

May/June 2017

BARBEAT

Genesee County Bar Association



Celebrating the 14th Amendment in the Year 2017
Dower Abolished In Michigan?
Fore!
The Way We Were –A Reflection of How the Personal Injury Practice has Changed in 50 Years
Asset Protection Trusts in Michigan

2017 Barristers' Ball
Arts in Detention: The 6th Annual
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Celebrating the 14th Amendment in the Year 2017

By Michael A. Kowalko, President



Michael A. Kowalko

This year's Law Day topic was the "14th Amendment," which became part of the United States Constitution in 1868.

Imagine life in America today without it. Imagine all of the things we now take for granted but which were once separated by race: drinking fountains, bathrooms, laundromats, movie theaters, restaurants, sports teams, club memberships, marriage, and, yes, even professional organizations. This is not to suggest that the racial divide in America has been overcome in the year 2017. The 14th Amendment was simply the beginning.



The 14th Amendment eventually put an end to this.

State laws, often called "Jim Crow" laws, heavily favored whites remaining in power and were upheld despite the 14th Amendment. Laws were also upheld which made blacks

have to guess the number of marbles in a jar to vote, for example, as were laws that allowed the massacre of blacks without punishment.

In 1896 the United States Supreme Court gave its blessing to the (nonsensical) "separate but equal" laws.¹ It took "only" 58 years for the United States Supreme Court, in

Brown v. Board of Education, 347 U.S. 483 (1954), to recognize that being separate is inherently unequal in America's school systems. In 1964, the Civil Rights Act gave real teeth to the effect of the 14th Amendment as applied in the *Brown* case. How? By denying school funding to those institutions that wanted to maintain segregation. As we all know by now, "Money talks...."

Having now pointed out the long and sometimes tortuous history of the 14th Amendment from 1868 to 2017, I believe the United States of America is still the best country in the world. Through evolving standards of decency and with the courageous help of brave citizens, lawyers and judges, this great country of ours is truly a land of opportunity. We, as attorneys and judges, must therefore remain forever vigilant to do our part to carry out the spirit of our great Constitution, especially as provided in the 14th Amendment, to continue to strive for "EQUAL protection under the law!"

Endnotes

- 1 Think about this one famous example for a moment: When the great Jesse Owens won Olympic Gold Medals, in order to attend the very celebration honoring him, he had to take the freight elevators in the back of the building instead of the white-only elevators that were in the main part of the building!

Dower Abolished In Michigan?

By Sherri L. Belknap

Governor Rick Snyder recently signed new legislation abolishing statutory and common law dower, part of Michigan law since 1787. Even though the statutory and common law dower has been abolished, it remains in the Michigan Constitution.

Michigan adopted dower in order to provide support for widows after the death of their husbands. At that time, women were not allowed to own property and the property owned by her husband was usually left to the

first-born son at his death. Dower provided a widow a one-third interest in all real estate owned by her husband at his death, for her lifetime. This allowed a widow to support herself and her family.

Since the mid-1800's women have been allowed to own property and the disparity in wealth between men and women lessened. In 1961, the Michigan constitutional



Sherri L. Belknap

convention debated whether dower was still necessary to support the widow. They concluded it was. Michigan Constitution, Article 10, §1 provided that “[d]ower may be relinquished or conveyed as provided by law.”

The debate over dower did not stop. In 1998, the Michigan legislature updated the probate code. At one point, dower was removed from the revised probate code but was ultimately retained. Under the Estate and Protected Individuals Code, a widow has three choices when her husband dies under Michigan law. A widow may elect to: (1) take pursuant to her husband’s will, (2) take her dower, or (3) take one-half of what the surviving spouse would have received had her husband died without a will reduced by one-half the value of any property she received from her husband as a transfer outside of the will.

In 2008, the Michigan Supreme Court continued the debate over dower in *In re Miltenberger*, 482 Mich 901, 753 NW2d 219 (2008). Even though it decided not to hear a case on whether dower was unconstitutional, two justices filed opinions. Justice Maura Corrigan opined that dower was justified because of the disparity of economic positions between widows and widowers in Michigan and still served a legitimate governmental purpose. Justice Michael Cavanagh disagreed and opined that it was unconstitutional. Further, he opined that the dower provision in the Michigan Constitution was merely a directive and not an endorsement of dower. These opinions are not binding law.

In 2010, the Court of Appeals published *Thomas v Dutkavich*, 290 Mich App 393, 406; 803 NW2d 352 (2010) which provided that Article 10, §1 of the Michigan Constitution “makes it clear that the drafters of the Michigan



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Constitution intended to recognize dower as a legitimate property interest.”

The three bills signed by Governor Snyder became effective April 6, 2017. With these bills, a widow no longer has an option to take her dower interest upon the death of her husband. Further, a wife will no longer be required to execute a deed or mortgage to relinquish her dower interest in property owned by the husband during the husband’s lifetime. These bills, however, do not amend the Michigan Constitution.

The impact of failing to amend the Michigan Constitution is unknown at this time. With most investments being held in assets other than real property, it is likely that the lack of amendment will not affect many Michiganders. It will impact those widows whose husbands had substantial real estate in comparison to other assets. I suspect it will be in these circumstances that the Courts will have to decide whether the Constitution must be amended in order to truly abolish dower.

Fore!

By Anthony Tomaszewski

That is a word often heard on a golf course but rarely in a courtroom. So get out of the courtroom and reserve your spot for the 39th Annual GCBA Golf Outing. This year it is to be held **Monday, June 12** at the Flint Golf Club. Registration is at 11 a.m. with a shotgun start at 1 p.m. The cost is \$125.00 per golfer and includes dinner and program/raffle following the event.

This is the CGBA’s largest fundraiser for the year so please come out and enjoy the day, the beautiful course, and the camaraderie of your fellow attorney-golfers. Last year 34 teams had a great afternoon break from motion day.

Once again we are partnering with the Food Bank of Eastern Michigan on a food drive. Look for baskets at the GCBA office, the 4th floor Attorney Lounge at Circuit Court, and Legal Services of Eastern Michigan. All donations are

appreciated: non-perishable food or cash.

Sign up today to support your Bar Association and the Food Bank of Eastern Michigan.

Flags, Tee signs and other sponsorship opportunities are available.

And as always, please visit and support our sponsors. They are listed in the monthly Notes N’ News.



Anthony Tomaszewski



Date: Monday, June 12, 2017

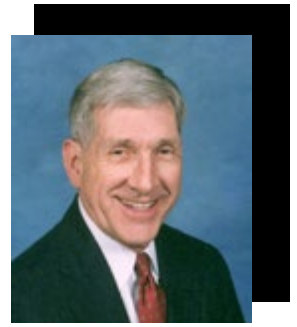
Location: Flint Golf Club

Registration: 11 a.m. **Shotgun start:** 1 p.m.

Cost: \$125 (per golfer, includes dinner, program, raffle following the event)

The Way We Were – A Reflection of How the Personal Injury Practice has Changed in 50 Years

By Edwin W. Jakeway



Edwin Jakeway

I have practiced law 55 years now. This is a sufficient period to reflect on what I want to believe is still a profession. Our legal system has always been subject to harsh reviews. Most people today like their lawyer or their brother-in-law who practices law but are guarded of lawyers in general.

In past years, Bar Ethics prohibited attorney advertising. Even having a shingle too large or a lighted sign was subject to criticism. Bold print in the telephone book was off limits. It could be that I am in the October of my years, and becoming too reflective. The *Shapiro v Kentucky Bar Association* case, 486 U.S. 466 (1988), brought changes not anticipated. It was thought by some that permitting advertising would help young lawyers get started.

Not satisfied with direct mailing, some attorneys have resorted to more aggressive measures. Contact has been made with auto accident victims by people holding themselves out as medical providers or “no fault helpers,” resulting in referrals to physicians and health care providers outside the community. I fear EMT personnel, hospital employees, and police officers have referred prospective clients expecting financial consideration. Finders or referral fees to non-lawyers are prohibited. (Rule 5.4 of Rules of Professional Conduct.) Hospital patients report frequent contact by attorneys and their representatives.

We all rely on family, friends and former clients for referrals. Michigan’s most recent statute prohibits sending letters to prospective clients for 30 days after a motor vehicle accident (MCLA 750.410b). The general solicitation statute, MCLA

750.410, remains in place. MCLA 600.919 voids an agreement to pay attorney fees in solicited cases. The Rules of Professional Conduct require lawyers to report violations to the Attorney Grievance Commission (Rule 8.3). We all should report ethical and statutory violations to limit prohibited practices. Personal solicitation of accident victims is not a protected First Amendment right. *Ohralik v Ohio State Bar Association*, 436 U.S. 447 (1978).

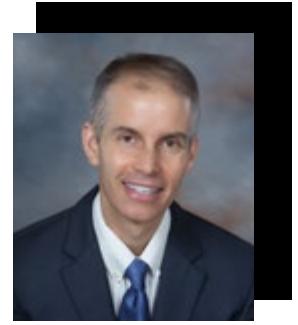
I believe that our State Bar should be more aggressive in discussing what it is doing to enforce the rules. Because the violations and unethical practices arise from some members of the plaintiff’s bar, both the State Bar of Michigan and the Michigan Association for Justice should be outspoken and critical of those practices. It is the conduct of that small faction, now increasing, that contaminates our civil system. Aggressive behavior by attorneys and their designated agents will result in legislation harmful to victims of injuries and will solely benefit insurance companies.

Unfortunately, Genesee County has become a target area for outsiders. The offensive conduct of some lawyers and No Fault medical referral companies will result in legislative efforts to limit access to the courts. If the access to our court system is restricted, as some have proposed, people will not become aware of the loss until it is too late. Lawyers must report each violation to the Attorney Grievance Commission and local prosecutors. Until those steps are taken the unethical practices will continue and increase.



Asset Protection Trusts in Michigan

By Brett A. Howell



Brett A. Howell

Imagine meeting with a client about creating a revocable inter-vivos trust. While you describe how the trust would work and its estate tax and probate avoidance advantages, the client explains he is a successful real estate developer and asks “would the trust protect me from lawsuits.” You explain it would not, but under a new Michigan law, such protection is now possible.

Until approximately 20 years ago, the laws in all states prohibited a person from establishing a domestic asset protection trust - a self-settled spendthrift trust where the grantor was also a named beneficiary. In 1997, Alaska and several other states enacted laws permitting individuals to create such trusts. Michigan residents desiring similar protection had to look to other jurisdictions for planning options without any assurance it was a viable strategy. Fortunately for some Michigan residents, Governor Snyder signed the Qualified Dispositions in Trust Act (QDTA) which permits domestic asset protection trusts (DAPT) to shield assets from creditors. On March 8, 2017 – the effective date of the law – Michigan became one of 17 states that permit DAPTs.¹

This new law is a game changer for asset protection planning. Residents who desire to protect a portion of their assets from creditor claims can legally do so while maintaining a beneficial interest in those assets. This is another tool in the estate planning attorney’s toolbox that can significantly benefit some clients with high liability exposure who have sufficient assets at risk (physicians, real estate developers, business owners, entrepreneurs, etc.) while also giving them ample resources to live on.

Advantages of a DAPT

Protection from creditors is a primary advantage of the DAPT. For a creditor claim that arises after a qualified disposition², the creditor must bring its claim within two years and prove its allegations by clear and convincing evidence. In addition, the transferor (defined as the person who conveys property to the DAPT) can retain significant beneficial interests in the trust property including the right to:

- a. direct investment decisions of the trust;
- b. veto distributions from the trust;
- c. exercise a special power of appointment by will or other written instrument effective only at transferor’s death;
- d. receive income from the trust including the rights to income retained by the trust;
- e. receive principal distributions from the trust at the discretion of the trustee or advisor under a discretionary or support provision;

- f. remove a trustee or advisor and appoint a new trustee or advisor; and
- g. after the transferor’s death, a qualified trustee can have the power to pay the transferor’s debts, estate administrative expenses or any estate or inheritance tax imposed on the transferor’s estate.

Disadvantages of a DAPT

Despite the ability to retain specific powers over the trust assets, a transferor must be prepared to give up control over the trust assets - *permanently*. The transferor cannot retain the right to amend or revoke the trust, serve as the qualified trustee, or direct that the assets of the DAPT be returned.

Marital Property

A DAPT can also benefit persons contemplating marriage who desire their assets not be at risk in the event of divorce. To be protected, the transfer of the assets to the DAPT should occur more than 30 days before the marriage. In addition, the parties can agree in writing that assets transferred to a DAPT within 30 days of the marriage are not marital property, MCL 700.1045(4)(b)(ii).

Conclusion

Michigan’s DAPT law – with its obvious MCL 700.1045(4)(b)(ii) – is so generous that some pundits are predicting it will bring trust work here from other states. Time will tell its full impact; however, there can be little doubt that a DAPT is a terrific planning option for certain clients. Estate planning attorneys need to familiarize themselves with this new law to help those clients who can benefit from its protections.

Endnotes

- 1 See 2016 Public Act 330 at MCL 700.1041 *et seq.* A companion law, 2016 PA 331 amends the Uniform Fraudulent Transfer Act to protect creditors against fraudulent creation of DAPTs.
- 2 A qualified disposition is defined as a disposition after which the subject property is: (a) owned by one or more trustees, at least one of whom is a qualified trustee; and (b) governed by a trust instrument under which the transferor has only rights, powers, and interests that are permitted under the Act. See MCL 700.1042(p). A disposition is not qualified if at the time of the disposition, the transferor is in arrears on child support by more than 30 days.

2017 Barristers' Ball

By Jessica Hammon



Jessica Hammon

The 2017 Barristers' Ball was held on February 25th at the Flint Institute of Arts. Once again the event was a huge success! Bar members and sponsors arrived dressed in style and following our "Venetian Masquerade" theme. Attendees played casino games, danced, and ate fabulous Venetian-themed food catered by Blackstone's Grill.

Lisa Teneyck, guest of sponsor Vehicle City Bail Bonds, was the lucky winner of the wine basket giveaway. Most importantly, we were able to donate \$695.58 to the Crim Community Education Program as well as provide additional monies to the GCBA general fund. Many thanks to all who attended, all who sponsored, and all who provided excellent service at this event.

A special thanks to the wonderful committee members Jade Edwards, Erica Edgington, and Andrea Rossi – all of whom put in hours of hard work to make this great event possible. Please make sure that you keep the February 2018 Barristers' Ball on your list of things "to do" – you won't want to miss what we have in store for you next year!

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Arts in Detention: The 6th Annual GVRC Share Art Exhibit

"Arts in Detention: The 6th Annual GVRC Share Art Exhibit" opened Friday evening April 14 at Buckham Gallery in downtown Flint to a crowd of over 450 visitors. The exhibit showcases works created by youth in visual arts, as well as poetry, dance, and theatre workshops taught by Buckham artist-members at Genesee County's youth detention facility, GVRC.

Featured in this year's exhibit are a number of large-scale mixed media works that gave the youth the opportunity to explore their own sense of creativity, while at the same time enhancing their ability to work collaboratively. Also on display are both small and large scale 3-D projects involving lighting and wiring, all done by the students themselves!

A new volume of poems and stories "HerStory: Unlocked," written by girls in the gender-based writing workshops, videos of dance and spoken word poetry performances at GVRC, and excerpts of writings from the "Shakespeare: Detained workshops," also make their debut in the exhibit.

For more information on the project visit Buckham Gallery's Facebook page and/or website: www.buckhamgallery.org, or contact Shelley Spivack at

sspivack@umflint.edu. Copies of "HerStory Unlocked" and matching T-Shirts are available at Buckham Gallery, 134 1/2 W. 2nd St. Flint.



Technophiles and Technophobes: The 21st Century Court Room

By Richard McNally



Richard McNally

Late in the 20th century trial lawyers graduated from blackboards to easels containing foamboards of exhibits or blown up photos. The 21st century has taken courtroom technology into a new realm.

On April 13, the Circuit Court administration introduced the technology advances that were recently installed in Judge Farah's double jury courtroom. The courtroom has undergone a remodeling which improves sight lines; for example, a witness can now be positioned to face the jury or the judge, depending on the type of trial.

The technology available to litigants has been vastly upgraded. Court technology coordinator Rob Gifford demonstrated some of the tools available in that courtroom. Several video terminals are positioned at counsel tables, as are inputs for audio/visual (A/V). Terminals are also placed before the judge, the witness and the podium. There is a huge video screen on the wall opposite the jury boxes. Sound amplification equipment is available for the hearing impaired, and the courtroom has the capability to take testimony from witnesses off-site.

The adjustable podium is equipped with an ELMO projector which allows counsel to place an exhibit on a horizontal flat bed for display to the Court and jury. Counsel or the witness can electronically draw on the exhibit, with different colors assigned to each participant. The podium has a DVD player for playback of video depositions, etc. The courtroom is also equipped with software that allows wireless projection from counsels' laptops and smartphones. Any A/V presentations can be preserved for the record.




These are just the principal tools that are available to litigants. Any counsel wishing to take advantage of the new technology must contact the Court Technology office at least one week before the proceeding to arrange individual training. The office may be reached at (810) 424-4436 or an email sent to courttechnology@7thcircuitcourt.com. Additional basic demonstrations have been scheduled; contact the Bar office. This technology is a valuable tool for persuasion in the courtroom, but in order for it to be used effectively, counsel will need to become familiar with the nuts and bolts of its operation.

Traveling This Summer?

While you are traveling this summer, remember that we would like to hear about your adventures! A short article with a picture or two would be appreciated. Contact Eileen at GCBA for submission procedures.



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Liberty Bell Awards

By Hon. Duncan M. Beagle

The Liberty Bell Award was established more than 40 years ago to recognize non-lawyers whose service strengthens the effectiveness of the American system of freedom under the law and encourages respect for the American legal system.

The individuals selected this year have outstanding leadership skills, understand the importance of collaboration and have the passion to address serious community issues.



Our first recipient is **Claire McClinton**. Claire was born and raised in Flint. She is a UAW retiree who comes from a family of auto-workers. She has been in the thick of the battle for labor and against poverty in her city for decades.

When Flint cut their water supply from Detroit in April 2014, in an effort to save money long before it was a national news story, residents in Flint were organizing and raising [cain] about the contaminated water. One of those individuals was Claire McClinton.

McClinton was upset that Flint City officials were saying the water was safe. She has led protests over the quality of water in front of Flint City Hall, along with other concerned citizens. She has been a panelist on several community programs educating the public about the water crisis.

She has strongly protested the 2011 Emergency Manager Law and has forcefully argued, “We don’t have just a water problem, we’ve got a problem of being stripped of our democracy as we’ve known it over the years.”



Our second honoree for the Liberty Bell this year is **Chris Flores**, currently the Vice President for Business Development with the Sacred Heart Rehabilitation Center. He is also Team Leader for Sacred Heart Outpatient and Medication Programming in the Flint area.

Flores has long been active in the health care field and in community affairs. He has been a member of the Hurley Medical Center Board of Managers since 1990.

Mr. Flores is a recognized leader in our community in addressing substance abuse issues at the local and state level; he is a go-to guy.

Among other things, Flores founded Community Recovery Services and successfully negotiated initial linkages to key referral sources within the region, resulting in the establishment of a networked, community-based outpatient substance abuse treatment system that meets the needs of at-risk adolescents, criminal justice clients and the uninsured community.

He also assembled and developed a clinical and administrative team of over 200 trained professionals who provide 7-day, 24-hour coverage in seven county areas. He designed and directed the creation of a specialized High Risk Pregnancy program for addicted mothers with a goal to reduce NICU days and improve outcomes.

He has been a strong supporter and adviser of specialized drug centers in our county. Flores continues to be passionate and outspoken as to the present drug crises.

2017 Crime Victim Advocate Award: Randall J. Petrides

By David J. Leyton, Genesee County Prosecutor

The selection process for the annual Crime Victim Advocate Award is always very difficult as there are so many deserving candidates. This year, however, the task was a little bit easier. There was no doubt I was going to select Randall J. Petrides, a man who has stood up for crime victims every day of his 38-year career of public service to the residents of Genesee County.



Randy left a big hole in the Genesee County Prosecutor’s Office when he decided to retire on March 31st after a long career of standing up for victim’s rights. And, although I was his boss, Randy was my mentor. He taught me about being a prosecutor, and the number one thing he always stressed was “remember the victim!” Standing up for victims was always his number one priority.

Randy is a lifelong resident of Genesee County who lived in Flint until a few years ago when he and his wife, Elizabeth, moved to Grand Blanc. He is a graduate of the old Holy Redeemer High school, the University of Michigan, and Notre Dame Law School. He has been married to Elizabeth for over 37 years and together they have 5 children and 10 grandchildren. His faith is very important to him, and Randy and Elizabeth are active members of Holy Family Catholic Church in Grand Blanc.

Randy joined the Genesee County Prosecutor's Office in 1979, and served four different prosecutors. Randy worked many of those years as a trial lawyer, trying over 100 cases before becoming a supervisor and then, for the last 12 years, my Chief Assistant.

Some noteworthy cases handled by Randy include:

- the murder of UM-Flint music professor Margaret Eby at the Ruth Mott Estate gatehouse;
- a racketeering case against the leaders of a local gang;
- and a rape case against one of the most notorious predatory rapists in this area.

Randy Petrides will certainly be missed in the Genesee County Prosecutor's Office. But his legacy of standing up for victims will remain long into the future.

Golden Apple Award—Mrs. Aisha Sherwood

By Griffin Blankenship



My name is Griffin Blankenship, and I am in fourth grade in Mrs. Sherwood's class and I am here to introduce her today.

Mrs. Sherwood graduated from the University of Michigan-Flint, and she is in her 19th year of teaching. She currently teaches the 3rd/4th grade STEM

class at Springview Elementary School in Flushing.

Mrs. Sherwood always encourages us to do our best and never give up on ourselves. Mrs. Sherwood's class is always fun and exciting. You never know what to expect. We are allowed to work at our own pace and work above our grade level. Being in Mrs. Sherwood's class is like being in the Magic School Bus class. I feel lucky to be in the STEM program and all my friends feel the same way.

For these reasons, and many more, Mrs. Sherwood deserves the Golden Apple Award.

CONGRATULATIONS, Mrs. Sherwood!!!

Golden Apple Award—Kristen Mignerey

Kristen Mignerey is in her 23rd year of teaching and is currently at Seymour Elementary in Flushing. She spent fourteen years as a special education teacher and nine years teaching first grade. She looped with her classroom last year and is now teaching second grade.



A proud graduate of Flushing High School, Kristen attended Clemson University on a full athletic volleyball scholarship where she quickly learned to love the color orange. While at Clemson she met her husband of 22 years, Todd Mignerey.

After living and teaching in Pensacola, Florida for five years, they moved north back to Flushing where they have been teaching ever since. They have two active sons.

Kristen also has a passion for coaching and has been active in travel volleyball. She loves volleyball and exercise, college sports (any college game piques her interest), and reading. Kristen also loves taking her boys to their sporting and social events. She is an active member of First Presbyterian Church of Flint.

Mallory, Van Dyne Scott Bar Association Essay Contest

By G. David Guinn

The Mallory, Van Dyne, Scott Bar Association (MVS) is the Association of African-American judges and attorneys practicing in Genesee County. During the Genesee County Bar Association's Law Day



Celebration, MVS was proud to announce the winners of their annual essay contest. MVS annually awards three book scholarships to African-American high school seniors who reside in Genesee County. This year's topic was "Do you believe that President Trump's proposed travel ban into the United States would help protect our country against terrorism?" Each applicant submitted an essay of 500 words or less discussing the pros and cons of said topic. Some excellent essays were submitted and the scoring was very close. Our 1st Place winner was Lachelle Lee, a senior at Grand Blanc High School. Our 2nd Place winner was Loren Nelson, a senior at Grand Blanc High School. And our 3rd Place winner was Za'Taia Shelby, a senior at Beecher High School. Congratulations once again to all of our winners!

Genesee County Bar Association
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Employer: Simen, Figura and Parker
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