

# BARBEAT

Genesee County Bar Association



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Emergency Financial Manager

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### 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.

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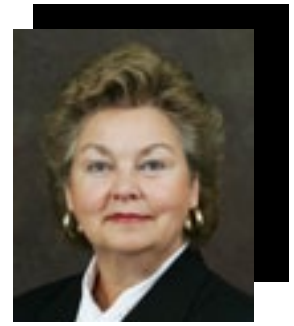
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# Gardening

By Karen L. Folks, President



Karen L. Folks

When my third grade teacher bet the class in October that the 100-year-old oak tree outside our classroom window would drop all of its leaves by the following February, she was banking on imparting a few life lessons. First, we were surprised that February even arrived because for 3<sup>rd</sup> graders time crawls and finally stops moving by Christmas. However, today Mrs. Doyle's lessons continue to be "spot on." Time goes by more rapidly with each passing year; past experiences and achievements inform the present; and within every ending is a seed that will germinate into a new beginning. So I probably should not be too surprised to suddenly realize just how fast my term as GCBA president is drawing to a close.

I don't know about you, but looking at our five new strategic planning focus areas, I can tell that the great GCBA memories of line dancing at a Bosses Night event, delivering a Gilbert and Sullivan description of the 7th Circuit Court Bench for a GCBA talent show, outstanding seminars in our own backyard, and the mentoring give-and-take of long term collegial relationships informed and helped design these new goals.

Projects we completed include the 2012 Strategic Plan, amending the by-laws to allow affiliate membership, the go-ahead to publish *Raising The Bar*, the development and updating of our website by this coming fall, and forging a beneficial relationship with the BEST organization. These all feel like the end of great projects, but they really are seeds that will germinate into exciting new beginnings for the GCBA.

This great organization is about to enter its 115<sup>th</sup> year. Its lineage reads like a "Who's Who." Its core strength is built upon its dedicated membership, and it will surely continue to plant and harvest richly for many, many years to come. As I conclude my term as Genesee County Bar Association President, I thank you for the privilege of serving in this office. It has been such an honor and truly a highlight of my professional career.

The secret to the GCBA's longevity, energy, ingenuity, and continued relevance in a changing society is found not in a single person but in the sum of its parts. A big thank you to all of the Committee Chairs who continue to deliver great seminars and keep our membership informed of changes and trends in their practice areas.

Thank you to this year's Board of Directors who were engaged, analytical and responsive. I couldn't have chosen a better executive committee. Chris Christensen, Jim Washa, Fred Meiers, and Jeff Himelhoch were valuable resources, methodical problem-solvers, and enthusiastic supporters for all initiatives that were deemed to be beneficial to the GCBA.

Executive Director, Tina, and her team of Eileen and Star, I swear, are practically clairvoyant! No sooner would we discuss an initiative, idea or approach and the details to ensure the desired outcome would be mapped and the implementation under way. Thank you to Tina who has expertly navigated an Executive Director transition and continues to maintain a high quality of support services, keeping the GCBA at the forefront of innovative and active bar associations in Michigan. Thank you to each and every one of you for your support and participation over this past year. I look forward to our continued work with the GCBA and wish you all a bountiful garden of blessings.

## "Baby Court" Gets 17<sup>th</sup> Annual Priority Children Award

By Roberta J.F. Wray



The 17<sup>th</sup> Annual Priority Children Award has been given to the Genesee County Maltreated Infant/Toddler Treatment Court established by the late Judge Robert E. Weiss in June of 2007. The award now sits in the courtroom of Judge David Newblatt, who currently presides over the so-called "Baby Court."

Baby Court resulted from the 1997 passage of the federal Adoption and Safe Families Act. Since then the mental and physical health of infants and toddlers aged 0 to 3 have received greater attention from some family courts, beginning in 2000 with a pilot program in Miami-Dade County, Florida. The

model has spread to courts in at least eight states, including three in Michigan.

Judge Weiss along with the Department of Human Services and Community Mental Health implemented the Genesee County system of intervention, training and reunification. So far, it has resulted in 30 young families overcoming the barriers to healthy interaction and breaking an often generations long cycle of abuse and neglect, especially of infants and toddlers.

The Priority Children Award recognizes five years of work by the court and mental health professionals in trying to make young families healthier. Often the parent/s involved have grown up in situations where they were either abused, neglected, or both. Sometimes the neglect was due to being born to parents who were too young and/or had no healthy examples of parenting to follow.

Judge David Newblatt, who inherited the “Baby Court” when Judge Weiss died, says the concentration is on the children first, then the family. He says what happens to children in their first three years of life affects them emotionally, physically and developmentally. The children who are removed from abusive and/or neglectful parents are evaluated for mental health issues arising from stress, environment and unhealthy attachments. The children get intensive treatment for these problems.

The parents get career counseling and therapy. They are given assignments to help develop better parenting skills and work habits, and to provide housing and the other needs of children. As they progress, they are allowed supervised visitation with their child/ren during which they learn how to interact appropriately, often including how to get down on the floor and play.

The program involves about 12 families at any one time. They may be single mothers, single fathers or two parent families. Some of them either drop out or are dropped from the program, and their children wind up as permanent wards of the court. For Judge Newblatt, those are disappointments. He says the ones who succeed are a great satisfaction to him and the legal and mental health professionals who see them through the program.

Judge Weiss did not live to see the first graduates of the Genesee County Maltreated Infant/Toddler Treatment Court. His leadership has been recognized by the Michigan Supreme Court through establishment of the Robert E. Weiss Award “recognizing success in family reunification, adoption and other permanent placements for children in abuse and neglect cases.”

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## *What We Give, What We Get*

By Francine Cullari

In the last issue of *Bar Beat*, Candace Crowley from the State Bar thanked GCBA members who are active at the state level. To further encourage GCBA members to become involved with SBM, a few of us would like to relate the benefits to us of our involvement.

Jim Bauer, Probate Court Administrator, has served on the Elder Law and Disability Section Council. He enjoyed the camaraderie and the knowledge he gained from conferences. He also received many updates on Medicaid planning and other topics “hot off the press.”

Paul Goyette serves on the local Character and Fitness Committee under the guidance of chairperson Richard Barron. The committee interviews candidates seeking admission to the State Bar of

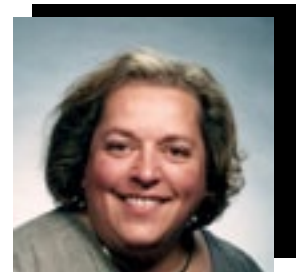
Michigan who have been identified as having possible character issues that need to be addressed before they can be admitted to practice law. After interviewing the candidates, our committee meets and renders written recommendations. These are forwarded to the State Bar, which generally adopts our findings.

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**As we all benefit from being members of organizations, Paul asks that each of us give some of our time and talents to help make them even better.**

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Paul finds it eye-opening to see some of the difficult issues prospective young lawyers face (substance abuse, enormously high student loans, etc.). He says it is rewarding to see how resilient and driven those same young



Francine Cullari

lawyers can be. As we all benefit from being members of organizations, Paul asks that each of us give some of our time and talents to help make them even better.

Richard Morley Barron has been active in the State Bar of Michigan for over forty years, first with the Young Lawyers Section, then the Criminal Law Section, the Litigation Section, the Public Corporation Law Section and finally the Alternative Dispute Resolution Section, on whose Council he now sits. His section participation created contacts with leaders in the Bar and enhanced his professional skills. He also has had

Continued on next page

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**A Narrow Road.** . . Continued from page 5

the privilege of representing Genesee County attorneys in the Representative Assembly of the State Bar for several terms. He has always considered Bar service a duty in addition to being a professional opportunity to improve law practice. He recommends it particularly to his younger colleagues.

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**His section participation created contacts with leaders in the Bar and enhanced his professional skills.**

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Shayla Blankenship likes being involved in making decisions that affect her and the practice of law, decisions that shape our profession. She enjoys meeting and networking with attorneys from other areas. At the state level, she sees a bigger picture of the profession, and it helps her to be a better lawyer for the profession and her clients.

As for myself, I have been active with the State Bar for many years. There is a *tremendous* opportunity to *personally* influence the direction of the State Bar and its services to the public and its members. Meeting attorneys from across the state makes referrals much easier because you can ask a colleague about his/her confidence in another attorney you are using elsewhere in the state.

We learn early of so many issues on the forefront of our profession and, yes, many back stories that never become common knowledge. Working with the SBM staff is an amazing experience. There is an incredible amount of talent and efficiency at 306 Townsend in Lansing. Our dues are very seriously monitored and spent according to the SBM Strategic Plan. I join Jim, Shayla, Rich and Paul in encouraging each of you to choose a section or committee at SBM and become a leader in the adventure. Let's make even more Genesee County lawyers shine statewide!

# Appraisers Need More Than Copies of Tax Returns for a Credible Valuation

By David W. Schaeffer, CPA, ABV, CFF, CMAP



David W. Schaeffer

**T**his situation happens all too often: We are contacted by an attorney requesting a business valuation for their client. After a brief discussion regarding the client, the purpose of the valuation, the valuation date, ownership percentage, etc., the attorney will say, "I have copies of the past three year's tax returns. That's all you need, right?" Our answer is always "No." **A business valuation analyst cannot perform a credible valuation report from tax returns alone.**

The AICPA Statement on Standards for Valuation Services No. 1 (SSVS) requires that in analyzing a business we must consider financial and nonfinancial information and obtain sufficient nonfinancial information to enable us to understand the subject entity, including its:

- Nature, background and history,
- Facilities and organizational structure,

- Management team (which may include officers, directors, and key employees),
- Classes of equity ownership interest and rights attached thereto,
- Products or services,
- Economic environment,
- Geographical markets and industry markets,
- Key customers and suppliers,
- Competition and business risks,
- Strategy and future plans,
- Governmental or regulatory environment.

In addition to income tax returns, we should also obtain, where applicable and available, financial information such as:

- Historical financial information (including annual and interim financial statements and key financial statement ratios and

statistics) for an appropriate number of years,

- Prospective financial information (budgets, forecasts, and projections),
- Industry financial information and relevant ratios,
- Information on compensation for owners, including benefits and personal expenses,
- Information on key person or officers' life insurance,
- Management's responses to inquiries, including:
  - Advantageous or disadvantageous contracts,
  - Contingent or off-balance-sheet assets or liabilities,
  - Information on prior sales of company stock.

Finally, we are required to evaluate the provided information to determine its reasonableness for the purposes of the engagement.

The above information is essential in considering, evaluating and applying the various valuation approaches and methods used in a valuation report. It also provides adequate documentation to support the overall conclusion. In short, it makes the valuation report credible.

## For Example

When we use an income method to determine value, we make professional judgment decisions regarding specific company risk, industry risk, and the

Continued on next page

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expected growth rate of the company. The non-financial data provides the information necessary to make *supportable and credible* conclusions in these and other areas, including the discounts for lack of control or marketability, if appropriate.

### The Document Request Form

We provide the client with a company-specific Document Request Form for each valuation engagement. The form requests information that we believe may be relevant in determining the value of the business. It is important to address all items on the Document Request Form. Not providing requested information could be cause for a scope limitation comment in the report. Further, if relevant information is withheld, it could have a material effect on the overall conclusion of value.

### Denied or Delayed Requests

We often encounter situations in the course of preparing a business valuation where access to important information and requested documents is initially denied or delayed. When this occurs, it is extremely important for us to maintain constant communication with the attorney so that you may make timely, formal requests to the court to receive the missing data. All requests directed to the court should be in writing and well documented. A lack of persistence or diligence in this area could lead to poor quality or diminished credibility in the valuation report. Therefore, when we ask you for help in obtaining the requested information, please move swiftly in assisting with that endeavor.

The work necessary to prepare a credible valuation report goes well beyond simply analyzing the tax returns of the company. The

Document Request Form plays an integral role in making sure that the information necessary to form a clear picture of the past, present, and expected future operations of the business is received. In that regard, you play an instrumental role in assisting us in securing the requested information.

### About the Author

*David W. Schaeffer, CPA, ABV, CFF, CMAP, is the Managing Principal of the Saginaw office and leads Yeo & Yeo's Valuation & Litigation Support Services team. He holds designations of Accredited in Business Valuation and Certified in Financial Forensics and is often called upon as an expert witness. He also holds the Chartered Merger and Acquisition Professional accreditation. Additional areas of expertise include succession planning, management consulting, and turnaround management.*



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# *Politically Speaking: Emergency Financial Manager*

## *—Pro*

By John A. Streby



John A. Streby

For years, many of the largest cities and school districts in Michigan have witnessed rampant corruption, cronyism, and ridiculous pay and retirement packages that have left them insolvent. Accordingly, the legislature enacted a beefed-up Emergency Financial Manager law (EFM), affording gubernatorial appointee's broad powers to abrogate union contracts and get rid of deadwood. Predictably, some of the same politicians and union bosses who created the mess in the first place are spouting inflammatory rhetoric to whip the public into a frenzy, with fighting words such as "undemocratic" and "unconstitutional power grab." Even worse, the opponents of the EFM law are playing the race card.

No city or school district can spend more money than it is taking in year after year without running dry.

Yet only three ways exist to stem the fiscal bleeding. One is for politicians and unions to collaborate on layoffs and cuts in pay and benefits, but with virtually every sector asserting sacred cow status, those measures are generally too little, too late. Another remedy is Chapter 9 Bankruptcy protection, which places a bankruptcy judge, serving a 14-year appointment under federal judges with life tenure, effectively in charge. The most practical approach allows EFMs, appointed by a governor serving a 4-year term, to tackle the tough measures needed to restore solvency. If Snyder's appointees are as incompetent as the elected politicians they have replaced, the voters can turn the governor out in 2014.

The populism of the anti-EFM movement belies the fact that little of the corruption and waste in local

government has "trickled down" to the masses. Instead, it has created a privileged elite made up of overpaid government workers and political operatives who have prospered while our cities and school districts have gone broke. Voters are responsible for ousting bad leaders, but when the Kilpatricks, Ficanos, Stanleys and Williamsons of the world continually get re-elected, other remedies are needed. Those who would repeal the EFM law must face the possibility of even less "democratic" control by a bankruptcy court. Righteously denouncing the governor is akin to killing the messenger who brings the bad news.

# *Politically Speaking: Emergency Financial Manager—Con*

By Daniel Bremer

In November, Flint was placed under the control of an emergency manager for the second time in recent years. The new law expands the powers of emergency managers considerably. It is too early to tell if the manager will break collective bargaining agreements. The experience of Pontiac may be instructive. The manager there received state approval to end the collective bargaining agreement for 11 police dispatchers last June. Recently the Pontiac manager listed city property for sale, including five fire stations, two cemeteries, two landfills, 11 water pumping stations, the public library and the police station. The police department has been abolished, and the city has contracted with the Oakland County Sheriff for police

protection. The manager plans to increase property taxes by 5.4 mills to fund police and fire pension and health care funds.

Except for Ecorse, all of the cities with emergency managers (Flint, Pontiac, and Benton Harbor) have majority African-American populations. If Detroit and Inkster are placed under emergency managers, as is threatened, slightly more than half of Michigan's African-American population will not be able to vote for their local governments.

Flint's problems may result in part from mismanagement, but the reduction of revenue-sharing from the state, loss of business, and increased poverty are beyond the control of any mayor and city council. The real reason for

the emergency manager law, and the reason the legislature and governor were not satisfied with the existing financial manager law, is simple: union busting. While the new law makes it possible to lower the wages of municipal employees, this will not only cause plenty of distress, it will not balance budgets.

The emergency manager will not save Flint. Pontiac has been under the control of an emergency manager since March, 2009 and its credit rating since then has dropped from B to triple-C.

Perhaps the citizens of Michigan will get an opportunity to vote on this important issue and restore some element of democracy to cities and school districts currently under Emergency Financial Managers.

# Michael Behm Winding Up Year as MAJ President

By Roberta J.F. Wray



Michael J. Behm

Mike Behm is looking forward to having just one full-time job in a few months. Meanwhile, as President of the 1700 member Michigan Association for Justice, formerly the Michigan Trial Lawyers Association, he has a double plate full. Behm says since this is an election year there is still a lot of work to be done.

The MAJ is in the midst of an 18-month plan that includes talking to legislators and others. President Behm says the intensity of the job increased considerably after the 2010 election resulted in all three branches of Michigan government being controlled by a Republican majority.

The state legislature has to give only 18 hours notice of proposed legislative action, which means those who wish to be heard on pending legislation must be ready to appear on very short notice. The MAJ has established an emergency response team with members prepared to speak up on any issue. Among the most important to the MAJ are proposals that are considered unfriendly to consumers.

Behm also says the MAJ will be looking for volunteer *poll greeters* to meet voters in November and encourage them to vote in non-partisan judicial elections as well as the higher profile partisan races. He says it is one way to make people aware that when they vote

a straight ticket they still need to mark the boxes for judges and justices.

Appearances before many committees of the state legislature, as well as addressing meetings in New York, Chicago and elsewhere, have meant a lot of time away from his wife, the Honorable Kay Behm, and their three children, aged 13, 10, and 8. He says his family "has been incredibly supportive," and he gets great satisfaction from being able to "give back" for things he believes in. Behm has served on many boards and commissions over the years and says he was influenced by the late labor and community leader Danny Sain, with whom he served on occasion.

His five-year commitment to the MAJ will be completed soon, but that only means that his community service will take another direction. He and his family are planning to start a charity to help refurbish and protect local parks and playgrounds from further decay in the face of reduced public funding. In addition, he says, he has several associates in his law office who will appreciate it when he is able to take care of his share of the case load again.

# 34<sup>th</sup> Annual GCBA Golf Scramble: Legends in Their Own Minds

By Ewrin F. Meiers

The GCBA Golf Scramble is fast approaching, and Bubba Perryman, Phil Christensen, Tiger Tomaszewski and Slammin' Sammy Sippell, the most feared foursome in golf, are ready to tear up the course. But Padraig Dillard, Rory Bekofske, Sergio Chimovitz and Nancy Pearson have been preparing all winter for this championship. Strategies have been discussed at the 19<sup>th</sup> hole (aka The White Horse), and every indoor golf device has been employed to whip them into shape. Watch the story play out on June 1<sup>st</sup>. Join the hackers, whackers, and whiffers for *The Golf Event of the year*.

The site is the Captain's Club at Woodfield, 10200 Woodfield Dr., Grand Blanc, on Friday, June 1, 2012 with a 9:00 a.m. shotgun start. At \$105 per player, or \$25 for the buffet only, you don't want to miss this opportunity to end the workweek with some friendly competition on the links and some cool prizes.

This is our single largest fundraiser. Through the efforts of the GCBA staff, and members Anthony Tomaszewski, Jessica Hammon, Mark Newman, Bruce Leach, and others, the 2012 event promises to be full of fun and camaraderie.

Many of our members are calling upon their clients and business associates to donate prizes. This has proven to be a great way for them to get their company names out to our membership. Just as we patronize our local businesses, we would hope they consider our members when hiring their next attorney.

Whether you are a first-time golfer or a veteran, come and support our golf outing as one of your golf charities this summer. Mark your calendar, call the GCBA to register, and come enjoy the fun!



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