoptive Couple v Baby Girl:

When State and Federal Laws Collide

Who's On the Bench?

Hon. John L. Conover, 67th District-Div. 2

Indigent Defense Update

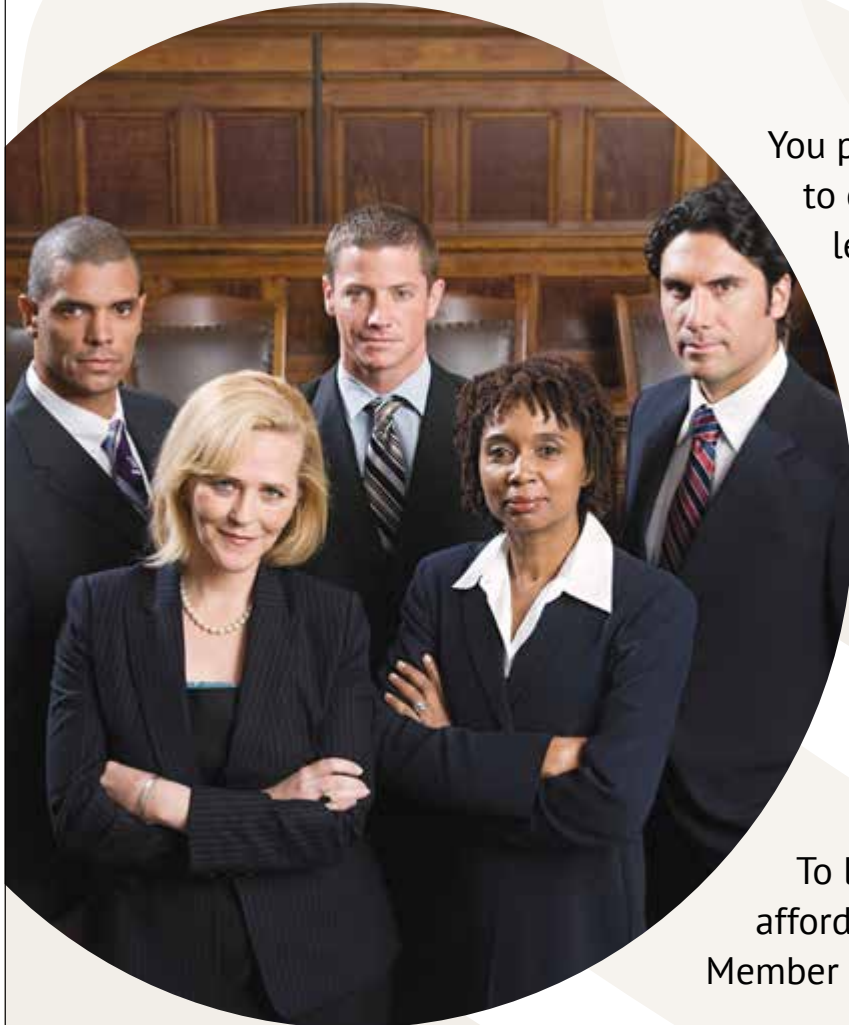
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Stepping Out as Leaders in Our Community

By Erwin F. Meiers, III, President



The Genesee County Bar Association has tradition. Today we are over 450 attorneys strong, all based primarily in Genesee County practicing in the 67th and 68th District Courts, the 7th Judicial Circuit Court, the Family and Probate Courts, and the Federal District Courts of Eastern Michigan.

On July 1, 2013, I became the 98th President of the GCBA. I will be working with an Executive Committee, Board of Directors, members, and a staff that is second to none.

As a group we plan to bring forward an energized association to meet the needs and the expectations of members in the next year.

As an association we need to exchange ideas, mentor and educate our young attorneys in the skills we need to participate in the legal process we call the law.

Genesee County is a hotbed of legal issues and topics, including:

- our emergency manager and municipal laws;
- protecting the rights of criminal defendants;
- compensation for court;
- appointed counsel;
- legal theories in personal injury areas.

We have the best and brightest attorneys in the State of

Michigan to lead in all these areas, and as an association it will be our members who do this.

Just over the last year we have had dynamic seminars in family, criminal and probate law. The State Bar of Michigan came to work with us to put on the MiPad Practice iPad for Legal Professionals seminar at Mott Community College. We have developed an affiliate membership for our legal support staff.

During the term of my presidency I want to further develop our "Hire Your Local Attorney" promotion.

In addition, a committee will be formed to lead our social media campaign. This will include Facebook, Twitter, website and marketing of the association. We need a strong online presence to stay competitive in our market.

My mission for the GCBA is to be a leader and a vehicle to promote the law and to provide legal education to the Flint and Genesee County area residents. We must be the leaders to promote improvements in the administration of justice and improve relations between the legal profession and our community.

Erwin F. Meiers, III

Meet Your Executive Committee



Erwin F. Meiers, III



Jeffrey J. Himelhoch



Michael A. Kowalko



Shayla D. Blankenship



James J. Wascha

President: Erwin F. (Fred) Meiers, III

Undergraduate degree: Bachelor of Arts in Risk and Insurance, Michigan State University

JD: Thomas M. Cooley Law School (1987)

GCBA member since 1988

Area(s) of Practice: General Practice, Criminal, Bankruptcy and Family

Past committees, activities, State Bar involvement: Past Treasurer and Secretary of the Genesee County Bar Association; board member of PAWS; board member of Genesee County Specialty Court Foundation; chair of GCBA Golf Committee.

Reason you believe in service to the GCBA: to be a mentor, to promote local attorneys and to be a part of the fellowship of the Genesee County legal community.

Vice President: Jeffrey J. Himelhoch

Undergraduate degree: Bachelor of Arts, Michigan State University

JD: Thomas M. Cooley Law School (1980)

GCBA member since 1981

Area(s) of Practice: Civil Litigation, Social Security Disability, Alternate Dispute Resolution.

Past committees, activities, State Bar involvement: Past President Flint Trial Lawyers Association; Past President Flint Jewish Federation; Past President Temple Beth El.

Personal Achievements: My father taught me to treat people fairly and through my law practice it has been very rewarding to help people obtain justice, fairness and equality under the law.

Favorite Quotation: “I have lived my life and I have fought my battles, not against the weak and the poor – but against power, injustice, against oppression.” Clarence Darrow

Treasurer: Michael A. Kowalko

Undergraduate degree: Bachelors degree from Northern Michigan University (1980).
JD: Detroit College of Law (1984)
GCBA member since 1993.

Area(s) of practice: Civil Rights, Employment Litigation, Whistleblower Protection, Personal Injury, Medical Malpractice and Commercial Litigation

Past committees, activities, State Bar involvement: 2011-2012 President of the Flint Trial Lawyers Association and member of the Board of Directors of the GCBA (2011-2014), appearance on the Phil Donahue Show (1992), and being invited and giving a seminar to the Michigan Trial Lawyers Association (now the Michigan Association for Justice) concerning “Presenting Aggravation of Injury Cases to a Jury” (2001).

Reasons you believe in service to the GCBA: The GCBA is all about the “big picture.” Local attorneys who advocate against each other in individual cases set those battles aside and join forces for the common interest and values we all share which ultimately benefits the public.

Secretary: Shayla D. Blankenship

Undergraduate degree: Bachelor of Arts, English and Sociology/Anthropology from Olivet College

JD: Thomas M. Cooley Law School (2002)
GCBA member since 2003

Area(s) of practice: Family, Adoption and Child welfare.

Past committees, activities, State Bar involvement: Chairperson Family Law Committee, Holiday Dinner, Golf Outing, monthly meetings, Law Day, and social events. I serve on the Representative Assembly for the State Bar. I also served on the Domestic Violence Committee for the State Bar of Michigan.

Reasons you believe in service to the GCBA: For both personal and professional growth, networking opportunities and to remind myself why I went to law school.

Immediate Past President: James J. Wascha

Undergraduate degree: Political Science; University of Michigan, Ann Arbor
JD: Wayne State University Law School (1972)

GCBA member since 1973

Area(s) of practice: Personal Injuries, Corporate, Shareholder and General Civil Litigation, Insurance and No Fault Law;

Past committees, activities, State Bar involvement: Past President of the Centennial Inns of Court; Michigan Association for Justice (MAJ)

Reasons you believe in service to the GCBA: This is the paramount professional association for members of the local bar. It serves continuing education, community services, and fosters civility among lawyers and judges alike. It provides a learning and social atmosphere for the legal profession.

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Adoptive Couple v Baby Girl: *When State and Federal Laws Collide*

By Shelley R. Spivack, Genesee County Family Court Attorney/Referee



Shelley R. Spivack

Well, these—these considerations are why domestic relations pose the hardest problems for judges. Our domestic relations judges all by themselves every day have these difficult problems. If we could appoint King Solomon, who was the first domestic relations judge, as special master, we could do it. But we can't do it.

Justice Anthony Kennedy during oral arguments in *Adoptive Couple v Baby Girl*

After the Supreme Court's ruling in what has been referred to as the "Baby Veronica" case, the fate of the 3 ½ year old little girl whose mother attempted to put her up for adoption at birth and whose father, a member of the Cherokee Nation, objected to the adoption, will be back in the hands of the South Carolina Family Court judge whose decision placing the child with her biological father was recently overturned by the Supreme Court.

This emotionally charged case produced four separate opinions and pits state adoption law against the federal Indian Child Welfare Act (ICWA) in a case involving an adoption initiated by an unmarried mother. While both the trial court and the South Carolina Supreme Court held that the ICWA prevailed, the US Supreme Court in a narrow majority held that the "heightened showing of serious harm" required by the ICWA to terminate parental rights "does not apply when, as here, the relevant parent never had custody of the child."

The Indian Child Welfare Act was passed by Congress in 1978 to reverse the damage inflicted upon Indian children and tribes by adoption policies that separated Indian children from their families, homes, and culture. Finding that the existence and integrity of Indian tribes was threatened by the breakup of Indian families by the state and the removal of Indian children to non-Indian homes and institutions, Congress established federal minimum standards to be used in certain child custody proceedings.

As part of the statutory scheme, the ICWA sets more stringent standards for the termination of parental rights than most state statutes, including proof beyond a reasonable doubt that "the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." USC 1912 (d) (f).

The South Carolina Family Court judge who denied the adoption and ordered that the child immediately be returned to her father focused on the impropriety of the child's original move to South Carolina with the adoptive parents (due to misinformation given by the mother about

the father's Indian heritage) and the father's immediate efforts to establish paternity and stop the adoption.

Finding that the ICWA and not state law governed the action as the child was an "Indian child," the trial court held that father was a "parent" as defined by ICWA; that he did not consent to the adoption; and that the adoptive parents had failed to prove that custody with father would result in serious emotional or physical damage to the child.

Justice Scalia, in a succinct dissent, rejected the majority's understanding of the words "continued custody" to mean only custody which had occurred in the past focusing instead on the constitutionally protected parent-child relationship.

Justice Sotomayer, focusing on the history and legislative intent behind the ICWA, accused the majority of transforming "a statute that was intended to provide uniform federal standards for child custody proceedings involving Indian children and their biological parents into an illogical piecemeal scheme" that "excludes biological fathers from the Act's substantive protections."

The majority's hollow literalism distorts the statute and ignores Congress' purpose... Baby Girl has now resided with her father for 18 months. However difficult it must have been for her to leave Adoptive Couples' home when she was just over 2 years old, it will be equally devastating now if at the age of 3½ she is again removed from her home and sent to live halfway across the country.

For Michigan practitioners the question is what effect will the Supreme Court's ruling have on termination of parental rights cases involving non-custodial Indian parents. According to Washtenaw County Judge Tim Connors, Michigan judges would not be bound by the Supreme Court's ruling because of the recent enactment of the "Michigan Indian Family Preservation Act", PA 565 of 2012. Judge Connors, a member of the committee that proposed the Act, stated that the Supreme Court has made it clear that the ICWA creates "bare minimum standards but states are free to enact laws that offer greater protection."

Looking back at the words of Justice Kennedy, it certainly would be easier to appoint King Solomon to solve the difficult cases our family court judges face every day, "but we can't do it."

Who's On the Bench?

Hon. John L. Conover, 67th District Court-Division 2

By Roberta J.F.Wray



Hon. John L. Conover

Everyone should have a job they'll be disappointed to leave. That is the case with Judge John L. Conover who has been on the bench in the Davison division of 67th District Court since 1993.

The judge was born in Illinois farm country near Danville. He credits his "crusty old grandfather" with helping to mold his character through summers working on his farm. It was there he gained his sense of fairness and justice.

Sitting on the porch in the summer, listening to the St. Louis Cardinals on the radio, Judge Conover says he was taught respect for others, courtesy, kindness and that behaviors have consequences. He says he learned the latter the hard way through broken tools and wagons of corn dumped in the ditch due to excessive speed.

He and his staff pride themselves on being kind, respectful, and fair

Judge Conover says that sometimes translates into a perception of toughness in some of the sentences he imposes. His primary aim, however, is to help people.

"Sometimes it is necessary to deal with alcohol and drug abuse problems or anger management issues," he says, "so I keep track of people on probation. If the rehabilitation doesn't succeed, then punishment is appropriate."

He says his goal is to treat people with absolute fairness, regardless of their personal characteristics. He and his staff pride themselves on being kind, respectful, and fair. Judge Conover says it is important to listen to the people before him, and he says, "I won't allow some *pro per* person to be trampled on."

Judge Conover is an alumnus of Michigan State University and MSU-DCL Law School. He was in private practice from 1970 to 1993 when he took the bench.



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Indigent Defense Update

By Roberta J.F. Wray



Roberta J.F. Wray

“It is widely accepted that Michigan’s criminal justice system is broken for poor people accused of crimes. When the indigent defense system is broken, everyone suffers. Innocent men and women end up in prison while the perpetrators are left on the streets to commit more crimes.”

- Michael J. Steinberg, ACLU of Michigan legal director

Recognition of the problem has not meant anything meaningful in terms of solutions until the Michigan Legislature, in June, finally passed new laws that establish a permanent commission to oversee the administration of indigent defense in the future. The laws emanate from a class action law suit filed by the ACLU in 2007 on behalf of a number of Michigan defendants who alleged they were wrongfully convicted because they had untrained or inadequate counsel in their trials.

In a 2008 report by the National Legal Aid and Defender Association, Michigan ranked 44 out of the 50 states in per capita expenditures for provision of legal counsel for indigent defense. Fifty years after the landmark case of *Gideon v Wainwright* 372 U.S. 335 (1963), it is expected that the new laws will result in better oversight, more funding, new standards for training, performance standards to govern their practice, and review of their performance.

In June 2012, the Governor’s Indigent Defense Advisory Commission issued a report that not only acknowledged the problems but outlined a roadmap for the legislature

to ensure that our criminal justice system works for all Michiganders regardless of their economic status.

According to an ACLU press release, the bills, passed in mid-June, set minimum standards for indigent defense statewide, including:

- immediate counsel assignments after indigency is determined;
- sufficient time and space for clients to meet with their attorneys;
- a controlled workload for the defense counsel that is free of economic disincentives or incentives that impair the ability to provide effective representation;
- the matching of the defense counsel’s ability, training, and experience with the complexity of the assigned case; and
- ensuring that defendants have continuity of counsel.

The bills also provide counties with the opportunity to apply for grants if they do not currently have enough money to adhere to the new standards.

New Member Profile—Roy Edgar Webber, IV

Roy Edgar Webber IV was raised in Vienna Township and graduated from Clio Area High School. He earned a BA in Political Science and Sociology from The University of Michigan-Ann Arbor. His law degree is from Wayne State.

Roy says, “I’ve always loved to argue. Once I cross-examined an assistant high school principal about the attendance policy in front of my government class. The assistant principal said he was unsure of the attendance policy. I produced my copy of the student handbook, and yes I had a copy of the student handbook in my book bag. After reading the relevant portions to the class, he said he was still unsure. I thought to myself if I could make the assistant principle unsure of himself in an area where he was a supposed expert, I could do the same with other so-called experts.”

During the summer of his junior year at U of M he

had two jobs: working on a production line at Delphi Steering Gear in Saginaw and interning with 67th District Judge Larry Stecco. He says his production job paid a lot better than his internship, but after observing attorneys negotiate with the judge, the prosecutor, and the magistrate he liked what he saw and knew he could work with these individuals. He says, “I like to hear myself talk as much as, if not more than, the next attorney.”

“Clerking for Judge Yuille has offered me an education in civil litigation. This experience has reinforced my instincts of becoming a civil litigator,” he says. “I am proud to be from this county and work for this county.”



Roy Edgar Webber, IV

Online, Not in Line!

By Terry R. Bankert

With the recent merger of the two offices, our Genesee County Clerk has also become the Register of Deeds. John Gleason is a leader in customer service. His office is committed to the county objective "Online, Not In Line!"

Despite budget and staff reduction Gleason's administration continues excellent service while exploring technological advances to keep the quality of service up and the cost

down. You can save your office money by using the electronic services of Gleason's Genesee County Clerk's Office.

Online services include obtaining a birth certificate, marriage license, death certificate, court records, land & property documents, elections and many more.

John J. Gleason is clerk to the 7th Circuit Court (civil, criminal and family court divisions), the County Board of Commissioners, the County Apportionment Board, Concealed Weapons Licensing Board, and the County Road Commission. Other duties of the Clerk include maintaining birth and death records, assumed business names, co-partnership certificates, concealed weapons permits, veterans discharge records, marriage licenses and notary licenses. The "Online, Not in Line" policy is working. Be sure to ask the office how you can save time by electronic communications with his office.

The Clerk also is the chief election official of the County and supervises all national, state and local elections also administering the campaign finance act.

How to get there electronically? Go to www.gc4me.com. Find the County Clerk page (easy). In the right margin you will have easy access to:

- **Elections:** Polling address locations, election results, candidate lists, ballot languages samples.
- **Legal Division:** 7th Circuit Court Records, PPO information and more.
- **Vital Records:** Apply for marriage license, DBA, Co-Partnerships, Concealed Pistol.
- **Register of Deeds:** All recorded documents pertaining to real property transactions. There are three ways for electronic recording.
- **Vital Records Research:** The office maintains most marriages births and deaths in Genesee County since 1867. Vital records can be ordered online or by mail. Some records can be shipped overnight. Forms are available at this site.

Take the time to visit the Genesee County website to learn about county services available online.



Terry R. Bankert

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2013 Annual Meeting Awards

For those of you who did not attend this year's annual meeting, the following is a summary of the Annual Award Ceremonies:



Rhonda Stowers

Rhonda Stowers was named Pro Bono Attorney of the Year, an award bestowed annually by Legal Services of Eastern Michigan. A graduate of the University of Michigan and the U of M Law School, Ms. Stowers is an attorney in Plunkett Cooney's Flint office. Her practice areas include general litigation, governmental law and title insurance law.

Her award was presented by Jill Nylander of LSEM, who cited her dedication to providing volunteer service in the monthly legal advice clinic, counseling clients on their legal situations, their options and their future, "and perhaps most importantly, the power to take control." Ms. Stowers has been a member of the SBM and the GCBA since 2002.



Carl L. Bekofske and Milliken Award winner Robert M. Chimovitz

since 1985 and a member of the GCBA since 1988.

And finally, the annual Herbert A. Milliken, Jr. Civility Award recognizes "a long-time, practicing member of the Genesee County Bar Association who is recognized for the habit of offering professional guidance and advice to their fellow attorneys and being widely recognized as a professional role model who demonstrates the highest standards of professional courtesy and civility combined with a zealous and thorough advocacy on behalf of their clients."

This year's recipient of this signal honor is Robert M. Chimovitz, a graduate of Southwestern High School, an Eagle Scout, a Marine, an attorney since 1971 and a member of GCBA since 1972. Chimovitz attended law school on the GI Bill, in his words, "having been issued an M-14 and a 10-key calculator by the U.S. Marine Corps in the mid-1960's."

He has been married to Maryrita for 19 years, and they have four children between them, and eight grandchildren, six of whom occasionally allow their grandfather to ski with them. He has two brothers, Jeff and Larry. Bob and his brother, Jeff, are in practice together. Bob says without his secretary, Tammy Reitano, he would be unable to practice law. The Milliken Award was presented by Carl L. Bekofske, 2011 Milliken Award recipient.



Erwin "Fred" Meiers and Jessica Hammon

Our newly elected President, Erwin "Fred" Meiers, III, was honored with an award from the Young Lawyers Section of the GCBA. His nominating letter, submitted by Elizabeth A. McDaniel, states in part, "Fred seeks out young lawyers to make them aware of opportunities and will refer clients to new lawyers that he knows are trying to establish themselves. Fred also promotes ethics and will always discretely offer counsel to young lawyers struggling to learn the ropes." Fred has been an attorney

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Rebecca A. Millsap, CPA
Principal, Flint



David W. Schaeffer
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Notes on a Trip to Find Spring

By Roberta J.F.Wray



I went to Arizona in April looking for Spring. I picked the only week in the month that had perfect temperatures for someone who loves Michigan's climate. I was hoping to find the desert in its legendary blooming phase. I was probably a week too late. The last time I went to Arizona looking for Spring, I was about a week too early. Just lucky, I guess!

This trip gave me the opportunity to revisit the Deer Valley Rock Art Center, a concentration of Native American petroglyphs located just at the end of Deer Valley Drive in Northwest Phoenix. The park contains 1571 glyphs that have been identified by archaeologists. Some are as much as three to five thousand years old.

What looks like a pile of rubble is a mountain of igneous rock formed by volcanoes during the Pliocene era. Among the cracked and broken boulders are flakes of basalt, the evidence of ancient quarries that provided early inhabitants with hard stone tools. The rocks were of such quality, according to the literature provided by the Center, that people came from many miles away to collect the rocks.

Ancient peoples made marks on the rocks to record hunts, harvests and other evidence of their existence. Humans continue to impact the area through housing developments, dams and highways brought about by the rapid growth of the Phoenix area.

The Center is maintained by Arizona State University and serves as a classroom for archaeology, geology and

anthropology students. Besides being the preserve of ancient marks of humanity, it is a classroom for teaching the impact of humans over all time into the future.



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