

November/December 2010

BARBEAT

Genesee County Bar Association



Photo by Terry Bankert

GCBA Holiday Dinner 2010
"It Can't Happen to Me ..." Or Can It?
Court Dockets (not airport flight schedules)
Constitution Day: Year One
Duncan Case "Non-Judicial," (for now)
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By B.D. "Chris" Christenson, President



B.D. "Chris" Christenson

According to the dictionary, "resilient" is defined as "recovering quickly: able to recover quickly from setbacks."

The Flint area is often referred to as tough, but resilient is probably a better description. We have had plenty of practice recovering from setbacks, as it seems our area continually has more than its fair share. The latest example is the way our court system pulled together after the flooding at the McCree building. Looking back at the way the building was used, it is clear that we had begun taking for granted the fact that we had all of the District Courts in one place, centrally located. This made it very simple for the criminal defense bar and the prosecutor's office to cover multiple courts for multiple jurisdictions easily and efficiently in one location. In addition, it was convenient and efficient for the Sheriff's department in that

they were able to cost-effectively and quickly move defendants to and from our local jail.

With the flooding of the McCree building, it became clear that other arrangements were going to be necessary, and much to the credit of the judges, court staff, Sheriff's department, prosecutor's office, and the attorneys, it has been pulled off well. I have been impressed with how everyone has worked together to make the best of this chaotic situation. I look forward to the courts being consolidated under one roof again, but I am confident that while we wait, the professionals in our system will keep the courts moving as best as they can. Thank you to everyone who has worked so hard and been so patient as we collectively work through these trying times.

As I finished this article on the resilient nature of our city and its people, I was reminded that it would

not appear until early December. It occurred to me that the holiday season, especially the GCBA/GCBF holiday dinner, would be on everyone's mind and that the citizens we help every year are the true examples of resilience. While we work through the inconvenience and difficulty of having our court system fractured, seeing the faces of the people of our area that are having real difficulty and setbacks in keeping and maintaining their lives helps define true resilience.

Again, thank you for all of your help in making the best of this situation and if you would like to see truly resilient people, volunteer for the afternoon for the GCBA/GCBF holiday dinner on Tuesday, December 21, 2010. Please contact the bar for how you can help.

Have a very happy and safe holiday season.

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Save the Date!

**GCBA/GCBF
Holiday Dinner
December 21, 2010**



**4 p.m.
The Masonic Temple**

GCBA Holiday Dinner 2010

By Brian M. Barkey, Holiday Dinner Chair



Brian M. Barkey

Until Judge Beagle asked me earlier this year, I did not realize that this year will be the 20th GCBA/GCBF Holiday Dinner. Our first dinner was in 1992, but we had so much food left over that we had a second dinner that winter to serve it all. So there you have it, twenty dinners.

As good an idea as this was (in fact, it was Judge Beagle's), I do not think any of us foresaw the impact this dinner would have on our community and on us. To my amazement, we raised enough money from around the table at the first committee meeting, and from the Flint Trial Lawyers Association who matched this amount, to fund the entire affair. Larry Battiste agreed to handle the food preparation, and the Masonic Temple donated the room. Just like that, we were in business.

Because we had no idea what we were doing, we overdid everything. Our members appeared in waves to help set up, serve, and clean up afterward. In addition, they were more than willing to help families get their plates to the table and help the kids cut the meat. Our dinner was not

well known in those days, and when traffic through the front door slowed, Santa himself went out the door onto Saginaw Street to recruit people in passing cars. At the end of the evening we did not want to go home. We were tired, but we felt great.



Every year we have tweaked something to make things go a little smoother. We have two serving lines to get people their food quicker. We moved Santa downstairs, then upstairs to help cut the congestion. We have made space for people to wait inside out of the cold. Our Santa pictures have gone digital.

The community response has been wonderful. We are now one of the expected annual events other charities plan around. They know us at the shelters, at soup kitchens, and the state Department of Human Services. Our numbers have grown. Last year we served 1,035 people and distributed 558 presents. We also handed out 150 sets of gloves, hats, and socks to kids who looked cold.

It has changed us too. Last year 122 donors contributed money to the dinner. Some who had already sent in a donation, called to see if we had enough money, offering to send in more if we needed it. Two hundred thirty-four people volunteered. Entire offices closed for the afternoon and volunteered in lieu of their office parties. Where I used to see lawyers bringing their spouses to help, I now notice them bringing their children to show them what helping people feels like. I hope they like it as much as their parents.

So why has this hit such a resonant chord with the Genesee County legal community? Why has our need been met with such generosity? I have my own theory. To paraphrase a first line from a famous novel, we all practice law for hundreds of different reasons, but we were all attracted to it for the same one. We want to help people.

Please join us if you can. This year's Holiday Dinner is on December 21st, beginning at 4:00 p.m. It will make your heart grow in your chest, I promise you.

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“It Can’t Happen to Me . . .” or Can It?

By Roberta J.F. Wray



Roberta J.F. Wray

We’ve all done it. We see a traffic accident involving teenagers, or defend a young person whose parents have hired us to deal with their alcohol or drug arrest. We say a silent “thanks” that our kids know better. But do they?

GCBA member Lori Tallman says, “Don’t count on it! I was 99 percent sure my son would not be involved in drugs.” Then she got the call from the school saying he was accused of distribution of prescription pills.

The incident happened more than two years ago and has been dramatized on the Davison High School website (www.davisonschools.org). Click on parents/prescription drug taskforce. The 12-minute video shows kids trading in prescription drugs that have been obtained from their parents’ medicine cabinets. Educators, parents and students throughout the state have viewed the video. Tallman urges you to watch it with your kids.

“For four months I had a full time job taking him to counseling, drug testing, picking up his school assignments, making arrangements for taking tests, and trying to find a school that would take him.”

Tallman says, “No matter how much awareness you have of the extent of the problem it’s hard to believe it can be your child. My son was a ‘good kid’, an athlete, mature, responsible, and had never been in any trouble before. I did it all: checked cell phone records and e-mails, monitored Facebook accounts, told him how

dangerous using drugs could be, and the legal consequences. It wasn’t enough. Even when you do the right things, it can happen to you.”

Tallman’s son bought some Xanax from a “friend” at school who was ultimately caught. He had taken three of the pills, then gave the rest to another student so he wouldn’t be caught with them after his supplier was caught. When he was questioned, Tallman’s son denied, but later admitted his involvement. It had happened only once. It resulted in his suspension and ultimately his expulsion from school.

That was just the beginning for Tallman. “For four months I had a full time job taking him to counseling, drug testing, picking up his school assignments, making arrangements for taking tests, and trying to find a school that would take him. Schools have problems with taking in someone who is expelled from another school because of their own expulsion rules for their own students,” she says.

“I learned that kids don’t fully understand the consequences for possession, use and/or distribution of prescription drugs. They don’t think they can get in legal trouble with prescription drugs, and they don’t think prescription drugs can harm them.”

Lori Tallman’s son said if he had known he would be disqualified from playing sports and expelled from school, he wouldn’t have messed with the pills. He said he did it, “because everyone else was.” He learned that the legal consequences are the same as for possession, use, and/or distribution of crack cocaine. Criminal conviction on drug charges can also result in

disqualification from participation in federally funded programs including student loans and other financial assistance.

Lori Tallman learned “Just Say No” doesn’t work with teenagers. “You need to make sure they fully and completely understand the consequences.” She says kids take pills from their parents’ and grandparents’ medicine cabinets and night stands. Since the episode, she has been approached by parents in supermarkets and on the street. She tells them, “Lock up your drugs. Grandparents’ drugs, too. Keep track of them. Tell (your kids) what can happen!”

Lori’s son has returned to school in Davison, the terms of his punishment completed. Lori says she is proud of how he has handled himself since the episode. She is also pleased that her story has helped other parents deal with their teenagers’ prescription drug issues.

Student distribution and abuse of prescription drugs is “going on in every school district,” says Genesee County Prosecutor David Leyton. Law enforcement agencies urge parents to lock up their drugs and to dispose of out-dated or unused drugs by taking them to an appropriate disposal site. According to Leyton, since Lori Tallman and her son’s story has been publicized in the Davison High School video, the number of cases of student involvement with prescription drugs in schools has dropped dramatically.

Court Dockets (not airport flight schedules)

By Barbara A. Menear, Administrator, Genesee County Circuit Court



Barbara A. Menear

On Monday, August 30, 2010, the 67th District Court, 68th District Court, Genesee County Probate and Circuit Courts went live with new electronic daily docket monitors in the McCree Building and the Courthouse. A one time funding opportunity allowed the courts to collaborate on a project that will make the daily dockets more accurate and readable by all court users. The system is called *Docket Call*, by *Infax*.

There are monitors located at the point of entry to each of the four court facilities. The daily docket for all courts is displayed in each facility. The information is configured by *party last name*. Judge/Referee, location and time of the court event are also noted. The information is displayed for 4 hours before the event is scheduled and 3 hours afterward. In the 67th District Court at the McCree building, a smaller monitor is located at each courtroom to display the daily docket for that location.

The installation eliminates the daily posting of the paper docket by staff in all of the courts. After an initial roll out period of 30-60 days, additional features of the system are being evaluated. The system has the capacity to be updated multiple times each day from the case management software as events are adjourned, moved from one court to another, added or removed from the docket.

Since the installation, many positive comments have been received from court users who are able to quickly determine if they are in the right court facility and identify the appropriate courtroom.

The Labor Day flood of the McCree Building has temporarily reduced the total efficacy of the system. However, the scroll on the bottom of the monitors in the Courthouse has proved to be a useful feature to re-direct district court users during this time.

This venture would not have been possible without the partnership of Dena Altheide, Administrator 67th District Court, Paula McGlown, Administrator 68th District Court, and Jim Bauer, Administrator of the Probate Court. Technical representatives from each of the courts were deeply involved with this project.

Although the courts identified funding, the Genesee County Board of Commissioners approved the project and allowed us to go forward with the upgrade. Many thanks for their foresight and support. Eric Hopson, Genesee County Purchasing Director, Cindy Carnes, Purchasing Manager, Jim Miller and Ray Zanke, Building & Grounds Supervisors, worked well with the courts and took pride in the project. Special thanks go to Rob Gifford, Court Technology Coordinator for Circuit Court.

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President Christenson signs the Diversity and Inclusion Pledge on behalf of the Genesee County Bar Association on September 30, 2010, at the State Bar Annual Meeting. For pledge language visit www.michbar.org/diversity.

Constitution Day: Year One

By Sherri L. Belknap, Law Day Committee Co-chair



Sherri L. Belknap

According to its mission statement, “[t]he Genesee County Bar Association exists to serve the professional needs of our members, improve the justice system, and educate the public about the law and the role of lawyers.” In order to support our Mission Statement, the GCBA organizes activities such as community seminars. This year, the GCBA expanded its role of educating the public by participating in Constitution Day.

In 2004, President George Bush signed an appropriations bill into law which created September 17 of each year as Constitution Day and required schools receiving federal funds to teach the Constitution. On September 17, 2010, five attorneys from the GCBA entered two area schools, Faithway Christian and International Academy of Flint with a PowerPoint presentation

entitled “Right to a Jury Trial.”

The interactive presentation focused on the right to a jury trial as provided by the 6th and 7th amendments, jury duty, and the history of the right to be a juror. It included two videos using footage from *My Cousin Vinny* and the original *Twelve Angry Men*. The videos were used to entertain, especially with the voir dire scene in *My Cousin Vinny*, as well as to provoke discussion based on the rant of a juror about the defendant being guilty because of his race in *Twelve Angry Men*. At the conclusion of the presentation, students were provided a pocket edition of the Constitution from the Genesee County Bar Foundation. The students were active in the presentation and the feedback from the students and teachers was positive.



Tim Ruwart



Carol Jaworski

New Admittees



On Tuesday, October 26, 2010 the Genesee County Bar Association sponsored an Admission Ceremony for those who recently passed the State Bar Examination. Judge Geoffrey Neithercut with the new admittees.

Duncan Case “Non-Judicial,” (for now)

By Glenn M. Simmington



Glenn M. Simmington

“This case is at its earliest stages, and . . . it is premature to make a decision on the substantive issues. Accordingly, the Defendants are not entitled to Summary Disposition at this time.” Unanimous Michigan Supreme Court decision dated April 30, 2010, *Duncan, et al. v. State of Michigan and Jennifer Granholm*.

* * *

“(T)he Motion for Reconsideration of this Court’s April 30, 2010 Order is considered, and it is GRANTED. We VACATE our order dated April 30, 2010. On reconsideration . . . we remand this case to the Ingham Circuit Court for entry of summary disposition in favor of the Defendants.” 4-3 Michigan Supreme Court decision (concurrence by Justice Markman), dated July 16, 2010, *Id.*

As those who follow the ongoing saga of public defense reform efforts in our state are aware, the Michigan Coalition for Justice brought suit against Governor Granholm and the State of Michigan in February of 2007, seeking declaratory and injunctive relief which, if granted, would compel the State of Michigan to honor its constitutional responsibility to provide indigent citizens accused of crimes the effective assistance of appointed counsel. The case of *Duncan v. Granholm*, Ingham County Circuit Court Case No. 07-000242-CZ, named eight plaintiffs who alleged that their Sixth Amendment right to appointed counsel, as recognized in the landmark U.S. Supreme Court case of *Gideon v. Wainwright*, had been violated by a “system” that routinely failed to provide adequate funding for defense services, sufficient training for appointed counsel, and state oversight

regarding the overall effectiveness of the public defense bar. Michigan’s nonfeasance in this area has been well-chronicled, and there are anecdotal reports of Michigan judges returning from out-of-state conferences having felt embarrassed during discussions of Michigan’s “broken system.”

According to a National Legal Aid and Defender Association (NLADA) study conducted before the filing of the *Duncan* litigation, Michigan ranked 44th in the nation for public defense spending behind Alabama and Georgia, spending only \$7.35 *per capita*. That year-long study was done at the request of state lawmakers and focused on ten counties chosen by representatives from the State Court Administrator’s Office, the Prosecuting Attorneys Association of Michigan, and the Criminal Defense Attorneys of Michigan, as well as the State Supreme Court and trial-level judges. The NLADA study found that none of the representative counties met either the ABA’s Eleven Principles of a Public Defense Delivery System or the SBM’s Ten Principles of Public Defense.

With the support of the study the *Duncan* case was filed. After surviving, first, a motion for summary disposition in the trial court, and then, review by the Michigan Court of Appeals, the lawsuit met with a rare show of unanimity (and, arguably, non-partisanship) on April 30, 2010, when the Michigan Supreme Court upheld the lower courts’ decisions, and remanded the case for further trial proceedings.

On July 16, however, by a 4-3 vote, the Supreme Court *vacated* the April 30 decision on the stated basis that upon reconsideration the case was deemed *non-justiciable* (i.e., essentially a political question, not appropriate or proper for judicial consideration or

resolution). Following the July 16 decision the Plaintiffs countered with another motion for reconsideration. As of this writing no decision on that motion has been rendered.

It remains to be seen whether the Court will render a decision on this latest reconsideration motion before the November 2nd election. Similarly, even if the Court renders its decision afterwards it is anyone’s guess whether the Court’s former unanimity will return or whether the July 16 “split” will either hold or will in some way be further altered.

It would be injudicious to speculate that the High Court’s unprecedented actions have been (or will be) motivated by *electoral* political considerations. Nonetheless, fairly or unfairly, without any other ready explanation, at least some of those interested in the public defense reform/*Duncan* saga will speculate. By design, of course, fundamental political change under our tripartite governmental form, consisting of co-equal branches, comes only incrementally; and the prospect of any near-term modification in the way Michigan judges, including appellate judges, are selected is dim to non-existent. Until some such change in judicial selection methods might come to pass, however, Michigan’s appeals courts will continue to invite such speculation; or, more to the point, to invite both speculation and suspicion.

Because “The Judges both of the Supreme and inferior Courts shall hold their Offices during good Behaviour . . .” U.S. Const., Article III, Section I, the same can only rarely be said of Federal, “Article III” Judges.

Help Yourself!

By Francine Cullari, Genesee County Bar Foundation Trustee



Francine Cullari

Here's the pitch – please make a donation to the Genesee County Bar Foundation. Why? The Foundation helps *you*: new clients (yes, new clients) from an educated public; less expensive continuing education, terrific events honoring attorneys, and tax deductions.

The Foundation has two primary functions: educating the public and educating lawyers. When the public is educated about the law, people often realize they need a lawyer. Every semester some students in my law courses at UM-Flint tell what they learned in class to their parents, who then contact me for legal advice.* Legal knowledge does lead to new clients. Thus, educating the public is good for the public and for legal profession economics.

Attorneys even benefit when legal knowledge does not lead an informed member of the public to hire an attorney. Think of how much better court cases proceed when an *in propria persona* litigant knows what he or she is doing. It saves all of us – judges and lawyers – time in court.

The Foundation also underwrites many educational opportunities for GCBA members. Seminars on criminal law, evidence, computers and bankruptcy, the Young Lawyers Lunch N' Learn series, membership meeting speakers, and other events were underwritten by the Foundation in the past year. The Foundation also sponsors events honoring attorneys, most recently the Beagle Family Commemoration, drawing over 300 attendees.

In every *Notes N' News* from GCBA/GCBF, we read about donations in memory of attorneys and family members, or in honor of attorneys. What an ideal way to acknowledge friends, by helping the profession and the public.

Please remember GCBF as you enjoy the holiday season, and send a contribution to GCBF at 315 E. Court St., Flint, MI 48502.

* To avoid any appearance of impropriety, students and their families are referred to other attorneys.

Probate Court Today

By Craig L. Wright, Probate Committee Chair
and Jason A. Metcalf, Wright & Metcalf, Attorneys at Law, P.C.



Craig L. Wright

While a discussion on the intricacies of EPIC could certainly be relevant I opted for a more personal approach for this article. I am the grandson and son of probate lawyers, and I decided to review the changes in probate practice over the past 60 years. To that end, my father, John M. Wright contributed the following thoughts:

“I now have the distinction of being the oldest practicing attorney in Genesee County. I began practicing law in 1947. In 1965, the judge set all probate administration fees (attorney fees) based on a percentage

of the gross estate. No time records were kept. There was usually a long line of attorneys at the Judge's door. Veteran attorneys always went to the head of the line. Charging less than the specified fee was considered a violation of the Canon of Ethics. Copy machines, computers, dictating machines, electric typewriters and legal assistants had yet to be invented. Pre-trial conferences, depositions, interrogatories and other red tape procedures did not exist.

The courthouse was open from 8:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to noon on Saturdays. Most attorneys were in general practice and handled any kind of case that was profitable.”

I became a lawyer in 1984. My father let me operate out of his office. His staff would occasionally assist me. I quickly learned the benefits of supplementing my income by teaching

college courses. Many lawyers in our community still teach in addition to practicing law.

Before computers, few attorneys prepared their own documents, and most attorneys had to employ at least one legal secretary. Now most firms routinely require attorneys to prepare most of their own documents, and one legal assistant may be assigned to several attorneys. While the advent of fax machines, computers, and cell phones has made our jobs easier in some respects, it often seems as if the attorney's duties have doubled and his or her availability is limitless.

When I started my practice there were three probate judges with similar dockets. Court reorganization left us with just one probate judge. Since Judge Barkey became the Probate Judge I think we have returned to the judicial style of my father's time. She devotes endless energy to her work and appears intent on developing new ways to increase her job duties and availability to those she serves. Based upon numerous comments, we have one of the most effective Probate Court Judges in the State.

This changing of the guard, coupled with an unfortunate downturn in the economy, appears to have played a large part in shaping probate practice in 2010. The loss of jobs resulted in fewer potential clients. Fewer clients resulted in more competition among the lawyers. Lawyers that previously would not go to Probate Court now view it as a means of supplementing their income, and I have noticed the return of the general practitioner to Probate Court, much like a half-century ago.

Family members cheating each other and the financial exploitation of senior citizens are common topics in court today, whereas they weren't years ago. In an effort to respond to these developments, the passage of the senior mileage has brought about the Elder Abuse Prevention and Task Force. As a result, the attorney's role in probate is more important than ever. We are often asked to defend as well

as pursue new and unique causes of action. Probate practice heavily relies upon the use of forms that are often mandatory and ever changing.

The Estates and Protected Individuals Code was enacted in 2000 and the new Michigan Trust Code in 2010. An understanding of these is essential to competent probate practice. Once rare, the use of Appeals Court decisions in Probate is commonplace now. Keeping abreast of changes and updates in the law is a formidable task, which requires probate practitioners to specialize their practices or face rude awakenings in Court or even at the counter.

Civility among probate practitioners has endured as a hallmark of practice in Genesee County throughout the years. It also used to be that the

general public was not sophisticated when it came to the law. Now, people are very resourceful and have become sophisticated due, in part, to the Internet.

Many practitioners are working more hours and receiving less pay. I think most of us can relate to that scenario. I appreciate the experience I have gained by appearing before numerous probate judges. I like to think it has made me a better person. Our lives as probate practitioners today aren't so very different from what they were in the past. The same basics are still required: hard work, knowledge of the law and respect for the Court. With an aging population we are becoming more important than ever. The future is good for probate practice. I am proud to be a probate practitioner.

Beagle Family Tribute

Photos taken by Lawrence J. Day



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