

September/October 2009

BARBEAT

Genesee County Bar Association



Hon. Paul V. Gadola
Civil Libertarian of the Year

Be a Local Booster

Judge Paul V. Gadola Awarded 2009
Civil Libertarian of the Year Award

Genesee County Attorney Wins State
Bar Young Lawyer of the Year Award

King of the Castle

Form 990—Changes that Affect
Nonprofit Organizations Now

October is Pro Bono Month

Congratulations!

Brian M. Barkey received the State Bar of Michigan Representative Assembly's Unsung Hero Award at the State Bar of Michigan Annual Meeting in September.



Brian M. Barkey with Kathy Kakish, 2008-2009 Representative Assembly Chair.

State Bar of Michigan photo



Douglas M. Philpott

by Susan Philpott Preketes

There are things that my Dad loved most and were the priorities in his life.

He loved the practice of law, research, interacting with other attorneys, and trying cases for 50 years. He was well known throughout the legal community for his brevity and one-page trial and mediation briefs. So, with respect to my father, brevity is in order.

He loved teaching, having taught Business Law at U of M for 45 years.

He loved his family, his four children: Susan, Jennifer, Scott, and Pete. He loved his golden retriever, Barney.

He loved U of M and its football team.

Most of all, he loved his wife and best friend of 50 years, Helen.

Editor's Note: Douglas M. Philpott passed away June 9, 2009. He was president of the Genesee County Bar Association from 1990-1991. Susan was president from 2004-2005.

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Bar Beat Editor

LindaLee Massoud
BarBeat@gcbalaw.org

Genesee County Bar Association

315 E. Court St., Flint, Michigan 48502-1611
(810) 232-6012
For editorial information, call (810) 232-6000.

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- ❖ **Publications**—“Private Mediation,” *Bar Beat*, July 1995; “Facilitative Mediation,” April 1996 and “Michigan Mediation Update,” June 2004, *Michigan Lawyers Weekly*

Be a Local Booster

By Timothy H. Knecht, President

It seems as if summer was extraordinarily short (perhaps just cold and wet) this year. We are part of an economy that's in the tank and seems like it's been there forever. People are leaving Michigan, and Flint in particular, in hope of finding greener pastures. All of this can contribute to a sense of hopelessness and foreboding. What can we, as lawyers, do?

Despite our region's economic problems, many of us have chosen to stay and fight it out, continuing our practices right here. But just hanging in there doesn't seem like enough. We can all do a little something extra to help make the area better not just for us and our practices, but for everyone living here.

Flint is rebuilding itself from the inside out. The downtown area has new restaurants and new night spots, and is a fun place to spend an evening. Come downtown one night to visit the new spots including Wize Guys Pizza, 501 Bar & Grill, Soyl's, Blackstone's, or Raspberries Café, or old staples like Churchill's, The Loft, The Torch, or Soggy Bottom. People from the suburbs are coming into downtown Flint for dinner and

entertainment. See what's going on for yourself. Then pass it on.

Lest one believe that I support downtown Flint at the expense of the rest of the county, I am a firm believer in the apple-core theory of economic development: keep the core strong and healthy, and the whole will prosper.

Downtown Flint is being slowly but surely transformed from a depressing area of empty storefronts and empty streets and parking lots to a bustling hub of energy and enterprise. From the Durant Hotel on the north to the government center on the south and everywhere in between, buildings are being renovated and turned into commercial and residential spaces. Take a look at what's happening. Then pass it on.

Carriage Town is beginning to flourish. You know, that dreadful area between downtown and Kettering University on the north side of the river? It was recently featured in a very positive article in, of all places, *The New York Times*. See what's going on for yourself. Then pass it on.

Flint is a college town. UM-Flint is expanding. Kettering, Baker, and Mott are flourishing. The schools are



Timothy H. Knecht

cooperating and even sharing housing resources. All of them have special attributes that are attracting young people from all over the world to our community.

What brought all of this about? A few individuals with big dreams went to work on something they believed in, then passed their enthusiasm on to other individuals and became small groups with dedication and belief. Thank you to all those dreamers.

We, as lawyers, are part of this community. We have the opportunity to influence people and to direct people. If we support our local community and let others know that we support our local community, we will make a positive impact on Flint and Genesee County. Give it a try. Then pass it on.

Our impact does not have to be limited to supporting local businesses. We can refer cases and clients among ourselves, keeping them in Flint and Genesee County rather than outsourcing them. We can encourage our friends and acquaintances to use local lawyers. We can strive to be the very best lawyers we can be and attract new business by our excellence. Not one of us will have a big impact individually, but by developing and promoting our own local talents, we can collectively make a positive impact on our community.

Dream big and believe! Let us look forward to a glorious fall as we work on becoming cheerleaders for Flint and Genesee County.

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Judge Paul V. Gadola Awarded 2009 Civil Libertarian of the Year Award

By Gregory T. Gibbs, President, Greater Flint American Civil Liberties Union



Hon. Paul V. Gadola

“Interesting choice” was the response of one local lawyer I called to sell annual dinner tickets to when he heard that the Greater Flint ACLU had voted to give Judge Paul V. Gadola, a prominent conservative Republican, the Thomas C. Baltus Civil Libertarian of the Year Award for 2009. I am sure many more I called were shocked but kept their thoughts to themselves.

Let me explain why you shouldn't be shocked.

The public perception is that liberals and conservatives are polar opposites when it comes to civil liberties and civil rights. This is simply not true. There is considerable convergence of opinion on matters concerning civil liberties. Both ideologies harbor a healthy distrust of government when it comes to regulation of individual rights. Both embrace protection of the right to free speech, the right to be free from government discrimination, and the right to be free from arbitrary government intrusion on our liberty, property, and privacy.

The divergence begins when issues such as whether to rely on government to regulate the private sector or whether certain groups should be entitled to protection from government discrimination are debated. Polarity begins at the mention of whether there ought to be penumbras emanating from any of the rights in the Bill of Rights. But divergence is the subject of some other article. This article is about why Judge Gadola's long-standing record of protecting civil liberties, respected by both ideologies, resulted in his receiving the Civil Libertarian of the Year award.

Judge Gadola attended Michigan State University, earning a B.A. in 1951, and the University of Michigan Law School, where he earned a J.D. in 1953. After serving in the U.S. Army, he returned to Flint in 1955 and was a private practitioner for 33 years. In 1963, he was one of the founding members of the Greater Flint ACLU Chapter and fought to protect civil liberties. Three of his memorable efforts were:

- Advancing the right of free association by securing an order from the Court of Appeals overturning a ban against an anti-Vietnam War group from Flint City Council Chambers;
- Advancing the right to equal protection of the law by supporting the Flint fair-housing ordinance, which forbids housing discrimination in the city; and
- Advancing free-speech rights of all speakers, no matter how unpopular their message, by defeating governmental attempts to block George Lincoln Rockwell (founder of the American Nazi Party) from speaking.

The public perception is that liberals and conservatives are polar opposites when it comes to civil liberties and civil rights. This is simply not true.

President Ronald Reagan selected Judge Gadola to be a U.S. District Judge in 1988, and he reached senior status on January 31, 2001. He continued to carry a full case load until 2008. As a federal judge, Gadola made many rulings

advancing the Bill of Rights, including:

- Ruling in favor of an ACLU challenge to a political-sign ordinance in Troy, finding that the law restricted political speech in violation of the First Amendment. This decision was later used by the Greater Flint ACLU to secure an order preventing a similar ordinance restricting political signs in Fenton; and
- A decision ordering a new trial for a woman convicted of first-degree murder on the grounds that she was denied her constitutional right to effective assistance of counsel under the Sixth Amendment. Although the decision was overturned by the court of appeals, the sentence was ultimately commuted by the governor.

Judge Gadola received his award at the Greater Flint ACLU's annual dinner at the Flint Golf Club on May 28. A large and ideologically diverse group of attendees celebrated his receipt of the award, and letters of commendation from Judge Avern Cohn, Judge Gerald Rosen, and Judge Stephen Murphy III were read. There were also proclamations from Rep. Dale Kildee and Mott Community College. Judge Gadola gave an acceptance speech that was both fascinating and informative.

For those of us who fight for the right to express any opinion regardless of whether we agree or disagree with the opinion expressed, it was an interesting evening.

Genesee County Attorney Wins State Bar Young Lawyer of the Year Award

By Torchio W. Feaster

They say 30 is the new 20. Following that logic, Jade J. Edwards is a teenager again. Jade is a legal newcomer, but this six-foot-tall dynamo is already shaking up the legal profession in Genesee County. Jade, a 2005 graduate of Michigan State University's Detroit College of Law, began her career as a law clerk for the Hon. Duncan M. Beagle. She served in this capacity for three years before accepting a job with the Williams Firm, P.C. in Grand Blanc.

Jade is one of many young attorneys in Genesee County practicing in a variety of fields ranging from the prosecutor's office to the city attorney's office to private practice. These young attorneys are very passionate about the law and motivated to get involved and be active in this community. Jade is no different. She may, in fact, be the poster child for this new and growing

group as she is involved in activities across the county and beyond.

Jade's professional affiliations include the Genesee County Bar Associate Board of Directors, the American Inns of Court, the Flint Women's Forum, Michigan Youth in Government, and the D. Augustus Straker Bar Association. She is also president of the Mallory Van Dyne Scott Bar Association.

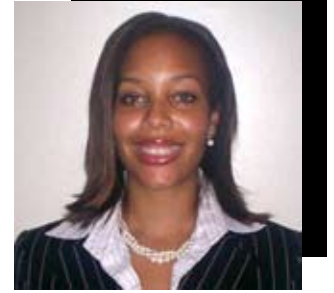
While these groups are important to Jade, they share attention with the volunteer work she does with Big Brothers/Big Sisters of Flint, one of the commitments of which she is most proud. Jade invests a significant amount of time mentoring and socializing with her "little sister," Sasha, a nine-year-old Flint resident. No matter what Sasha needs—advice, clothes, tutoring, or anything else—Jade is there for her. This dedication and passion weighed heavily in

the State Bar of Michigan Young

Lawyers Section decision to honor Jade in April with its 2009 Young Lawyer of the Year Award.

Jade accepted the award at the section's annual conference in Mt. Pleasant. While she was surprised by her selection and modestly suggested that she did not merit the award, the Young Lawyers Section obviously felt otherwise.

This young legal newcomer is exactly the type of person Genesee County and the City of Flint need. I am sure Jade will continue to make strides and be very successful in the future. Congratulations, Jade.



Jade J. Edwards

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Upcoming GCBA Events

October 29—Young Lawyers Meet & Greet; 12 noon; GCBA

October 30—Halloween Party; Time: 9 p.m. - Close; Location: Maxie's Food and Spirits

November 16—November Membership Meeting featuring Charles R. Toy, President of the State Bar of Michigan; 12 noon; Masonic Temple, downtown Flint.

December 4—*The Must Attend Probate Seminar of the Season* from the GCBA Probate Committee; Time: 9 a.m. - 12 noon; Location: Holiday Inn Gateway Center - Washington Room

For more details visit
<http://www.gcbalaw.org/calendar.php>

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King of the Castle

By Kevin L. Rush



Kevin L. Rush

It was great. I was the judge, jury, and executioner all in one. A supreme being—a kind of exultation and euphoria surrounded and consumed me. It was a moment of supreme consciousness, as it has been popularly put, of knowing the effect one has on the populace, being able to direct and dictate the outcome.

“Do your homework. Now.”

It was the ultimate essence of being a hypocrite, the *coup de grace* of arguing in the alternative. The entire day had been spent negotiating and convincing and being inspired by some legal principle that would certainly convince a jury or the court that the momentary indulgences of the client—whose background was as shaky as the few square miles immediately adjacent to the San Andreas Fault—were balanced by mitigating circumstances.

“The client was thrust into this situation mistakenly, your honor, an obvious case of it not being their fault,” you argued, all the while hoping that the court would not deviate from the guidelines as laid out by the legislature whose edict was to take *all* circumstances into consideration, trusting that the court would understand that a prior record was only *part* of the equation and that the circumstances, as they were, deserved some kind of mercy. It really didn’t matter who was the client; the same scenario played out over and over, day after day.

So here was the perfect remedy, the consummate prescription and antidote. Open the door and walk into a storm of protest. Both sides gather arguments, entrench themselves in rationales, perfect their mistakes, and try to convince the trier of fact.

“Mom’s word is final. Do your homework.”

Home less than five minutes and

already the defaults of the day, the posturing and performing melted away in a swift and unconstitutional direction—Mom’s Law was clearly arbitrary and capricious, but it was the only law available in *this* jurisdiction. In an instant, the client was given his day in court, the verdict was rendered, and a sentenced handed down.

Man, it was good to be king.



Despite the genuflections of the day, irrespective of the quest for the key word or case that would set your client free, it was inviting to change hats and gain a different perspective. Maybe it was a Napoleon complex, or some over-argued fringe principle of mental illness, but being the one to make the decision was welcome relief to the previous 10 hours, when you had your client’s interest and blood on your hands.

Because you were also the executioner, you could leave no witnesses. How convenient. Sentence being rendered, you are hereby remanded to the custody of your parents, whose only goal and satisfaction in life is to cause you misery and pain. It was unfair, one-sided, without peer

review, and completely without safeguards.

With a verdict and no chance for appeal, the only thing that remained was the outcome.

She cracked the book. Scowled. Didn’t care. Mom happy. Me eat dinner. It was good to be king.

“But such a puzzlement,” the king would say. How incongruent this life seems to be, where the days are spent following edicts and rules, statutes and codes, following the *law*, and then returning to the castle where you had serfs and power and the ability to hack off the head of whomever it was who dared to eat the king’s deer. Practically Shakespearean, when one examines this duality we in this profession have in our lives. Quite a balancing act.

The point is that as members of this profession, as attorneys and judges, it is quite easy to put our own personal problems secondary—from simply running our offices or dockets to the loss of a loved one to sickness or mishap. The interests of the client or a case always seem to be paramount. The stress of the profession grows with the years. Indeed, our own Bar recommends that attorneys and judges take time away from the business to reload, to step back and re-connect with our health, our families, our friends, and those things that are important to us. It’s never easy to divest ourselves of our obligations. This profession is a jealous mistress.

But step away. Be king of your castle. Love your children. Take your spouse somewhere different. It will all be there when you get back.

Form 990—Changes that Affect Nonprofit Organizations Now

By Jennifer Watkins, CPA

Following is a summary of the key modifications to 2008 exempt organization tax returns that organizations need to be aware of now. The IRS is phasing in the new Form 990 over three years.

All organizations are required to report their five highest earning employees and five highest earning independent contractors if they are paid \$100,000 or more. This is public information.

Other major changes involve **tracking in the organization's accounting system**. The following are now required:

- Amount of revenues related to program expenses if the organization is a 501(c)(3) or 501(c)(4)
- Contributions broken out for federated campaigns, fundraising event contributions, and related organizations
- Compensation of "disqualified persons"
- Changes in "endowment" funds and the percentage of year-end balances held in different types of endowment funds
- Fundraising/special events with more than \$5,000 in gross revenue separately reported; all others combined
- Gaming revenue, expense, and volunteer labor split into bingo, pull tabs/instant bingo/progressive bingo, and other gaming

For donor advised funds the following need to be done:

- Report contributions, grants, value, and the number of funds
- Inform all grantees, donors, and advisors in writing that grant funds may be used only for charitable

purposes, not for the benefit of the donor, and are legally the organization's property

Other questions allude to **best practices**. Carefully consider whether the organization needs to implement these policies and procedures if they are not already in place:

- Independent voting members
- Written policies and procedures to govern chapters, branches, and affiliates
- Board review of Form 990
- Annual conflict of interest disclosures and monitoring
- Whistleblower policies and document retention policies
- Independent persons review of top management's compensation and related comparability data
- Committee responsibility for oversight of the financial statements and selection of the independent accountant
- Loans to and from interested persons
- Gift acceptance policy

Information must be provided regarding **officer compensation**:

- Disclose if officers, key employees, or highly compensated employees receive certain perks.
- Indicate if there is a written policy regarding payment of perks and whether substantiation is required.
- Itemize compensation for each of the above people into base compensation, bonus/incentive compensation, other compensation, deferred compensation, and nontaxable benefits.

Various other information

must be disclosed:

- How the organization makes its application for exemption and Form 990 available to the public (required)
- How financial statements, governing documents, and conflict of interest policies are disclosed to the public
- Grants to entities or persons outside the U.S. must be reported separately from entities and persons within the U.S.
- Tax-exempt bonds need certain information
- The number of non-cash contributions as well as the number of Form 8283s received

501(c)(3) organizations that follow either of the public support tests in Schedule A may notice a difference in the test; start discussing tax planning to see how potential changes could affect the organization.

Some information is optional to disclose. Although it is optional, readers of the form may expect to see it.

There have been major changes in the Form 990. Some will require changes in the accounting of expenses and revenues; others will require a change in policy or how information is accumulated. Although many of the questions pertain to policies that the IRS does not require, the court of public opinion may dictate that those policies be in place.

For more information about Form 990 reporting requirements, contact Jennifer Watkins, CPA, Senior Accountant at the Flint office of Yeo & Yeo, CPAs & Business Consultants at (810) 732-3000 or jenwat@yeoandyeo.com.

October is Pro Bono Month

By Jill L. Nylander, Directing Attorney, Legal Services of Eastern Michigan

The American Bar Association has designated the week of October 25-31, 2009 as National Pro Bono Week. Michigan has extended this recognition throughout October to encourage further celebration and promotion of pro bono commitments. As a result, bar associations, lawyers, and legal services providers alike will be taking part in events across the state to educate their communities about the importance and impact of pro bono work. This designation is also an important opportunity to honor those in the legal profession who have already regularly dedicated their time and resources to improve the lives of the needy.

The State Bar of Michigan uses a voluntary standard to encourage pro bono participation. It recommends that attorneys annually do one of the following: represent three low-income individuals without charge, donate 30 hours to representation or services for low-income individuals, donate 30 hours of time to public service or chari-

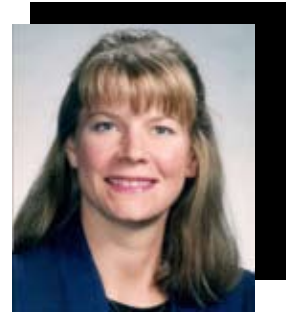
table groups or organizations, or contribute \$300 to non-profit programs providing these services. Inherent in this voluntary standard is the idea that pro bono commitments may extend far beyond direct representation of the indigent. Opportunities for pro bono work include serving on a local pro bono committee or the board of directors of a legal services program; training and mentoring other attorneys, engaging in community legal education programs or advice clinics; or advising not-for-profit, low income, or public interest organizations or groups.

The current economic slowdown presents a tremendous opportunity to fulfill the voluntary standard of public citizenship through pro bono and nonprofit work, and it appears many members of the local and state bar are already accepting this challenge. We applaud their skills and dedication and appreciate their assistance throughout the year, but we are honoring them locally with a special printed recognition this month.

Even with so many members of the state and

county bar making themselves available of pro bono service, legal assistance still remains largely unavailable for numerous members of the community. For every client served by a legal services program either directly or through pro bono assistance another person who seeks help is turned away. This conclusion was affirmed in a September 2009 report by The Legal Services Corporation entitled *Documenting the Justice Gap in America—The Current Unmet Civil Legal Needs of Low-Income Americans*. Michigan's particular financial plight has undoubtedly further widened this gap in the areas of foreclosure, bankruptcy, and public assistance.

Despite the response of numerous attorneys willing to meet this rising demand, there remains a need to recruit additional volunteers to fill the gap in legal services to the poor. The opportunities for pro bono work are many, the resources and supports available to assist in the work are great, and the need for the work is presently unparalleled. If you can spare even a few hours, your skills and talent could make a dramatic difference for a member of our community in need. A Brown Bag Lunch and Pro Bono Orientation will be held in the GCBA conference room on October 28, 2009, to provide additional resources for interested individuals. Please contact Legal Services of Eastern Michigan at (810) 234-2621 to RSVP or if you would like more information.



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Also, thanks to Chris White, technical expert from Carl Bekofske's office.

*Members of the Genesee County Bar Association

Attorneys Volunteer for Free Legal Advice Seminar



Laura Shirah provides attendees with details on bankruptcy.



Barbara Foley outlines information explained by Laura Breckenridge.



Sherri Belknap helped organize the seminar.

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