

July/August 2008

# BARBEAT

Genesee County Bar Association



Newly elected President David S. Leyton

Golf Wrap-up

Valuing S-Corporations and  
the Federal Income Tax Dilemma

Let's Journey Back

GCBA 2008 Annual Meeting  
and Election of Officers, plus  
Award Ceremony Honorees

# Golf Wrap-up

By Fred Meiers, Susan Philpott Preketes, and Karen L/Folks



**W**ow! What a great way to kick off a summer of golf! We promised a wildly successful 30<sup>th</sup> Annual Bar Association Golf Outing... and through the support of our members and sponsors, delivered on that promise. Despite the dire weather predictions, the rain held off, the sun showed up on schedule, and we were able to use the occasional stiff wind to advantage or excuse as needed.

What a pleasure it was to work with the staff and employees of the Elks Club. Moreover, thank you to the Elks for providing such a comfortable atmosphere, a course in great condition, delicious food offerings, and a price that worked for everybody's pocketbook in this strained economy.

While fun was the order of the day, we had some incredible golfers who turned in outstanding golf scores in this scramble event. Congratulations go to our first place winners, Judge Michael Theile, Tom Warda, Charles Desotelle, and Tim MacDonald, who delivered the lowest score of the day. Our congratulations also go to the second place team of Kraig, Robert, Kirk, and Steve Sippell.

Our members came out in droves to golf, join us for dinner, purchase signs, flags, and provide door prizes...just ask David Leyton about the plentiful door prizes! (Lets just say we stopped counting at five.) The numbers truly demonstrate that this was the most successful golf outing in over 12 years! We had over 28 golf teams, 30 tee/greens signs, 12 greens flags, and 12 teams who helped their golf scores by paying our golf ringer to hit incredible distance shots off the 15<sup>th</sup> tee!

Once again, thank you to all our fabulous Genesee County Bar Association members and sponsors for making this year's 30<sup>th</sup> Annual Golf Outing such a huge success and infusing the day with fun-filled energy and memories. And while you're

thinking golf...open your 2009 calendar and save Monday, June 8, 2009, so we can do it all over again!

**Rush Dembo Team**



**Beauvais Team**



**Shaheen Team**



**Meiers Team**





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- ❖ **Publications**—“Private Mediation,” *Bar Beat*, July 1995; “Facilitative Mediation,” April 1996 and “Michigan Mediation Update,” June 2004, *Michigan Lawyers Weekly*

# Prosecutor David Leyton, GCBA President

## *Proud to be a Michigan Lawyer*

By David S. Leyton, President

It is an honor to serve as the President of the Genesee County Bar Association, and I look forward to working with many of you over the next year as we continue our proud traditions and provide services not only to members of the Bar but to the community as a whole.

As many of you may relate, it seems like only yesterday that I was a newly inducted member of the State Bar of Michigan and the Genesee County Bar Association. However, the truth of the matter is that it has been 25 years since I was sworn in as a lawyer. Boy, how time flies!

As I reflect on the past and take stock of the present, I am filled with great pride in so many ways. First and foremost, I am proud to be a lawyer, for it is truly a privilege to be able to wear that title. Lawyers have done so much, for so many, and in so many ways, that each of us should be proud of our membership in this Bar and in the common bond we share as fellow lawyers.

I am especially proud to take on the title of "president of the Genesee County Bar Association." It truly is one of those personal milestone events in my life, and it is a position with many

responsibilities that I will work hard to fulfill.

One need only look back on the history of the Genesee County Bar Association to develop a personal sense of pride in being a member. The GCBA's website ([www.gcbalaw.org](http://www.gcbalaw.org)) has a very interesting narrative of our history, and I would encourage you to take a look at it some time.

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It is that rich legacy that makes me feel so privileged to have the opportunity to lead this organization for the next year.

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In it you will find trailblazers and familiar names—names not only well-known and familiar to us in the Bar but, perhaps more importantly, they are names known to the greater Genesee County community as leaders who worked tirelessly through the generations for the betterment of all our residents.

It is that rich legacy that makes me feel so privileged to have the opportunity to lead this organization for the next year.

Our nation's history is full with stories and examples of lawyers who have helped shape our society, our democracy, and our way of life. Our history books point to lawyers who, in the face of great personal risk and peril, stood up with bravery and moral courage to see that justice was done.

Take, for example, the story of Alexander Hamilton, the Philadelphia lawyer and an early leader in our federal government who, while in private practice, successfully defended German immigrant printer John Peter Zenger against charges of seditious libel in 1735,

helping to set the stage for this nation's rich history of free expression and a free press.

Another great example is John Adams, America's second president who, as a practicing lawyer, was ridiculed as a traitor when he defended British soldiers for firing on a crowd of Boston colonists in 1770.

Clarence Darrow is another lawyer who risked much to do what was right when he gave up his career in 1895 to defend Socialist Eugene Debs and other officers of the American Railway Union against charges of criminal conspiracy.

There are thousands of stories of similar acts of courage from lawyers who fought for justice against tall odds. All of these lawyers answered the calling, often at the cost of their own popularity and pocketbook, to do what was right.

As attorneys, we all have a continuing responsibility to uphold fundamental principles of justice from which the law cannot depart.

As the late U.S. Attorney General Robert Kennedy said: "In all dealings—with rich and poor, with the innocent and the criminal—a good lawyer is an embodiment of the sanctity of the law, a living reminder that ours is a government of law and not of men—or of money."

Thank you for allowing me the privilege to lead this organization for the next year. Most importantly, thank you for the work you do each and every day in our community. Let us work courageously. Let us work boldly. Let us work together for justice and for a brighter tomorrow for our clients, our families, our communities, and our country.



David S. Leyton



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# From the Bar to Business

By LindaLee Massoud, Editor

*This is the next in a continuing series of article about area attorneys who have "sideline" businesses. In this issue we are pleased to highlight Judge Ransom's new retirement business.*

**Q. After your many years on the bench, what kind of business did you start?** I am providing private judge services through the business entity of Trial Court Services, P.C.

**Q. What prompted you to take on a new business after retirement?** It was never my intention to retire - i.e., quit. I intended to avail myself of more free time with less stress and continue to use my 30 years of judicial experience to provide service to the community.

**Q. What kinds of services do you provide?** In addition to providing

more traditional ADR services of facilitation, arbitration, and mediation, I have the ability to conduct trials. Because I continue as a member of the judiciary, I have the capability of taking case assignments.

With the stipulation of counsel, I can conduct a trial with or without a record. The advantage to counsel and clients is the case can progress on your schedule; there is expedited disposition, on a date set by the parties and without competition of a court's trial docket. Of particular interest to the family law bar, the use of conference trial techniques is available.

The conference trial is a "kinder way" to resolve disputes, minimizing adversarial conflict. It has proven very beneficial when custody of children is an issue.

I've had the unique opportunity to conduct a trial involving professional negligence where the respective parties wanted confidentiality.

**Q. Tell us about some of the challenges you have faced in starting your business.** Because techniques of private judging, conference trials, etc., are non-traditional, many members of the bar don't consider such options.

**Q. What recommendations do you have for your colleagues who might be considering branching out into an ancillary field?** Be creative with your thinking - "think outside of the box." We all have far more options than we think. You are not "trapped" if you afford yourself the freedom to explore.

Thank you for sharing your insight with us.



Hon. Robert M. Ransom



LindaLee Massoud

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## Senior Attorney Lunch Group

The Senior Attorney Luncheon group meets on the second Thursday of each month except for the months of February, March (time off for southern winter trips), July, and August (time off for golf, family visits, etc.) All area attorneys over the age of 65 are invited to attend, whether retired, semi-retired, or still claiming to be working. The purpose is to enjoy friendships, interesting discussions, and shared experiences, including favorite war stories. The lunches are "Dutch treat," scheduled for noon at the Valley Coney Island Restaurant located at the corner of Linden and Miller Roads. Our next luncheon is planned for September 11, 2008. For more information, call Dick Ruhala, attorney luncheon coordinator, at (810) 733-5154.

## Monthly Membership Meeting

The September 15, 2008 Membership Meeting will recognize those with 50 or more years of membership in the GCBA. Reese Stipes and Duke Parker will serve as master of ceremonies. Judge Tom Yeotis, Duke Parker, and Gil Rubenstein will share reflections on the past.

Honorees are:

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Reese W. Stipes

Jack C. Straley

John M. Wright

Hon. Thomas C. Yeotis

The luncheon is free to sustaining members; \$10 for member reservations made in advance; and \$15 for walk-ins and non-members. Please join us at noon at the Masonic Temple..



# Valuing S-Corporations and the Federal Income Tax Dilemma

By John W. Haag, CPA, CVA

**W**ould your clients pay 35 percent more for an S-Corporation versus a C-Corporation? Certain developments within the valuation industry indicate that the Internal Revenue Service (IRS) is expecting business appraisers to substantially increase the value of a company based solely on whether the company is an S-Corporation or a C-Corporation. As legal counsel, it is very important that you understand how your valuation experts are addressing this issue, and whether they have thoroughly supported their conclusion so that it can stand up against IRS inspection.

The income valuation approach requires the appraiser to estimate the benefit stream provided to an investor in the company, and then apply

a capitalization rate to that benefit stream. Appraisers will use either actual historical data to develop this benefit stream or, when available, a financial projection. For a regular corporation, the benefit stream will be either net income after federal income taxes or net cash flows after taxes. Since the corporation is required to pay income taxes before paying dividends to shareholders, the income taxes are a non-discretionary expense to the company. Therefore, it is generally accepted that the value of a regular C-Corporation business will be decreased by the fact that the company pays federal income taxes.

Who pays taxes in an S-Corporation, though? Not the company, but the shareholders. The company itself does not pay federal income taxes. As a pass-through entity, the income and deductions flow through to the individual shareholders who then pay taxes at their individual income tax rates. Therefore, is the IRS correct in believing that an S-Corporation should be worth more, since it does not have to pay taxes? Herein lies the core of the S-Corporation valuation debate to tax-affect or not to tax-affect.

Those who believe that S-Corporations should be valued on a before-tax basis cite that the company is not responsible for paying federal income taxes on income and therefore can distribute more earnings to its investors. In addition, dividends that the company pays to its investors are not taxable. These two facts are the core of the opposing argument to tax-affecting an S-Corporation. Other benefits offered to an S-Corporation are the preferential capital gain tax rates that apply to the sale of capital assets, and the increase in shareholder basis that results from an increase in the company's retained earnings. It is the IRS's opinion

that simply applying corporate tax rates to an S-Corporation significantly undervalues the company and does not take into consideration the favorable tax treatment of S-Corporations. They believe that these tax benefits should result in a premium being paid for an S-Corporation versus a C-Corporation.

Opposing the above argument

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**Certain developments within the valuation industry indicate that the Internal Revenue Service (IRS) is expecting business appraisers to substantially increase the value of a company based solely on whether the company is an S-Corporation or a C-Corporation.**

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are those who consider the restraints placed on S-Corporations. They believe that the value of a company's stock to an investor should be on an after-tax basis because it does not matter whether the company pays the tax or the investor does. The bottom line is that the taxes are being paid prior to the shareholder being entitled to the return. Some of the limitations that drive this argument are that an S-Corporation cannot have more than 100 shareholders, any foreign investors, corporate shareholders, or multiple classes of stock. This limits the S-Corporation's market, which some appraisers believe should discount the value of the company.

In response to the IRS's argument that the S-Corporation is not

*Continued on page 9*

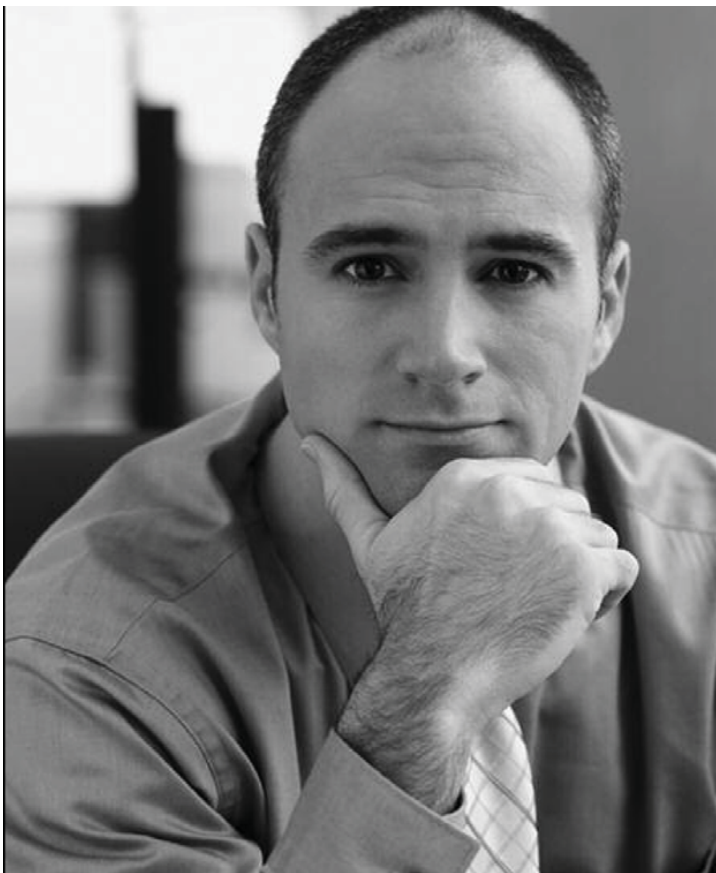
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responsible for federal income taxes and therefore should be worth more than a C-Corporation, appraisers might offer the following line of reasoning. The appraised value of a company is based on the value that is provided to each shareholder. Shareholders desire either a cash return or an appreciation in the value of their stock and base this return on what is available to them after taxes. Whether the company remits payment to the IRS or whether the investor does is irrelevant to the investor's definition of value. For a valuation that is prepared on the premise of fair market value, the potential investors, i.e., willing buyer(s), ultimately determine the value of the company. It would be illogical to think that the investor would pay a premium for stock in a company that requires that the same amount of tax dollars be paid, with the only difference being who remits the check, the company or the investor. Therefore, not tax-affecting the benefit stream in an S-Corporation would defy the intentions of a prudent and willing investor, and therefore will result in an overvalued company.

The old days of simply applying regular corporate tax rates to an S-Corporation value can result in serious problems upon IRS inspection. Both sides of the argument agree that there are both benefits and costs to being an S-Corporation. How these items affect the overall value of an S-Corporation is an important part of the business appraiser's overall conclusions and support. The facts and circumstances surrounding the specific valuation must be thoroughly considered when the appraiser determines how to treat federal income taxes in the valuation of an S-Corporation.

**Editor's Note:** John W. Haag, CPA, CVA, is accredited as a Certified Valuation Analyst with the National Association of Certified Valuation Analysts. He is a manager in the business consulting group in Yeo & Yeo, P.C.'s Midland office. Yeo & Yeo is the accounting firm for the GCBA and GCBF.

## Let's Journey Back

By Jack M. Wright

Come along with me, if you will, on a little journey back 60 years in time. What was the practice of law like for a lawyer in Flint, Michigan during 1947?

My pre-law college days at Michigan State College ended when I enlisted in the infantry in October 1942. After spending six months in Army hospitals recovering from a shrapnel wound, I received a medical discharge in April 1945.

Two months later, I enrolled at the University of Michigan Law School. (My wife worked to help get me through law school.) Two years later, when I could no longer walk because of my WWII shrapnel wound, I had spinal cord surgery and missed six weeks of law school in early 1947.

The Michigan Supreme Court ruled that combat veterans were eligible to take the bar exam while in their last semester of law school. I had just started my last semester, but still had to make up the six weeks and pass final exams because of my back surgery. I took the bar exam with a big bandage still on my back, without any review, in April 1947. I finished first in my class, probably because I was relaxed and fully expected to take the bar exam after I graduated from law school.

Although I did not do anything particularly remarkable in law school, I was no longer an immature, acquiescent student. I could not sit silently in class and listen to some 4-F law professor's views on the criminal atomic bombing of Japan. I explained my views bluntly.

I completed law school in two years and was sworn in as a 23-year-old attorney in front of Judge Philip Elliott on motion of John A. Wright, my father, who was dying from war wounds suffered in the D-Day invasion on Omaha Beach.

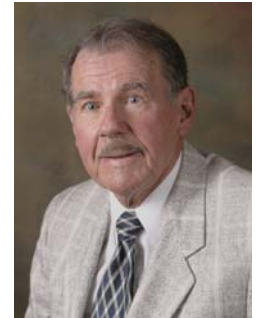
Many of the attorneys had just returned from the war, the residents of Flint were resuming pre-war living, and the factories were converting from tanks to cars. Like other veterans, the change from life as a combat infantry soldier to a civilian life was not easy. I sold my bicycle and bought my first car. I bought a dress hat to look more mature. It didn't help: I still looked like a paper boy wearing a funny hat.

The first years of law practice were especially difficult. Scratching out a living to support a wife and three boys was necessary. I fought the demons of WWII for several years. It took 12 years before I was able to play hardball in the city league again.

In 1947, Genesee County had three circuit judges (each with a clerk but no secretary), two probate judges, two Flint municipal judges, and four justices of the peace. Lawyers used the designation "Counselor at Law" on their signs and business cards. Nearly all Genesee County lawyers were general practitioners, doing everything from probate to divorce to criminal law. Attorney Bill Wumkes used to say, "Get me any kind of a big case and I'll become a specialist."



Jack M. Wright - then ...



... and now

Pleadings were much more simplified. Those great wasters of time, pre-trials, interrogatories, and depositions, had not been thought of. A trial date was assigned and the case was tried or settled on that date.

Copy machines, computers, air conditioners, calculators, dictation machines, and legal assistants had not been invented. Legal documents like wills, deeds, pleadings, and contracts were prepared by using non-erasable carbon paper on manual typewriters.

I shared office space in the Mott Building with two older lawyers and one secretary. Three attorneys constituted a big law firm in those days. It was rare for a young lawyer to be hired by a law firm.

My Flint Central high school typing class came in handy because I typed most of my wills, pleadings, etc. Thirty years later, I needed three legal assistants to handle all the new laws (red tape) sponsored by the State Bar committees.

Although the State Bar minimum fee schedule stressed the "minimum" aspects, there was an unwritten presumption that a charge of less than the minimum fee was a violation of the Canon of Professional Ethics.\* In fact, the 1966 opinion 302 of the Ethics Commission of the American Bar Association provided, "The

habitual charging of fees less than those established by the minimum fee schedule may be evidence of unethical conduct." Such habitual sub-charging amounted to advertising or solicitation of business: both were considered as grounds for Bar disciplinary action.

Telephone listings in the phone book had to be in small print. Because advertising was not permitted, it took a long time to build a practice based on client referrals. I bought 1,000 business cards – the only advertising permitted. At the end of the first year, only my sister and mother had accepted my cards. (I was impressed with myself but no one else was.) I threw away 998 cards and never replaced them or advertised since.

Because of the difficulty for young – or not so young – lawyers to make a living, many sought jobs in the Flint auto factories, at an insurance company, as school teachers, etc.

I began practicing under the Probate Code of 1939. There was no ICLE or "how to" books for new lawyers. Thank God for Probate Judge Frank MacAvinchey, who explained probate administration under the 1939 code in his book and his evening classes. Every young lawyer needed a mentor. I had a good one in Dale Andrews.

All probate fiduciary and attorney

fees were determined by order of Judge MacAvinchey, which explained why there frequently was a long line of attorneys waiting in line to obtain his signature.

Then came the Revised Probate Code on July 1, 1979, followed by the Estates and Protected Individuals Code on April 1, 2000 and, of course, a new batch of Supreme Court Rules each year. Most Bar committees feel compelled to revise/rewrite something.

Each new revision has been passed before I learned the last revised code.

There was no need to take a course in lawyer civility. Law was a proud and honorable profession. Most disputes were settled before commencement of court action – many during the noon hour at the Elks Club. Law schools had not started to crank out law students.

In 1947, there were 6,968 Michigan attorneys. In 2000, there were 34,275 Michigan attorneys. If the trend continues it will be necessary to have a separate telephone book just for lawyers.

By 1948, I was appointed assistant chief prosecuting attorney with an annual salary of \$3,600 and no benefits – less than I would have made in the factory.

Today, the practice of law barely qualifies as a profession in the eyes of the public. In fact, only President Bush and Congress rate lower than lawyers in public opinion polls. Being introduced as a lawyer these days always results in a lawyer joke. The profession is not what it once was.

\*Watch for Richard Ruhala's article on the minimum fee schedule in our next issue.

**Editor's Note:** Jack is the GCBA's senior-most practicing attorney and served as president from 1964-1965. His son, Craig, chairs the GCBA's Probate Committee.

## WALTER P. GRIFFIN

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# *GCBA 2008 Annual Meeting and Election of Officers Award Ceremony Honorees*

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Herbert A. Milliken, Jr.  
Civility Award presented  
to Linda L. Pylypiw by  
the Genesee County Bar  
Association



More than 125 members and guests attended the meeting



Pro Bono Attorney  
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President Brown gives outgoing board member  
John Greene a plaque



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(l-r) Ward Chapman, Don Rockwell, Judge Judith Fullerton, and Jeff Rocco



Back row (l-r): Judge  
Joseph Farah, Celeste  
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#### ***Private Trust Services***

**Stephens Wealth Mgt Group offers securities and investment advisory services exclusively through Raymond James Financial Services, Member NASD/SIPC**



**Sherri Stephens, President  
Wealth Manager, RJFS**

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Over **\$350 Million** under  
management

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Serving Businesses and Professionals  
for over 30 years.

- Named in Barron's in 2006 & 2007 as one of the "**Top 100 Women Financial Advisors**"
- In 2005 Research Magazine named Sherri as one of the "**Top-Ranked Advisors in America**"
- Named as one of the "**150 Best Financial Advisors for Doctors**" in 2004, 2005 & 2006 by Medical Economics

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