

November/December 2012

# BARBEAT

Genesee County Bar Association



## ***Poinsettias***

Lessons for Genesee County Courts in  
the Dismissal of Cases

Hunting for Treasures in Hidden Assets

Holiday Dinner: It's What We Do!

Who's on the Bench? Hon. Joseph J. Farah

Who We Are: Jessica J. Hammon

Share Art: Arts for Youth in Detention

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# Lessons for Genesee County Courts in the Dismissal of Cases

By James J. Wascha, President



James J. Wascha

COMMONWEALTH OF KENTUCKY  
KENTON CIRCUIT COURT

FIRST DIVISION

CASE NO. 09-CI-00165

ENTERED  
Kenton Circuit/District Court  
JUL 19 2011  
John C. Middleton

BARBARA KISSEL

PLAINTIFF

v

SCHWARTZ & MAINES & RUBY CO., LPA, et al.

DEFENDANT

## **ORDER**

The herein matter having been scheduled for a trial by jury commencing July 13, 2011, and numerous pre-trial motions having yet to be decided and remaining under submission;

And the parties having informed the Court that the herein matter has been settled amicably<sup>1</sup> and that there is no need for a Court ruling on the remaining motions and also that there is no need for a trial;

And such news of an amicable settlement having made this Court happier than a tick on a fat dog because it is otherwise busier than a one-legged cat in a sand box and, quite frankly, would have rather jumped naked off of a twelve-foot step ladder into a five-gallon bucket of porcupines than have presided over a two-week trial of the herein dispute, a trial which, no doubt, would have made the jury more confused than a hungry baby in a topless bar and made the parties and their attorneys madder than mosquitoes in a mannequin factory;

**IT IS THEREFORE ORDERED AND ADJUDGED** by the Court as follows:

1. The jury trial scheduled herein for July 13, 2011 is hereby CANCELLED.
2. Any and all pending motions will remain under submission pending the filing of an Agreed Judgment, Agreed Entry of Dismissal, or other pleadings consistent with the parties' settlement.
3. The copies of various correspondence submitted for the camera review by the Defendant, SMRS shall be Sealed by the Clerk until further orders of the Court.
4. The Clerk shall engage the services of the structural engineer to ascertain if the return of this file to the Clerk's office will exceed the maximum structural load of the floors of said office.

Dated this 19<sup>th</sup> day of July, 2011.

MARTIN J. SHEEHAN  
Kenton Circuit Judge

<sup>1</sup> The Court uses the word "amicably" loosely.

i. This is an actual order entered by the Kenton Circuit Court.

# Hunting for Treasures in Hidden Assets

By Amy Buben, CPA, CFE



Amy Buben

Suppose you represent a company whose biggest customer, a family-owned manufacturing business, has just filed for bankruptcy. The business owes your client nearly \$200,000, but the owner pleads poverty, claiming that other creditors have already cleaned him out. Your client suspects he is not telling the truth and is, in fact, hiding assets.

*Enter the forensic accountant.* These financial experts use several techniques to uncover and demonstrate the existence of assets, including performing net worth analysis and reviewing tax returns. All of these tools can help in a variety of litigation contexts—fraud investigations, shareholder disputes, divorce and business valuations.

## Net Worth Analysis

Net worth analysis entails looking at changes in a person's worth and reconciling those changes with income and expenses. The first step is to reconstruct this data, which may involve some detective work.

Experts search for clues in a variety of places, including bank records, real estate and court filings, payroll records, expense reports, phone bills, insurance documents, and credit reports. Employment and loan applications can also provide a wealth of information, including current and previous residences, family members' names, and previous jobs. Experts then interview people such as the subject's accountants, former spouses, former business partners and real estate agents.

Once they collect the financial data, forensic experts typically use three methods to detect hidden assets:

1. **Assets.** This method compares the subject's net assets at the beginning and end of the year, adding known income and subtracting known expenses. A result other than zero indicates income from unknown sources.

2. **Expenditures.** An expert using this method looks for discrepancies between the subject's expenditures and his or her sources of funds, including salaries, commissions, investment dividends, inheritances, loans, gifts, and cash on hand at the beginning of the year. If the subject's spending exceeds the available funds, an unknown source of funds exists.

Complicating matters, however, is the fact that many people pay cash for expenses such as entertainment and meals and don't keep the receipts. If it appears that the subject is using skimmed funds to pay for cash items, a more in-depth investigation will be necessary.

3. **Bank deposits.** This method relies on the assumption that all money is either spent or deposited. The expert starts with net deposits to all accounts during the year and adds cash expenditures to arrive at total receipts for the year. If that amount exceeds funds from known sources, the difference represents an unknown source of funds.

## Reviewing Tax Returns

Typically, experts also must review several years of tax returns for specific items and general trends. Of particular interest are:

- Income from wages,
- Interest and dividends,
- Taxable refunds of state and local taxes,
- Retirement plan distributions,
- Alternative Minimum Tax (AMT), and
- Income tax refund amounts.

Tax return schedules also can contain a wealth of information.

For example, Schedule A (itemized deductions) covers real estate and personal property taxes. The expert checks that reported amounts correspond to the underlying property. If they don't, further investigation may lead to undisclosed assets. Entries regarding state and local taxes may reveal income (or income-producing property) in other states. Experts can also glean critical information from Schedules B (interest and ordinary dividends), C (profit or loss from business), D (capital gains and losses), and E (supplemental income and loss).

## Wrong and Right

The existence of a previously unacknowledged source of funds doesn't necessarily mean the subject is wrongfully concealing assets. However, when experts find an unexplained gap, they know that the subject's financials merit further investigation. And this can help your clients recover what is rightfully theirs.

## About the Author

Amy Buben is a Manager in the business management advisory services department of the Saginaw office. She is a member of Yeo & Yeo's Valuation & Litigation Support team and co-leader of the firm's Manufacturing Services team. Amy is a Certified Fraud Examiner with expertise in fraud investigation and prevention. She also specializes in business consulting, financial reporting and tax issues with a strong focus on manufacturers, auto dealers, retail and wholesale sectors. Contact Amy via e-mail at amybub@yeoandyeo.com or call 800.968.0010.

# Holiday Dinner: It's What We Do!

By Brian M. Barkey, Holiday Dinner Chairman for Life



Brian M. Barkey

When I want to appreciate how long the GCBA has hosted the Community Holiday Dinner, I remember that my grandson, Jordan, had not yet started kindergarten in 1992 when we held the first one. He is now a second year law student at Wayne State. It has been 21 years.

This has not been an easy thing over these 21 years. The Dinner has grown tenfold, and we have added things that cost money every year. We now use three floors of the Masonic Temple and have to rent space to keep all our supplies and gifts over the rest of the year. We now serve over 1,200 people in four hours. We distribute over 500 gifts and take photographs of kids (and some adults) with Santa all night long.

This growth also points out what impresses me the most. Every year members completely fund all our expenses. We have never been short. In fact, there are several members who always call after sending a check and ask if we have raised enough. If not, they send another check. One

member endorsed a check that had been awarded to him by a local judge for attorney fees and sent it for the Dinner.

Our members support the Dinner by incredible volunteer effort. Because of our growth, we have had to get a bit more organized. We have divided up the parts of this huge operation and assigned "captains" to each one. We have a check-in area that sends individual volunteers to these captains to be assigned to jobs and to keep track of various parts of this huge enterprise. There are now 16 captains. We have never lacked for volunteers. There are at least a dozen lawyers that have volunteered for every Dinner. Offices close and staff report to the Dinner to volunteer. People bring spouses. They bring their children.


Something happened on the night of the first Dinner I will never forget. Santa (Joel Florida) saw all the children on the stage of the main dining room that night. It was before we gave them presents, so he could only listen

to their holiday wishes. It must have moved him to hear all those things because he knew that many of the children would be disappointed. When he had spoken to everyone, Santa took the microphone on stage and told those in attendance that Santa and the people in that room had not forgotten them. It gives me goose bumps every time I think of this.

By the time this appears in the *Bar Beat*, the election will be over and maybe we can all get our televisions back. This has been the worst year in my memory for campaign rhetoric. Who can blame people for disbelieving anything they hear people say after the year we have just been through. This reinforces something my dad always claimed: if you want to discover the truth about people you should spend more time paying attention to the things that they *do* rather than the things they *say*. Well, our Association has not forgotten these people. And we do more than talk about it. A lot more.

Please help us keep up this impressive record. If you can, please support the Dinner by sending a check to the Genesee County Bar Foundation. Please be sure to write "Holiday Dinner" in the memo line. If you cannot, please consider signing up to volunteer at the Dinner. It will make your heart grow in your chest, I promise you.

This year's Dinner will be Tuesday, December 18, 2012 from 4:00 to 7:00 p.m. at the Masonic Temple. I hope to see you there.




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# Who's on the Bench? Hon. Joseph J. Farah

By Roberta J.F.Wray



Joseph J. Farah

Judge Joseph J. Farah has law in his DNA. His maternal grandfather, Saman Daoud, became a judge at the age of 33 when Jordan was a protectorate of the British. Jordanian King Abdullah I later appointed him to write the constitution for the emerging state of Jordan. Following independence, Daoud served as Minister of Justice, and in several other posts. In the late 1950s, according to US State Department records, Judge Farah's grandfather met President Dwight Eisenhower and helped work out economic development policy for the young Jordanian government.

Judge Farah is a graduate of Michigan State University and Thomas M. Cooley Law School. He says although he met his grandfather several times, it was his father, who always wanted to be a lawyer, who influenced his career choice. Of his three siblings, two are lawyers and one is a medical technical writer.

The judge was in private practice for nearly 20 years with an emphasis on appellate work. He says he also did his share of criminal defense, domestic relations, and personal injury cases. He became *Judge Farah* in March 1998, when he was appointed to fill the vacancy created by the retirement of The Honorable Thomas C. Yeotis. He ran unopposed in November of that year for the balance of the unexpired term.

Judge Farah served in the Family Division until 2005 when he moved to the Civil/Criminal Division. Asked which he preferred, he said he has found interesting challenges in both. One thing they have in common is the large volume of cases. He says he would prefer fewer, but more complex, cases. He says the most interesting part of being a judge is the analytical process in dealing with the more intricate arguments projected from case elements.

The change in jury trial procedures that took effect a year ago has been a good thing, according to Judge Farah. "Jurors who are able to take notes and ask questions seem more attentive," he says. "Getting the jury involved earlier in the process has taken some getting used to," but over all the change has been for the better.

In addition to his duties on the court, Judge Farah is President of the Board of Law Examiners, Adjunct Professor of Evidence at Cooley Law School, and a member of the boards of the MJA, Cooley Law School, Metropolitan Community Development, GCBA and Inn of Court.



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## Who We Are: Jessica J. Hammon



Jessica J. Hammon

**Why did you decide to become an attorney?** I have wanted to be an attorney from the age of twelve. As I got older I found that my interest in the law grew as I realized that not only can attorneys help shape the laws of our community, state, and country, but we can also truly help people at the times they need it most. We are able to help our clients navigate the complicated system of the law so that they can reach their best result.

**In what area(s) of law do you practice?** My areas of focus are family law, child welfare law, and criminal law.

**Which area of the law do you like the best and why?** I enjoy the procedure of criminal law. It has always been a favorite subject of mine. Family and child welfare law can be a bit more taxing, as you are dealing with the core of most people's being - their family - but it can also be very rewarding

when you obtain an outcome that truly benefits children and their parents.

**What do you like best about being an attorney?** The control that you have over your own profession. With the law, you are able to look at a decision that you have researched, spent time on, and can stand behind and feel true pride in your work because it is your own.

**What part of being an attorney can you do without?** Student Loans!!! The amount of student loans that young professionals are amassing these days is so far out of step with what young professionals can actually make that it creates a huge financial burden. I hope that lawmakers address this issue soon.

**What words of advice could you offer to new lawyers?** Make sure this is truly what you want to do. Those who get into the law for the

money quickly burn out in this economy - attorneys simply do not make what they made in the past. In this day and age as a new attorney you need to be committed and work hard to establish yourself and set yourself apart from everyone else.

**What suggestions do you have to improve the legal system?** I am a strong supporter of "plain speak." I know that using big words makes us feel smart, but our goal should be to help our clients and the community understand what is happening in the legal system - speaking Latin is about as far away from this as you can get.

**Offer one suggestion for improving our local Bar.** Incentives for young lawyers. Young lawyers need to be drawn in and shown what benefits come with being a member of the bar.

**Tell us about your life outside of the law.** I live in downtown Flint and love the city. I'm an avid golfer and have a very strong family and friend network in our community that means the world to me.

**If you had not become an attorney what career would you have chosen?** That's an easy one: I would have become a chef. I love to cook and have people over to try my new recipes. My dream is to one day open up a small restaurant in downtown Flint - but I suppose I still need to do a little work before I'm at that point.

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# Share Art: Arts for Youth in Detention

By Shelley R. Spivack

Art and poetry are not words we usually associate with juveniles locked up in detention centers. However, during the past year art and poetry have flourished within the walls of the Genesee Valley Regional Center (GVRC). With the assistance of grants from the Ruth Mott Foundation and the Community Foundation, members of the Buckham Fine Arts Project, an artist-run co-operative gallery in downtown Flint, have conducted weekly Visual Art and Spoken Word Poetry workshops for the youth detained at GVRC.

Studies have shown that arts-based programming in juvenile detention settings can be an effective tool in the effort to rehabilitate and reintegrate youth who have come into contact with the juvenile justice system. Arts programming has been shown to decrease the anger, depression and anxiety of detained youth while increasing their impulse control, emotional expression, coping and social skills. Through the use of expressive arts, youth are able to have enjoyable, positive, creative experiences that enable them to build a more positive self-image and pro social identity.

In the Visual Art workshops, painter Todd Onweller uses artistic concepts and skill building to both increase personal awareness and enhance positive social interaction among the youth. An example of this was the creation of murals in each of GVRC's residential wings. This activity gave the youth the opportunity to learn to work cooperatively, while still expressing their own individual creativity. In the Spoken Word Poetry workshops, Dr. Traci Currie and James Thigpen, Jr. challenged the participants to explore their own feelings and enabled them to use language as a means of self-expression and of communication.

Research results from the initial 12-week pilot project led project organizers to develop a Gender-Specific Spoken Word Poetry program to address the unique and unmet needs of young female offenders. During the summer of 2012,

Dr. Currie constructed a series of eight weekly workshops aimed at improving self-image, increasing self-confidence, and developing the verbal and writing skills of this group of girls. During each of the sessions the girls challenged themselves and each other, writing and performing pieces reflecting the hardships they have faced and the goals they hope to achieve. A grant from the Rosenbaum Family Foundation will enable this portion of the program to continue for an additional eight weeks in January of 2013. Project organizers are currently seeking funding to continue all portions of the program during the next year.

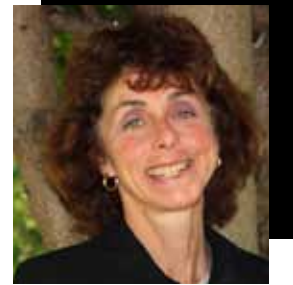
To celebrate the work of these young people, we would like to invite all members of the Genesee County Bar to Art Walk on Friday, December 14, from 6-9 p.m. where the work of the youth will be featured as part of the members' exhibition at Buckham Gallery, 134 ½ W 2nd St. Flint.

And here is a sampling of the work created by the girls this summer:

*Life is too short  
For me to spend all my time in court  
Getting' locked up cuz of bad reports  
Life ain't long enough  
To be livin this rough  
And snortin that stuff  
Always end up in cuffs  
Love is too rare  
For me to not care  
It's like I'm never there  
Everyday is a dare  
Hate comes too often  
Cuz one day I'll be in a coffin  
And I hope that day ain't too soon  
I have a lot of things I need to fix  
I need to stop hittin licks  
I'm starting to get sick  
Of treating life like a trick*

\*\*\*

*I call myself Meena,  
Beauty and sweet,  
Looks that define my  
Smile to teeth.  
Hurting inside don't care to explain*



Shelley R. Spivack

*Rather have a mind than a simple ol brain  
Maybe I'm mean and yeah I speak my mind  
If you don't like it say nevermind  
Occasionally I rap and cry to my bed  
Wishing & hoping that I was just dead!  
Something hits me like lightning at night  
Wishing the worst just isn't right  
I tell myself you are Meena your own little self  
You're just there like a book on a shelf  
No one else is going to be your friend  
Look to partner yes your twin  
Look at her smile and how she looks  
Picture perfect standing tall  
I love my sister that isn't all  
I love my mom, my dad, my cat  
I love me and hair on my neck  
Goodbye Muah*

\*\*\*

*Heart full of pain  
Lost my brother so I'm stuck on one thing  
Can't move on so it's hard to make a change  
Too busy tryin' to learn the game  
But things still ain't the same  
Locked up? I spent a year  
It's like my life stuck in reverse gear  
Momma say a lot of things but act like I  
don't hear  
Hard to trust but far from fear  
At the end I regret but at the time I act like  
I don't care  
Living a stressful life so I lost a lot of hair  
Serving my time – what's fair is fair  
But at the end I remain great  
I learned how to love so I'm far from hate  
My life keep rolling like I'm on skates  
And I keep on going before it's too late*

## About the Author

Shelley Spivack is a Genesee County Family Court Referee and Lecturer at the University of Michigan-Flint. She is a board member of the Buckham Fine Arts Project and chairs the Share Art Project committee.



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# Barristers Beatify Barkeys

By Richard F. McNally, Jr.



Richard F. McNally, Jr.

The Flint Golf Club could scarcely hold the horde of judges, lawyers, dignitaries, friends, family and admirers of the Barkey family who gathered October 3 to honor the contributions made to the community by Walter J. Barkey, Brian M. Barkey, and the Hon. Jennie E. Barkey. After an hour's worth of lubrication, Master of Ceremonies, Harvard Law Valedictorian, Congressional Medal of Honor recipient and former Governor of Rhode Island, Reese Stipes, began by recounting the travel adventures of the combined Barkey and Wistrand families. Stipes and Sheriff Pickell then butchered their prepared script, Patric Parker serenaded the assembled host, and the Hon. Richard Random, a/k/a "Maude Barkey", allegedly one of Walter J's former wives, dished the family dirt.

The event was rescued when St. Brian took the pulpit. He related some

of the rules he learned from Walter J. First, when a lawyer is elevated to the bench, the first name is forfeited and replaced by "Judge", which continues *ad infinitum* regardless of retirement, re-election, defeat, or disbarment.

Second, "Lesser is Better." Walter J's successful closing argument in defending a personal injury trial consisted entirely of the following: "For the last year and a half I've known this case is a fraud; now you know it too."

Finally, "Pay It Forward." Brian recalled that when, as a new lawyer, he had an evidentiary question, Walter J told him to call Fred Salim, then one of the deans of the criminal defense bar. Fred called back quickly with the answer that made Brian look like a genius in court. The lesson learned is that each of us, by virtue of the wisdom imparted to us by the senior members of our bar, owes to them and those that follow the obligation to pay it forward.

Jennie (rather "Judge", see rule #1 above) had a tough act to follow, but recounted the story of how Walter J "persuaded" the family's priest to downgrade a multitude of mortal sins of self-abuse (for which her penance was holding up Walter J outside the church) to lesser venial sins so they could get out with time served.

She closed with an image of what must be Heaven for Walter J: sitting in a smoky bar with the likes of Cam Dean, Earl Cline, Tom Stipes, Harry (rather "Judge", see rule #1 above) McAra, Dick Goldstein and John Bove. Walter looks down on his kids and the assembled admirers from his version of Heaven, nudges his companions, points down, and smiles.



The Barkey Family

Mark Morgan receiving a scholarship.



Reese Stipes and Sheriff Pickell



Walter Griffin speaks to the crowd in attendance.

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