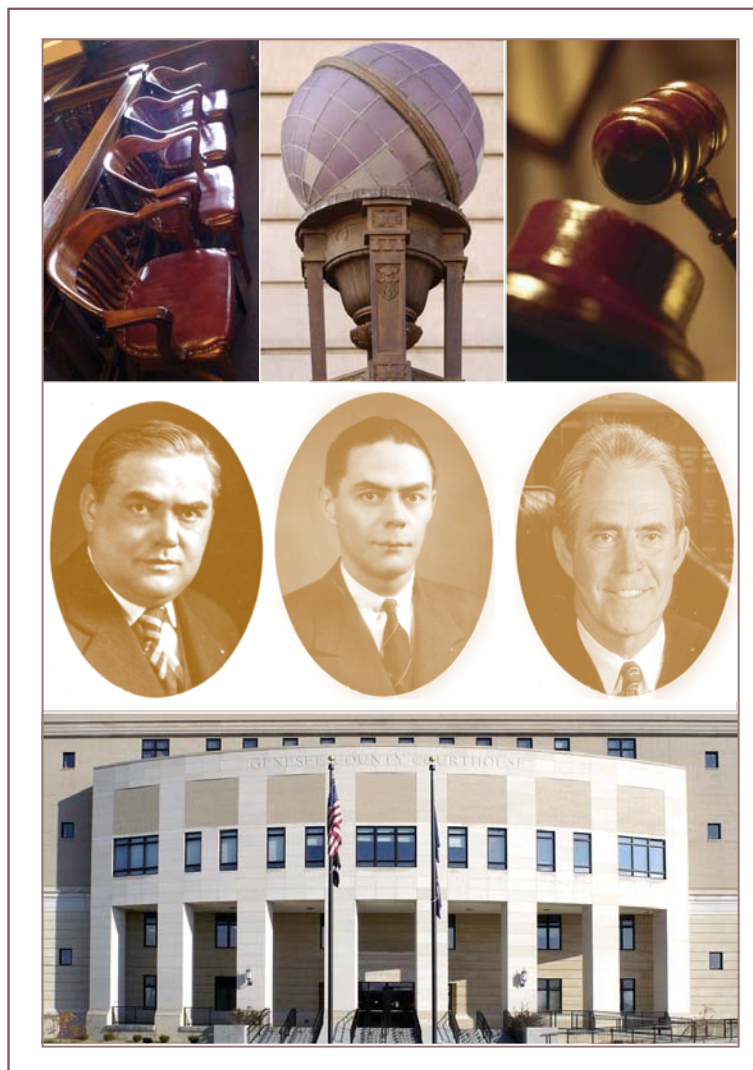


September/October 2010

# BARBEAT

Genesee County Bar Association



A Beagle Family Tribute  
125 Years of Contributions  
to the Legal Community

Pension Provisions in a Domestic Judgment:  
Qualified Domestic Relations Order/Eligible  
Domestic Relations Order

Ethical Issues in the Practice of Law Today

Precious Memories

Mallory Van Dyne Scott Bar Association: A Rich  
History and Bright Future

The Winegarden Letter: Lawyers and the Media in  
a Nutshell

A Beagle Family Tribute

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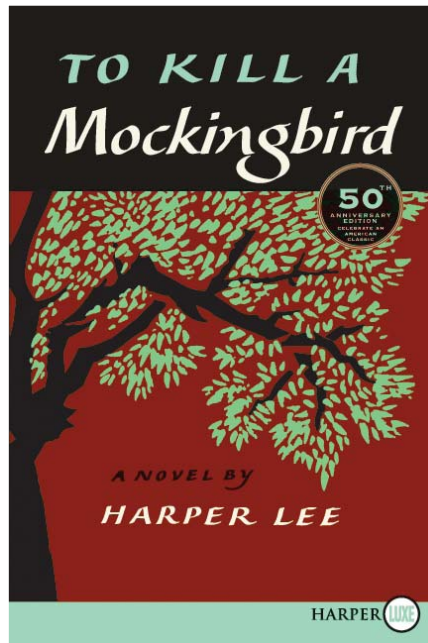
# Theme: "To Kill A Mockingbird"

By B.D. "Chris" Christenson, President

This summer marked the 50th anniversary of Harper Lee's novel *To Kill A Mockingbird*, the classic story depicting the innocence of childhood, the struggles of racial prejudice, and integrity. This novel touches many people for a variety of reasons, but the one that resonates with many lawyers is the moral hero of the book; a model of integrity, Atticus Finch. Many attorneys credit this novel with inspiring them to become lawyers in the first place.

In the story, Atticus Finch held his ground in the face of great opposition from the general public and the risk of harm to himself and his family. He had the courage it took to stand up and carry on his task of preventing an injustice based on stereotypes.

In doing criminal defense work, I frequently get asked how I can represent "criminals," and I remind the questioner that in our country everyone is innocent until proven guilty. This usually results in some eye rolling until I explain that everyone has a right to counsel, and we do not know who is innocent or guilty until all facts are known. Part of our job is to make sure



source: <http://www.harpercollins.com>

that the defendant gets a fair trial and that all the rules are followed. It would be a terrible system where a lawyer could simply pick and choose who they were going to vigorously defend based upon the popularity of the case, and nothing exemplifies this ideal better than the conduct of Atticus Finch.



B.D. "Chris" Christenson

To help celebrate the anniversary of this wonderful novel and movie, the Genesee County Bar Association and the Genesee County Bar Foundation proudly hosted a presentation of the film at the Flint Institute of Arts. The galleries were open for viewing and the lobby was set up with hors d'oeuvres and refreshments. It was nice to see so many members and their families socializing and enjoying the event.

A special 'Thank You' to Judge Hayman, Judge Beagle, and Judge Farah for setting the context for the evening by providing us with some interesting facts about the author and the novel as well as personal insights about how the story had affected each of them.

I hope everyone who was able to attend had a wonderful evening. We are always interested in other ideas, so if you have an idea for what you think might be a fun event, please feel free to drop us a note or give us a call.

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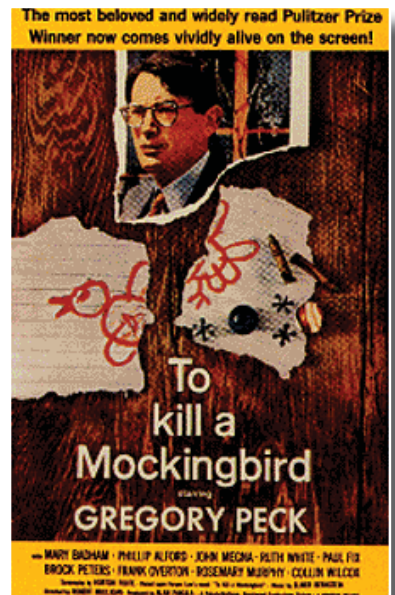
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# Pension Provisions in a Domestic Judgment: Qualified Domestic Relations Order/Eligible Domestic Relations Order

By Barbara Dawes, Family Law Committee Chair



Barbara C. Dawes

**F**or divorce or separate maintenance cases filed on or after September 1, 2006, MCL 552.101(5) provides that if a judgment assigns rights to pension, annuity, or retirement benefits, a proportionate share of all components of the pension, annuity, or retirement benefits shall be included in the assignment unless the judgment expressly excludes a component. Components are defined to include, but not be limited to: supplements, subsidies, early retirement benefits, post retirement benefit increases, surviving spouse benefits, and death benefits. As of the date of this writing, there is no case law defining "components."

The following areas should be addressed in the judgment for a defined benefit plan (i.e., where a person receives a monthly benefit upon retirement, usually called a pension):

1. **Duration of payment.** A QDRO/EDRO must state the duration of the payment to be on Alternate Payee's (AP) or Participant's (P) life. There is a distinction. If the QDRO/EDRO provides the payment for the duration of the AP's lifetime, then most plans do not allow the AP's share to revert to the P in the event the AP receives benefits and predeceases P. Also, most plans require the benefit to be payable on P's life if AP is to receive surviving spouse benefits and if the Participant has already retired.
2. **When AP may begin drawing.** A plan may allow the AP to draw early, prior to P's actual retirement, as long as P has met the retirement qualifications. Generally, if the AP draws early, it only affects the AP's share, not the participant's

share; also, the AP may receive a reduced benefit.

3. **Fees.** The judgment should address who is to pay the fees, if any, for surviving spouse benefits. If the AP is required to pay and then P subsequently remarries someone younger than AP and names the new spouse to receive a share of the surviving spouse benefits, the surviving spouse fee could then increase as the younger wife has a longer life expectancy. Also, should AP pay 100 percent of the fee if he or she does not receive 100 percent of the surviving spouse benefit?

The judgment may also address who is to pay for the fees to prepare a QDRO/EDRO. Sometimes a plan may have a fee for simply processing the QDRO/EDRO.

4. **Percentage of the surviving spouse benefit.** Some plans limit the percentage of a surviving spouse benefit. Other plans have options, like 50 percent, 75 percent or 100 percent. The judgment should specify what percentage AP is to receive, including whether it is limited to the marital portion of the pension.
5. **Surviving benefits on the AP's share.** There are some plans that allow the AP to name a survivor. Should this be P?
6. **Surviving spouse benefits not elected at retirement.** Another concern with pensions is when P

Continued on next page

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retires and does not elect surviving spouse benefits. Once P makes this election, it cannot be changed (unless he remarries). Therefore, AP cannot receive surviving spouse benefits and AP's share ceases upon P's death. To protect AP, a provision in the judgment could provide that if P does not elect surviving spouse benefits, then AP should be named the irrevocable beneficiary on P's life insurance policies.

7. **Retired P.** If P has already retired, the judgment should provide P shall pay AP his or her share until the DRO becomes effective. Also, if P retires before the QDRO/EDRO is accepted, P should pay AP his or her respective share.
8. **Overpayment/Reimbursement.** If P is awarded retroactive Social Security benefits for a disability after P began receiving his or her pension, the pension plan may require reimbursement for a portion of the pension (i.e., with GM, the supplemental benefit). Who should repay this overpayment? Only P received the retroactive lump sum of Social Security benefits. The judgment may address this issue by providing P must repay the overpayment from the Social Security payment and hold AP harmless thereon. Generally, the plan administrator will automatically withhold money from P and AP for repayment.

These are just some of the areas that I have had problems with in the past. This list is not complete; however, the more specific the judgment, the fewer disputes there will be later. For cases filed before September 1, 2006, case law defines the parties' rights. (Please note that components for a defined contribution plan, i.e., 401K, PSP, are different).

## *Ethical Issues in the Practice of Law Today*

By Karen L. Folks, Professional Practice and Ethics Committee Chair



Karen L. Folks

*Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts.*

As any practicing attorney will admit, this excerpt from the Michigan Rules of Professional Conduct "Preamble: A Lawyer's Responsibilities" does not set up a three-cornered intersection where each street is clearly marked and the right road to resolution self evident. How do we appropriately and professionally navigate these intricate and conflicting issues? What resources are available to assist us?

Friday, October 29, 2010, the Professional Practice and Ethics Committee of the Genesee County Bar Association, in collaboration with the Genesee County Judicial Council, will present a half-day seminar on "Ethical Issues in the Practice Of Law" in the RTC building of Mott Community College. Michigan Supreme Court Chief Justice Marilyn Kelly will set the tone, help identify recent ethical issues, and underscore the critical importance of early recognition of ethical challenges. Genesee County Circuit Court Judge Richard Yuille will speak on the numerous ethical issues that we will explore and debate in detail in the breakout sessions. Judge Yuille will also serve as a session facilitator and a panelist on the issue of ex parte communications.

Joining our distinguished faculty as facilitators and panelists will be former Kent County Circuit Court Judge Dennis Kolenda and former Wayne County Circuit Court Judge Pamela Harwood.

Mark Friday, October 29, 2010 on your calendar now, and make sure you don't miss out on this important and engaging seminar on "Ethical Issues in the Practice Of Law Today." This fast-paced, informative seminar will keep you captivated right through the final 10 minutes when "Ten Tips in Ten Minutes" will be presented by State Bar of Michigan Professional Standards Service Counsel Nkrumah Johnson-Wynn from her wealth of experience, expertise, and insights based upon the operation of the State Bar's Ethics Help Line.

# “Precious” Memories

By Roberta J. F. Wray



Precious Petross Buckner

“I used to think I was the only one in the world with that name,” said Precious Petross Buckner. “Since I moved to Flint I have come across four other people named ‘Precious,’ and now there’s a movie, *Precious*.”

I have no doubt her mother had a good reason for choosing the name, but Precious says she doesn’t know. What she does know, though, is “it’s never too late to learn.” What else would you expect of someone who started law school after she passed her 50th birthday?

Precious spent her early life as an employee of the City of Flint, in the Human Resources department. Eventually, she was promoted to a similar position at Hurley Hospital, before it had attained the exalted status as a “medical center” and while it was still a “department” of the City of Flint.

During all of her career as a public servant, Precious was going to school and raising a family of four as a single mom. She achieved a degree in Social Psychology from the University of Michigan-Flint. Then she earned her master’s degree in Personnel Management from Eastern Michigan University. Along the way, she became Director of Human Resources at Hurley, but she wasn’t done learning.

Precious enrolled in Detroit College of Law, encouraged by the late Edward P. Joseph, who was then the attorney for Hurley. Her interest in labor law followed naturally from her years in human resources, and that is the course she pursued after she completed law school and passed the state bar exam in 1983, at the age of 60.

Precious spent some time with UAW-GM Legal Services, did some

mediation for the State of Michigan for a couple of years, and considers herself a “semi-active” practitioner to this day. When I called to interview her for this story, she was “meeting with a client.”

She says she also “volunteers here and there and would have been a great philanthropist” if she’d had the money.

## Trust Account Overdraft Notice Rule

New Michigan Rule of Professional Conduct 1.15A, also known as the Trust Account Overdraft Notice Rule (TAON) takes effect on September 15, 2010. Michigan lawyers need to know about the serious consequences of a trust account overdrafts. Financial institutions will be required to report overdrafts to the Attorney Grievance Commission. Lawyers must confirm that their financial institutions are on the list of approved financial institutions posted on the State Bar’s website at [http://www.michbar.org/opinions/TAON\\_list.pdf](http://www.michbar.org/opinions/TAON_list.pdf). Forms and additional information are available on the State Bar’s website at <http://www.michbar.org/opinions/TAON.cfm>.

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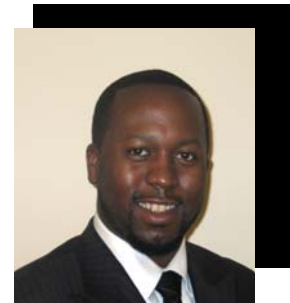


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**THRIVE.**

# Mallory Van Dyne Scott Bar Association: A Rich History and Bright Future

By Torchio W. Feaster, President



Torchio W. Feaster

## Mallory Van Dyne Scott Bar Association

P.O. Box 13571  
Flint, MI 48507  
malloryinfo@gmail.com



Left to right: Ilanta Robbins, Torchio Feaster, Angela Watkins, Anthony Maxwell, and Patrice Lewis.

### 2010 Officers

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### Our History

The Mallory, VanDyne, Scott Bar Association was formed in 1989 and takes its name from three of the earliest black attorneys in Genesee County. The organization is made up of African-American judges and attorneys practicing law in the county. The association is an affiliate of the National Bar Association and was formed to promote and protect the interests of minorities entangled in the criminal justice system, as well as to encourage appropriate representation of minorities on the bench and in the business of law.

### Our Pioneers

Our pioneers include three of the most highly sought-after attorneys in Genesee County during the 20th century. Our organization takes its name from these individuals, and we are proud to call them our pioneers. *Dudley Mallory* became a member of the Genesee County bar in 1926, coming here from Virginia. He continued in practice for several years. He made a significant contribution to the legal community and the county as a whole. *R.M. VanDyne* moved from Oklahoma to Genesee County to practice law. He became a member of the Genesee County Bar Association in 1927 and was a popular trial attorney. VanDyne recruited and brought his nephew, *Elisha Scott*, from Kansas in 1946 to practice. Scott practiced with his uncle and became very involved in civic organizations. Scott became Flint's first administrative law judge, serving the Michigan Department of Labor.

### Our Mission

The mission of the Mallory VanDyne Scott Bar Association is to enrich the community by zealously advocating on behalf of the under-

represented and to educate the public and enhance the justice system through scholarship, public service, and education. We have been doing this since the advent of our organization, and we continue today.

### Our Activities

During the past two years Mallory has been increasingly active in the county and within the Bar. This year alone Mallory has hosted its second annual membership mixer, mentored students at a number of junior and senior high schools, hosted a community legal seminar at the Flint Public Library with the Genesee County Young Lawyers' group, coached the Northern High School Law Day Team, and held its second annual golf outing. Coming events for the year include the first annual Mallory Community Fun Day (August 21), mentoring students through the National Public Defense Initiative, and hosting a lawyers' social event the first Friday of every month at local restaurants.

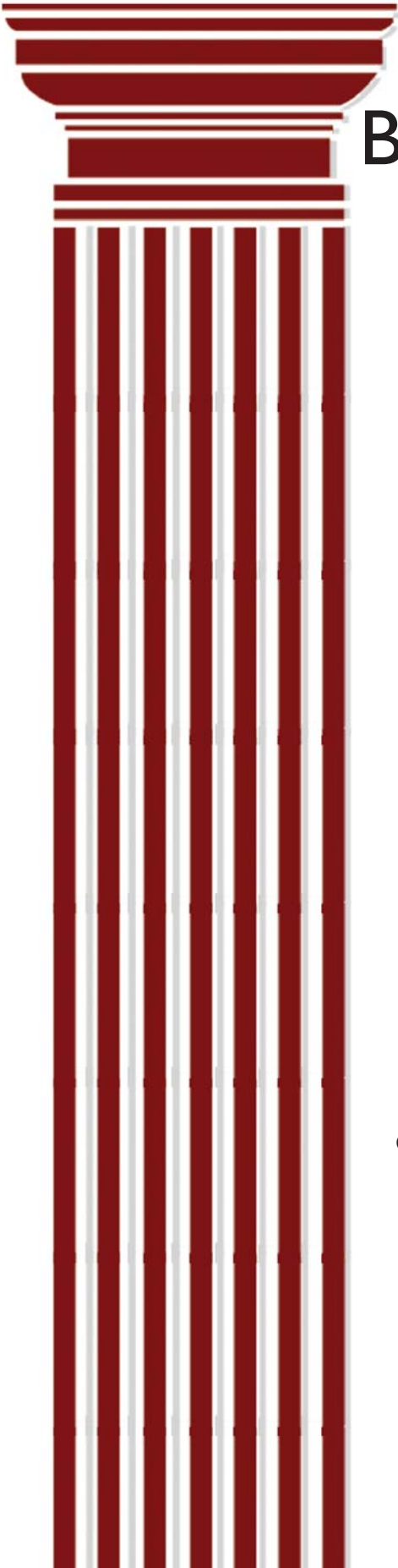
### Our Future

I think it is safe to say that the Mallory, VanDyne, Scott Bar Association is active and engaged in this community. Its members are truly dedicated to the group's mission. The Mallory, VanDyne, Scott Bar Association plans to be around for many years to come and to continue to bring Flint the leadership it deserves.

### Monthly General Membership Meetings:

1st Thursday of each month at 5:30 p.m.  
Genesee County Bar Association  
(unless otherwise announced)





# BEAGLE FAMILY TRIBUTE

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# *The Winegarden Letter:*

## *Lawyers and Media in a Nutshell*

By J. Dallas Winegarden, Jr.

---



J. Dallas Winegarden, Jr.

**W**hat do you do if the media take an interest in your case or client? First, remember the ethical considerations. Second, unless there is some compelling public policy issue in play, stay away. Third, if it must be done (talking to the media) do it yourself unless you have complete control of your client **and** your client is able to be brief and lucid in dealing with the issues.

**Lawyer/media screw-ups are a breeding ground for legal malpractice, especially if you do not control the situation.** It is my first recommendation that you not allow your clients to be interviewed if there is the remotest possibility that they had any culpability in the matter. In a criminal case it is very easy for them to say something that could later be used against them. They could also hinder the investigation, jeopardize their legal position and/or interfere with the prosecution or defense of a claim in a civil matter, thus impairing your ability to represent them.

**Establishing a good relationship with the media is extremely important.** If you must, only talk to media representatives whom you trust to quote you and/or your client correctly and in proper context. Make sure the media representatives you deal with have a good understanding of our legal system. Establishing a good rapport with the reporters you deal with will give you a better chance of favorable, or at least unbiased, treatment.

**Respect media deadlines.** The media are always in a hurry to get your comments, but you might want to spend some time reflecting on what you

want to say. During the international case in which I was involved, I would tell the media that I understood they had a deadline and I would get back with them shortly. Then I would take time to consider what I wanted to say, and I would also try to anticipate what the other side would say in response and how the public would react.

---

**... don't allow yourself or your client to fall victim to what I call "media intoxication," a false sense of security stemming from a successful first interview.**

---

**There are some special pitfalls dealing with television/film.** You do not want them taking your words out of context and leaving the essence of what you are trying to say on the "cutting room floor." Try to distill your statements into "sound bites;" the three to ten second clips that best make your point.

With any type of media don't allow yourself or your client to fall victim to what I call "media intoxication," a false sense of security stemming from a successful first interview. I guarantee you that the next time their questions will be more penetrating, and aimed more at getting at what you don't want to reveal, and that is detrimental to your position. In a tough spot answer a question with a question, try to change the subject, or shift the emphasis from yourself or the client.

Embargos are important to national news. This means that you only will speak to one representative. In the international case that I was working

on, I chose Katie Couric because I had an in-depth talk with her and felt that she would do the story the justice that it deserved. For that interview on Super Tuesday in the year 2000, the themes that my client and I wanted to make sure were brought out were developed well in advance of that broadcast.

I would not recommend going live with your client in a personal injury case unless you have a terrific client who is on a mission to demonstrate the devastation that was brought about by the wrongful actions of a defendant. From a criminal defense standpoint it would be foolhardy to allow your client to be interviewed. You might consider telling your client not to cover up or try to elude photographers, as that tends to make them look as if they really have something to hide.

Most criminal defense attorneys will tell you, as far as the media coverage of heinous crimes is concerned, that it can seem like trial by ambush and that in reality the defendant's rights are trashed. This presumption of guilt in the media is wrong, and you should try to avoid extensive pre-trial publicity. Always take the opportunity to emphasize the presumption of innocence, the right of all accused to a fair trial, and the requirement that the prosecution provide proof of guilt beyond a reasonable doubt.

Finally, if you can avoid the media, you should! However, sometimes that is just not possible. Good Luck!

# A Beagle Family Tribute

By Walter P. Griffin, President Genesee County Bar Foundation



Walter P. Griffin

The Genesee County Bar Foundation is privileged to host an evening honoring the Beagle family.

As most of you are aware, it was announced in the Genesee County Bar Association *Bar Beat* for January-February 2010, that a scholarship in the name of John S. Beagle, a distinguished member of the Genesee County Bar Association and the Genesee County Bar Foundation, has been established to assist students from Genesee County with financial support during their junior and senior years of law school.

**On the night of October 7, 2010, we will honor the Beagle Family at the Flint Golf Club beginning at 6:00 p.m.**

The Beagle family has contributed significantly to the delivery of legal services to the citizens of this community and nearby communities. The first "legal Beagle" was Charles D. Beagle (1881-1958), who graduated from the University of Minnesota Law School in 1904, and practiced law in the State of Washington from 1905 until 1923. Moving back to Michigan, Charles became an assistant prosecutor in Genesee County, under William R. Roberts, and in 1928 he was elected Prosecutor of Genesee County.

His long and notable career included successfully trying 29 consecutive felony cases in Genesee County without an acquittal, and he was the prosecutor in several "spectacular" cases involving the embezzlement of monies from the old Industrial Bank during the stock market crash of October 29, 1929. This was later immortalized in a book, *The Day the Bubble Burst*.

At the time of Charles' death, he had practiced law for 54 years in Genesee County, and had served as the President of the Genesee County Bar Association from 1937 to 1938.

His son, John S. Beagle, was born June 2, 1912, in Anacortes, Washington. John graduated from Flint Central High School in 1929 and then went to Washington and Lee University, where he earned a bachelor's degree in 1933. He went on to earn his law degree from that same institution three years later.

John became an assistant Genesee County prosecutor and an assistant Michigan attorney general in Lansing, and then served honorably in the United States Army Air Corps in 1942 and in the Navy Air Corps from 1943-1945.

After returning to Genesee County, John established himself as one of the premier practicing attorneys. He was a straightforward, no-nonsense attorney whose word was his bond. John retired from the practice of law in 1986, and passed away in May of 2000 at the age of 87.

The third generation of the Beagle legal family is the Honorable Duncan M. Beagle, Genesee County Circuit Court Judge. Duncan has served on the 7<sup>th</sup> Circuit Court since 1991. He received his undergraduate degree from Albion College in 1970 and his Juris Doctor

from the University of Detroit Mercy in 1975.

Prior to his election to the Genesee County Circuit Court, Duncan had served as a court administrator for the 67<sup>th</sup> District Court, assistant prosecuting attorney for over five years, Friend of the Court Referee for over four years, and for nine years had a private practice specializing in domestic relations and criminal defense.

A tribute to the family and the presentation of this year's John S. Beagle scholarship will be October 7, 2010, at the Flint Golf Club. The tribute begins at 5:00 p.m. with hors d'oeuvres, the ceremony starting promptly at 6 p.m. and concluding no later than 7 p.m.

The Genesee County Bar Foundation is pleased to support this tribute and hopes the attorneys and legal community will attend.



Left to right: John S. Beagle, Devan Beagle, and Hon. Duncan M. Beagle

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