

May/June 2008

BARBLEAT

Genesee County Bar Association



The Birrell Golf Team

John Wade, Jack Birrell, Fran Wade, and Jeff Birrell. Read our member profile of Jeff Birrell on page 11.

A Man Named Arthur

Social Responsibility

Meet You on the Fairway

The Private Pond Dispute or How To Counsel Neighbors on the Use of Their Pond

The Impact of a Participant's Social Security Disability Award on the Alternate Payee

The Winegarden Letter

A Man Named Arthur

By Cynthia L. Carty

That rare moment on April 28, 2008, when Amanda and I stood before the Justices of the United States Supreme Court in Washington, D.C. was filled with a mother's hope that her daughter would feel strength, inspiration, and conviction in the fact that she lived in a time of limitless opportunity—a time when she could be or do anything she dared to dream. It was a moment I feel so fortunate to have shared with my daughter.

I had no idea that my favorite moment of the Washington, D.C. trip would be a chance meeting with a stranger named Arthur. On Saturday, Ramona had scheduled Arthur to be the group's tour guide of the Washington, D.C. monuments. He was an extraordinary historian who weaved the tale of history with great passion. He was no taller than my 10-year-old Amanda, and wore an orange outfit with a red, white, and blue baseball cap.

When we went to the Vietnam Women's Memorial, Arthur said he could "relate" to this monument because he had been shot in Vietnam. The monument portrays three women. One woman is looking to the sky for the helicopter, one woman is comforting a man, and the other woman is providing care to a wounded man. Arthur said he had been patched up and sent back out to fight. As he continued the tour to the next monument, Amanda caught up to him and asked him why he was sent back to fight when he was hurt. Arthur told her that he was the radioman...no one could afford to lose their

radioman because he was their connection to survival. He said that there were not enough men to fight and he had to get back out there as soon as he could. Arthur told her about the formation they walked in because the enemy wanted to kill the radioman – hoping to cut off their communication. He told her that there were many strategies for survival – such as never returning to a drop-off point. He explained that one day they were forced to return to the drop-off site and the enemy had laid mines. One of the men blew up and they all froze. Arthur said he shifted his weight and a mine exploded his leg.

Amanda continued to ask questions. Arthur continued to be candid. My husband and I followed behind the two of them – silently – so thankful that this man would share his experience.

The first my daughter ever learned about the Vietnam War was from a veteran – his name was Arthur.



Cynthia and Amanda



Arthur



**U.S. Supreme Court
Admissions Trip
to
Washington, D.C.**

Genesee County Bar Association

2007-2008 Board of Directors

PRESIDENT – Kurtis L.V. Brown
VICE PRESIDENT – David S. Leyton
TREASURER – Timothy H. Knecht
SECRETARY – Karen L. Folks
IMMEDIATE PAST PRESIDENT – Kraig S. Sippell

Specialty Bar Board Members

Young Lawyers Delegate – Anthony P. Vance
Mallory, VanDyne, Scott Bar – Trachelle C. Young
Women Lawyers Delegate – M. Cathy Dowd
Flint Trial Lawyers Representative – Michael J. Kelly

Board Members

John R. Greene '08	Dennis Lazar '08
Steven W. Moulton '08	James J. Wascha '08
Peter M. Bade '09	Erwin F. Meiers III '09
Lynne A. Taft '09	Bernhardt "Chris" Christenson '09
Shayla Blankenship '10	Orene Bryant '10
Ridley S. Nimmo II '10	Jermy R.M. Piper '10

Bar Beat Editor

LindaLee Massoud
BarBeat@gcbalaw.org

Genesee County Bar Association

315 E. Court St., Flint, Michigan 48502-1611
(810) 232-6012
For editorial information, call (810) 232-6000.

Published bimonthly by the State Bar of Michigan,
306 Townsend St., Lansing, MI 48933, for the
Genesee County Bar Association. For advertising,
call (517) 346-6315.

No material in *Bar Beat* reflects the opinion or endorsement of the
Genesee County Bar Association, unless otherwise stated.

Table of Contents

- | | |
|--|---|
| 2 A Man Named Arthur | by Cynthia L. Carty |
| 4 The View from Behind the Wheel | by Kurtis L.V. Brown |
| 5 Social Responsibility | by LindaLee Massoud |
| 5 Meet You on the Fairway | by Erwin F. Meiers III and
Susan Philpott Preketes |
| 5 Michigan Defense Trial Counsel 16th Annual Excellence in Defense Award | |
| 6 The Private Pond Dispute or How To Counsel Neighbors on the Use of Their Pond | by Linda S. Berker |
| 9 The Impact of a Participant's Social Security Disability Award on the Alternate Payee | by John Streby |
| 10 The Winegarden Letter | by J. Dallas Winegarden |
| 11 Member Profile of Jeff Birrell | by Ramona L. Sain |

Advertisers

Larry Day
Attorney/Mediator 3

Nan Ruth Chardoul
Personal Property Appraisals 4

Plante and Moran
CPAs/Business Advisors 5

Paul Goebel Group
Insurance 8

Glenn M. Simmington
Cline, Cline & Griffin 10

Yeo & Yeo
Accountants and Business Consultants 11

Stephens Wealth Management Group
Investment Consultants back cover



Larry Day

Attorney & Mediator

(810) 603-3400

www.mediationday.com

MEDIATION SERVICES

(General Civil and Domestic Relations)

- ❖ **Mediation Training**—Harvard University, Nova University, State Bar of Michigan and ICLE (General Civil and Domestic Relations)
- ❖ **Experience**—Practicing mediator since 1995, and practicing lawyer for more than 30 years
- ❖ **Chairperson**—Genesee County Circuit Court Civil Mediation Committee, 2004-2005
- ❖ **Presentations**—"Preparing Yourself and Your Client for Facilitative Mediation," ADR Section, State Bar of Michigan, July 2000; "ADR," Saginaw Valley Adjusters Association, March 1996; "ADR Seminar," Genesee County Bar Association, September 1995
- ❖ **Publications**—"Private Mediation," *Bar Beat*, July 1995; "Facilitative Mediation," April 1996 and "Michigan Mediation Update," June 2004, *Michigan Lawyers Weekly*

The View from Behind the Wheel

It's Been a Memorable Ride

By Kurtis L.V. Brown, President

It hardly seems possible, but I am informed that this is my last column as your president. It seems like just yesterday, or at most last week, that I was preparing to begin my memorable, year-long ride as your president. At the beginning of my term as GCBA president, I spoke of both the amazing list of prior GCBA presidents and the historically amazing accomplishments made by our relatively small bar association. Events of the past year have not only given me an even greater appreciation for those who preceded me, but have also provided additional appreciation for both the members of our legal community and our GCBA as a whole. For example, to those among the past presidents who warned me a year ago that my time as president would fly by in a whirlwind, I

must confess that you were, and are, absolutely correct.

It is no secret that now is one of the most difficult times to earn a living in our chosen profession of lawyering. The ever-increasing economic stresses, both regionally and nationally, together with a fast-paced business world, make finding time for career, family, and oneself increasingly difficult. In spite of those difficulties, however, the members of the GCBA routinely meet every challenge presented them, and do not hesitate to help fellow lawyers and the community as a whole.

For example, when GCBA members and their clients faced a potentially difficult problem with sudden parking fee increases near the courthouses in downtown Flint, an ad-hoc committee of Jim Wascha, David Leyton, Fred Meiers, Tony Vance, and Kraig Sippell sprang into action. The result was a repeal of the parking fee ordinance and a commitment from area governmental bodies to work with the GCBA in drafting any new ordinance.

In addition, the Genesee County Bar Foundation has flourished as a result of the leadership of its president, Carl Bekofske, and its Board of Directors. More importantly, the generous donations of GCBA members like each of you have allowed the Bar Foundation to take increasingly broad steps to assist our legal community, improving both the availability and quality of seminars to GCBA members. With this support, and the work of GCBA committee chairs such as Shayla Blankenship (Family Law), Craig Wright (Probate Law), and Tony Vance (Criminal Law), we have had several exceptional seminars over this past year.

This year also saw an important anniversary for Law Day, a GCBA-sponsored tradition for area high school

students. For some, the word retirement means

slowing down and taking it easy. But for Law Day Chairperson Roberta Wray, it meant jumping into the extensive planning of the 50th Anniversary of Law Day, along with the GCBA office staff. The results were impressive, to say the least, and left us with perspectives on what has passed before us and the ongoing hope of even better Law Days to come.

At virtually the same time as Law Day, I had the distinct honor of working with our executive director, Ramona Sain, leading a fantastic group of area lawyers on a trip to Washington, D.C. The culmination of the trip was an appearance before the United States Supreme Court, with myself sponsoring these lawyers for admission to practice before the highest Court in our land. Thanks to Ramona's tireless and impeccable planning, the trip to Washington and the events leading up to our appearance in the Supreme Court went seamlessly. I want to thank those lawyers, and their families, who went to Washington, for allowing me the honor of sponsoring them for admission.

The Law Day activities by no means signaled a slow-down of GCBA events. Your GCBA staff, and the associated committees, have been working long hours to complete plans for the annual Golf Outing and the annual 5K Run for the BAR. Since I will NEVER be mistaken as either a golfer or a distance runner, I will not "endanger" either of these events with my own competitive participation. My lack of athletic ability should never be interpreted as a lack of support for



Kurtis L.V. Brown

Personal Property Appraisals of Grand Blanc

Professional Appraisals and Reports

Probate
Family Division
Insurance
Donation

Reports Critiqued, Methodolgy
Condition Reports written
Brokerage Services supplied
Estates Liquidated

Nan Ruth Chardoul
810-694-7153

International Society of Appraisers

American Society of Equine
Appraisers

Reports Written to Appraisal
Foundations Standards

Continued on page 7

THERE'S MORE WHERE THIS CAME FROM.

- Economic damages and expert testimony
- Business and intangible asset valuations
- Fraud and forensic accounting investigations
- Insurance claims (Business interruption and PIP)
- Employment and personal injury

Peggy Jury 810.767.5350
plantemoran.com



CPAs / Business Advisors

THRIVE.

Social Responsibility

By LindaLee Massoud, Editor



LindaLee Massoud

It is my honor and privilege to begin my second year as the editor of our *Bar Beat* magazine.

We are endeavoring to provide the legal community with a mix of legal and related articles that support the practice of law in Genesee County. I hope you will benefit from the topics we will include this year.

In a recent conversation with Jerry Winegarden, the topic of our social responsibility as lawyers came up. Sometimes we get so wrapped up in our daily calendars and caseloads that we forget the broader ethic that made many of us become attorneys in the first place. We are to be a watchdog for the public to ensure that the judicial system is, as much as possible, dispensing equal justice. As St. Augustine said, "In the absence of justice, what is sovereignty but organized robbery?"

In this issue, you will find another installment of *The Winegarden Letter*, an attempt by one of our own to address what he sees as inconsistencies in our justice system. Let us all renew our calling to recognize and promote justice for all.

Meet You on the Fairway

By Erwin F. Meiers III, Golf Committee Chair,
and Susan Philpott Preketes, Co-Chair

The GCBA's 35th Annual Golf Outing is Monday, June 9, 2008, at the Elks Club in Grand Blanc Township, with shotgun start at 1 p.m. We have slashed registration fees to an affordable rate of \$85 per person. Lunch and dinner are also included.

In years past, this was our largest attorney gathering. Because of the increasing number of golf outings and difficult economic times, attendance has fallen off. We plan to turn things around this year and have the best event in more than a decade.

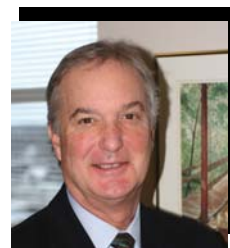
There is time to purchase a sponsorship sign, donate a door prize valued at \$25 or more, or both. Sponsors will be listed in *Notes N' News* and *Bar Beat*. Since this is our only fundraiser of the year, your support and generosity are appreciated!



Michigan Defense Trial Counsel 16th Annual Excellence in Defense Award

The Michigan Defense Trial Counsel honored Walter P. Griffin as one of two recipients of the Sixteenth Annual Excellence in Defense Award. Walt was honored at their Annual Awards Banquet in May.

The award was established by MDTC to honor civil defense counsel who have demonstrated superior professionalism and advocacy skills, and have contributed significantly to their communities and the defense trial bar.



Walter P. Griffin

The Private Pond Dispute or How To Counsel Neighbors on the Use of Their Pond

By Linda S. Berker



Linda S. Berker

Land owner A comes into your office. He explains that he and land owner B each have legal descriptions providing title to adjacent lots. Both lots are flooded by a pond. The lot lines are not disputed; use of the pond is. Land owner B has either fenced his lot line (right through a portion of the pond) or is otherwise preventing A from using the portion of the pond owned by B.

Does land owner A have the right to use the entire pond, including that portion owned by B? Does seasonal flooding therefore increase the area of B's land that A may use as a "riparian" owner? Could that flooding extend riparian use rights to B's back deck? Could those use rights extend to the lands of others? The answer to these questions is probably "no" and is dependent on the private or public character of the pond, whether a use easement exists, or whether A has been granted a right to use the entire pond by his deed or some other conveyance.

First, read A's deed. If A has a right to use the pond created by his deed, it must be expressed clearly in the document. The language of the deed will be strictly construed and enforced.

The question of whether a non-codified use easement exists is analyzed according to the traditional principles of adverse possession and acquiescence. To establish adverse possession, a claimant must show that his possession is actual, visible, open, notorious, exclusive, hostile under cover of claim or right, and continuous and uninterrupted for the statutory period of 15 years.¹

However, "mutual use or occupation of property with an owner's permission

is insufficient to establish adverse possession. Further, permissive use of property, regardless of the length of the use, will not result in an easement by prescription."² Cases of adverse possession are usually determined by a trial court after strict examination of the exact use, location of that use, and the character of the premises.³ Adverse possession in the absence of color of title can extend no farther than the boundaries of that land which is actually used and occupied for the statutory period for those claiming title.⁴

Therefore, for land owner A to establish a claim by adverse possession or a prescriptive easement over a portion of the pond, he must establish open, notorious, and hostile use for some continuous and uninterrupted statutory period of 15 years or more. This principle is better suited to maintain the right to use a particular duck hunting blind or other particular spot on the pond where some construction has been maintained by land owner A for the requisite 15-year period than to some sort of claim of occasional fishing or boating, which will probably not be sufficient to maintain a prescriptive use easement.

Public rights of fishing were created in a line of cases including *People v Horling*, 137 Mich 406 (1904) and *People v Conrad*, 125 Mich 1 (1900) and began as the right of the State of Michigan to enforce its fishing laws. These rights then expanded to provide the public with the right to fish as long as the public could access a particular lake by a navigable channel, and have now been contracted by the latest case holding on this point by the Michigan Supreme Court in the case of *Bott v Commission*

of Natural Resources, 415 Mich 45 (1982).

For land owner A to have a right to fish, boat, or use the entire pond, the pond must first be characterized as a water body having a public right of navigation.

The public right of navigation exists to all of the Great Lakes and to riparian owners of property bounded by inland water courses who own bottom land of the lake or stream to the centerline, as evidenced by their deeds.

On a lake on which a public right of navigation exists and where there are several riparian owners, they may use the surface of the whole lake for boating, swimming, and fishing and other similar riparian rights as long as they do not interfere with the reasonable use of the waters by other riparian owners.⁵

Absent the public right of navigation, the metes and bounds or lot line descriptions of the owners are the lines that convey the only existing use rights. Both parties may fence their portion of the pond. A change in the size of the pond, either addition by flooding or reduction by drought, does not affect the use rights of the parties.⁶ The right to fence the pond is only restricted by the rules and regulations of the Michigan Department of Natural Resources and the Michigan Department of Environmental Quality and federal and state rules and regulations protecting wetlands, water flows, and fish migration.

A's right to use the pond will depend on whether it is characterized as having a navigable or non-navigable access. This issue is defined by the

Supreme Court's decision in *Bott v Commission of Natural Resources*, 415 Mich 45 (1982). In that case, the Supreme Court ruled that a recreational boating test could not be substituted for the log flotation test to determine navigability and that the recreational use permitted in navigable waters should be defined only as a public right to fish and not as the public rights to make use of the lake's surface for navigation, fishing, and recreational uses on inland lakes. In that case, the Court held that since the creeks, which provided access to a 35-acre lake, were too shallow to permit the flotation of logs, the creeks were therefore not navigable, and the waters of the 35-acre lake, otherwise surrounded by private property, were not navigable and not subject to public access. The creek deemed to be non-navigable in the *Bott* case is a natural channel 240 feet in length, varying in width from 100 at its widest point to 15' at its narrowest point, with an average depth of water of approximately 2'. This channel is deemed boatable by small or motor propelled craft, but non-navigable.

If the pond on A & B's land has no "navigable" access, A's use should only extend to his lot lines and no farther.

Endnotes

1. *West Michigan Dock v Lakeland Investments*, 210 Mich App 505 (1995) page 511.
2. *West Michigan Dock v Lakeland Investments*, 210 Mich App 505 (1995) page 511.
3. *Burns v Foster*, 348 Mich 8 (1957) at page 15, citing *Barley v Fisher*, 267 Mich 450.
4. *Rozmarek v Plamondon*, 419 Mich 287 (1984) at page 296.
5. *Pierce v Riley*, 81 Mich App 39, 45, 264 N.W.2d 110 (1978).
6. *Winans v Willetts*, 197 Mich 512 (1917); *Giddings v Rogalewski*, 158 N.W. 951 (1915).

The View . . .

continued from page 4

either event, however. To the contrary, each event is critical to the financial health of our bar association. Besides, they are quite a bit of fun to attend, even as a spectator or volunteer.

None of these accomplishments would be possible without the assistance of the dynamic GCBA Executive Committee, including Kraig Sippell, David Leyton, Tim Knecht, and Karen Folks. I owe them thanks for all their efforts, time, and work, but each of you should thank them as well for their work on your behalf. In addition, my job has been made considerably easier because of the input, opinions, and help of the Board of Directors as a whole. This year has seen some of the most interesting and active Board meetings in recent memory.

My most important thank-yous get saved for last. At the outset, my wife and my boys have tolerated yet another interruption into our family schedule without grumbling or complaint, but a large part of the reason for that lack of difficulty must be credited to Ramona, and her staff Tina and Star. Rarely have I

seen a team of individuals accomplish so much with largely fixed resources, or happily take on whatever tasks are presented, regardless of the complexity or the time involved. Not only do I owe them a tremendous debt of thanks, but you, as our members, do as well. Suffice it to say that our association's accomplishments this past year would have been a practical impossibility without their hard work.

Now it is time for me to pass the (literal) "Spoon of Power" on to our vice president, Prosecutor David Leyton. I am confident that he will receive the GCBA's literal symbol of power and leadership, the GCBA Spoon of Power, well and that he will provide our organization with an even better mantle of leadership in the year to come.

Thank you to each and every one of you for your support over this past year. I hope the summer months bring you time to spend with your family and friends as well as time to get in some much-needed relaxation for yourself. No doubt, I will see many of you on the roadways and waterways of our community.

Dear Friends:

Thank you for your support and contributions to Access to Justice in honor of the 24 Genesee County attorneys who have defended our constitutional freedoms for half a century. The reception at the Flint Golf Club on April 1 was a wonderful success, with Justice Marilyn Kelly as our keynote speaker.

Special appreciation must be given to the women who organized the event: Linda Pohly, administrator of the Centennial American Inn of Court; Ramona Sain, executive director of GCBA; Linda Rexer, executive director of the Michigan State Bar Foundation (MSBF); Celee Battisfore of the MSBF; and Susan Oudsema of the State Bar of Michigan.

*Francine Cullari
Chairperson, Civil Liberties
Reception*



First Row (sitting down, l-r) Glenn M. Simmington, Carl L. Bekofske, Max Dean, Robert L. Segar, and Henry M. Hanflik

Second row (standing l-r) Linda L. Pylypiw, J. Dallas Winegarden, Jr., Peter E. Goodstein, Gregory T. Gibbs, Victor L. Galea, Sr., Kirk M. Liebengood, Jeanmarie Miller, Richard Ponsetto, and Orene Bryant

Not photographed Daniel Bremer, Marvin L. Failer, Hon. Paul V. Gadola, Muna Jondy, S. Olof Karlstrom, Edward H. Powers, C. Frederick Robinson, Shelley R. Spivack, Barry A. Wolf, and Dean T. Yeotis



MyBlueSM

My Life, My Health Plan

It's your life. Choose your health plan.

Welcome to MyBlue, Blue Cross Blue Shield of Michigan's new suite of individual health plans.

MyBlue offers the quality benefits, flexibility and valuable services you've come to expect from Michigan's most trusted name in health care.

Choose from our MyBlue plans, designed to meet your needs and fit your budget, at any stage of your life.

Individual Care BlueSM

Comprehensive plan for you and your family

Value BlueSM

Basic health coverage with low monthly premiums

Young Adult BlueSM

Basic health coverage for young adults, age 19 to 30

Flexible BlueSM

Combine a comprehensive health plan with a tax-advantaged health savings account



**Call Paul Goebel Group at
(800) 632-4591 for MyBlue information.**

Blue Cross Blue Shield of Michigan is a nonprofit corporation and independent licensee of the Blue Cross and Blue Shield Association.

The Impact of a Participant's Social Security Disability Award on the Alternate Payee

By John Streby



John Streby

For me, there is no greater source of frustration in the practice of law today than QDROs.

Dealing with the myriad of ways that QDROs issues can cause insomnia, malpractice, and grievance exposure is beyond the scope of the article. Instead, let me focus on a small, but significant, problem area.

Every General Motors and Delphi worker who retires on disability is required, under the terms of the UAW Collective Bargaining Agreement, to apply for Social Security Disability benefits. The pendency of such an application does not reduce the retiree's pension benefits, but if an award of disability benefits is made, the retiree becomes obliged to repay Fidelity for the amount representing the overpayment during the period in question.

The problem arises when the retiree's former spouse is an alternate payee pursuant to a QDRO. This ex-wife (or ex-husband) will receive a double-whammy letter indicating that future benefits will be subject to not one, but two, separate reductions: one for the diminution in the participant's future benefits, and another to reimburse the overpayment arising during the pendency of the participant's application for Social Security.

As attorneys, it is part of our job to anticipate possibilities that our clients would not think of, and to act pre-emptively to avoid harm to them. Given the frequency of disabling injuries and long-term medical conditions among industrial workers, it behooves those who represent their spouses to seek a means within the judgment that will provide redress.

I am urging my colleagues in both the bench and bar to consider the

following clauses:

RESERVATION FOR FURTHER RELIEF: In the event that the Defendant shall receive an award of Social Security benefits prior to the age of 62, and such award results in a reduction of the Plaintiff's payments as the Alternate Payee of the Defendant's GM/Delphi pension, the Defendant shall be obliged to hold the Plaintiff HARMLESS with respect to any reduction in [her] Alternate Payee's benefits resulting from the Social Security award, both prospective and retroactive. To the extent necessary to make such reimbursement, the Defendant shall be deemed to hold any lump sums and monthly benefits in trust for the benefit of the Plaintiff. The Defendant shall be obliged, even in the absence of a formal amendment to the QDRO and/or the Judgment of Divorce, to make such reimbursement as soon as the correct amount is known. In the event that the Defendant fails or refuses to make such reimbursement, and the Plaintiff incurs legal expense in securing relief from this court, the Court shall assess reasonable attorney fees to the Plaintiff, the amount of which shall be payable immediately or, failing that, be prorated over a 12 month period and added to the amount to be received by the Plaintiff, as alternate Payee of the Defendant's pension. In the event that the reimbursement is not made immediately, but made over a 12-month period, [7%] annual interest on the unpaid balance shall be added. In this provision, the term "immediately" shall mean the preparation and delivery (either personally or by means of deposit into the U.S. mail or private delivery service (UPS, Federal Express) within two business days after the payment is received. Any costs or legal fees associated with enforcement of this provision shall be borne by the

nonperforming party and paid forthwith or reduced to a money judgment in favor of the injured party, enforceable within this proceeding by way of garnishment or execution. Any sums paid to the Plaintiff hereunder shall not be deemed alimony, but shall be treated for all purposes as part of the property settlement.

IT IS FURTHER ORDERED that whenever both parties have begun to receive Social Security benefits, the party receiving the greater sum shall pay an amount to the other party in an amount sufficient to equalize the parties' incomes from that source, without regard for other sources of income. This does not constitute alimony, but may be the subject of an income withholding order at the appropriate time.

Commentary: For these provisions to gain general acceptance, it will require aggressive advocacy by the domestic relations bar and the active support of our judges.

When we, as advocates and jurists, fail to assure that important elements of a property settlement are carried out in a manner consistent with the parties' intent, we are rewarding legal gamesmanship and shifting the burden of supporting middle-aged women and men to family members, churches, charities, or the government.

It is my understanding that Social Security clauses are somewhat more commonplace in Oakland County, but many things are different there than they are here. Please share your thoughts with me at (810) 767-2700, Fax: (810) 767-3530, or johnstreby@sbcglobal.net.

The Winegarden Letter

By J. Dallas Winegarden



J. Dallas Winegarden

What an unprecedented disastrous year at the Michigan Supreme “Insurance” Court. It has been a turbulent year as the outright destruction of the judicial process proceeded, at race-car speed, with one outrageous opinion after another, which came forth from the majority of Michigan Supreme “insurance, big business” Court. The percentage keepers (Michigan Democratic Convention) have indicated that the courts have ruled a majority of the time in favor of big business and large corporations at the expense of the people of the state of Michigan.

They are train wrecking our civilization. For example, the majority of the Michigan Supreme Court has opined that blind people are supposed to see danger, and other people are to have eyes on the floor at all times (or, in one case, on the top of their heads). They have claimed that everything from a grape on the floor at a produce section to a low ceiling is open and obvious and, therefore, there is no duty owed to the injured individual. This effectively eliminates the possibility of a jury trial to many injured fall victims. What a travesty.

To collect on auto cases for pain

and suffering from a negligent/drunken driver, our hopeless majority has exclaimed that your entire life must be totally destroyed, changed, and ruined by this tortuous injury. This is ridiculous and absurd.

The legal drug lords (“drug manufacturers”) are immune to suit in only one state in the United States, the state of Michigan. Product liability suits are capped, and so severely limited, as to duty owed, that those cases of inherently dangerous products are becoming a thing of the past.

Killer road cases in Michigan are becoming a thing of the past. For example, this Supreme Court has held that traffic lights not on the roadways, improper signs, and sight distance problems, as well as anything else not directly on the roadway, are not considered a highway defect. These are real threats to the public.

The Michigan Supreme “Insurance” Court has enforced statutes of limitations, even when you do not even know who the defendants are because the murderer has not been caught. The victims of the infamous Flint Gate House murders case will feel the loss as they walk the earth because they were barred for not filing their suit

within three years—even though the perpetrator’s identity was

not known. How ridiculous! Who are they supposed to sue if they didn’t know who the perpetrator was for 25 years?!

Consumers are unprotected at every turn from dangerous products and medical negligence cases with statute of limitations against children who do not even have the legal capacity to sue. This is another outrageous standard of an outrageous, just say no Supreme Court.

Many outstanding lawyers will not even bring a medical malpractice case; it well could be walking legal malpractice because the rules seem to change monthly. An example is the technical “hoopjumping” imposed certifications of notaries in foreign jurisdiction.

The entire tort “deform” package of shame is really unconstitutional, as it was found in five other states. The Michigan Supreme “Insurance” Court has taken away proximate cause from the jury on many cases by using the term “direct cause.” Prosser (renowned author of *Prosser on Torts*) would roll in his grave with that shameful, nonsensical, application of the law.

This is not law; this is unabashed legal lynching of the rule of law by a Supreme Court that has stolen the rights of the people.

Editor’s Note: The opinions expressed in this editorial are those of the author and do not represent an authorized statement of the Genesee County Bar Association.

GLENN M. SIMMINGTON

Attorney at Law

Concentrating in Appellate Work, Civil and Criminal

With professional experience before the Michigan Supreme Court and Michigan Court of Appeals. Years of private successful appellate work, both as appellant and appellee. Member of the State Bar of Michigan Appellate Law Section, 1998 to present and Criminal Law Section, 1983 to present.

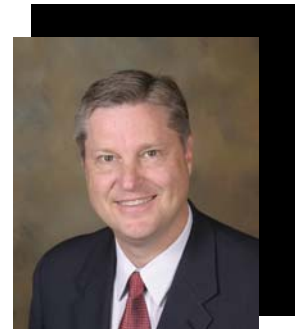
Contact Glenn M. Simmington at



810-232-3141 or 800-837-1973

Member Profile of Jeff Birrell

By Ramona L. Sain



Jeff Birrell

Why did you decide to become an attorney?

Watching "Perry Mason," "To Kill a Mockingbird," and "Anatomy of a Murder" when I was young made a career as an attorney attractive. As a freshman in college, an aptitude test suggested being an attorney, so I took a couple of business law classes and really liked them. I decided then to become an attorney. It was either that or work in a General Motors factory like most of my relatives and friends.

In what area(s) of law do you practice?

As a solo practitioner, I have a general practice, although most of my time is spent in the areas of family law, real estate, probate, and personal injury.

How has the law changed since you first began your practice?

In many regards, as much as things change, they really do stay the same. One significant change is fewer plaintiff

cases. In the past, one could make a living as a personal injury attorney. It is much different now. Another change, at times, is a reduction in professionalism. Some of this might stem from television programs and the expectations that attorneys should behave like those on TV.

What do you like best about being an attorney?

I really appreciate having a job where the duties vary day to day. No two days are ever the same. I also enjoy the intellectual challenges that come with being a solo practitioner and the ability to have a somewhat flexible schedule.

What part of being an attorney could you do without?

Trying to collect fees from clients, at times, can be difficult, particularly in tough economic times.

What words of advice could you offer to new lawyers?

I would advise a new lawyer to associate

with an experienced attorney mentor.

Clerkships are also a good way to get your feet wet. I clerked for judges and a law firm while in law school. Upon graduation, I clerked full time for Judge Latreille in Livingston County, which led to a two-year stint in the Livingston County Prosecutor's Office. If those types of jobs are available, I think it's a great way to get started.

Tell us about your life outside of the law.

I have been married 15 years to my wife, Kim, who recently took a new position with Genesys Hillside Clinic, running their intensive outpatient program. We have two children. Our 14-year-old daughter, Angie, is a high school freshman and enjoys dance, piano, snowboarding, swimming, and hanging out with friends. Our 12-year-old son, John, is in seventh grade and enjoys playing baseball, football, skateboarding, and snowboarding. I play as much golf as possible. Last summer, I managed my son's Little League baseball team and really enjoyed it, so I'm going to do it again this summer. I also serve the Grand Blanc Little League as vice president of the Minor League Division. I also love to play the guitar and since 2004, I have played in a six-piece Chicago-style blues band called Knucklehead. I also volunteer for the annual holiday dinner and often recruit my wife and kids, too.

Now the most pressing issue.

How tall are you?
6'5".

Editor's Note: Jeff is a member of the Family Law committee. He has also served on the GCBA Board of Directors.

Be on Target with Determining Value



Putting a price on a business is no easy task. Yeo & Yeo's experienced valuation specialists have the *training and credibility* to be the best advocates for your clients.

- Business Valuation
- Litigation Support
- Insurance Loss Accounting
- Estate & Gift Taxes
- Succession Planning
- Fraud Investigation

Flint Office

Alan Rohde, CPA, PFS
Rebecca Millsap, CPA

1-800-899-4742

Saginaw Office

David Schaeffer, CPA, ABV
Thomas Hollerback, CPA, DABFA

1-800-968-0010



YEO & YEO
CPAs & Business Consultants
www.yeolandyeo.com

Investing can be a challenge...

Finding a financial advisor who cares about you doesn't have to be.

STEPHENS WEALTH MGT GROUP

Investment Consultants

Guiding your Financial Success

5206 Gateway Centre, Ste 300
Flint, MI 48507
810-732-7411

www.stephenswealthmgtgroup.com

Comprehensive Financial Planning

- *fee based investment consulting*
 - *retirement solutions*
 - *insurance*
 - *estate planning*
 - *cash flow analysis*

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**

Over **\$350 Million** under
management

Serving Businesses and Professionals
for over 30 years.

- Named in Barron's in 2006 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

Genesee County Bar Association
315 East Court Street
Flint, Michigan 48502-1611

GCBA 5K Run for the BAR

Friday, June 13, 2008

Visit www.gcbalaw.org for more information

PRSRT STD
U.S. Postage
PAID
Flint, MI
Permit No. 125