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Holiday Cheer

By Shayla D. Blankenship, President

The holidays are upon us. I hope your holiday season is full of cheer and good tidings: but in all honesty, the holidays can be stressful for many reasons. For me, the holidays have been a mixed emotional roller coaster for many years. My father has always been a pastor, and when I was a child, the holidays meant increased religious services, charitable work and overall just more bustle. It would leave my family cranky, and when the holidays were over we were glad to leave them behind us.

These days I have two children of my own, and because we have family spread out all over Michigan and Ohio, we spend a good portion of our holidays celebrating what I have termed a "Windshield Christmas." We drive a lot. Sometimes, I find myself cranky and wishing we could just stay home and do away with the baking, giving, and driving. Perhaps you, too, have found yourself wishing things could slow down around the holidays.

My Heart Swells

By Brian M. Barkey

It comes earlier every year. It seems like I just cross the Crim finish line, and on the way home I look up and see the leaves turning, and there is a voice message on the office phone from Tina Burroughs wanting to clear the date for the first Holiday Dinner Committee meeting. Wow.

This is our 25th Dinner, and every year I get to work on it I am amazed at the incredible support we have enjoyed from our members. We now have more volunteers than we had hungry people at the first dinner in 1992. Volunteers buy candy canes, supplies and over 450 toys for children who attend. Tina sends fliers to charitable organizations all over the county. Beginning at Thanksgiving, teams of volunteers deliver fliers at regular intervals to soup kitchens, shelters, warming centers and other charitable organizations.

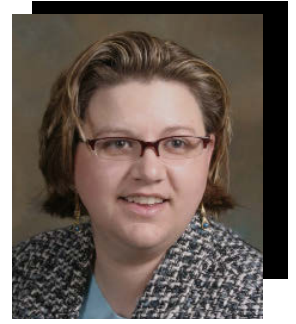
The date is cleared with our partners, the Masonic Temple and the Temple Dining Room, St. Paul's Church and Larry Battiste, who begins buying food for 1,200 people. Teams sort and wrap presents. One GCBA member has organized a group that knits hats and mittens all year for the children who look cold when they arrive.

The day itself is a blur. Law offices close and report for volunteer assignment. Some bring spouses, friends, children and (at least in my case) grandchildren. You will

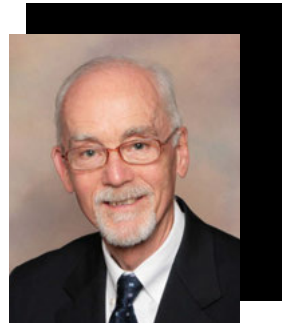
Regardless of the stress that typically accompanies the season, I have found that the GCBA Community Holiday Dinner has become one family tradition which always brings me holiday cheer. I

look forward every year to serving at the dinner in whatever capacity I am needed. I have worked the food line, cleaned up, been a Santa helper, helped with pictures, helped with presents, and I even sang carols one year. No matter what job I perform, I always leave the dinner feeling blessed to have lived another year, to celebrate another holiday and to cherish the blessings I have been given.

I hope you join me this year in slowing down, finding the enjoyment of the season and helping others. I wish you all a Merry Christmas, Happy Hanukkah, Joyous Kwanzaa, Happy Winter Solstice, Happy Festivus, and a joyous New Year.



Shayla D. Blankenship



Brian M. Barkey

see school groups, choirs, scout groups and others not necessarily a part of the legal community.

The younger ones (and the talented older ones) sing Christmas carols. Others greet people, serve food and help our guests navigate through serving lines to a table and clean up after them when they are full. Children are taken to see Santa, and all of them leave with a present, a candy cane and a picture with Santa.

Our guests are genuinely grateful, and they let you know it. And it makes you feel wonderful to do something for people who need it. This, you recall, is the reason we were attracted to our profession. When I leave, I swear my heart has grown in my chest. If you can, please plan to be a volunteer at this year's dinner, December 17th. You will see what I mean, I promise you.

At the end of the evening, one thing stands out more than anything. In the 25 times we have done this, we have always had enough financial and volunteer support to pull it off. Members of our association have carried this wonderful community event through its entire history. It is a wonderful tribute to all of you.

Don't Let the Debt Buyers Get You Down

By Rex C. Anderson

Recently my phone has been ringing off the hook with consumers worried about debt collectors. The most common complaints involve attempts to collect inflated balances, collecting on debts already paid (by wage or tax garnishments), suing on time-barred debts, collecting debts discharged in bankruptcy or never owed in the first place, e.g., debts of family members both living and deceased.

In a day and age where trillions of dollars of “charged off” debt are being bought, sold and collected upon, it should not be surprising that there are a few unscrupulous players out there. Recently, JP Morgan Chase agreed to pay \$136M to federal and state regulators for its involvement in the lying, stealing and cheating that is rampant in the fastest growing sector of our nation’s economy since 2008, the debt buying industry. (See the JP Morgan Chase story - <http://www.chicagotribune.com/business/breaking/ct-chase-settlement-0709-biz-20150708-story.html> or the Tiny URL: <http://tinyurl.com/prcujt3>).

Although people should be responsible and pay their just and owing debts, it is, nevertheless, illegal for debt collectors to use abusive, harassing, deceptive and unfair collection practices. In 1977, Congress decided that the debt collection industry had run amok for long enough and that it needed to be regulated by a uniform federal law. After many months of testimony, investigation and hearings, Congress found:

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy ... Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts ... (Fair Debt Collection Practices Act 15 USC 1692 §802. Congressional findings and declaration of purpose)

Congress delegated the task of enforcing the Fair Debt Collection Practices Act (FDCPA) to consumers and private consumer attorneys. This law requires debt collectors to treat anyone who owes a debt with respect, dignity, truth and fairness. The FDCPA also protects innocent family members, employers and other third parties—strangers to the debt—from collection harassment. Significantly, one of the primary purposes of the FDCPA was to protect reputable collection agencies from being competitively disadvantaged.

The FDCPA requires a debt collector found guilty of violations to pay actual and/or statutory damages along with the consumer’s attorney fees. Therefore, it is possible in many FDCPA cases for the consumer to negotiate resolution of the underlying debt while at the same time using a “free” lawyer to accomplish this. The FDCPA is about regulating collectors and requiring debt collectors to comply with the law. Whether the consumer is a “deadbeat” is irrelevant.

The Telephone Consumer Protection Act (TCPA) is another federal law designed to protect our privacy rights and allow consumers to choose how debt collectors may contact them. (*No space to discuss telemarketers in this article*). The law permits debt collectors to use computer-generated collection calls (robo-dialers with pre-recorded/artificial voice messages) to communicate with a consumer on a **land-line** phone. However, the TCPA prohibits debt collectors from robo-calling and/or using pre-recorded/artificial voice messages in communications to a consumer’s **cellphone**.

Despite the avalanche of lobbying efforts by the banking and debt collection industry, the Federal Trade Commission (FTC) recently affirmed its prior orders holding that where a consumer never consented to being contacted on his cell phone (i.e., provided his cell number to the original creditor) or after a consumer revokes consent to being contacted on a cell phone, the creditor/collector must stop robo-dialing that cell phone. The statutory damages for violating the TCPA are \$500 per call and may be trebled after determination that the creditor/collector made the calls “knowingly and willfully.”

Consumers often believe that bankruptcy is the only way to resolve the stress of debt collection harassment and illegal conduct, so they go to see a bankruptcy lawyer. A bankruptcy lawyer can easily determine whether consumers are being harassed, abused, or unlawfully treated. The FDCPA and TCPA provide remedies to help extinguish the consumer’s debt and avoid bankruptcy altogether. Alternately, where the consumer owes too much debt or has too many creditors, FDCPA and TCPA settlements may be used to pay for bankruptcy legal fees and costs, paying down Chapter 13 reorganization-based plans, and obtaining earlier discharge for the consumer-debtor.

Bankruptcy practitioners and bankruptcy trustees should be on the lookout for these types of consumer violations. The settlements can benefit both them and their clients.



Rex C. Anderson

Family Law Attorneys Assist Domestic Violence Services

By Ann Kita, M.A., Service Coordinator & Crisis Counselor
YWCA Domestic Violence and Sexual Assault Services
Recipient of the 2015 Crime Victim Advocate Award



Ann Kita

More often than not, survivors of domestic violence and sexual assault have legal questions when trying to understand the civil and criminal justice systems. The YWCA of Greater Flint Domestic Violence and Sexual Assault Services victim advocates who work in the criminal courts have the help of prosecuting attorneys as well as the Victim Advocacy Office located in District Court. However, YWCA staff needed support when questions arose regarding issues in the Family Division of Circuit Court. So the YWCA Services Coordinator reached out to Barbara Dawes, chair of the Family Law Committee of the GCBA, and inquired about a possible partnership.

In the spring of 2014, family division attorneys agreed to volunteer their time by signing up for a particular month to be "on call" to the YWCA advocate staff. The average number of calls the assigned attorney receives from staff has been approximately 0-2 per month. The YWCA advocate staff knows that the attorney volunteer list is strictly for staff to call. It is not given to those receiving our services.

This partnership has been very helpful for the service participants. In one case, the attorney on call was able to recommend a newer attorney to the field to handle a

divorce filing which resulted in the woman regaining custody of her two minor children. The YWCA advocate staff extends its thanks to those who have volunteered their time to assist the victims of domestic violence and/or sexual assault.

Thank you to the following Family Court committee volunteers:

- Barbara Dawes, Chair
- Julia Black
- Shayla Blankenship
- George Brueck
- Kathleen Buckley-O'Neill
- Denise Fish
- Ron Haldy
- Jessica Hammon
- Linda Pylypiw
- Lynne Taft
- Lori Tallman
- John Zintsmaster
- Alternates: Carol Jaworski; Jeff Birrell

Congratulations are in Order!

Congratulations to:



Donald Rockwell, newly elected Vice President of the SBM and in line to succeed to the Presidency in two years



Richard Ruhala, newly elected Chair of the Master Lawyers Section of the SBM



Hon. Robert Ransom, recently elected President of the Retired Judges of Michigan

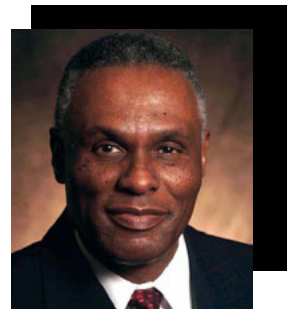


Hon. Joseph J. Farah, the 2015 recipient of the Judicial Award from the Michigan Defense Trial Counsel

Say thanks to these members of the GCBA for their continuing service.

Mediation in the Criminal Justice System

By Abner J. Tansil



Abner J. Tansil

Mediation is widely accepted and recognized as an effective means to resolve civil law disputes and has become an essential, and sometimes preferred, part of many fields of law.

Although mediation in the criminal justice system is not nearly as widespread as its civil counterpart, it has been used in criminal matters since the 1970's. In fact, based on a *National Survey of Victim-Offender Mediation Programs* conducted by the US Department of Justice (DOJ), there were over 300 such programs in the United States in 2000. Further, in 2006, the ABA's Criminal Justice Section established the ADR and Restorative Justice Committee, and in 2008 the ABA initiated the Mediation in Criminal Matters Project (MCMP) to study and promote criminal mediation throughout the United States. Today, overburdening court caseloads, high costs of incarceration, and the growing recognition of the need for criminal reform, have sparked an increasing interest in the potential role of mediation in criminal law disputes.

According to a survey conducted by MCMP, victim-offender mediation (VOM) is the most developed and common type of mediation used in criminal law. Typically, this process provides interested victims an opportunity to meet their offender in a safe and structured setting and with the assistance of a trained mediator, engage in a mediated discussion of the crime. The primary goals of VOM are to:

- Support the healing process of victims by allowing them to meet and speak with the offender on a voluntary basis;
- Allow the offender to learn about the impact of the crime on the victim and to take direct responsibility for their behavior; and
- Provide an opportunity for victim and offender to develop a mutually acceptable plan to address the harm caused by the crime.

Under today's conventional retributive justice model, crime is treated as a violation against the state rather than the victim, and punishment, if proportionate, is viewed as the best response to crime. In contrast, VOM is based on a restorative justice model, which emphasizes repairing the harm caused or revealed by criminal behavior. It views crime as a violation of people and relationships, and involves the victim, the offender, and the community.

The eligibility and procedural requirements for VOM and other criminal mediation programs vary. In some programs, cases are referred primarily as a diversion from prosecution, assuming any agreement reached during the

mediation session is successfully completed. In other programs, cases are referred after the court has accepted a formal admission of guilt, with mediation being a condition of probation. Some programs receive referrals at both stages.

Since the primary focus of the typical VOM program is to repair or alleviate the harm caused by the offender's criminal behavior, most VOM programs allow referrals at any stage in the criminal justice process, i.e., both before and subsequent to adjudication. VOM can also occur during an offender's incarceration, and when successfully mediated, result in a return of property and resolution of other restitution issues.

However, the primary objectives of criminal mediation programs are to reduce court caseloads and unnecessary incarcerations. These programs usually focus on referrals at the diversion or pre-disposition stage of the process. If mediation is successful and results in an agreement to drop charges, both of these objectives are met.

VOM and other criminal mediation programs usually restrict their referrals to misdemeanor disputes, both juvenile and adult. In the aforementioned DOJ Survey, the most common offenses, in order of frequency, were vandalism, minor assaults, theft, and burglary. However, when asked whether they ever use mediation in more serious crimes, a surprising number of respondents indicated that they occasionally handle cases as serious as sexual assault and even murder and attempted murder.

Obviously, there are many legitimate reasons why criminal mediation is not as extensively studied and practiced as civil mediation. A major concern is the potential for compromising an offender's constitutional rights, especially against self-incrimination, since an offender may be required to admit his guilt prior to participation. Also, criminal mediation lacks the precedents of criminal adjudication and involves concerns about various legal protections, such as confidentiality and enforcement of resolution and agreements. Nonetheless, when used appropriately, with highly skilled and trained mediators, criminal mediation is a potentially effective tool for addressing some of the concerns regarding our criminal justice system, and should be included in any discussion about criminal reform.

Abner Tansil is the Chairperson of GCBA's ADR Committee and a member of the State Bar of Michigan's ADR Council.

Emerging From the Shadows: Domestic Workers as Protected Employees under the Law

By G. Michael Meihn



G. Michael Meihn

Introduction

In late 2013, for one rare, brief moment, a glaring light was cast on the plight of domestic workers in the United States. The strip search of an Indian diplomat during a United States crackdown created a political firestorm and front page fodder for every media outlet. Lost in this maelstrom, however, were a domestic worker's claims against the diplomat. The domestic worker alleged she was paid less than half the minimum wage and was forced to work longer hours than had been initially agreed to by her employer. These complaints are not uncommon, voiced on a daily basis by multitudes of domestic workers who inhabit the homes and lives of millions of Americans.

The domestic worker protections presently afforded by federal and state legislation are lacking and/or inconsistent. In fact, in many states, domestic workers are completely left out of the definition of the term "employee."

Domestic Workers And Federal Law

A. Applicable Federal Law.

With few exceptions, federal law has excluded domestic workers from protection *either explicitly or through qualification criteria* such as number of employees required before the act or statute would apply, hours worked in a prior year, or other qualifying requirements.

1. **Explicit Exclusion of Domestic Workers:**
 - a. **National Labor Relations Act:** Domestic Workers are excluded.
 - b. **Occupational Safety and Health Act:** Domestic Workers are excluded.
2. **Domestic Workers Excluded By Qualification Criteria:**
 - a. **Title VII of the Civil Rights Act of 1964.** Title VII only applies to employers who employ relatively large numbers of workers (15 employees or more) and who "affect or engage in commerce." 42 USC §2000(e).
 - b. **GINA/HIPAA.** GINA/HIPAA only apply to employers having 15 or more employees who "affect or engage in commerce." Pub. L. 104-191 110 Stat 1936.
 - c. **Americans with Disabilities Act.** Like Title VII, The ADA only applies to employers who employ relatively large numbers of workers (15 employees or more) and who "affect or engage in commerce." 42 USC §12111(5)(a).
 - d. **Age Discrimination in Employment Act.** This law applies only to employers who have 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and who "affect or engage in commerce." 29 USC § 630 (b).
 - e. **Family Medical Leave Act.** This law applies only to employers who have 50 or more employees and whose business "affects or engages in commerce." 29 USC 2611.

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Domestic Workers And State Law

The application of state discrimination, wage and hour, disability, and leave law applied to domestic workers, like its federal counterpart, is dependent on the type of employer involved, the number of employees required by statute to qualify, and whether the employer's business "affects commerce."

A random sampling of states demonstrates that each state is slightly different with regard to its discrimination and disability statutes. Indeed, some states directly exclude domestic workers and others do not address domestic workers at all leaving the issue open and ripe for litigation. States that directly exclude domestic workers from protection for discriminatory practices include: Connecticut, Delaware, Idaho, Illinois, Iowa, Kentucky, Minnesota, Nebraska, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, and Washington.

In Michigan, the Michigan Persons with Disability Discrimination Act, MCL 37.1201, specifically mentions and excludes domestic workers. On the other hand, domestic workers are not addressed or referenced under Michigan's Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2201. Moreover, there are no reported cases in Michigan where a domestic worker attempted to claim race, sex, gender, age, marital status, weight, or any form of discrimination under ELCRA.

Importantly, ELCRA defines an "Employer" as "a person who has one or more employees, and includes an agent of that person." MCL 37.2201(a). An argument could be posited that since ELCRA is so broad, any individual who employs another individual should be considered an "employer" under ELCRA, and therefore must comply with the law, even with respect to non-employee individuals. Accordingly, a domestic worker may have state law discrimination protection under ELCRA against a homeowner that hired him to perform a service.

Conclusion

The domestic worker dilemma appears to be a slowly evolving issue in employment law. One could argue that suits against employers of domestic workers are the next new frontier of employment litigation.



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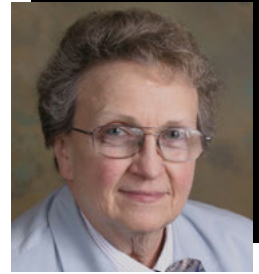
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Miranda: More than Words

By Roberta J.F.Wray



Roberta J.F. Wray

It's been a few years since I chaired the Law Day Committee, but it's never been far from my mind. I'm pleased to be able to be involved again.

In addition to the attorneys who help students prepare for their mock trials, the committee is looking for more schools to get involved. Over the years, the requirements of standardized tests and core curricula have resulted in several schools electing not to participate. We think Law Day is an excellent way to teach young people about lawyers and how we fit into the fabric of communities.

So here's the pitch: Schools should be more than standardized tests. They should teach critical thinking. Participation in Law Day can help students learn techniques for filtering information. If you agree, maybe you could approach officials in your school district and try to convince them to be involved.

I know some of our members became lawyers after participating in our Law Day activities when they were in school. I also know that anyone who participates in any way in Law Day activities comes away richer for the experience.



Welcome New Members

Attorney: Brooke E. Tucker

Employer: 7th Judicial Circuit Court
Undergrad School: Eastern Michigan University
Law School: DePaul University College of Law

Attorney: Marianne Marconnay

Employer: Self-employed
Undergrad School: University of Michigan-Dearborn
Law School: Michigan State University (DCL) Law School

Attorney: Joan Morgan

Employer: Federal Defender Office
Undergrad School: University of Michigan
Law School: University of Detroit Mercy Law School

A Prosecutor's Perspective on Presumptive Parole

By David S. Leyton



David S. Leyton

There is a coalition formed in Lansing with the reasonable goal of cutting costs in Michigan's prison and criminal justice systems.

But alarmingly, recent proposals in Lansing would undermine public safety.

Over a decade ago, Michigan made tough decisions regarding sentencing guidelines, which resulted in a reduction of inmates being housed in Michigan prisons from a high of around 50,600 in the mid-2000's to a little over 43,000 currently.

The result is that today, 71% of all Michigan prisoners are in prison for violent, assaultive crimes - murder, rape, carjacking, robbery, and other violent offenses. Another 22% are in prison as habitual offenders because they have, literally, chosen to make a career out of crime. Most of the rest are in for violating parole or probation.

Contrary to some popular beliefs, Michigan's prisons are not full of shoplifters, petty thieves and pot smokers. Of the 7.6% of Michigan prison beds being used by drug offenders, most are in for major controlled substance trafficking crimes.

Furthermore, only 10% of Michigan felons are initially sentenced to prison. That means that 90% of all first time felons are sentenced to county jails or some type of diversion program.

The bottom line is that it is not easy to get into prison in Michigan.

As proposed reforms to Michigan's criminal justice system and the MDOC are advanced in the legislature to save money, we must be cautious in our approach. We do not want to jettison scores of career and violent offenders back into our communities.

One proposal that is particularly alarming is called presumptive parole.

In October, the Michigan House of Representatives passed a bill that would presume a prisoner's right to automatic parole at their earliest release date without a full parole board review and hearing. Currently, the burden lies with the prisoner to provide the proofs to the parole board that they are deserving of parole. The proposed legislation would replace that burden with a presumption of automatic parole and shift the burden of proof to the parole board to rebut that presumption of automatic eligibility.

Further, this legislation significantly reduces the parole board's discretion and narrows it down to a short list of specific reasons for which the parole board may deny parole. In essence, this bill takes away the parole board's experience and expertise in determining on a case-by-case basis those inmates who should be eligible for parole.

Protection of the general health, safety and welfare of the public is widely recognized as the primary job of any governmental body. As the elected prosecutor for Genesee County, my number one priority is public safety. While saving taxpayer dollars is an admirable goal, saving a few dollars at the expense of public safety is bad public policy.

I encourage you to contact your State Senators and Representatives and urge them to vote "no" on presumptive parole.

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Life Beyond the Courtroom

Buckham's last show was amazing. Everything was done right, music, wine, good company, and truly beautiful art – created by attorneys! I would say that was the best show I've attended. There was a really good art vibe going on. We could have been anywhere – maybe San Francisco. Who knew there was such an art scene in Flint?

-Ken Randall, Midland County Friend of the Court

On Friday October 9th, “Reflections,” featuring works created by three members of the Genesee County Bar Association, opened to a crowd of over 400 people. On display until November 7th, the exhibit showcased fused glass creations by Suellen Parker, paintings by Charles Boike, and photography by Shelley Spivack.

Buckham Gallery, an artist-run cooperative gallery located in a second floor loft on the corner of West Second Street and Buckham Alley, has brought high quality contemporary art to the Flint community for over 30 years. Featuring local artists as well as painters, sculptors and photographers from around the globe, Buckham gives visitors to Flint's Second Friday Artwalk an opportunity to experience art in a setting comparable to that which would be found in larger cities such as New York or San Francisco.

Last month's show, “Reflections,” gave visitors the chance to see that lawyers have a life beyond the courtroom. Suellen Parker, family law attorney and the owner of Case Island Glass, holds a degree in art from Boston College and exhibits her unique fused glass creations at art fairs and in museum shops across the country. The show at Buckham gave Suellen the chance to exhibit her work and engage her audience in a new and exciting way. With three large walls, instead of a 10' x 10' booth, the individual pieces became part of a larger vision engaging the viewer, not only in the beauty of each piece, but in the enjoyment of unique reflective patterns.

Suellen's son, Charles Boike, who studied at Columbia College in Chicago and is an Associate at Simen, Figura and Parker, has become a moving force in Flint's growing art community, serving on the board of GFAC and organizing events such as the popular *Aerosol and Audio* festival in downtown Flint. Charlie's gallery work depicts American iconography with the flare of pop art and the essence of street graffiti. His work can be found in the Ruth Mott Foundation Collection, the Thomas M. Cooley Law School collection, and the homes of many private collectors.

Shelley Spivack, a photographer as well as an attorney/referee with the Genesee County Family Court, is an artist/member of Buckham, and is the director of the Buckham/GVRC Share Art Project which offers arts workshops to incarcerated youth. The work shown in “Reflections,” 13 images of sites ranging from Iceland to New Zealand, is a retrospective of places she and her camera have visited over the last 13 years.

While “Reflections” closed on November 7th, works by Parker, Spivack, and Boike will be available at Buckham during the Annual Member show which opens on Friday December 11th.



(L-R) Suellen Parker, Charles Boike, and Shelley Spivack



Genesee County Bar Association
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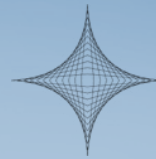
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