

September/October 2018

BARBEAT

Genesee County Bar Association



Give a Little, Get a Lot!

Baby Court Turns Ten!

Happy Birthday Ninety Years Old Cline, Cline & Griffin, P.C.

SCOTUS between Terms ... What's Next?

Community Action Committee Update

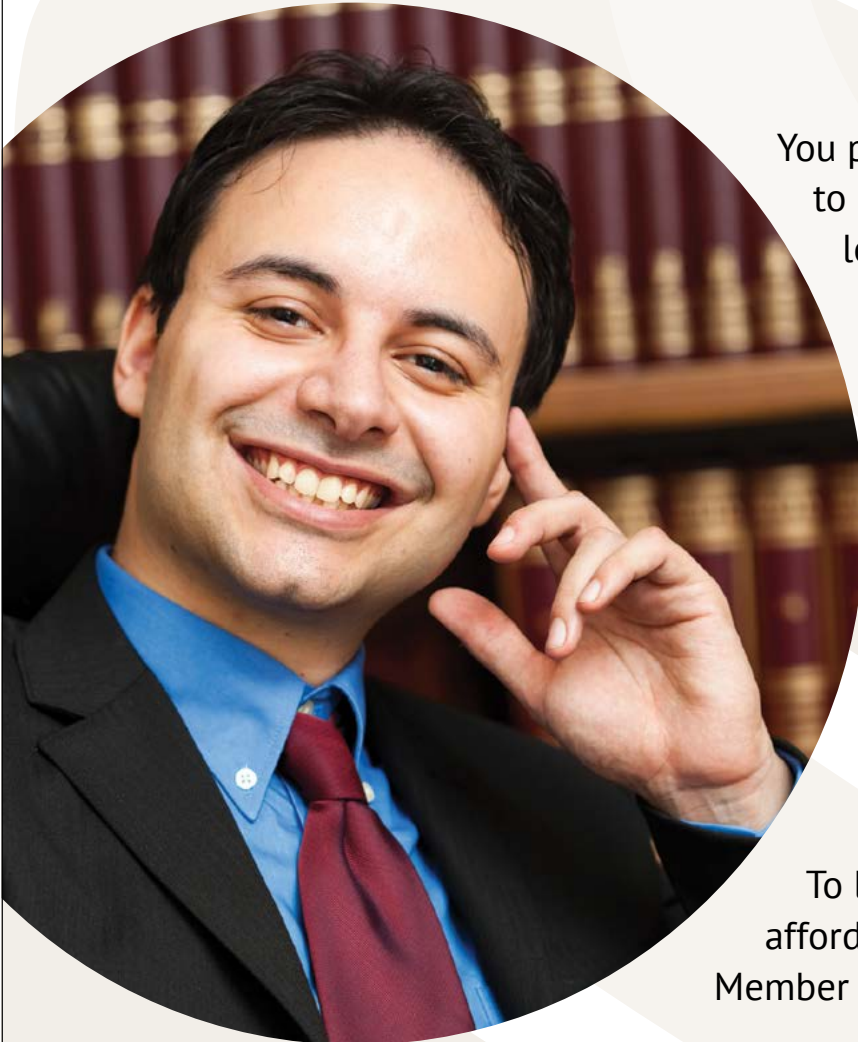
Amended Michigan Law Preempts Local Salary History Bans and "Ban the Box" Laws

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Table of Contents

- | | | |
|----|---|---------------------------|
| 4 | Give a Little, Get a Lot! | by Jessica J. Hammon |
| 5 | Baby Court Turns Ten! | by Hon. David J. Newblatt |
| 6 | Happy Birthday Ninety Years Old Cline, Cline & Griffin, P.C. | |
| 7 | SCOTUS between Terms . . . What's Next? | by Roberta J.F. Wray |
| 7 | Community Action Committee Update | by Katie Stanley |
| 8 | Amended Michigan Law Preempts Local Salary History Bans and "Ban the Box" Laws | by Linda Graham |
| 9 | Book Review: Triple Cross Killer | by Shelley R. Spivack |
| 10 | Family Step-Downs: The Insidious Clause That May Lurk in Your Auto Policy | by Richard McNally |
| 10 | Best Kept Secret in the Country: SUVCW | by Roberta J.F. Wray |

Advertisers

Blue Cross Blue Shield of Michigan
inside cover

Larry Day 3

Tom R. Pabst, P.C. 4

Jakeway Injury Law 5

Robert M. Ransom 9

Hamo Law Firm 11

Cline, Cline & Griffin, P.C.
back cover



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Give a Little, Get a Lot!

By Jessica J. Hammon, President



Jessica J. Hammon

As the fall hastens upon us and the season of giving approaches, I'd like to take some time to talk about the most unique way an attorney can give to others – pro bono work. I know some of you are already rolling your eyes and making the all too common, "I do enough pro bono work for clients who don't pay me," or "I have bills to pay, I can't work for free" comments, but hear me out.

We attorneys are able to help those in need in ways other professions simply cannot. Our advice is our trade, our calling card. Like an intellectual artist, each piece of advice we give, each document drafted, has a piece of ourselves in it. Sometimes the idea of giving away such a talent seems illogical, crazy even. It is unmistakably valuable and, therefore, sometimes hard to give for free.

It is also how we put bread on our table and ensure our families have a roof over their heads. But it is in fact the remarkably high value of this talent that makes it such a blessing to those who truly need but cannot afford it. To them, the advice and assistance of an attorney is something they never thought was possible with their limited means.

And please, do not make the common mistake of thinking, "Well if I do it for free for one person I have to do it for free for everyone!" No! No, you do not. Our work is ours to create and ours to charge what and how we see fit. A painter may donate a work of art to their local school,

but that does not mean everyone in the community gets to demand their own masterpiece for free.

If you are still hesitant, also consider that there are many ways that you can do pro bono work outside of your own practice, thereby easing the burden on you and your staff. Take a case or two a year from Legal Services – they screen the client for you to ensure they are truly in need, and you choose to take the case or not. Some of these cases, if warranted, may even result in an award of attorney's fees.

Volunteer at an "Ask the Lawyer" event or walk-in hour at LSEM. This takes very little time and no long-term commitment. If you are a certified mediator, contact the Community Resolution Center and get on their list of volunteer mediators. They can always use more people to alternatively settle cases. You will find that the feeling of assisting another in a way that no one else can is truly a wonderful thing.

The GCBA Holiday Dinner is just around the corner. Please make sure to sign up to volunteer to spread some love and joy to those who need it most. But as you do, please also consider giving just a little more. A few hours of your time may be life-changing for the person you help.

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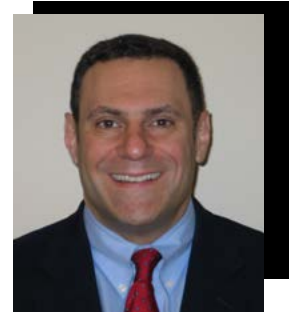


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Baby Court Turns Ten!

By Hon. David J. Newblatt



Hon. David J. Newblatt

You've come a long way, Baby Court! Happy Tenth Birthday! You and your little sister, Girls Court, are growing up so nicely!

Ah, I remember it well: the good ole days when courts only had to make decisions. They were the "widgets" manufactured in the factory of justice. But then some genius had the idea that judges should solve problems too. The horror! I remember where I was when I heard the news: Judge Ransom's courtroom. I was the snot-nosed prosecutor assigned to him when he started one of the country's first drug courts. He made me clap and pass out candy. My heart just wasn't in it. I felt pretty stupid. If there wasn't a dead body and a jury, I wasn't interested.

After I became a family court judge, I was in the room when Justice Corrigan told Judge Weiss that he was starting a Baby Court. And he was gonna like it. I was impressed because not many people could talk to Judge Weiss like that. I sure couldn't. After he passed away, Judge Barkey told me I was taking over Baby Court. And I was gonna like it. What can I say? She made me an offer I couldn't refuse.

Soon though I was a true believer. I loved Baby Court's Humpty Dumpty approach to fixing trauma, dysfunction, substance abuse and mental illness, all while addressing infant mental health and the parent/child bond. Our program,

which became a model for the state, more than doubled reunification rates! Not too shabby!




A few years later I became educated about human trafficking. It made me think of a case I tried in 2003, where a 19-year-old woman was murdered by her pimp. I had wondered at the time why she picked such a dangerous job, but then I learned that she wasn't Julia Roberts in *Pretty Woman*: an empowered chooser. Rather, predictable risk factors made her vulnerable to being preyed upon by her pimp, who manipulated and coerced her, and ultimately used violence that led to her murder. I realized that girls who had these same issues were hiding in plain sight on my juvenile delinquency docket. I wondered if we could use Baby Court's approach and design a program to prevent them from being trafficked. And voila, Girls Court was born!

But it took Nickolas Kristof of the New York Times to help me see the bigger picture. His column said that there is no one solution to solving poverty, but that we need many initiatives; in other words, not a silver bullet, but silver buckshot. This was a revelation! I was doing this

Continued on next page



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without even knowing it: using treatment courts as part of a larger attack on poverty. I wrote him back to tell him and he published my response. I said that we need to consider every contact courts have with families, not as just another decision to make (a widget), but as an opportunity to lift them out of poverty. It's very exciting that this is what Baby Court has become!

So where do we go from here? We lift all boats: we take the lessons learned and apply them to all cases and into the community. For instance, we've expanded infant mental health services exponentially. In Girls Court, we've used our knowledge to help build a county-wide protocol that provides an emergency response and services to help all human trafficking victims. Also, we've begun to combine the two courts when appropriate, which gives us an opportunity to break the multi-generational cycle of poverty and dysfunction. For instance, when an at-risk teenage girl becomes pregnant, using the courts together can both reduce her risk and prevent a baby from coming into care.

Baby Court and Girls Court are committed to expanding our innovative approach in order to help our children and families now and into the future. So, the next time you see Judge Ransom, tell him I'm sorry I was such a killjoy. And that I clap really loud now.

Happy Birthday Ninety Years Old

Cline, Cline & Griffin, P.C.

After ninety years, Cline, Cline & Griffin and its predecessors have been part of the Flint legal community through most of the 20th Century and into the 21st.

The firm was first established in 1928 with offices located in the newly-finished Mott Foundation Building (Union and Industrial Bank) at the corner of First and Saginaw Streets in Flint, Michigan. A small corner office overlooking Saginaw Street was the beginning. The firm was originally called Stockton, Cline & George, and has maintained an active legal practice in that same location through today. Under the name of Stockton, Cline & George the firm continued until the death of Thomas Stockton (1870-1937) at which time it became Cline & George [Howard Cline, Sr. (1903-1965) and Francis J. George (1904-1970)] until 1960 when the firm became Cline & Cline. One original founding member, Howard D. Cline, Sr., continued in practice along with his two sons, Earl J. Cline (1931-2002) and Howard D. Cline, Jr. After the death of Howard D. Cline, Sr. in 1965, the firm continued as Cline & Cline until 1978 when Walter P. Griffin joined and Cline, Cline & Griffin evolved. The firm continues under the name of Cline, Cline & Griffin to this day in the same location but with offices expanded to encompass the entire 10th floor of the Mott Foundation Building.

Today the firm consists of nine lawyers with Walter P. Griffin, Timothy H. Knecht, José T. Brown and J. Brian MacDonald as principals.

To survive through three generations of attorneys, multiple changes in Flint, both ups and downs, and to flow with changes in the law over these many years, is truly amazing. The firm was initially recognized as a general practice firm and maintains that moniker today, but changes in the practice of law over the past ninety years have necessitated some specialization. Prior to 1950 the practice was indeed general, which required an attorney to handle myriad problems for clients in the Flint community.

Since the 1950's, the firm has developed a defense practice in the negligence field, acquiring as clients several insurance carriers throughout the country and particularly in the areas of medical, dental and hospital malpractice defense. It has also continued a strong business and corporate practice for diverse clients, and has an active will, trust, and estate practice.

Cline, Cline & Griffin is most proud of its acceptance of civic responsibility. The principals of the firm have held positions as Trustee of Grand Blanc Township, President of the Community Foundation of Greater Flint, President of the University Club of Flint, and President of the Flint Golf Club, to name of few.

The attorneys of Cline, Cline & Griffin have also held significant leadership roles in the legal community. Walter P. Griffin has been President of the Michigan Defense Trial Counsel, President of the Genesee County Bar Association, and Chairman of the Negligence Section of the State Bar. Timothy Knecht has also provided leadership in these same roles and is a past President of the Centennial American Inn of Court.

Supporting the legal profession and the community as a firm, and personally by the attorneys, along with representation of multiple corporations and entities, have been at the firm's core.

It is with great pride that the members now celebrate a ninety-year legacy with the hope of continuing the legacy along with the resurgence of the community.

SCOTUS between Terms . . . What's Next?

By Roberta J.F.Wray

With a full complement of justices the Supreme Court took final action on the third iteration of the Trump Travel Ban ruling it to be within the power of the President under the rubric of national security. It was a narrow ruling and a 5-4 vote, as expected.

The long-standing practice of the Court to avoid politically based cases was evident, in June, in two cases challenging political redistricting plans that have resulted in snake-like districts that resemble those that gave rise to the term "Gerrymander."

As summarized in the New York Times of June 20,

The cases (from Maryland and Wisconsin) had the potential to deliver a reckoning on a practice that dates to the early days of the Republic and got its name from one of the signers of the Declaration of Independence, Elbridge Gerry. The court instead kicked the can down the road, leaving the door open to further challenges.

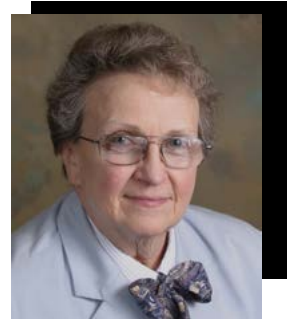
But the decisions were a setback for critics of gerrymandering, who had hoped that the Supreme Court would transform American democracy by subjecting to close judicial scrutiny the way districts have been redrawn to accommodate the preferences of the

party in power. When the dust settled Monday, the status quo remained in place.

The resignation of Justice Anthony Kennedy has resulted in uncertainty about the future.

Confirmation of Judge Brett Kavanaugh to fill the vacancy unexpectedly stalled over an accusation of sexual misconduct that allegedly occurred when he was in high school resulting in echoes of the 1991 confirmation of Justice Clarence Thomas. Some senators also expressed concern over Judge Kavanaugh's positions on *Roe v Wade* and on presidential power.

Cases involving both of those issues may come before the Court this term, but among the issues already scheduled to be argued are at least two cases involving Native American treaty rights, a number of Federal Arbitration Act cases, and detention of criminal aliens under certain circumstances. Criminal law cases covering burglary, and career criminals, execution methods and, in *Madison v Alabama* (No. 17-7505), whether a state may execute a prisoner whose mental disability leaves him with no memory of his commission of the capital offense. Stay tuned.



Roberta J.F. Wray

Community Action Committee Update

By Katie Stanley, Community Action Committee Chair

As we enter another year of service, there are many exciting changes taking place within the Genesee County Bar Association (GCBA) and our Community Action Committee. Attorney Jessica Hammon, previous GCBA Community Action Committee Chair, has been inducted as the new GCBA President, and we look forward to her continued successful efforts on behalf of GCBA membership and the greater community at large. As I begin my journey as your new Community Action Committee Chair, I am humbled by the enormous contribution she has made to increase charitable activities in Genesee County, and hope to continue to follow in her footsteps while improving upon our efforts.

Our main event, the Barristers' Ball, continues to be a success. This upcoming year, with a theme of "Derby Nights," there will be charitable betting, derby style hats, and attendance and great company supplied by our ever supportive GCBA membership. We look forward to continuing this event in years to come.

Throughout several weeks in August, the GCBA Community Action Committee also hosted a successful clothing

donation drive and we were able to supply nearly six carloads full of clothing, books, and children's items to our local Catholic Charities Community Closet. As a result of this success, we plan to repeat the "clean out your closet" event at least once more during the year.

In addition to these events, the GCBA Community Action Committee also plans to continue to coordinate and participate in volunteer efforts in partnership with local soup kitchens, blood donation drives, diaper drives, and our yearly charitable Holiday Dinner at the Masonic Temple.

Lastly, while looking forward to future events, we are also planning a talent show that will be open to GCBA membership participation; so talented members, get ready for a show!

As always, we would love to have new members on the committee. If you'd like to get more involved with the GCBA while helping to make a difference in the community that we serve, contact Katie Stanley at: kstanley@lsem-mi.org



Katie Stanley

Amended Michigan Law Preempts Local Salary History Bans and “Ban the Box” Laws

By: Linda Graham



Linda Graham

The Local Government Labor Regulatory Limitation Act, MCL 123.1384 (2015), which previously prevented municipalities from regulating what a private employer “must request, require or exclude on an application for employment,” has been amended to include what an employer can ask during the interview process. Public Act 84 of 2018 (effective 6/24/2018).

This amendment is no doubt in response to salary history bans and “ban the box” laws gaining momentum across the nation. Approximately thirty states and one hundred fifty U.S. cities and counties have enacted “ban the box” laws. Ten states and eight municipalities have enacted salary history bans and many more jurisdictions are considering such legislation.

“Ban the box” legislation prohibits employers from requiring applicants with previous criminal convictions to check a box on an employment application which, all too often, ends the hiring process for many minorities. “Ban the box” laws regulate when during the hiring process an employer may inquire about an applicant’s criminal history which may be during the interview or after a conditional offer of employment is made.

Salary history bans prohibit an employer from asking job applicants about prior wage history and considering such information in establishing wage rates. Supporters of salary history bans argue that they are necessary to repair historic wage disparities for women and minorities. They argue that wages should relate to an applicant’s skills and abilities rather than prior salary, which is more likely to be lower for female and minority applicants.

Proponents of Public Act 84 argue that labor and employment laws should be left to the state and federal government since local laws often expand or conflict with existing laws, making it difficult for employers to be compliant (especially those doing business in multiple jurisdictions). They further argue that there are state and federal laws already in place to prevent race and sex discrimination (i.e. Title VII of the Civil Rights Act of 1964 (42 USC 2000e), the Michigan Elliott Larsen Civil Rights Act (MCL 37.2202) and The Equal Pay Act of 1963 (29 USC Sec. 206(d)).

Opponents of Public Act 84 argue that despite current discrimination laws, wage disparities and discrimination against minority ex-offenders persist. They argue that municipalities should be free to act where states fail to protect the rights of workers.

Currently, Michigan law only prohibits employers from asking applicants about misdemeanor arrests that have not resulted in conviction (MCL 37.2205a). Thus, private employers may seek information regarding pending felony charges and all criminal convictions. Also, in the absence of a state ban on salary history, private employers in Michigan can request prior salary information from applicants.

But while it is legal to ask questions concerning criminal background and salary history during the hiring process, an employer must be careful not to use such information in a manner that denies equal job opportunity or pay to minorities and women. The following sources offer guidance to Michigan employers seeking to evaluate their applicant screening practices: *Pre-Employment Inquiry Guide* published by the Michigan Department of Civil Rights (MDCR); *EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions* published by the Equal Employment Opportunity Commission (EEOC).

On Friday September 14th Governor Rick Snyder will sign an executive order banning the box for felony convictions on state job applications.

Volunteer for Teen Court!

Looking for a way to give back to the community? If so, Teen Court wants YOU!

The Genesee County Teen Court is looking for attorneys to serve as volunteer referees for the upcoming school year. Teen Court offers Genesee County youth accused of minor offenses the chance to avoid formal court proceedings and instead be judged by their peers. Teen Court also gives high school students from throughout the county the opportunity to learn about democracy first-hand by participating in actual court proceedings.

We are looking for volunteer attorneys to preside over the Teen Court hearings. Teen Court will be in session four times per month-on alternate Tuesday and Thursday afternoons from 1:00 -4:30 pm. There is no minimum monthly commitment and training will be provided.

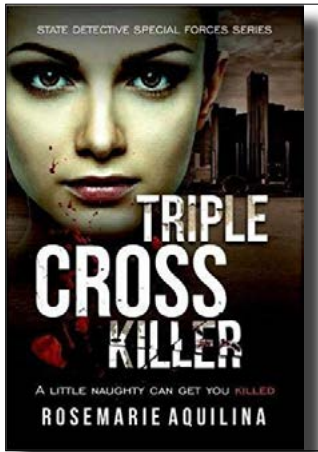
If you are interested in volunteering or learning more about Teen Court, please contact Rhonda Ihm at: RIhm@co.genesee.mi.us. We look forward to hearing from you!

Book Review: Triple Cross Killer

By Shelley R. Spivack



Shelley R. Spivack



By Rosemarie Aquilina
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“Crouching among lush Russian olive trees behind a garage, several blocks from his Siesta Key condominium, Nick Mosiah Archer waited patiently. Ocean brine tanged the air filling his lungs. He checked his watch.” (p 9- Nook edition referenced throughout)

Reading these opening lines of Judge Rosemarie Aquilina’s recently published crime novel, *Triple Cross Killer*, I imagined Nick Archer as a handsome and valiant detective whose exploits tracking a serial killer I would anxiously follow for the next 300 pages. I sat back in my recliner, ready

for Nick to be foiled by the tricky killer; I was totally unprepared for what came next.

“Nick smashed the old man against the back of his wheelchair, wrapped strong fingers around his bony neck, and mumbled, “Just like an old turkey buzzard.”

“The old man struggled, but in less than a minute, he gurgled, his eyes bulged, and he went limp, hands falling to either side.”(p 11)

Aquilina, an Ingham County Circuit Court judge who recently received international attention during the Larry Nassar sentencing hearings, proves herself to be a master of intrigue and suspense. A page turner and a fast read, *Triple Cross Killer* travels between the icy streets of Detroit and the balmy shores of Florida’s Gulf coast. Along the way, readers, become the sole witnesses to a series of bizarre murders that Nick commits in both locations.

Strangling his victims while evading a team of crafty detectives in each state, we soon learn that Nick is no ordinary killer. An airline pilot by day, Nick kills with a Robin Hood like purpose. Imagining himself to be the savior of abused children, he finds his victims through letters youngsters have written to Santa. In each of these letters, a child has asked Santa for the abuse to stop. As Nick wraps his fingers around his victims’ necks, he grants them their Christmas wishes.

Since we know the killer’s identity from the novel’s opening pages, the book’s strength lies not in the narrative of the murders, but in the killer’s manipulation of the characters who surround him. Two pairs of detectives, Abel

Mendoza and “Rabbit” in Sarasota, and partners and sometime lovers Jaq and David in Detroit -- scramble to put an end to an ever-growing series of brutal murders. Yet Nick, with his precision like method of killing and his uncanny ability to wipe each scene clean of his presence, continuously evades capture.

Adding to the drama is the introduction of Jaq’s best friend, Rita Rose, an emotionally insecure former ER nurse, recently assigned to work with the county medical examiner in the Wayne County morgue. At the same time Rita is assisting with the autopsies of Nick’s victims, Nick is courting her and convincing her to become his wife.


The murders multiply and while the detectives begin to unravel the mysteries, readers become equally entwined in Rita’s self-destructive relationship with Nick. It is the unfolding of this relationship that drives the rest of the story.

To tell more of the plot, would spoil it for potential readers. So let it suffice to say that once I reached the book’s last 100 pages, I could not put it down until reaching the final word.

As is the case with many mystery novels, portions of the plot line and dialogue seem somewhat staged. These minor criticisms aside, Aquilina does not let the reader down. It is clear that during her years as a circuit court judge, she has carefully listened to details of forensic evidence and studied the characters of those who have appeared before her. She uses what she has learned on the bench to craft a suspenseful and stimulating work of fiction that can be enjoyed by both the average reader as well as those involved in the legal and criminal justice systems.

Avid readers, such as myself, will look forward to more titles flowing from Judge Aquilina’s mighty pen.

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Family Step-Downs: The Insidious Clause That May Lurk in Your Auto Policy

By Richard McNally



Richard McNally

Imagine you're a parent with a school-age daughter, and you are driving her and her friend to dance class. It's winter, and you lose control on a patch of black ice. There's a crash, and both your daughter and her friend are catastrophically injured.

It's a parent's nightmare, but you are otherwise a responsible driver, and have tried to protect your family and others by buying car insurance with decent liability limits, in your case \$250,000/500,000. Things are bad enough with a daughter that now has life-long dependency, but at least she has unlimited no-fault medical coverage. However, when you talk to your insurance agent you are shocked to learn that your policy has what's known as a "family step-down" provision. Your daughter's friend can collect up to \$250,000 in damages under your liability coverage, but your own daughter, simply because she is related to and lives with you, is limited by the family step-down clause to the Michigan statutory minimum liability coverage of \$20,000 from the insurance company to which you have been paying premiums for damages, such as a lifetime of wage loss. The same reduction would apply to your spouse or any relative that lives with you.

In my many years of practice involving insurance litigation, I have increasingly encountered family step-downs, which result in the cruel tragedy where a family member's

loved one, who we want to protect the most, is denied the coverage for which we pay extra. These insidious provisions, buried in the policy or an amendment, I have found personally, and have been reported in policies issued by AAA, Farm Bureau, Frankenmuth, GEICO, Progressive, and USAA. Their validity has been consistently upheld by Michigan appellate courts. For example, see *Ruzak v USAA*, unpublished COA # 274993 (2008), where although the trial court found the provision "reprehensible," the Court of Appeals upheld it.

Insurance companies have defended family step-downs as necessary to prevent "fraud" or "collusion," but it is difficult to imagine how to fake a catastrophic injury. The provisions make no exceptions for legitimate claims.

We usually do not find out about family step-downs until after a tragedy occurs and it's too late to avoid their application. The only thing we can do short of fly-specking dozens of pages of boilerplate is before a loss occurs, to proactively ask our agents pointedly (and to be safe, in writing) if our policy contains such a clause. If it does, it's time to immediately get another policy, or barring that, another agent.

Richard McNally has practiced law in Genesee County for over 35 years, specializing in insurance claims. He regularly speaks to civic groups on auto insurance issues.

Best Kept Secret in the Country: SUVVCW

By Roberta J.F. Wray

The new National Commander of the "Best Kept Secret in the Country" wants to change that image. We're going to help him because he's a member of the GCBA.

Donald W. Shaw was sworn in as Commander-in-Chief of the Sons of Union Veterans of the Civil War at their encampment this summer. The organization is the successor to the Grand Army of the Republic, which was comprised of veterans of the Union Army, Navy, Marine Corps, or Revenue Cutter Service. From a national membership of over 200,000 at the turn of the 20th Century it has dwindled to about 3500 today.

That's a result of the changes in interest and attitudes about joining fraternal and/or charitable organizations. Don Shaw wants to see more people informed about the SUVVCW during his term as Commander in Chief, not to men-

tion the second-best kept secret, the Daughters of Union Veterans of the Civil War. Both organizations pale next to the comparable organizations of descendants of the veterans of the Revolutionary War, the Sons and Daughters of the American Revolution.

One of the primary missions of the SUVVCW is to maintain and restore the graves and monuments to those who fought to restore the Union. A recent major project of the local camp of the SUVVCW was the restoration of a large monument in the center of the cemetery in Flushing. There are about 50 members of the local camp, which includes Genesee and Lapeer Counties. The group annually sets flags at all known gravesites of Union Veterans in the two counties.



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TRUST EXPERIENCE. COUNT ON COMMITMENT.

In the Fall of 1928, Howard D. Cline and Francis J. George, both recent graduates of law school, formed a partnership Cline & George and secured a small office on the 10th floor of the Mott Foundation Building. That partnership remained until the mid-fifties when Earl J. Cline, son of Howard D. Cline, joined the firm which became Cline & Cline. In the early sixties, Howard D. Cline, Jr. joined the law firm. Howard Cline, Sr. died in 1965. Walter P. Griffin joined in the mid-seventies and in the late seventies the present law firm of Cline, Cline & Griffin, P.C. was formed. That entity expanded with the acquisition of the entire 10th floor of the Mott Foundation Building. Since that time, Timothy H. Knecht, José T. Brown, and J. Brian MacDonald have become shareholders. Currently, Cline, Cline & Griffin, P.C. has twenty employees, including eight attorneys. We look forward to the next 90 years.



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