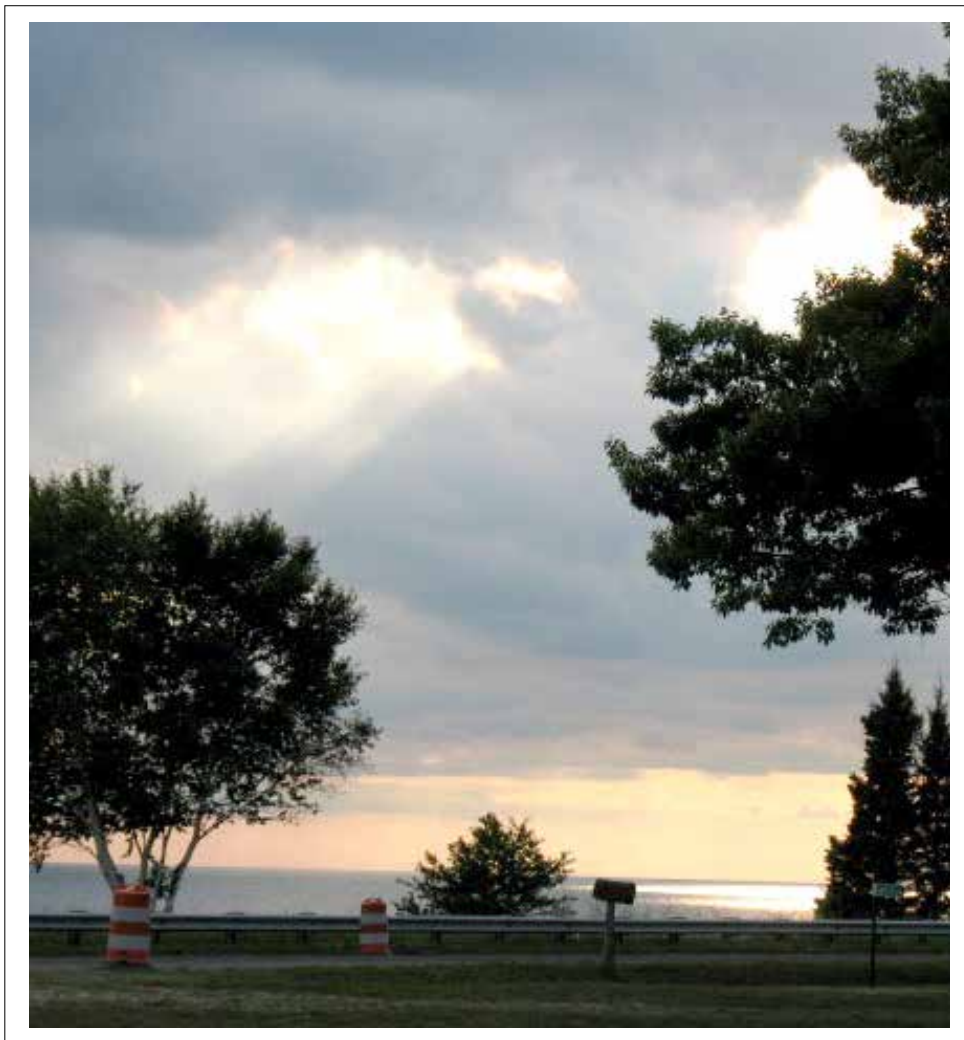


September/October 2014

BARBEAT

Genesee County Bar Association



Lake Michigan along US-2 West. Michigan's UP

Photo taken by Roberta J.F. Wray

Meet Your New Board Members

Supreme Court Preview -- 2014 Term

The Mindful Lawyer

In Re Sanders and the One-Parent Doctrine

For the Public Good

Who's on the Bench? Hon. Mark C. McCabe,
67th District Court

New Member Profile: Rachel Smith

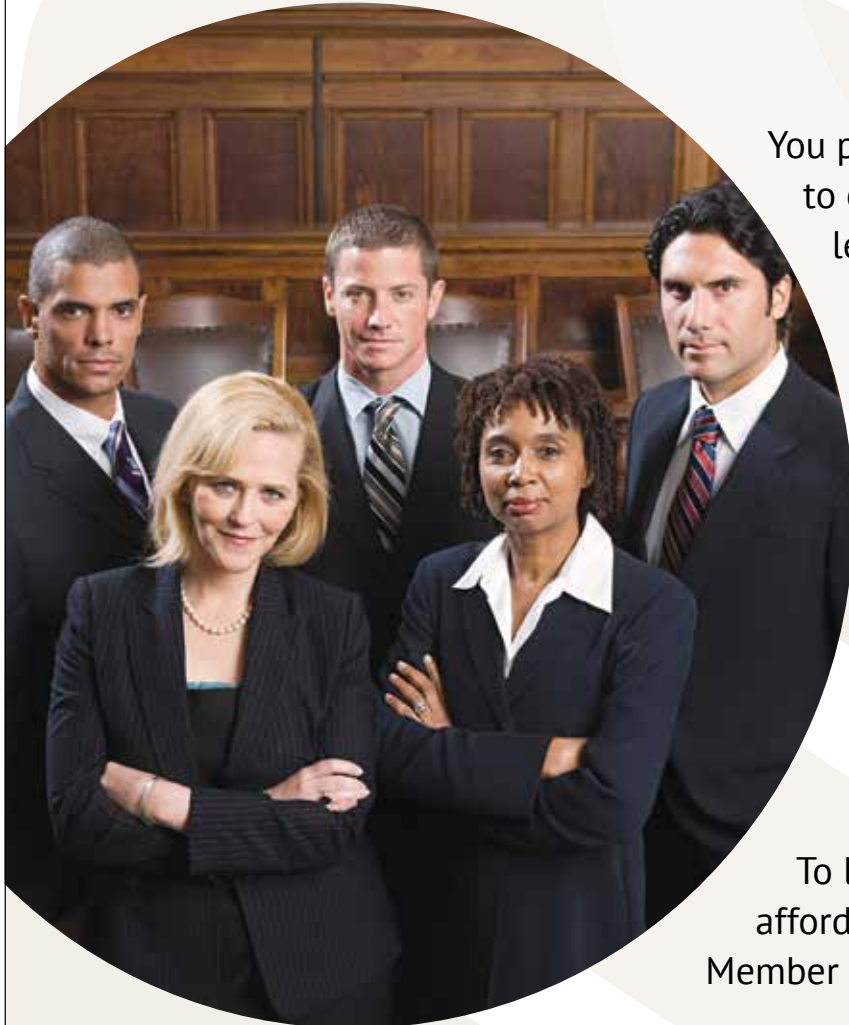
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Meet Your New Board Members



Michael J. Gildner



Chadd A. O'Brien

Michael J. Gildner (Term 2014-2017)

Family: Wife, Elizabeth and five children (four boys and one girl).

Undergraduate school, degree and grad year: Albion College, 1991, with a BA in Political Science.
Law school and grad year: University of Detroit-Mercy, 1993.

Bar Association member since: 1995.

Areas of practice: Municipal Law, Civil Litigation, Probate Litigation, Life Insurance and other ERISA Litigation.

Office location: Simen, Figura & Parker, P.L.C., 5206 Gateway Centre, Ste., 200, Flint, MI 48507. Email: mgildner@sfplaw.com

Past committees, activities, state bar involvement: Past Chairman of Municipal Law Committee; Volunteer at Community Holiday Dinner; Former Chairman of Committee on Character and Fitness.

Reasons you believe in service to the GCBA: I can't imagine a more friendly and professional bar than the one we have here. I had great mentors as I tried to make my way as a young lawyer. Some of those mentors were my supervisors, but in this community almost everyone I worked with played a role in showing me how to practice law. I'm still trying to figure it out, but I've been doing it long enough now that I feel the need to try giving back in whatever leadership role I can fill.

Chadd A. O'Brien - Young Lawyers Representative

Family: Wife, Sarah, and two children.

Undergraduate school, degree and grad year: University of Michigan, 2005, with a BA in both Political Science and History.

Law School and grad year: Michigan State University College of Law, 2009

Bar Association member since: 2009

Areas of practice: Financial Institution Law, Real Estate, Construction, Creditor's Rights, and Corporate/Business Law.

Office location: 2305 S. Center Road, Burton, Michigan 48519. Email: Chadd.Obrien@elgacu.com

Past GCBA committees, and activities: "Ask the Lawyer" Presenter, Member of the Young Lawyers Section, and Law Day Trial Coach

Reasons you believe in service to the GCBA: I realized early in my career that great lawyers are not born. In fact, most graduate from law school knowing very little about the profession they have just entered. Instead, great lawyers learn from other great lawyers. The GCBA provides an excellent opportunity for lawyers, young and old, to socialize with other lawyers to share practice tips, offer guidance, and occasionally share a laugh. I'm proud to be a part of an organization that strives for the betterment of the profession, stands as a constant reminder that the law is a scholarly pursuit, and educates new attorneys so that they may follow in the footsteps of today's great lawyers, including (but in no way limited to) Carl Bekofsky, Tim Knecht, Hon. Joseph Farah, and Bob Chimovitz.

Correction to Who's On the Bench: Judge Tracy Collier-Nix, July-August 2014 Bar Beat:

Judge Collier-Nix did not attend Howard University. A friend there advised her to take a year to decide if law school was for her, so she did. She worked as a probation **aide**, not a probation officer, before enrolling at Wayne State Law School.

Supreme Court Preview -- 2014 Term

By Roberta J.F. Wray



Roberta J.F. Wray

The upcoming term of the U.S. Supreme Court promises a variety of issues from the highly controversial to the mundane. Oral arguments begin on October 6. To date, about half of an expected 75-80 cases have been accepted for hearing.

From administrative procedure to First, Second and Fourth Amendment issues . . . from conflicts among the courts of appeals to infringement on power reposing exclusively in the President, the term promises interest from the first day to the last.

The issues that may spark the greatest *general* interest so far seem to be those involving marriage equality (not officially on the docket yet), gerrymandering, and mortgage restructuring issues.

For attorneys, there's everything else: a death penalty case from the fifth circuit (Louisiana, Mississippi, Texas), involving both procedural and substantive issues under habeas corpus; whistleblowing (labor law), involving intentional disclosure of sensitive security information under the Department of Homeland Security; also, de novo review or Rule 52 in a patent case; ambiguity; juries; class action deadlines; religious freedom in prison; and distinctions between actors in anti-trust law.

For a continuously updated list of cases to be considered see: http://www.americanbar.org/publications/preview_home

The Mindful Lawyer

By Terri L. Stangl



Terri L. Stangl

"I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel." - Maya Angelou

My friend Karen recalls how she once warned her son Charlie, then in preschool, that if he did a certain thing, "Mommy will be mad." He paused a moment. Then he asked, "Just a little mad? Or are you going to say [expletive deleted]?"

Like Charlie, lawyers pay close attention to what words are used. But it wasn't the word that caught Charlie's attention. It was his mom's emotion. We all communicate enormous amounts of information with emotions instead of words. Consider an exchange between a teenager begging permission with the single word, "Mom...", and the response of "No!" How many different messages can be exchanged with just those two words?

Maya Angelou correctly observes how we all do remember the way we felt around someone else. Human brains are wired to pay attention to emotions, and our emotional responses occur before we logically "think" about and come up with "reasons" for anything. Thus I don't care for the expression that one person "makes" an-

other person feel this thing or that. My reactions are always produced by my own thoughts and assumptions and beliefs about how the world is (or should be). No event "makes" anyone feel a specific thing, as evidenced by how different people may react to the same sporting, theatrical, or political event.

The problem - if I can call it that - is that our reactions can happen so quickly that we may not see how our own thoughts produced them. So we say things like "you made me feel." That's an after-the-fact explanation. Unfortunately that description only generates frustration because we can't ever control anyone else. That's where things like meditation, yoga, and floating can be helpful. They slow down your thoughts so you can observe them rather than be caught in them. As an observer, you have an opportunity to see patterns and discrepancies in your thinking and adjust them. That key, like the power of Dorothy's ruby slippers to take her home, has been yours all along. You simply have to find it for yourself. <http://www.greatlakesflotation.com>

In Re Sanders and the One-Parent Doctrine

By Shelley R. Spivack



Shelley R. Spivack

On June 2nd the Michigan Supreme Court dramatically altered the landscape of child neglect proceedings in the state by declaring the “one-parent doctrine” to be unconstitutional. *In re Sanders*, 495 Mich 394 (2014). Since the issuance of the decision, much discussion and debate has ensued as to the meaning of the case and its impact on current and future child welfare cases.

In 1839, the Supreme Court of Pennsylvania invoked the concept of *parens patriae*; a policy which allows the state to step in and act as parent where the natural parent is “incompetent or corrupt” or otherwise “unequal to the task” of educating or raising his or her child. As stated by the court: “The right of parental control is a natural but not unalienable one.” *Ex Parte Crouse* (1839).

The issue in *Sanders* concerned the court’s authority to enter dispositional orders affecting the rights of “non-adjudicated parents” in cases where the court had found one parent to have abused or neglected the child but had made no such findings regarding the second parent.

In Michigan, the juvenile code, MCL 712A.1 *et seq* governs our state’s exercise of its *parens patriae* authority over children by establishing procedures that allow courts to gain jurisdiction over and make decisions concerning abused and neglected children. The process consists of two phases: adjudicative and dispositional. During the adjudicative phase the court determines if there is sufficient evidence of abuse or neglect to take jurisdiction over the child. In the dispositional phase the court issues directives to ensure the child’s safety and well-being.

The issue in *Sanders* concerned the court’s authority to enter dispositional orders affecting the rights of “non-adjudicated parents” in cases where the court had found one parent to have abused or neglected the child but had made no such findings regarding the second parent. This concept, referred to as the “one-parent doctrine,” had allowed courts to enter dispositional orders against the “non-adjudicated” second parent. *In re CR*, 250 Mich App 185 (2002). Such dispositional orders could include orders requiring the parent to engage in services, as well as orders removing children from the home or even terminating parental rights.

In *Sanders*, the father challenged the court’s authority to remove his child from his care as the court, which had based its jurisdiction on a finding of neglect against the mother, had never proven that he had abused or neglected his child. The father, asserting his fundamental constitutional right to parent his child, argued that the XIVth amendment required that he be afforded a hearing on his fitness as a parent before the state could remove the child from his custody or otherwise infringe upon his right to direct the care, custody, or control of his child. Relying on a line of US Supreme Court cases dating back to 1923, the Michigan Supreme Court agreed with the father holding that “due process requires a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.”

What does the *Sanders* decision mean for courts in Genesee County and throughout the state? As courts have routinely relied upon the “one-parent doctrine” the ruling has spurred a flurry of motions filed by non-adjudicated parents who have either been denied custody and/or have been required to engage in court-ordered services. The ruling has also raised a flurry of questions and comments by practitioners and jurists as to how to specifically apply the Court’s ruling. While the specifics of such questions are beyond the scope of this article, both the State Court Administrative Office (SCAO) and DHS are attempting to respond to the changed landscape by re-examining and revising statutes, court rules, and DHS policies. See: <http://courts.mi.gov/Administration/SCAO/Pages/Recent-Communications.aspx#family>.

A follow-up article will be published as soon as more details are available.

As courts have routinely relied upon the “one-parent doctrine” the ruling has spurred a flurry of motions filed by non-adjudicated parents who have either been denied custody and/or have been required to engage in court-ordered services.

For the Public Good

By Jill L. Nylander



Jill L. Nylander

Pro bono publico or pro bono is a Latin phrase for professional work that is undertaken voluntarily for little or no fee as a public service. Pro bono service is unique among forms of volunteerism; it requires the giving of specific skills and talents by trained individuals.

Each year, October is the month chosen by the Bar Associations to officially celebrate pro bono work within the legal profession. It affords us an opportunity to both recognize the significant achievements of those who are already giving of their time and expertise and to raise discussion about the practice to encourage additional participation.

We all recognize that an attorney's advice and assistance can change not only the outcome of a lawsuit, but that it can change a life. Every day, attorneys change lives by preserving homes, providing economic or emotional security or preventing discrimination. The October Pro Bono Celebration is a chance to reflect upon and highlight the significance and generosity of the legal profession. Imagine the impact for our community if every attorney in Genesee County committed to change one life for the better through pro bono service over the next year!

There are numerous service opportunities available to match everyone's interests. Often, these opportunities provide mentors, free training, malpractice coverage and prescreening of clients. These support services can be of particular value to young attorneys, small-firms, and solo practitioners.

The October Pro Bono Celebration is a chance to reflect upon and highlight the significance and generosity of the legal profession.

United States Attorney General Eric Holder stated the challenge at the American Bar Association's National Pro Bono Summit in 2011: "We are bound by a responsibility to use our unique skills and training -- not just to advance cases, but to serve a cause and to help our nation fulfill its founding promise of equal justice under law." October 25, 2011.

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Who's on the Bench?

Hon. Mark C. McCabe, 67th District Court

By Roberta J.F. Wray



Hon. Mark C. McCabe

When he was a young man just out of high school Mark McCabe thought he would become a teacher. He even got his BA in Education from the University of Michigan. “Unfortunately,” he said, “many school districts were actually closing schools and jobs were fairly hard to come by.”

Law was his second choice and he got his JD from Wayne State in 1976. “I soon realized that this was probably the choice I should have originally made” he said, “and I have been proud to be a lawyer every day of my professional life.” McCabe was in private practice from 1976 to 1993 when he was appointed to the 67th District Court by then Governor John Engler.

Judge McCabe says he has always considered former Genesee County Circuit Judge Thomas C. Yeotis to be “my legal role model” with his . . . vast knowledge of the law and (his) patient and understanding judicial temperament.” As to

his own judgeship he cites Judge Albert Engel’s Judge’s Prayer, “I hope that I shall never forget my first day in Court when I have before me a new lawyer going through the agony of theirs.”

He says he is “very impressed with the knowledge and enthusiasm of young lawyers. We cannot forget that they are the future of our profession.”

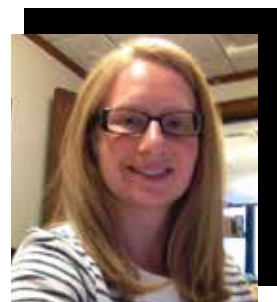
And as a former president of GCBA he says, “In my humble opinion Genesee County has the best Bar Association in the State of Michigan. The Annual Holiday Dinner stands out as a prime example of lawyers giving back to the community, especially to those who have had some hard times.”

Judge McCabe is married and has a wonderful daughter and son-in-law and a beautiful new granddaughter.

New Member Profile: Rachel Smith

Rachel Smith was raised in Indianapolis, Indiana. She graduated with a business degree from Indiana University in 2005 and from Villanova University School of Law in 2008. She is currently working for Judge Geoffrey Neithercut as a law clerk.

She has previously been employed at the Miami-Dade State Attorney’s Office as an assistant prosecutor.



Rachel Smith

While there she met and married husband, Matt. They moved to Michigan to be nearer their families.

Rachel says she chose to go to law school because she wanted to pursue a challenging and rewarding career. After practicing law for six years she says, “I still love the intellectual legal challenges.” Her hobbies are cooking, running, reading, knitting, and yoga. She also enjoys spending time with her family and dog, Cocoa.

Rachel says, “I love living in this community and all it has to offer. My favorite activity has been training for and participating in the Crim. I ran my second Crim this year and loved it. My favorite thing about the Crim is how many people from the Flint community volunteer, cheer, and support the race.” She has run other races around the county and planned to run a half marathon in Lansing in September.

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seeking to enlarge or complement its current practice areas. We are seeking an applicant or applicants with established practices looking to affiliate with attorneys in the Genesee County area. Five years or more experience required. All inquiries will be kept confidential. Please respond with a resume and cover letter to attyresumeapp@gmail.com.

Come Help!!

(Introduction of the Community Action Committee)

By Jessica J. Hammon, Chair



Jessica J. Hammon

Attorneys are inherently charitable individuals, despite what public perception may be. We have taken an oath to uphold the law, to maintain truth and honor, and to never reject the cause of the defenseless or oppressed.

The ancient philosopher Cicero once said that “The people’s good is the highest law.” It was with this thought in mind that the Community Action Committee of the Genesee County Bar Association was formed. Upon approval by the greater board we have established a committee for us, as a group, to support our community in more ways than just legal representation.

Volunteer opportunities abound in our community. From soup kitchens, to community gardens, to major downtown events, there is always an opportunity for us, as attorneys, to show our neighbors that we agree with the great Cicero rather than the nay-sayers out there.

We have more to give than our legal minds, and it is time for us to make that abundantly clear. So let this be a call to you all; come, join the Community Action Committee at our meetings: Bar Association office, noon, second Monday of each month. Come help us plan our next fundraiser for a worthwhile cause; come help us assist Brian Barkey and his great work with the Holiday Dinner; come give us your ideas of how we, as attorneys, as citizens, and as neighbors, can help those in our community who depend on us to uphold the highest law.

Editor’s Note:

If you are like me, you have clothes in your closet that you haven’t seen, much less worn, in years . . . or at least one year. It might be time to give those gently used work and career clothes a chance to make someone else look GOO-OO-OD!

Take a look at the information provided by Therese Leyton, wife of Prosecutor David Leyton, and see if you can help out.



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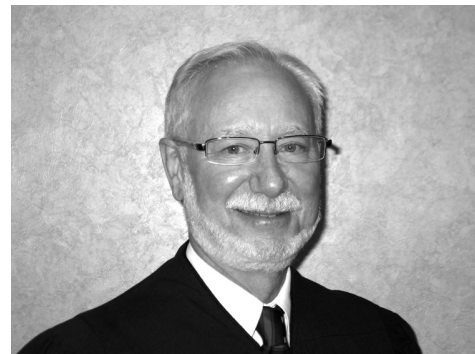
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The More Things Change ...

By Roberta J.F. Wray



Roberta J.F. Wray

I recently re-read *My Early Life: A Roving Commission* by Winston Spencer Churchill, Member of Parliament, Soldier, War Correspondent, Historian, First Lord of the Admiralty, and Prime Minister of the United Kingdom. The book was first published in 1930. It includes reminiscences of his experiences with elections and politics beginning in 1892, and his soldiering days in the Boer War, India and World War I. More than a hundred years later, it's hard not to see how things have changed . . . or not.

On Elections:

As of 1930, Churchill had participated in fourteen contested elections. Each had taken about a month of campaigning. He said, "It is melancholy to think that no less than fourteen months of my life have been passed in this wearing clatter." By-elections, of which he had five, were the worst he said, "because all the cranks and faddists of the country and all their associates" come out and attach themselves to the "wretched candidate." He continued, "if he is a supporter of the administration, he gets blamed for everything that's wrong in the world, and all the shortcomings of human society."



This political leaflet is from the 1899 Oldham by-election.

Source: [bbc.co.uk](http://www.bbc.co.uk) - (C) 2014 BBC.

<http://www.bbc.co.uk/historyoftheworld/objects/e8PR3gMRSli8tdbjui6OHQ>

On War:

From his experiences in the Boer War in Southern Africa as a young officer, and later in World War I he wrote, "Never,

never, never believe any war will be smooth and easy, or that anyone who embarks on the strange voyage can measure the tides and hurricanes he will encounter. The Statesman who yields to war fever must realize that once the signal is given, he is no longer the master of policy but the slave of unforeseeable and uncontrollable events." Once war is declared, he said, all kinds of "ugly surprises and awful miscalculations" take over. "Always remember, however sure you are that you can easily win, that there would be no war if the other man did not think he also had a chance."

On Economics:

Churchill represented a working class constituency in Oldham, a part of Greater Manchester. It was, in the late 19th century, an extremely prosperous community. They spun cotton goods for India, China and Japan, and made the machinery that ultimately enabled India, China and Japan to spin these cotton goods for themselves. There were many thousands of working class homes where for more than half a century things had been getting slowly and surely better. Churchill said he watched them rise in prosperity and then fall back. "In those days the saying was 'clogs to clogs in four generations': the first makes the money, the second increases it, the third squanders it, and the fourth returns to the mill." He said he lived to see them, "with a style of life unknown in my early days" and finally "gripped in the ever-narrowing funnel of declining trade and vanished ascendancy."

On Politics:

By the mid-1920's, Churchill was a well-established member of Parliament. He reflected, "(I)n those days we had a real political democracy led by a hierarchy of statesmen, and not a fluid mass distracted by newspapers." He described "a structure in which statesmen, electors and the press all played their part. (When a statesman) . . . made a mistake in some fact or figure to the prejudice of his opponents, he went back and corrected it, observing that he must not be unfair."

This is where you get to decide what has changed (for better or worse) and what has not.

Senior Attorney Luncheon Meetings

By Dick Ruhala, Program Coordinator

The Senior Attorneys of the Genesee County Bar Association have resumed their monthly luncheon meetings at the Valley Family Restaurant, across from the Genesee Valley Mall, on the southwest corner of Miller and Linden Roads. There will be meetings on the second Thursday of each month except in the months of July and August. Attorneys in this group are usually age 65 or older, with some still working full-time, while others work part-time or are fully retired. There are no dues, and each attendee orders and pays for his or her lunch from the restaurant menu.

These luncheons are a time for socialization and exchanging information – such as vacation, travel, investment programs, help in adjusting to retirement, health status and, of course, war stories about trial experiences.

The luncheons begin about 12 noon and conclude by 1:30 p.m. A special program is planned for the October 9th luncheon meeting. Guests and other attorneys re-

gardless of age are welcome to attend. Dick Ruhala heads up the Telephone Committee, and he may be contacted at his home phone, 810-733-5154, for further information.

Members on the Executive Committee, besides Dick Ruhala, are Ed Henneke, Doug Buck, Sally Joseph, John Mandelaris and Bob “Judge” Ransom. We look forward to another worthwhile year of friendly and enjoyable monthly luncheons.



New Member Profile Affiliates Division: Tamara Johns

Tamara Johns was appointed to the position of Administrative Secretary in the Genesee County Prosecutor’s Office by Prosecutor David Leyton in January of 2005. Prior to that appointment, she was a legal assistant at the law firm of Leyton & Kasle. She graduated with honors in 1986 from Mott Community College with an Associate’s Degree in Applied Science, Para-Legal Technology and has worked as a legal assistant since 1984. She is also a Certified Electronic Recorder having passed the state exam in October

of 2013. Tamara joined the GCBA Affiliates to become more involved in the legal community, to take advantage of seminars, and to enjoy the camaraderie of her fellow legal professionals.

Tamara loves cooking and gardening. She recently became a consultant with Pampered Chef. She is also a Master Gardener with the Michigan State University Extension Service here in Genesee County. She has two adult children and is married to Trever Johns, owner of Finish It Custom Carpentry.



Tamara Johns

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