

July/August 2010

BARBEAT

Genesee County Bar Association



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2010-2011 GCBA President

Arthur Hurand: Lawyer, Medic, Businessman

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Table of Contents

- | | |
|--|-----------------------------|
| 4 An Optimist Looks Forward | by B.D. “Chris” Christenson |
| 5 Arthur Hurand: Lawyer, Medic
Businessman | by Roberta J.F. Wray |
| 6 Did You Know . . . ? | by Jeffrey D. Rocco |
| 6 Our Newest Members | |
| 8 Making an Exception to the Open
and Obvious Defense | by Edwin W. Jakeway |
| 9 Young Lawyers—You Have a Voice.
Use It! | by R. Paul Vance |
| 10 Meet Tina Burroughs, Our New
Executive Director | by Timothy H. Knecht |
| 11 The GCBA Wishes Farewell to
Ramona Sain | |

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An Optimist Looks Forard

By B.D. "Chris" Christenson, President

As my year as bar association president began I sat down and took stock of the present state of things. On paper things do not look good: the economy is doing poorly; the real estate market remains upside down; there is still a lot of violence in our area, etc. In our profession we suffer when the negatives pile up. More than a few of our local attorneys have relocated or changed their practices to cope. Some have even changed careers. It would be very easy to allow the negatives to seep in and consume a person.

As all of this soaked in I realized that there are many positives to consider. We have a resurgent downtown, a continually developing college community, new work coming to our remaining GM plants, and significant cultural assets. Our art institute and museums have world class traveling exhibits.

In these times of turbulence there is plenty of opportunity to reaffirm why we became lawyers in the first place and how this association can help. The legal profession is one of the cornerstones of any community. We can help provide a stable foundation that people rely on. The public expects us to carry out our duties and try to provide answers to the many problems of everyday life: the operation and management of their businesses, family and domestic relationships, the operation of our local municipalities, and criminal situations.

I indicated at the May membership meeting that our community is going through extremely difficult times. My sincere hope is that the legal community can show stability, consistency, and strength in order to help the whole community survive and thrive. I hope that by encouraging the committees

of the bar association to obtain more feedback from their section members the association as a whole can provide more and better programs and services so our members will be better equipped to help their clients.

The recent "meet and greet" session with committee chairpersons and the board of directors was a huge success, and I thank all who participated in that event. It is my hope that increased communication among Genesee County Bar Association members will provide us with greater opportunities to serve the general public in Genesee County. It is my goal to gain a better understanding of the issues facing the practitioners in this county and to learn what issues need to be addressed in order to benefit the association and the community. By working together we are going to prove that during a time of tremendous need this cornerstone is solid.



B.D. "Chris" Christenson

We began last year providing helpful seminars to the public on a wide range of topics. If you believe you have a good idea for a topic and/or are interested in participating, please feel free to contact us at the bar association. We are always open to suggestions. Please also keep in mind that if you have an idea for a fun social event or some other event that you believe would be a good fit for the bar association, forward those ideas to us as well.

Let us all do our part to make this a productive year while having some fun at the same time. It is an honor to serve as the Genesee County Bar Association President, and I look forward to a great year working with all of you.

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Arthur Hurand: Lawyer, Medic, Businessman

By Roberta J.F. Wray



Arthur Hurand

At 94 years of age, Arthur Hurand has become the most senior member of the Genesee County Bar Association, though Jack Wright is our oldest practicing member. Mr. Hurand still goes to his office every day, though he quips, "I go in later and later and am tolerated more and more." His membership in the GCBA predates our records.

Mr. Hurand graduated from Wayne State University Law School in 1940, passed the Michigan Bar Exam in 1941, and joined the Army for what was to be a one-year stint. That was just before the Japanese attacked Pearl Harbor on December 7, 1941. His military career immediately became open-ended, ultimately extending to 1945 and war's end.

One might think the young lawyer would have become a timely addition to the Judge Advocate General's staff. That might seem logical, but the Army had other needs at the time.

Mr. Hurand remembers defending a number of AWOL cases and an attempted murder, but his primary service was in the Medical Corps. After the U.S. entered World War II, there was a more urgent need for medics than for lawyers so the lawyer became a medic serving in the European/North African/Middle Eastern theaters. He wound up his service as a captain with administrative duties in the 81st Field Hospital.

Mr. Hurand's active practice of law never got going after the war. That fact enables him to joke, "I never lost a case." He says, "Anyone with a law degree and a feeling for people ought to practice. Why have all that training and not use it?"

In his own case, however, his return from the war meant returning to the family bakery business. Over the years he helped grow the now-long-gone Buttercup Bakery into an enterprise that included Dawn Donuts

and several real estate interests, among other things. There is no doubt that his law degree was helpful, if not essential, to his success.

The Flint native is a graduate of Northern High School. He is a life-long booster of the community, as indicated in this August 15, 2008, letter to the *Flint Journal*:

Staying positive is the key for Flint

Over the years I have written letters to the editor. Seldom do I send one. Most of them end up in the wastebasket. The articles I read from those who downgrade my city of Flint upset me and I write them mostly to vent my feelings.

This letter is a request from a 92-year-old guy [now 94] who thinks Flint is a very special place. Please continue to talk and write about the positive things about Flint. I won't go into all the assets, but you could use the Flint Cultural Center as a great starter.

Arthur Hurand
Flint

Mr. Hurand's success has permitted many philanthropic activities and membership on several boards of directors. He says he has maintained his membership in the GCBA because he admires what it stands for, and he numbers many of its members among his best friends.

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Did You Know . . .?

By Jeffrey D. Rocco, Treasurer,
Genesee County Bar Foundation

One of my duties as treasurer of the Genesee County Bar Foundation is to keep track of the assets in the various trust accounts. This spring I attended a seminar on the new Michigan Trust Code cosponsored by the Probate & Estate Planning Section of the State Bar of Michigan and the Institute of Continuing Legal Education. The cost of the seminar was reduced for attendees due to a grant from the MacGregor Trust Fund, a fund that has supported continuing education for years. My interest turned to learning more about the donor, and after some research, this is what I found.

The MacGregor Trust Fund is named after Court of Appeals Judge Louis D. MacGregor. Born in 1901 in Linden, Michigan, he was a farm boy who loved nature and the outdoors.

He taught school to work his way through the Detroit College of Law and came to Flint to practice in 1927. After more than 30 years of practice, he became a circuit judge and then a member of the Court of Appeals from 1964 until 1975, when he retired.

Judge MacGregor was a fisherman, hunter, and conservationist who lectured on his travels and outdoor sports. He died in 1993. It is through the generosity of his widow, Barbara MacGregor, that his legacy lives on.

In 1995, Mrs. MacGregor executed a trust with Citizens Bank whereby a portion of her estate was to be paid to the Genesee County Bar Foundation and set up as a fund known as the Louis D. MacGregor Fund. The gift was to provide continuing legal education for members of the Genesee County



Jeffrey D. Rocco

Bar Association. Following her death in 1998, \$300,000 was paid to the Bar Foundation, which entered into a revocable investment trust agreement with J P Morgan Chase Bank.

With the investment guidance of the staff in the bank trust department, the fund has helped pay for many educational seminars through the years. As of May 2010, it was worth \$373,834.32. I am grateful for the generosity of Judge and Mrs. MacGregor and appreciate the supervision of the Bar Foundation trustees.

Our Newest Members

Ryan Alexander Slep is originally from East Hartford, Connecticut. Now an Assistant Genesee County Prosecutor, Ryan is a graduate of Central Connecticut State University (2003), and of Thomas M. Cooley Law School (2009). Ryan says he always wanted to be in law enforcement and decided, while in college majoring in Criminology, that the best way to help protect society was as a prosecutor. He is a champion chess player, and loves racquetball and wrestling.



Ryan A. Slep

Ryan E. Decker is a Howell, Michigan, native. He obtained his BA in Criminal Justice from Western Michigan University and his JD from Thomas M. Cooley Law School, also in 2009. He says he has always been fascinated by the law. That, coupled with his desire to help others, motivated him to attend law school. He hopes to be his own boss someday with a successful general practice. Ryan is a "huge sports fan" rooting especially for the Detroit Tigers and Red Wings.



Ryan E. Decker



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Making an Exception to the Open and Obvious Defense

By Edwin W. Jakeway



Edwin W. Jakeway

Court decisions have removed the duty to use ordinary care to protect an invitee from a condition on the possessor's land and placed it firmly on the invitee by the (open and obvious) defense. All lawyers know the general rules. The exceptions, however, can make an otherwise difficult case a winner.

It is important to remember that the (open and obvious) defense can only be asserted by a possessor. If a delivery person negligently places a box in an aisle, his or her employer cannot assert the defense. A contractor or repair person who creates an unsafe condition may not properly plead that the condition was open and obvious to plaintiff. A governmental unit charged with a defective sidewalk cannot claim the open and obvious condition relieves it from its statutory duties. *Walker v City of Flint*, 213 Mich App 18, 22, 23 (1995) affirming the trial court decision of Judge Judith Fullerton.

The (open and obvious) defense came into prominence in *Riddle v McCloud*, 440 Mich 85 (1992). The historical basis of the doctrine is set forth in *Restatement of Torts*, 2d, Sec.

343A, which provides:

1) A possessor of land is not liable to his invitees for physical harm caused to them by an activity or condition on the land whose danger is known or obvious to them *unless the possessor should anticipate the harm despite such knowledge or obviousness.* (Emphasis mine).

I believe the courts have overlooked Comment (f) of the Restatement. Comment (f) provides an exception to the now established Michigan rule that a possessor of land has no duty to give warnings or take steps to safeguard invitees from conditions that are open and obvious.

Comment (f) of the *Restatement of Torts* 2d, 343A provides:

f. There are, however, cases in which the possessor of land can and should anticipate that the dangerous condition will cause physical harm to the invitee notwithstanding its known or obvious danger. In such cases the possessor is not relieved of the duty of reasonable care which he owes to the

invitee for his protection. This duty may require him to warn the invitee, or to take other reasonable steps to protect him, against the known or obvious condition or activity, if the possessor has reason to expect that the invitee will nevertheless suffer physical harm. Such reason may also arise where the possessor has reason to expect that the invitee will proceed to encounter the known or obvious danger because to a reasonable man in his position the advantages of doing so would outweigh the apparent risk. (Quoted in part).

The exception was followed in principle where a delivery man was previously told that a delivery could only be made at a particular location. Ice was present in that area. The plaintiff testified the icy condition that caused his fall was therefore effectively unavoidable. The premise owner denied the directive and asserted an alternative location was available. The Court held a question of fact precluded summary disposition. *Gregory Brown v Eastman Outdoors, Inc.*, Mich Court of Appeals, January 7, 2010, No. 286844, unpublished.

In a similar case, the Court noted an example discussed in *Lugo v Ameritech Corp.*, 464 Mich 512 (2001). The example indicated the floor of a commercial building where only the exit was covered with water presented a special aspect because it was effectively

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unavoidable and therefore an exception to the open and obvious condition.

In *Brousseau v Deyken Electric Corp.*, a mound of snow blocked the only entrance to a loading dock. The Court held:

Unlike many other conditions that are open and obvious, where a person could simply avoid the hazard by walking around it, there was no possibility in doing so in this case. Indeed, the jury could reasonably conclude based on the evidence presented that in order to make his deliveries, Plaintiff effectively had no choice but to drive over the mound. (*Brousseau v Deyken Electric Corp.*, Unpublished per curium, Court of Appeals, issued June 7, 2002 (Docket No. 225880), Lv. Den, 468, Mich 865 (2003).

Must a tenant who returns to his or her apartment after a day's work spend the night in a car or go to a motel rather than proceed across a slippery parking lot? Likewise, people required to be at work have no other reasonable choice than to proceed across an icy parking lot servicing an office complex.

A more rational and just approach would be to replace the (open and obvious) defense and restore the comparative negligence rule in premise liability cases. Removing the duty owed by a possessor to an invitee is unjust.

Harry Philo, a noted attorney, once said, "The law is not settled until it is settled correctly." I take solace in those words.

Young Lawyers— You have a voice. Use it!

By R. Paul Vance, Young Lawyer Delegate



R. Paul Vance

As the Genesee County Bar Association's Young Lawyer Section delegate, I attend the board of director's meetings on a monthly basis. At these meetings, I am the voice of the bar association's young lawyers (Note: you are a GCBA "young lawyer" if you are thirty-five years or younger and/or have been practicing for five years or less). In order to better serve the young lawyers and provide more meaningful participation at board meetings, I need to hear from the young lawyers. However, unless you are active in the bar, you may not know what issues or programs are pertinent to you.

Having a voice in the bar association starts with becoming more active. As the "young lawyers" of the GCBA we have the unique opportunity to help shape the direction of the bar association for many years to come. In order to lay the foundation for a successful future we need to become more involved today. Being active not only means showing up at cocktail hour but also volunteering your time for things like the holiday dinner, or participating in the golf outing, or serving on a committee. Being active in the bar means voicing your opinions, providing suggestions and letting me know what issues are important to you. You have a voice. Use it!

Participating in the bar association is the surest way to take some ownership and feel more connected to the legal community. You become a stakeholder, and your voice will be heard. By becoming more active you will be in a position to do something to make the changes you want to see. If you have an idea for a social event or would like to provide input on a current bar association program you have to speak up. You have a voice. Use it!

Active participation in the bar is also beneficial both professionally and socially. Participating in bar association events is an easy way to network and "get your name out there," and as an active member you will meet fellow attorneys outside the courtroom and form friendships that will last forever.

Each of us has joined the bar association for a reason. Being more active will help you see more of a return on your investment and make your experience as a bar member more enjoyable and worthwhile. Remember, you have a voice. Use it!

Editor's Note: E-mail Paul Vance at pvance@ccglawyers.com.

Meet Tina Burroughs, Our New Executive Director

By Timothy H. Knecht, Search Committee Chair



Tatilia Y. Burroughs

Please join me in welcoming Tatilia Y. Burroughs, fondly known as "Tina," as our new Executive Director. Tina comes to us with 12 years of experience working for and with the Genesee County Bar Association. She was the assistant to our former Executive Director, Ramona Sain. This long history of involvement with our bar association has allowed Tina to step into the job without missing a beat.

Tina grew up in the Flint area and is a lifelong resident of Genesee County. Tina's mother is employed by the Flint Board of Education and continually pressed her children, including Tina, to get an education and to strive for excellence. Tina brings excitement,

enthusiasm and a lot of knowledge to the position of Executive Director of the Genesee County Bar Association.

In 2003, Tina received her Bachelor's Degree in Business Administration from Baker College. She has been married for five years to Dion and they plan to start a family in the near future. Dion works for Genesee County Water and Waste Services. Tina and Dion recently bought a home in Grand Blanc. As a self-proclaimed HGTV fanatic, Tina, with lots of help from Dion, has been working on both the inside and outside of their new home.

While Tina has been working in the legal field since she was 15 years old, first answering telephones for then

attorney Ramona Roberts, the job of Executive Director of our bar association brings with it a new and different set of challenges and responsibilities. It is our job as members of the Bar Association to give Tina whatever assistance we can in performing her job so she can present the best possible image of lawyers in general, and of our members in particular, to the public. She is and will be our public spokesperson.

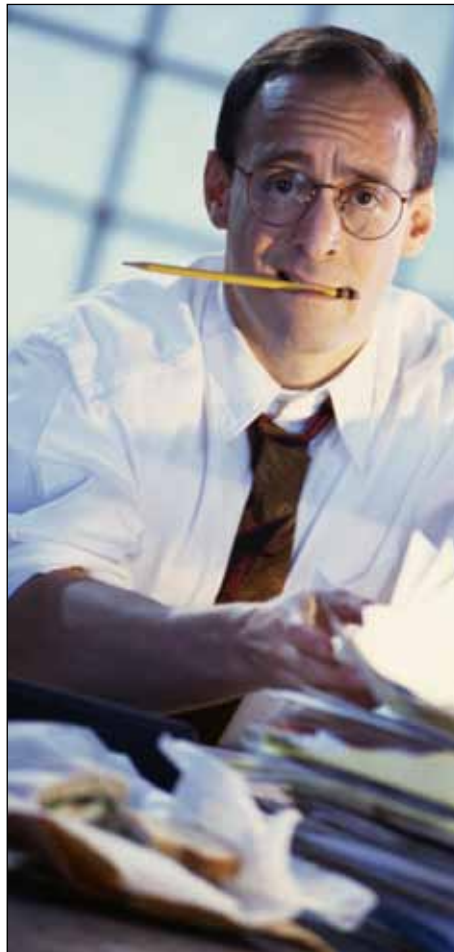
Please congratulate Tina on her new position.

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- October 18, 2010
- November 15, 2010
- January 24, 2011
- February 28, 2011
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- April 18, 2011
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The GCBA Wishes Farewell to Ramona Sain

On June 8, 2010, members gathered at the Buick Automotive Gallery and Research Center to wish Ramona Sain well on her new journey. Ramona dedicated 12 years of service to the GCBA/GCBF. Thanks to: Hon. Duncan Beagle; Michael Behm; Carl Bekofske; Sherri Belknap; Shayla Blankenship; Erin Blankenship; Jose Brown; Kurtis Brown; Kathy Buckley-O'Neill; B.D.

“Chris” Christenson; Francine Cullari; Christopher Ebbott; Walter Griffin; Jeffrey Himelhoch; Roger Isaac; Timothy Knecht; David Leyton; Erwin Meiers; Matthew Norwood; Tom Pabst; Patric & Suellen Parker; Joan Pierson; Susan Philpott Preketes; H. William Reising; Donald Rockwell; Timothy Ruwart & Ann Lossing; Sean Siebigerth; John Siler; Teresa

Schafer Sullivan; Lynne Taft; Douglas Theodoroff; James Wascha; Kendall Williams; and J.D. Winegarden, Jr. for sponsoring the evening.



- 1 Susan Philpott Preketes
- 2 Tina Burroughs, Star Estep, and Ramona Sain
- 3 Judges Judith Fullerton, Duncan Beagle, and M. Cathy Dowd
- 4 H. William Reising, Ramona Sain, and MaryAnn Reising
- 5 Richard Ruhala and Ramona Sain
- 6 Walter Griffin, Ramona Sain, and Timothy Knecht
- 7 Edward Henneke, David Leyton, and Ramona Sain
- 8 The Sain family



- 9 J.D. Winegarden, Jr. (left) and Timothy Ruwart (right) serenade the crowd
- 10



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