

September/October 2008

BARBEAT

Genesee County Bar Association



Featured artist Richard Ebbott
next to his painting *Deep Fall*

Peeking Into the Past

Bringing Peace of Mind to Your
Clients . . . The Benefits of
Using a Corporate Trustee

Judges' Tips

Race to the Bottom—Michigan's
Failing Public Defense System

Peeking into the Past

By Richard J. Ruhala

It was time to do spring cleaning around our house. Part of this task is to sort through old law records to determine those items that should be discarded. I decided to save one old Genesee County Bar Association publication entitled “Fee Schedule” dated March 1965. To take a peek into the past may be of interest to current bar members as to the practice of law 43 years ago in Genesee County.

This publication starts out as follows: “To My Brethren in the law..... The Minimum Fee Schedule which follows was adopted by the Genesee County Bar Association. This schedule is the same as adopted by the Commissioners of the State Bar of Michigan as promulgated by the Committee on Professional Economics, Louis B. Traycik, of Flint, as Chairman thereof.” It was signed by John M. Wright, who was then our GCBA president.

The publication goes on to state that an attorney “By entering into and becoming a part of the legal profession has rejected financial gain as his sole objective—he is not operating a business devoted entirely to showing a net profit—he has voluntarily offered his capabilities and talents to the service of the public.”

The publication further stated “in fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them.” It was proper for the attorneys to follow this fee schedule:

\$25 per hour for office consultation and general office work	
Adoption	\$150
Bankruptcy	\$250
Court matters Trial	\$25 per hour \$250 per diem
Criminal matters Felony Misdemeanors Drunk driving	\$750 \$100 to \$300 \$250 for jury trial cases
Divorce	\$250 uncontested; contested per hourly rate
Personal injury	1/3 contingent fee; 40 percent on appeal
Wills	\$25
Deed—simple	\$10
Land contract	\$20



Richard J. Ruhala

Most items in the Minimum Fee Schedule were on a \$25 per hour basis. Auto expenses were to be reimbursed at 15 cents per mile.

Chargeable time of an attorney was estimated at 1,200 hours per year, which at \$25 per hour (billed and paid) was \$30,000 annually. Forty percent, or \$12,000, was subtracted for overhead, leaving \$18,000 for net income per year, before taxes. After 25 percent was subtracted for estimated taxes, \$13,500 remained for net income.

Although an attorney was expected to work at least 1,915 hours per year, he was also expected to keep time of all his work, of which 715 hours could be allocated as follows:

Continuing legal education	70 hours
Public relations, charity, and civic organizations	285 hours
Unpaid legal work	360 hours
Total	715 hours

Attorneys were advised not to give legal advice over the telephone and to charge for all office consultations. Advertising was deemed unprofessional, but the use of simple professional cards was considered proper. Annual bar dues were \$12.

Enough said about the 1965 bar fee schedule, as we are now living in the year 2008. Many changes have occurred over the past 43 years, such as inflation, devaluation of the dollar, increased overhead, and taxes. Also to consider is the entry of more women in the legal profession along with men sharing in the caring of children and household tasks.

Taking this “peek into the past” should give us an idea of how much our practice of the law has changed since 1965. Electronic filings, computers, and the increased use of legal assistants are likely to change our method of law practice even more in the future. Adjusting to change is, indeed, a challenge.

Editor’s Note: In 1965, the use of “he” was standard practice in referring to both genders. At that time, there were 225 members of the bar. Five were women.

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Robert Kennedy: Looking Back

By David S. Leyton, President

With the 2008 presidential election just weeks away, the only thing of which we can be certain is that this year will be forever noted as a milestone in American political history.

From the earliest primaries and caucuses and all the way to the present, it truly has been one of the most memorable, interesting campaign seasons in at least a generation.

Early on, the eventual Democratic nominee, Senator Barack Obama, drew comparisons to another presidential candidate from an earlier generation who was also described as a young and inspiring leader. That earlier candidate was former U.S. Attorney General and U.S. Senator Robert Kennedy, affectionately known as Bobby Kennedy.

As comparisons were being made this election year between Kennedy and Obama and as we marked the fortieth anniversary of Bobby's 1968 campaign, I enjoyed a renewed sense of awareness of how Bobby Kennedy inspired so many people and why I have always looked at him as one of my heroes.

Without focusing on the comparisons between then and now

and without trying to be partisan, I would like to take this opportunity to reflect on Bobby Kennedy's career and share with you some of the reasons why I so admire his work and his life and why each of us as lawyers can learn something from him, 40 years after his death.

First of all, and noteworthy to those of us in the Bar, Bobby Kennedy was a lawyer. A graduate of the University of Virginia Law School, Bobby made his mark early as a U.S. Senate staff counsel where he earned a national reputation as a tough, hard-working, bare-knuckled fighter in his battles against corrupt union leaders and organized crime. From that early and very meaningful legal experience working in the U.S. Senate, Bobby Kennedy made his entrance onto the national political stage as campaign manager for his older brother John's successful run for the presidency in 1960. After JFK's election, Bobby was appointed U.S. Attorney General and he continued his fight against organized crime and demonstrated a strong commitment to civil rights.

During this time, Bobby developed a reputation among some in the media as being ruthless, calculated, and opportunistic. However, President Kennedy's assassination in 1963 had an enormous impact on Bobby and it would contribute greatly to his developing an even deeper moral foundation with open-mindedness and an immense sympathy for human suffering. These traits would bear greatly on the values and positions he would later carry as a U.S. Senator from New York and in his own campaign for the presidency in 1968.

When one looks at Bobby Kennedy's life's work, it is clear that



David S. Leyton

his legendary passion and energy were focused on fighting for that which he saw as morally right. In the postscript to his 1967 book, *To Seek a Newer World*, he had called it "thoughtless folly" to attempt "to solve problems and take action unguided by ultimate moral aims and values." He added another personal belief, often quoted, that "only those willing to fail greatly can ever achieve greatly."

Bobby Kennedy took his passions and his vision to those parts of America where people didn't have a voice in the political dialogue or a stake in the ever-increasing prosperity of the land. He spoke for the downtrodden, the misused, the abused, and the forgotten.

During his announcement speech for president on March 16, 1968, he said:

"I do not lightly dismiss the dangers and the difficulties in challenging an incumbent President. But these are not ordinary times and this is not an ordinary election. At stake is not simply the leadership of our party and even our country. It is our right to moral leadership of this planet."

As we go about our daily lives in the practice of law, let us remember the positive values exemplified by Bobby Kennedy. Let us be guided by a moral compass and strive to do good by our work. Let us be passionate advocates to not only the wealthy and the powerful, but also the defenseless and the oppressed.



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Bringing Peace of Mind to Your Clients... The Benefits of Using a Corporate Trustee

By Dawn D. Crichton

Have you ever prepared a trust for a client who was determined to name a relative or close friend as trustee, and you were uncomfortable with their choice? Maybe you had concerns about the individual's ability to manage investments, evaluate distribution requests, or remain unbiased in making difficult decisions.

In the future, you may want to consider recommending the trust department of a local bank. Trust departments are frequently appointed as corporate trustees and deal with hundreds of trusts. They are generally well established and employ experienced, knowledgeable staff. Most trust departments also administer investment management accounts, IRA's, estates and retirement plans. A trust department can act as a corporate trustee in the capacity of a sole trustee, co-trustee, successor trustee, or investment agent.

When is it appropriate to suggest the use of a corporate trustee?

Scenario #1

Ted was a widower and was his own trustee during his life. His son, Joe, was successor trustee. Joe and his older sister, Sherrie, were equal beneficiaries of Ted's trust. Neither knew much about investing, but Joe loved taking risks.

When Ted died in early 1999, there was \$1.2 million in his trust, all invested in a money market account. Joe decided it would be exciting to invest the \$1.2 million in technology stocks, so he chose two start-up software companies because their stock had increased by 45 percent in the first year. By the end of 1999, the stock in the trust was worth \$1.8 million, but by the end of 2000, it equaled \$1 million. Joe held on, hoping the companies would turn around.

He kept the same two stocks and on October 30, 2002, they were down to \$600,000. Sherrie turned 30 on October 31 and was required to take her share of the trust. Joe sold

\$300,000 worth of the stock and sent her a check. She was furious at the value and never spoke to Joe again.

What could you do differently with your client?

1. Discuss the roles and responsibilities of a trustee.
2. Explain the value of a corporate trustee, especially if the trust is complex, there are multiple beneficiaries, or a large amount of assets. Corporate trustees provide stable, professional investment management services using diversified investments.
3. If your client wants a corporate trustee, schedule an introductory meeting with your local bank's trust department, with whom you have already developed a relationship. They will remain in contact with your client and will refer them back to you when the trust needs to be changed or updated.
4. Provide a copy of the trust to the corporate trustee before your client signs it. The trust may meet all the legal requirements; the corporate trustee will review it for you from a practical standpoint to ensure it can actually be administered.

Scenario #2:

Susan was a single woman with no children. She had a successful career and acquired \$2,000,000 in assets. At 58, she had a trust prepared by a young attorney named Tom. Tom hadn't prepared any trusts before Susan's, but he did his best. Susan served as her own trustee and appointed her brother, Steven, as successor trustee.

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Judges' Tips

Genesee County Young Lawyers recently sponsored a Meet & Greet reception with section members and judicial secretaries. Secretaries compiled "Dos and Don'ts" for their respective judges. The tips proved to be very helpful and requests were made to reprint them in Bar Beat.

Circuit Court

Judge Archie L. Hayman

- Call the judge's office to advise when you are going to be late or have a scheduling conflict.
- If you have a plea, fill out the advice of rights form with your client before having your case called.
- Before the pretrial (in criminal cases), make sure you have gone over the guidelines with your client.
- Follow the pretrial scheduling order (in civil cases) to the letter. These dates are set by the court and cannot be changed by stipulation.
- Whenever possible, before calling the judge's office, please go online to review your case. This can avoid unnecessary phone calls.
- Don't "check in" in the judge's office. Please "check in" in the courtroom with the clerk unless otherwise instructed.
- Don't "check in" and then leave before your case is called.
- Don't come to court unprepared.
- Don't make personal attacks against other lawyers or the court.
- Don't knowingly misrepresent facts or law to the court.

Judge Geoffrey L. Neithercut

- Do not have incivility in court among lawyers.
- Do keep the judge's office informed if you are going to be late.
- In civil cases, abide by the scheduling order. Attorneys are given the opportunity to choose their cut-off dates. Judge Neithercut does not like to amend dates unless there are extenuating circumstances.
- In criminal cases, have People's Exhibit No. 1 and Advice of Rights

(Circuit Court Plea) forms filled out before plea. These can be obtained from the judge's staff.

- Do review the pre-sentence report with defendant before the sentencing.
- A good joke is always appreciated!

Judge Joseph J. Farah

- Be prepared for motions. (Do the research.)
- During oral argument, listen to the judge's questions. (They say a lot.)
- Be professional. (Leave your drinks, newspapers, and winter coats behind the bar of the courtroom.)
- Cobbs proposals need to be in writing, and they should include sentencing guidelines information.
- We will be requiring criminal mandatory settlement conference questionnaire forms to be completed and filed by the prosecutor and defense counsel during the initial mandatory settlement conference. (The completed forms must be in the court file for the judge's review at the time of the pretrial.)
- In most cases, you don't have to wait for the preliminary examination transcript to be prepared before filing your motions.
- Be prepared for civil trials. (They are now more likely to start on the first scheduled trial date.)



Nancy Chinonis, Tony Vance, and Jade Edwards

Judge Robert E. Weiss

- Please call Kathleen or Brittany if you are running late for a hearing.
- Be sure to file a brief and a witness list if you have an upcoming trial/evidentiary hearing scheduled. (Otherwise, your witnesses will be excluded.)
- Always stand at the podium when addressing the court; speak loudly and clearly to make a good record.
- Gentlemen, make sure your tie is straight and collar buttoned when before the court.
- Talk up the MSU Spartans with the court whenever possible.
- Don't use this court's copier to copy documents for cases that are before another judge.
- Don't leave your cell phone ringer on when in the courtroom. (You may lose your phone.)
- Don't enter the judge's office while talking on your cell phone. (This is very disruptive to staff.)
- Don't leave your morning Starbucks/Tim Hortons or other coffee cups/mugs lying around the judge's office for the staff to clean up.
- Bad idea to mention that you are an avid Wolverine fan to the court.

Judge Jennie Barkey

- Be prompt. (Judge Barkey starts on time.)
- Call if you are going to be late.
- If your file is "incomplete," check with the probate court clerk's office before the hearing to correct the deficiencies so that your file can be sent into the courtroom and heard at the scheduled time.
- Be prepared. (Judge Barkey reads

everything you file and may have questions.)

- Have your prepared orders ready for signature at the hearing. (This is much more time efficient than producing them at a later date.)
- Do not blame your secretaries/staff. (Your office's work product is your work product.)
- Do not blame our probate staff. (Our staff is there for direction, but if not aware of the "complete" circumstances regarding a particular matter, you may end up having to correct certain deficiencies, which could have been avoided if our staff had been given all pertinent information.)
- Do not take your frustrations out on probate court staff. (Judge Barkey is very aware of how staff is dealt with by attorneys.)
- Do not try to cover up a mistake. (Be frank with the judge; everyone makes mistakes. Judge Barkey would rather you let her know when you did something incorrectly, instead of trying to make excuses.)
- Do not hold conversations in the courtroom. (You want the judge's full attention on your case, so give others that same courtesy.)

Judge Michael J. Theile

- Before you ever get to court ... Do understand that your client needs to hear an unbiased assessment of his or her case. You do no one any good by telling the client only what he or she wants to hear.
- Do not ask for relief that clearly you are not entitled to, i.e., do not ask for a waiver of statutory waiting period unless a compelling reason, as required by statute, clearly exists.
- The court appreciates substance over form—get to the point and sit down.
- Interact with all court staff as if you are dealing with the judge—because you are! Also, you are as good as your staff. They speak for you in

dealing with the court. Court staff will not suffer a lack of common sense and/or incivility very well. Peculiar approaches and attitudes always get back to the judge.

- When presenting orders for entry, tabs on the court's signature pages are very much appreciated.



Torchio Feaster and Chris Christenson

67th District Court

Judge Richard L. Hughes

- Come prepared.
- Be on time or, if you can't be, call and let the court know that you are going to be late and what time you plan to arrive.
- Always check in with the judicial secretary/court recorder and let her know what case you came to court on and when you are ready to proceed.
- Be respectful to the court and the court personnel and to fellow attorneys.
- If you have a unique situation or are having a difficult time resolving a matter, ask to speak to the judge.

Judge Christopher R. Odette

- Be on time.
- Call the court if you are tied up in another court.
- Avoid ex-parte communications.
- Don't ask for an adjournment on the day of trial.
- Don't wait for the judge to order programs that you know your client needs (like anger management classes). Get your client into programs ASAP.



Andrea Johnson and Sandra Carlson

68th District Court

Judge Nathaniel C. Perry III

- Have patience with the court.
- Wear a tie.
- Don't be rude to the judge or his staff in court.
- Try not to be late, but if you must, call the judge's office and let the secretary know by at least 8:45 a.m.
- Have any and all exhibits marked by the court recorder before any trial preliminary examination.

Judge William H. Crawford II

- Please call if you're going to be late.
- Please turn off cell phones.
- Please stand when addressing the court.
- Please have exhibits marked before the start of trial.
- Please bring a judge's copy of any motions and/or briefs filed to the courtroom on a timely basis.
- No drinks, including water bottles, in the courtroom.
- Please be respectful to others, attorneys, and individuals representing themselves when they are on the record, and do not talk in the courtroom.

Thanks to all the judges and legal secretaries who attended the reception and provided tips.





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The beneficiaries of her estate were listed as “her nieces and nephews.” When the trust was drafted, Steven had one son and one daughter. Susan had two other brothers—Michael and Dave. Michael had a daughter named Maria and Dave had a daughter named Jessica. Michael and Dave both divorced and remained single, but in Dave’s later years, he met Alyssa and they had a daughter named Diana. When Diana was three, Dave and Alyssa split up and Alyssa and Diana moved to Alaska. Dave never saw them again.

Thirty years later, Susan died. Steven was 90 years old and lived in L.A. with his two children. After Susan’s funeral, Steven reviewed the trust. Besides his children, he contacted Maria and Jessica, but he had no idea how to find Diana. He

tried, but got nowhere, so for eight months he did nothing. Eventually he resigned and the probate court where Susan lived until her death appointed a local trust department as corporate trustee. Through much research, they located Diana. The trust was then distributed to the beneficiaries.

What could you do differently to assist your client?

1. Follow steps 1-4 outlined in Scenario #1.
2. Consider explaining to your client the benefits of naming a local trust department as successor trustee in the event Steven resigned.
3. Require your client to be more specific in identifying beneficiaries by listing the names and addresses for those alive, and indicating how they are known to your client.

In summary, a corporate trustee can provide value to your clients and help you build a trusting relationship, which could result in referrals and future business for you. When reviewing your existing clients’ trusts and as you obtain new clients, you may want to consider the following benefits of using a corporate trustee:

- Experienced professionals who stay abreast of changes in tax and fiduciary laws
- Access to professional asset and tax management
- Stable, reliable service with an objective and impartial outlook
- Regulated by government agencies and activities are reviewed by independent auditors
- Bill-paying services with itemized statements for recordkeeping and tax preparation
- Professional team players working with local attorneys and CPA’s

Many attorneys prepare trusts for their clients. You can set yourself apart by providing *your clients* with peace of mind. You can help them achieve this by selecting a trustee with experience and integrity who will professionally manage their financial affairs. This may very well be a corporate trustee.

Editor’s note:

GCBA member Dawn D. Crichton is a vice president and trust officer with Citizens Bank Wealth Management, N.A. in Flint and is a client advisor. Citizens Bank Wealth Management has been a provider of trust services for over 80 years, with its corporate headquarters in Flint, Michigan.

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THRIVE.

Race to the Bottom— Michigan's Failing Public Defense System

By Glenn M. Simmington



Glenn M. Simmington

A recent study conducted by the National Legal Aid and Defender Association (NLADA) took an in-depth look at Michigan's system of providing public defense. Released in June 2008, the report, entitled "A Race to the Bottom—Speed & Savings Over Due Process: A Constitutional Crisis," states that Michigan's system fails to meet national standards.

The NLADA's year-long in-depth study of 10 representative counties in Michigan was done in partnership with the State Bar of Michigan. David Carroll, NLADA's director of research and evaluation, found that Michigan fails to provide [effective] representation to those who cannot afford counsel in its criminal courts.¹

The 10 counties were selected

by an advisory group consisting of representatives from the State Court Administrator's Office, Prosecuting Attorneys Association of Michigan, State Bar of Michigan, State Appellate Defender Office, Criminal Defense Attorneys of Michigan, and trial-level judges. The 10 counties studied were Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Shiawassee, and Wayne. (While Genesee was not included, it is already under scrutiny, at least indirectly, in the *Duncan v. State of Michigan, et al.* case, as reported by this writer in the May/June 2007 edition of *Bar Beat*.)

The overall study was, therefore, based on a representative cross-section of counties, and it concluded, unfortunately, that Michigan chronically fails all of its citizens by placing the burden of public defense on its individual counties. With no state funding, state monitoring, or state standards, the counties have, quite simply, been rendered incapable of providing effective public defense delivery systems.

Michigan, like all states, has a constitutional responsibility to provide effective representation to those of its citizens whose liberty has been placed in jeopardy, as established in the landmark United States Supreme Court case of *Gideon v. Wainwright* (1963). As one of only seven states that place the entire burden for funding trial-level public defense on its counties (by definition, as an unfunded mandate), Michigan has completely shirked that responsibility.

Michigan, in fact, ranks 44th among the 50 states in per capita public defense funding, spending only \$7.35 per capita, or 38 percent less than the national average. By contrast, Michigan is one of the highest-ranking states (fourth, according to one survey) in per capita

spending on corrections, spending well over \$2 billion (over 20 percent of the state's budget) this year. Michigan taxpayer dollars, in short, are wasted on an inefficient, wholly inadequate system that does not deliver the kind of public safety or fairness taxpayers should expect.

Counties face tough budget problems of their own, of course, and are doing the best they can to provide public defense services. Because of a lack of state funding, the absence of state standards, and lack of state monitoring, however, counties across the state end up failing to meet the national standards set forth by the American Bar Association's *Ten Principles of a Public Defense Delivery System*—the fundamental criteria for effective representation. For example, despite the best efforts of defense counsel and county officials:

- Many attorneys have such unmanageable caseloads that they cannot provide an effective defense;
- Individuals often meet their attorneys for just a few minutes before trials, in non-confidential discussions in public courtroom corridors;
- There is little to no funding for experts or investigators; and
- There is a lack of training, time, and resources for defense attorneys to prepare a case.

The NLADA report highlights the prevalence in our state of the idea of McJustice, a term coined in Ottawa County to describe their district court arraignment day, elevating speed and savings over due process. Michigan's district courts, in particular, were found

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to value quick case processing above ensuring that individuals are informed about their right to counsel, much less that they receive effective representation. The report states that many district courts throughout Michigan simply do not offer counsel in misdemeanor cases at all, while others employ various ways to avoid their constitutional obligation to provide lawyers in misdemeanor cases.²

Time for Reform

Michigan residents deserve a justice system that works for all. Through the continuing efforts of the State Bar of Michigan, National Legal Aid and Defender Association, Campaign for Justice, and the Michigan Public Defense Task Force, however, legislators are now beginning to understand that Michigan's system of

public defense is failing. The time is ripe to build toward a legislative solution!

To that end, and converging with the release of the NLADA report, the Campaign for Justice, in particular, has emerged as a broad-based, bi-partisan coalition of organizations and individuals fighting for a fair and effective public defense system.

The campaign believes that legislative reform is needed to improve cost effectiveness, protect the public's safety, and restore the constitutional right to an effective defense representation.

To read the National Legal Aid and Defender Association report, visit <http://michbar.org/publicpolicy/indigentdefense.cfm>.

For more information about the Campaign for Justice, or to view the

Eleven Principles of a Public Defense Delivery System, adopted by the State Bar of Michigan in 2002, visit www.michigancampaignforjustice.org/eleven_principles.php, or contact information at www.michigancampaignforjustice.org.

Endnotes

- 1 National Legal Aid and Defender Association, "A Race to the Bottom—Speed & Savings Over Due Process: A Constitutional Crisis." June 2008. Page i.
- 2 National Legal Aid and Defender Association, "A Race to the Bottom—Speed & Savings Over Due Process: A Constitutional Crisis." June 2008. Page ii.

By Lawsuit or By Legislation Public Defense in Michigan Will Change

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**Wednesday, November 19
5 – 7 p.m.**

Cocktail reception with
hors d' oeuvres

Jazz entertainment by
Sleep Patterns

No RSVP necessary

Hosted by the Sustaining
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