

May/June 2015

# BARBEAT

Genesee County Bar Association



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From Strength to Strength  
Another Hall of Fame Member: Jean P. Carl  
Achieving Success Under The New Expungement  
Laws  
Girls Court  
Mastering Criminal Defense  
Of Interest—

FORE!  
Thanks  
Who's on the Bench?  
Hon. M. Cathy Dowd, 68<sup>th</sup> District Court  
Scenes from Law Day 2015  
Law Day 2015

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# From Strength to Strength

By Jeffrey J. Himelhoch, President



Jeffrey J. Himelhoch

**T**hank you for giving me the opportunity and privilege to serve as President of our awesome organization. I would like everyone to get involved in the Bar Association. The more involved you become the more you'll realize what an excellent Association we have. There is always more we can do to better serve our members and to help the public. The following strengths of our Association continue to provide stability as we grow:

- A) A wonderful staff, Eileen Harris and Star Estep and an exceptional executive director, Tatilia Burroughs;
- B) Financial stability as we are close to paying off our mortgage;
- C) A strong committee structure that continues to educate our members and improve our image in the local community;
- D) Upgraded computers and software;
- E) An expanded list of veteran lawyers who are willing to mentor younger lawyers through emails and phone calls;
- F) Five hundred members whose dedication has shown through the years in putting on the Holiday Dinner. In addition, our members responded positively when asked to better our community as demonstrated by 178 packages of diapers for the diaper drive, 179 pounds of food, a \$500.00 check to the Genesee County Food Bank, and a project for Habitat for Humanity. I believe this is only the beginning. The Community Action Committee, chaired by Jessica Hammon, is planning new activities for next year;
- G) Long term commitment to continuing Law Day for high school students;

- H) Bar Foundation;
- I) A newly created attorney line to expedite filings for attorneys at the courthouse; (Thanks to Clerk John Gleason for making this happen.)
- J) Annual golf outing.

I would like to thank all of the committee chairpersons, the board of directors, and executive committee and our staff for helping our association have a great year. Special thanks to the Family Law Committee chaired by Barbara Dawes, the Bankruptcy Committee chaired by Sherri Belknap, and the Probate Committee chaired by Craig Wright, for providing exceptional seminars to our members. In addition, thanks to Judge Farah for his continued commitment of seminars on evidence and trial skills, the late Amy K. Harris for her ongoing criminal seminars and monthly Mastering Criminal Defense series, and Chadd O'Brien for chairing the Young Lawyers monthly Lunch N' Learn series. As always, our Bar Foundation was instrumental in helping us finance these seminars.

I am confident we are on the brink of doing an even better job in the future. The strength of our association has been built over several years and with the leadership of many of our members. Vice President Shayla Blankenship has done an exceptional job bringing in engaging speakers in this past year, and she will provide new creative ideas and opportunities in which our Bar members may involve themselves. As we move forward, let us stay positive, fight for justice and go from strength to strength.

## Another Hall of Fame Member: Jean P. Carl

By Roberta J.F. Wray

**T**he late Jean P. Carl, past president of the GCBA, was inducted into the Genesee Regional Women's Hall of Fame on April 22, by the Zonta Club of Flint.

Jean was the second female president of the GCBA, serving in 1992-1993. She was a 1968 graduate of Detroit College of Law (now Michigan State University College of Law). Her legal career began as an assistant prosecuting attorney for Genesee County where she eventually became chief assistant for the Civil Division.

Jean later served as managing attorney for GM/UAW Legal Services. As a volunteer she helped establish the YWCA Safe House for women and children who were

victims of domestic abuse.

She continued to be an advocate for children, serving on the Governor's Task Force on Children's Justice until her death at age 70 in 2006.

The Regional Hall of Fame award was presented to Jean's twin sister, Joan.

Jean joins the late Judge Elza Papp and Honorable Judith A. Fullerton as GCBA attorney members of the Hall of Fame. A permanent exhibition of the Regional Hall of Fame is housed at Sloan Museum.



Jean P. Carl

# Achieving Success Under The New Expungement Laws

By Amy K. Harris



Amy K. Harris

Second only to the question of whether they are going to jail, criminal clients want to know what will be on their record long-term. Effective January 12, 2015, the law governing expungements was expanded, and now more clients are eligible to clear their records. Previously, a person could have only one conviction in their lifetime unless they were minor misdemeanors. Additionally, a person used to be able to apply for expungement five years after their conviction or their release from incarceration. These provisions have changed, and a practitioner should understand the new laws to assist clients with being successful in expunging their records. MCL 780.621-623.

## Timing

An application may be filed five or more years after the last of these events:

- Sentencing Date;
- Completion of probation;
- Discharge from parole;
- Completion of imprisonment for the offense to be set aside.

The requirement that the five years does not begin to run until probation or parole is completed is new, and counsel must pay specific attention to it.

If a person filed a previous application to set aside this conviction, they may not file another petition on this conviction until 3 years after the previous denial, unless the denying court specifies an earlier date.

## Charges

What may be on the client's record – MCL 780.621:

- A person convicted of only one felony, and not more than 2 misdemeanors, may set aside the felony offense;
- A person with only 2 misdemeanors and no felonies may petition to set aside one or both misdemeanors;
- A person convicted of CSC 4<sup>th</sup> may apply to have that conviction set aside if they have no more than 2 minor misdemeanors. (The minor misdemeanor is one punishable by 90 days or less, and a maximum fine of \$1000.00, and the crime was committed when they were younger than 21 years old).

Special Rules for what counts as a misdemeanor or felony:

- A misdemeanor includes any crime that was deferred

and dismissed under either:

- The MIP deferral statute;
- Drug Court or Veterans Court;
- HYTA;
- Domestic Violence Deferral under 769.4a ;
- 7411 Status;
- Parental Kidnapping Deferral;
- Deferral by a health care professional for an alcohol violation;
- Any other deferral program substantially similar – (author's note: keep in mind that 771.1 may apply here).

- Please take note that some driving offenses, including driving while license suspended, are misdemeanors that may prevent a client from obtaining an expungement. You must ensure that the client does not have more than two of these misdemeanors before seeking to expunge a felony.

The following may not be expunged at all:

- A Life Offense;
- Attempt of a Life Offense;
- Child Abuse 2<sup>nd</sup> degree, or attempt thereof;
- Child Sexually Abusive Activities, or attempt thereof;
- CSC 2<sup>nd</sup>, CSC 3<sup>rd</sup>, or Assault with Intent to Commit CSC, or attempt thereof;
- CSC 4<sup>th</sup> committed after 1/12/15;
- A Traffic Offense, including alcohol driving violations;
- Felony Domestic Violence if there is a prior misdemeanor for domestic violence;
- Human Trafficking.\*

\*There is an exception for an offense that was committed as the result of being a victim of human trafficking. MCL 780.621 (4). An application under this section may be filed at any time after the conviction and multiple convictions under this section may be set aside.

The steps and substance of how to do an expungement will be provided in the next edition of *Bar Beat*.

# Girls Court

By Shelley R. Spivack

The commercial sexual exploitation of children (CSEC) and teens is a growing problem within Genesee County. In 2013, the Michigan Commission on Human Trafficking found that 40% of federally funded sex trafficking investigations involved the sexual exploitation of children. Of the 105 children ages 13-17 rescued nationally in a July 2013 sweep, the second largest number of victims was found in Southeast Michigan, including the city of Flint.

The girls most at risk for CSEC are those within the juvenile justice system as an overwhelming number of these girls report histories of multiple forms of trauma, including physical and sexual abuse. Their survival strategies, which include running away and drug use, often lead them to further victimization and involvement with the juvenile justice system. For example, it has been estimated that three out of four teens that run away from their homes will be sexually trafficked in the first 48 hours of their experience.

In order to address this growing problem, in January of 2015, the Honorable David J. Newblatt, Presiding Judge of the Genesee County Family Court, established "Girls Court." The first of its kind within the state of Michigan, "Girls Court" offers a specialized prevention docket designed to meet the unique and complex needs of adolescent females who are at risk for sexual and other forms of exploitation. Other "Girls Court" team members include defense attorney Karen Bunker from the Child Advocacy Team, Alicia Cook from Juvenile Probation, Referee Shelley Spivack, and Juvenile Section Court Administrator Diane Melton.

"Girls Court" holds monthly court review sessions and provides gender-specific and trauma-focused treatment, judicial monitoring, community supervision, and mentoring opportunities. Its primary purpose is to prevent the exploitation of children and address victimization, health, education and overall well-being.

Wedgewood Christian Services, which operates the Manasseh Project for victims of sexual trafficking, provides

individual, group, and family therapy for "Girls Court" participants. An educational specialist monitors school progress and assures that participants receive appropriate educational services.

A mentoring program created in partnership with the Women's Educational Center at UM-Flint meets monthly and provides Girls Court participants with social, recreational and educational activities and opportunities. "Girls Court" is also working with university researchers at Wayne State University and Cal State-Fullerton to develop and implement screening and evaluation methods.

Other community partners include: The Hagerman Foundation, The Community Foundation of Greater Flint, Genesee Health System, YWCA of Greater Flint, Genesee County Human Trafficking Task Force, DHS, and the Buckham/GVRC Share Art Project.

For more information contact: Diane Melton [dmelton@co.genesee.mi.us](mailto:dmelton@co.genesee.mi.us) or Shelley Spivack [sspivack@co.genesee.mi.us](mailto:sspivack@co.genesee.mi.us).



Shelley R. Spivack

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# Mastering Criminal Defense

An Educational Series Provided by the Criminal Law Committee

By Amy K. Harris

The Genesee County Bar Association's Criminal Law Committee presents an educational series entitled "Mastering Criminal Defense," on the third Wednesday of each month. This series grew from the belief that every attorney, no matter their experience and skill level, can benefit from an outlet to discuss ideas, find others who have similar issues, exchange materials, and generally freshen up their knowledge and skills.



The series began in November of 2014 and presents the information needed to defend a criminal case from the arraignment through the polling of the jury. We began with basic pleadings, the most recent session covered circuit court motions that may be filed. Attendees were presented with sample motions, and discussions centered on what motions are appropriate and how they are written and argued. At-

tendees asked questions about specific cases they have pending right now, what motions may be appropriate for the case, and what the other attendees thought of their strategy. Attendees also discussed in general what motions are appropriate and when.

The "Mastering Criminal Defense" series provides an opportunity for defense attorneys to be in a trusted environment, to exchange ideas, and to ask any question without hesitation. Attendees have ranged from brand new attorneys just learning how to defend a criminal case up through attorneys with thirty plus years of experience in criminal defense. It is the Committee's intention to present this series on a rolling basis, so defense attorneys will continue to have a venue in which to learn new information and discuss ideas and strategies.

This series is open to criminal defense attorneys with a positive attitude who desire to learn and discuss. It is presented through a generous grant from the Genesee County Bar Foundation MacGregor Fund. Please consider joining us next month!



Amy K. Harris

## Things We Learned at the April Membership Meeting

- Human Trafficking is the second fastest-growing crime problem in the United States.
- Human trafficking is happening in every part of Michigan.
- Largest concentration of human trafficking crimes is in Southeast Michigan.
- Michigan State Police were first to investigate and get conviction on Human Trafficking charge.
- Seven of ten women in prison were first arrested for prostitution.
- Persons who engage in human trafficking typically realize \$182,000 dollars a year per victim.
- Police and prosecutors are now looking at prostitution as a possible human trafficking problem.

**IN MEMORIAM** - As we were going to press, we were shocked to learn of the untimely death of Criminal Law Committee chair Amy K. Harris, age 34, whose many contributions to the GCBA include two articles in this issue of *Bar Beat*.

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An item from James Nevins, Director of Communications for the Supreme Court, appeared online in late April. It addresses the effectiveness of specialty courts of which we have a plethora in Genesee County. An excerpt follows.

**Specialty Courts Solve Problems, Save Lives and Money**

The report, *Solving Problems, Saving Lives*, . . . says that graduates of drug, sobriety, and mental health treatment courts are substantially less likely to commit another crime. These “problem-solving” courts divert offenders into special programs that provide the treatment and supervision offenders need to stay out of trouble. Avoiding incarceration also generates substantial savings for taxpayers and participants improve their employment status.

“Problem-solving courts are doing much more than solve problems. They are saving lives and saving money,” said Michigan Supreme Court Chief Justice Robert P. Young, Jr. “The outcomes prove beyond a reasonable doubt that problem-solving courts work.”

“Problem-solving courts are making a difference in the lives of families statewide,” said Justice Mary Beth Kelly. “Graduate by graduate, these courts are strengthening families and building stronger communities.”

For example, the *report* details that two years after admission to any type of drug court, graduates were 56 percent less likely to be convicted of any new offense. Other

highlights include:

- 50 percent of participants in drug courts improved their employment status.
- Participants in mental health courts were 63 percent less likely to be convicted of any new offense after two years.
- Participants in sobriety courts and adult district drug courts were 75 percent less likely to be convicted of any new offense after two years.
- 97 percent of juvenile drug court participants improved their education level.
- 98 percent of mental health court graduates improved their mental health.

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**The report, *Solving Problems, Saving Lives*, . . . says that graduates of drug, sobriety, and mental health treatment courts are substantially less likely to commit another crime.**

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Currently, Michigan leads the nation in the number of veterans’ courts with 22. Michigan’s 164 drug, sobriety, veterans, and mental health courts and other nontraditional courts are accessible to 97 percent of the state population.



**FORE!**

By Tony Tomaszewski

The GCBA Golf Committee, co-chaired by Bruce Leach and Tony Tomaszewski, is looking for your participation in a great way to wind up your week!

The 37<sup>th</sup> Annual Golf Outing is scheduled for Friday, June 19, 2015 at the Jewel of Grand Blanc, 5270 Perry Road.

Please recruit three of your BFFs and join us for the outing which is in a scramble format.

\$105 per golfer includes your golf, cart, driving range, continental breakfast, hot dogs at the turn and a buffet luncheon and awards ceremony. If you can only attend the buffet luncheon the cost is \$25.

There will also be door prizes, 50/50 drawing, and on-course games and prizes.

Once again, in conjunction with the golf outing we are participating in a food drive for the Food Bank of Eastern Michigan. Bring your donation of non-perishable food items to the course, or drop them off at the GCBA office or Legal Services of Eastern Michigan. Cash donations will also be accepted. Please help the Food Bank continue their mission while taking part in a fun event.

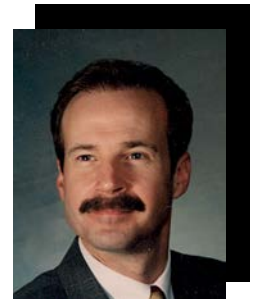
Sponsorships remain available for flags and tee or green signs.

Volunteers are always welcome!



# Thanks

By Craig L. Wright



Craig L. Wright

When I was first named Chairperson of the Genesee County Probate Committee, I set four goals for our committee. They were:

- (1) Conduct committee meetings on an informal basis to encourage member participation and group discussion;
- (2) Put on a seminar each year that addressed real, current concerns to probate practitioners;
- (3) Encourage participation by all bar members, attorneys and non-attorneys; and
- (4) Invite the Probate Court Judge, Court Administrator and staff so they would feel welcome and thereby establish an open line of communication with them as needed.

We have accomplished these goals. Much time and effort was devoted to these endeavors by many people. Thanks to the past seminar speakers, the Genesee County Probate Committee members, the GCBA office staff and the Genesee County Probate Court judges and staff. As

a result of our efforts, the probate seminars were some of the best that I have ever attended.

The Probate Committee also initiated a mentor program. Over the past several months, numerous inquiries were answered which I hope were of value to the recipients.

Although we accomplished a great deal, much remains to be addressed in the ever-changing practice of law. In particular, I am concerned by the deterioration of civility among attorneys and the vanishing of ethics. These topics will take a truly concerted effort to address.

These tasks must be left to others. Many of you remember my dad, John (Jack) Wright, who practiced law here for more than 67 years. I now wish to spend some extra time with him as he passes his 91<sup>st</sup> birthday. So, thanks for the opportunity I have had to serve the GCBA. I look forward to further service as time permits.

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## Welcome New Members

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## Who's on the Bench?

### Hon. M. Cathy Dowd, 68<sup>th</sup> District Court

By Roberta J.F. Wray

Appointed to the 68<sup>th</sup> District Court bench in 2008, M. Cathy Dowd had already gained 11 years' experience as the first attorney magistrate to serve in 67<sup>th</sup> District Court and had put in five years as assistant Flint City Attorney.

But her initial profession was as a teacher of Civics in the Niles public schools and "Mom" to two daughters and a son. She obtained her Bachelor's Degree in Political Science from Western Michigan and her Juris Doctor Cum Laude from Thomas M. Cooley Law School.

After some time in private practice she was chosen to serve as magistrate in the Flushing Division of 67<sup>th</sup> District Court, first with Judge Arthalu Lancaster and then with Judge Donald J. Rockwell.

Her initial appointment as 68<sup>th</sup> District Court Judge by then-Governor Jennifer Granholm came in the midst of serious budget issues for the City of Flint. She replaced Judge Ramona Roberts, who resigned in mid-term. Judge Dowd then stood for election in 2010 and won in a squeaker by 19 votes.

Her commitment to serving in what she called a "horrible economic situation" continues as she tries to balance "people's suffering" with the requirements of Michigan laws. The city's economic problems are a constant concern now as city and county work to combine the two

courts. Having worked extensively in both systems gives her an unique perspective on the problems of consolidation.

Judge Dowd says the most rewarding aspect of being a judge is "the number of people who come back year after year to visit and describe how she helped them turn their lives around." The most difficult part of the job is, "having to put people in jail. Maybe the person deserves it" she says, "but you have to think about the families and what it will do to them."

Another challenge for her is "setting bond," especially on young people, 18, 19, 20 year-olds. She says she looks at their family support systems, "how (the defendants) present themselves and their (sometimes cocky) attitudes."

In addition to her judicial duties, she's also "Grandma" to four grandchildren. Anyone who has ever been in an office occupied by Judge Dowd knows she "bleeds blue." Asked how she got "blue blood" in her veins when she went to Western Michigan, she says Michigan was just too close to home. And rooting for Sparty requires "extenuating circumstances."



Hon. M. Cathy Dowd

## Scenes from Law Day 2015





# Law Day 2015

By Sherri L. Belknap and Roberta J.F. Wray

Law Day 2015 recognized the 800th anniversary of the foundational document of English and American civil rights, *The Magna Carta*. In June 1215, King John and the nobility entered into *The Magna Carta* in order to avoid a civil war. In fact, it serves as the basis for the legal systems of Western Civilization. It is a document that leaders around the world have often cited for the proposition that “no man is above the law.” The GCBA observance gives us a chance to spread the word to 2-12 grade students in those schools where we could gain a presence.

In today’s high speed, high intensity, high tech world it may be that our young people don’t see the need to know about “all those dates,” but I wonder how many of them realize that even the *Bare Naked Ladies*, who wrote and sing the theme to *The Big Bang Theory*, recognize the importance of history in “unraveling the mystery that all started with the Big Bang.”

The annual Law Day observance shows that GCBA members through the GCBF (Bar Foundation) consider it important to invest in the study of the past and to help young people understand what brought us to where and who we are.

We have hosted lunch and sponsored, with the help of the courts, the annual mock trial demonstrations for more than 35 years

Law Day is also the time we recognize non-attorney members of the community who have had an impact on the way the law is perceived by the people of Flint and Genesee County.

In 1962, the GCBA presented the first Liberty Bell Award, which was developed by our Young Lawyers Section and later adopted by the American Bar Association. This year’s recipient was William S. White, of the Charles Stewart Mott Foundation, for leadership in education of young people locally and around the world. Kimberly Roberson accepted the plaque on his behalf.

This year’s Golden Apple Award went to Fredrek “Jim” Fuller, a teacher at Swartz Creek High School, who stepped up to be the Law Day sponsor for his students. Jim teaches math, history and Introduction to Law. His students also participate in Teen Jury and have been guests in various courtrooms to learn first hand about the legal system.

The newest award, given by the Genesee County Prosecutor, is the Crime Victim Advocate award. This year’s recipient is Ann Kita from the YWCA.

Ann’s professional career has been helping others as a foster care worker and as a caseworker for Friend of the Court. For the past 4 years Ann has worked as a Service

Coordinator and Crisis Counselor at the YWCA in the Domestic Violence Sexual Assault Services unit.

The award was presented on behalf of Prosecutor David Leyton “in recognition of her passion for helping others, her dedication to serving victims of domestic violence, and her other abilities and accomplishments.”



John Potbury, Ann Kita, and Randy Petrides



Fredrek “Jim” & Danielle Fuller



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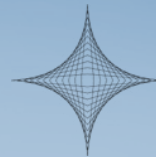
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