

BARBEAT

Genesee County Bar Association



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7th Circuit Court Specialized Business Court Docket
U.S. Department of Labor Adopts New Position on Summer Interns
2018 Amy K. Harris Criminal Law Seminar Sponsored by the Genesee County Bar Association
Good News about Driver Responsibility Fees!

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The GCBA Takes Washington, D.C. by Storm

By Hon Mark W. Latchana, President



Hon. Mark W. Latchana

Very early on Monday February 26, 2018, eight members of the Genesee County Bar Association embarked on the adventure of a lifetime. None other than Fred Meiers led us as we headed to Washington, DC to be sworn into the United States Supreme Court Bar. We were fortunate to be joined by several guests and family members. Our trip began with a 7 a.m. direct flight to Reagan National Airport, arriving in Washington at around 8:40. We all made our way to the hotel for an early check in. As we got comfortable with each other, conversations were shared and friendships formed. Before long we were headed to the United States Capitol.

Our group was treated to an informative, educational and enlightening tour of the Capitol Building. We came away with a new-found respect for the history of our great country and those who helped shape our system of government. While at the Capitol we were privileged to watch Michigan's own Senator Gary Peters deliver the traditional Washington's Farewell Address on the Senate Floor. The speech which dates from 1796, discusses the dangers of divisive politics and offers Washington's support for the constitutional form of government. After watching the address, our group, through the efforts of my wife Elizabeth, was granted a rare chance to meet personally with Senator Peters in his office. The Senator is a relative and friend, and was most kind and gracious.

Following our meeting we returned to the hotel before heading out as a group to a wonderful Georgetown restaurant for dinner. If you are ever in the neighborhood, Filomena is a great dining experience. We all came away more than happy with our meals. More importantly, we had the chance to break bread together and get to know each other in a way that just isn't possible when the competing interests of work and family are present.



Standing (L-R): Erwin F. Meiers, Tedd Bean, Hon. Mark W. Latchana, Brian Ogle, Mitchell Dembo, and Anthony Vance; Seated (L-R): Sherri Frame, Elizabeth Latchana, and Amanda Doyle

Tuesday morning bright and early, we arrived at the highest court in the land. After clearing security we had our official photograph taken and were briefed on what to expect. Two opinions of the court were being announced and two very interesting and nationally newsworthy arguments were scheduled for the day.

At the appointed hour we were taken to the courtroom and seated not more than 20 feet from the bench. With all the decorum and seriousness one would expect, court was opened and the Justices were seated. At the appropriate time Mr. Meiers stood before the Chief Justice and made the motion to admit us, reading each name individually. Hearing our names being placed on the record in the United States Supreme Court is something I, nor any of the other admittees, will ever forget. The arguments that followed were the highlight of the trip. The lawyers were skilled and the Justices were active in asking questions and offering opinions. The entire spectacle was all at once entertaining, informative and educational. We were watching jurisprudence being made before our very eyes. Later that same day we met as a group with Congressman Kildee. Despite a busy schedule, he too was gracious and generous with his time.

The rest of the trip flew by and Wednesday afternoon we boarded a plane to return to Michigan. I have no doubt

that every person on the trip came away with a newfound appreciation for our system of government and, in particular, our chosen profession, within the Judicial Branch. I encourage every member of our bar to take advantage of this incredible opportunity when you get the chance. A big thank you to Fred Meiers who acted as our chaperone and tour guide. I hope to fill his role next time around.

7th Circuit Court Specialized Business Court Docket

By Hon. Judith A. Fullerton



Hon. Judith A. Fullerton

Honorable Judith A. Fullerton is assigned to The Specialized Business Docket (SBD) which was implemented in Genesee County in 2013. The SBD handles all cases that include a business or commercial dispute under MCL 600.8031. All potential business court cases are prescreened by the legal division of the Genesee County Clerk's office. Cases appearing to meet SBD criteria are referred to Judge Fullerton for review and final acceptance into Business Court. (See Fig. 1).

forth by SCAO. As such, Judge Fullerton's office conducts a pre-trial telephone conference for all Specialized Business Court cases as quickly as possible after the answer to the complaint is filed. Dates are given to clearly establish a timeline for processing each case. Parties are asked if there is anything the court can offer to help parties move toward an early resolution of their case. Early Alternative Dispute Resolution is encouraged, and is, therefore, almost always ordered. A majority of cases are settled or dismissed prior to trial. (See Fig. 2).

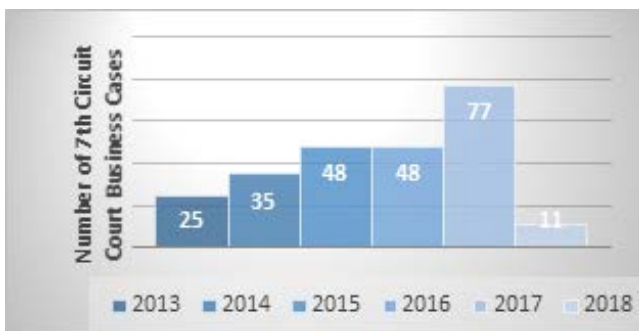


Fig. 1: From 2013 through February 2018, the 7th Circuit Court has seen a significant increase in the number of specialized Business Court cases.

The Michigan Supreme Court has established procedures for evaluating cases for Business Court (See Administrative Order 2013-6). A check box has been added to the Summons and Complaint Form MC 01 to identify a Business Court case. Court Rule 2.112(O) requires attorneys to verify on the face of the initial pleading that the case meets the statutory requirements to be assigned to the Business Court.

Effective October 11, 2017, two amendments to Michigan's Business Court Statute clarified the definitions and jurisdictional requirements under that statute for claims to be filed in the Business Court. The Legislature modified both MCL 600.8031 and 600.8035, which had the effect of adjusting Business Court jurisdiction through both expansion of power to hear certain claims (such as claims for equitable relief and claims against commercial loan guarantors); and a limitation of the power to hear other claims (such as claims between business enterprises that are not truly business disputes, claims between credit unions and their members, and claims for residential evictions and foreclosures).

The goal of the court is to expeditiously process Business Court cases while complying with standards set

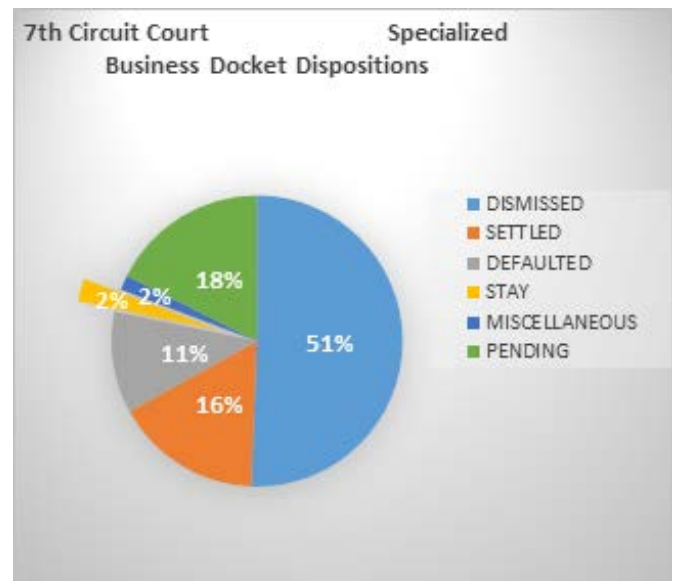


Fig. 2: Since 2013, 244 cases have been accepted into Business Court, with 42 in pending status.



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U.S. Department of Labor Adopts New Position on Summer Interns

By Gregory Meihn



Gregory Meihn

In 1967, guidelines were implemented to prevent the exploitation of unpaid interns “by using their free labor without providing them appreciable benefit in education or experience.” *Glatt v Fox Searchlight Pictures, Inc.*, 811 F.3rd 528 (2nd Cir. 2016).

Before 1967, internships were widely used by for-profit companies. Internships provided the employer a pool of workers to evaluate without running afoul of employment laws while having a person working for free and generating some value to the employer.

The value for the intern was exposure to the employer, real-life education and experience, class credit, and a possible future job offer.

The concept of interns and internships cuts deeply into the Federal Labor Standards Act (FLSA) foundational standard that requires “employers to pay all employees a specified minimum wage, and time and one-half for hours worked in excess of forty hours per week.” 29 U.S.C. Sections 206-207. Further, interns and internships run afoul of a second FLSA foundational standard that provides an employee cannot waive his right to the minimum wage and overtime pay because waiver “would nullify the purpose of the FLSA and thwart the legislative policies it was designed to effectuate.” *Barrentine v. Arkansas-Best Freight Sys. Inc.*, 450 U.S. 728 (1981).

The U.S. Department of Labor’s informal 1967 guidelines provided that an employment relationship *did not exist* if all of the following factors were satisfied:

1. The internship is similar to training which would be given in an educational environment.
2. The experience is for the benefit of the intern.
3. The intern does not displace regular employees, but works under close supervision of staff.
4. The employer derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded.
5. The intern is not necessarily entitled to a job at the conclusion of the internship.
6. The employer and intern understand that the intern is not entitled to wages.

Implementation of the six factors decreased, if not outright eliminated, the use of interns. Each determination was dependent on a case-by-case analysis. As a result, most employers eliminated interns to avoid the substantial expense of battling the DOL on the six factors which, some



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complained, were not interpreted or applied consistently.

On January 5, 2018, the DOL agreed to align its analysis of whether interns qualify as employees under the FLSA with the court ruling in *Glatt v Fox Searchlight Pictures, Inc.*, 811 F.3d 528 (2nd Cir. 2016). In *Glatt*, unpaid interns working on the Fox Searchlight-distributed film, *Black Swan*, and at Fox corporate offices in New York City, brought a class action lawsuit claiming they were employees. The facts of the case are very interesting and a must read, but are not relevant to this discussion. The 2nd Circuit Court of Appeals remanded the case to the district court regarding the applicability of the FLSA to the interns using the following non-exhaustive considerations.

The extent to which:

1. it is clearly understood the intern will not receive compensation;
2. the internship provides training that is similar to that given in an educational environment including hands-on-training;
3. the internship is tied a formal education program by integrated coursework or class credit;
4. the internship accommodates the intern's academic commitments by corresponding to the academic calendar;

5. the internship's duration is limited to the period in which the internship provides the intern with beneficial learning;
6. the intern's work complements, rather than displaces, work of paid employees;
7. the intern and employer understand the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Application of these seven factors requires weighing and balancing. "No one factor is dispositive and every factor need not point in the same direction for the Court to conclude that the intern is not an employee." *Glatt v Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 537 (2nd Cir. 2016).

How does this affect the use of interns by for-profit employers? The new seven-factor test in some ways provides clarity and in others ways is open to interpretation. While not all seven factors must be met, the DOL and courts must still engage in a balancing and weighing process to make such a determination.

The new test requires a case-by-case evaluation and is dependent on individual factual circumstances. However, it is logical and provides improved guidance for those desiring to get into the internship game.

2018 Amy K. Harris Criminal Law Seminar Sponsored by the Genesee County Bar Association

By Jessica R. Mainprize-Hajek

I am excited about this year's Amy K. Harris Criminal Law Seminar occurring May 10th and 11th at the Mott Community College Event Center! Sign up early for a discounted price and plan to be at the Event Center early as parking is often an issue. (\$1/card paid parking is available near the Event Center.)

As all Genesee County public defenders know, every year we are required to have continuing legal education credits to remain active on the public defender list. Public Defender Administrator Barbara Menear has been kind enough to allow Amy's Seminar to fulfill that continuing legal education requirement. The Michigan Indigent Defense Commission's Standard I also mandates attorneys to complete at least 12 hours of continuing legal education courses. See <http://michiganidc.gov/standards/>.



This year's topics include: the entertaining and educational Evidence Jeopardy as taught by the Honorable Joseph J. Farah; Sentencing Updates with Ann Yantus; Navigating MRE 404b Issues by APA Michael Tesner; and Witness Identification as presented by Danny Rose of the Michigan State Police. We will also have presentations regarding PSI's and sentencing mitigation, cell tower forensics, and collateral consequences of criminal convictions. Yet again we will have the benefit and assistance of the State Appellate Defender's Office. I look forward to seeing all criminal defense attorneys in attendance!

Good News about Driver Responsibility Fees!

By Roberta J.F.Wray



Roberta J.F. Wray

Fifteen years ago, the State of Michigan enacted a series of laws that were aimed at correcting driver behavior to reduce DWI and Reckless driving offenses and to plug a one billion dollar hole in the budget. Unfortunately the Driver Responsibility Fees that were attached fell primarily on lower income people who could not pay their traffic tickets, much less the driver responsibility fees.

Ten years ago, I wrote an article for *Bar Beat* that said, in part:

Over the (first) five fiscal years, from October 1, 2003, through September 30, 2008, \$775,465,700 has been assessed by the State of Michigan in driver responsibility fees. Only \$398,542,398, or slightly more than half, has actually been collected.

The uncollected amount continued to escalate, and the number of drivers without licenses mounted because they couldn't afford to pay the fees.

In 2009, after a 2008 Law Day Seminar sponsored by GCBA, the legislature started to change the driver responsibility fee structure. Four years ago it was announced that the fees would finally be phased out completely.

These statutes had changes:

MCL 257.732a, 257.304, 257.732D of the Motor Vehicle Code.

As of February 1, 2018, people who were enrolled in a payment plan have now had their outstanding fees and/or public service commitments forgiven and they are eligible to apply for the restoration of their driving privileges.

In addition, as of October 1, 2018, the driver responsibility fees will be forgiven for the remainder of the 345,000 drivers who have been unable to pay their outstanding fees. The amount of the unpaid fees is more than 600-million dollars. It is hoped that the result of getting rid of the onerous fees will help break the cycle of poverty that many felt was exacerbated by the imposition of the fees.

There are some conditions to getting relicensed, especially for those who have been unlicensed for more than four and a half years. A helpline has been established in the Treasury Department at 517-767-6424 and on-line at <http://www.michigan.gov/driverresponsibility> to help drivers figure out what they have to do.

Some of the unintended consequences of the acts were outlined in my 2008 article:

Little thought appears to have been given, before

its adoption in 2003, to the collateral damage that it might cause—damage such as increased unemployment rolls, welfare rolls, eligibility for food stamps and other aid, and loss of income tax revenues from those who might have been employed but for the lack of a valid driver's license either to *qualify them for a job* or to *get them to a job*.

After years of effort, beginning not long after the original measures were enacted, the impediments to employment for hundreds of thousands of Michigan residents are being removed.

Recently, the Michigan District Judges Association sent a thank you note to its members, recognizing their efforts in finally getting the Driver Responsibility Fees rescinded.

This is a great day for MDJA and for all of the people who still owe a DRF.

This would not have happened without a lot of hard work by a lot of District Judges and our lobbyists, GCSI. Thank you Marcia and Bob and we should not forget the work Nell did 4 years ago to phase out the DRF.

I think it would be appropriate to also thank former Senator and current Genesee County Clerk John Gleason and former state budget director Robert Emerson for helping get the ball rolling after our Law Day Seminar.



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<https://www.facebook.com/pages/Genesee-County-Bar-Association/142757561178>

February Membership Meeting



GCBA member and SBM president Don Rockwell addresses GCBA and congratulates the county's newest judge Hon. Celeste Bell.



Lunch with Larry

Members of the GCBA gathered at "Lunch with Larry, Robert, and the Temple Dining staff" in appreciation for extraordinary service and donations to the GCBF/GCBA Annual Community Holiday Dinner.



GCBA Volunteer Day at the Center for Hope Soup Kitchen

On Saturday February 17th our GCBA volunteers took time once again to help out at the Center for Hope Soup Kitchen located at St. Michael's Catholic Church in Flint. Center for Hope has recently been given a facelift and working in this new kitchen, serving meals to those in need, was an absolute joy. At least a hundred people came through the line where we served meatballs, macaroni and cheese, veggies, and salad. A little-known fact – Donna's Donuts donates their day-old supply so everyone also always gets a tasty treat! If you are looking to volunteer in a way that truly makes your heart grow, please join us for our next soup kitchen volunteer day, Saturday May 19th from 9:30am – 2pm! Sign up at www.gcbalaw.org.



Pictured: Brian Pickell, Michael Tesner, Jessica Hammon, Hon. Geoffrey Neithercut, and Constance Neithercut

John S. Beagle Scholarship Announced

Applications are being accepted for the John S. Beagle Scholarship established by the Genesee County Bar Foundation to assist students from Genesee County, Michigan with financial support while in their second or third level of law school. It is through the generosity of the late John S. Beagle and his family that the scholarship has been established.

John S. Beagle was a distinguished member of the Genesee County Bar Foundation and Genesee County Bar Association. He was affectionately known as "Legal Beagle," a man of irreproachable character and good will who had a passion for justice. He was also a man who recognized the

struggles of those less fortunate and thought that economics should not be a barrier to attending law school. Those fortunate enough to be the recipient of a John S. Beagle Scholarship will never have the opportunity to know this eminent attorney, but his memory will be embraced by those he helped.

A minimum scholarship of \$5,000 will be awarded. The application deadline is May 1, 2018. For those interested in learning more about the Genesee County Bar Foundation and the John S. Beagle Scholarship, information can be found at www.gcbalaw.org or by calling the Foundation at (810) 232-6000.

Barristers' Ball

The Barristers' Ball had a new twist this year . . . MURDER! During the evening of food, dancing and conversation, someone killed the host, a real estate developer played by Hon. Geoffrey Neithercut. It was up to the guests to find the culprit. All in good fun, the guests followed the

clues. They settled on Chris Christenson who played an architect and former business associate of the victim. The setting was the recently refurbished Capitol Theater. One wonders what the committee will come up with next year!



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