



May 2020

Ingham County Bar Association

BRIEFS



Retirees Spotlight Articles
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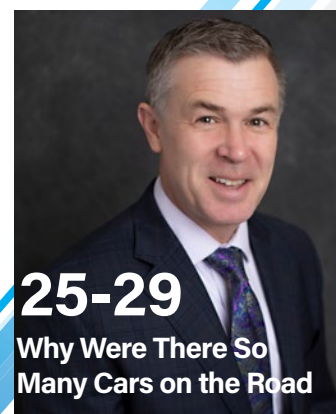
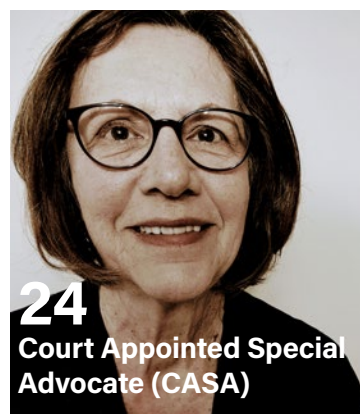
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A Tribute to our 70+ Members

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@inghamcountybarassociation



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ICBA Logo And Letterhead Policy

The ICBA has adopted a policy regarding the use of the ICBA logo and letterhead. If you are currently using or are planning to use the ICBA logo, we ask that you become familiar with and abide by the revised policy. You can read the full policy [here](#).

About ICBA

Founded in 1895, the Ingham County Bar Association continues its longstanding tradition of service to the legal profession and the greater Lansing community, bringing lawyers together to join in a strong organization that works to achieve objectives that transcend the individual.



INGHAM COUNTY BAR ASSOCIATION

P.O. Box 66
Grand Ledge, MI 48837
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Presidents Message

ICBA'S STIMULUS STEPS

By Charles (Chuck) Barbieri



Charles (Chuck) Barbieri,
ICBA President
cbarbieri@fosterswift.com

As mid-Michigan citizens continue to inch along the flattened Covid-19 virus curve, the Ingham County Bar Association (ICBA) Board wants to applaud the efforts of the ICBA members who have responded, and continue to respond, to the challenges posed by the invisible virus. The efforts of this County's bench and bar have been outstanding, and inspiring. It is particularly gratifying that so many have volunteered their services for the most vulnerable, as well as the disadvantaged and discouraged.

While less noteworthy, the Board wants to mention two other steps that have been taken in the past few weeks for the continued "health" of the association. First, the Board acted decisively based on the strategic planning committee's recommendation to increase dues for next year. The Board took this action in an effort to insure and improve the financial health of the organization. The ICBA has not increased its dues over the past 10 years. Yet, over that period, the organization has had increased costs for

technology, security, website support, BRIEFS production, accounting, supply, and professional management. The ICBA in the past decade has developed two websites, created three new sections, increased leadership training, developed social media platforms, created a website photo library, and added award recognitions for distinguished members. In addition to its numerous sections, the ICBA sponsors the ever popular 'Meet the Judges' event, the semi-annual Bench-Bar conference, the Ask the Lawyer forum, and ordinarily, the annual Shrimp dinner.

The ICBA is further committed to hold a public forum for judicial candidates to answer questions. While the organization has developed a "rainy day" fund, that fund holds less than 15 percent of the association's current annual budget. This special fund, in fact, has not received any funding for the past three years.

Next year, with the Board's action, annual dues will be \$90 instead of \$80 for lawyers practicing 5 years or less; \$150 instead of \$130 for lawyers practicing 6 years or more; \$90 instead of \$80 for lawyers serving the judiciary, government agencies, and non-profits; also, \$65 instead of \$55 for legal assistants and paralegals. Student members will continue to pay the same rate of \$30 per year. While lawyers over 75 years of age or older will still be free, lawyers between 70 and 75 years, will be

assessed annual dues of \$65. Continued dues for members between 70 and 75 years is a sensible action, given the relative age of our overall bar and given the vitality of many of those members who still provide valuable services and take advantage of bar activities.

The Board also has approved some sponsorship increases based on its conclusion that sponsorship opportunities have provided extra value for those contributors, while at the same time providing necessary financial support for the organization.

The Board's second step is to recognize the reality that the typical annual meeting requirement imposed by bylaws and governing statute requires tweaking this year. In lieu of the annual "physical" meeting being held in conjunction with the Covid-19 cancelled shrimp dinner, the ICBA Board has acted to pass a bylaw amendment allowing for a "virtual" electronic or telephonic annual meeting. While this is not ideal, this practical bylaw change will permit the Board to fulfill its legal requirement. Unless current social distancing limitations change in the near future, the Board expects to give notice of a telephonic or similar conference which will be used for the brief annual meeting.

In the meantime, thank you for your membership and service in our bar organization! GOD BLESS!

Getting to Know Ingham County Probate Judge Shauna Dunnings

A misquote was printed in that article. We have corrected and republished the article in whole. On behalf of the Briefs team, we sincerely apologize to Judge Dunnings.

The last column on page eight of the article states:

"Judge Richard Garcia is the Chief Probate Judge and I'm the Chief Probate Judge Pro Tem (or Vice President) so when he is gone, I fill in for him."

It should read:

"Judge Richard Garcia is the Chief Circuit and Probate Court Judge and I am the Chief Circuit and Probate Judge Pro Tem. (second in command), if at any time he is unable to serve, I fill in for him."



THE SBM'S COVID-19 RESOURCES include important information about local courts, including specific information about how a local court is implementing Michigan Supreme Court administrative orders concernings the pandemic, AO 2020-2-5.

If you have not already done so, please check it out here.

ICBA MEMBER DIRECTORY

Are you listed in the
online member directory?

If not, give us a call
at 517-627-3938.

A screenshot of the ICBA Lawyer Directory Member Search page. The page has a white background with a light blue header. The header contains the text "Lawyer Directory" and "Member Search". Below the header, there are four input fields: "Name:", "Practice Area:", "City:", and "Zip Code:". To the right of the "Zip Code:" field, there is a small "0" in a box followed by "miles". At the bottom of the page, there is a small footer that reads "667 Attorney(s) displayed." and "Page 1 2 3 4 5 6 7 ... 30 31 32".

Retirees Spotlight



Frederick Baker, Jr.
(Admitted 1975)
fmbjrpllc@outlook.com

Where you last practiced or are continuing to practice:

After stints with three firms, teaching at three law schools, service as a commissioner at the Supreme Court, and a couple of retirements that just did not take, I am enjoying a solo practice.

Area of Law practiced or are continuing to practice:

Primarily litigation, motion practice, appeals, agreements, and negotiations, principally in the areas of insurance, state tax, business, and employment law.

Retirement: I have observed that those who retire from the law generally did not like what they were doing, would prefer to do something else, or are in some way infirm. So far, I am fortunate that none of these applies to me, but

I do enjoy the flexibility of being in control of my practice (at least most of the time), which enables me to carve out time for family, friends, exercise, recreation, and travel.

Advice: My “advice” is simply to quote a lesson I learned in my first ten years of practice and teaching, which I shared in an interview published 35 years ago, in the Benchmark magazine, which I try to remember every day:

“ You have to find the right compromise between perfection and sanity. By practicing, you get better at what you do, and more closely approach perfection, but you must recognize that you will never attain perfection. Just keep working toward it, but remain sane. You should not allow yourself to be paralyzed by a fear of error. Go ahead ... just do your best. ”

- Author unknown



Gary Bauer
bauerg@cooley.edu

Where you last practiced or are continuing to practice:

Practiced Estate Planning at a Clinical program at WMU Cooley Law School through my students. Continue to teach Solo by Design, a business planning class for students wishing to go solo. I teach it online and send those students into the field to interview lawyers, judges and file clerks in the areas where they plan to practice. I am also engaged in special projects for the President and Dean of the law school.

Area of Law practiced or are continuing to practice:

Criminal defense, and estate planning with an emphasis on Medicaid planning. I have also authored two books, *Solo Lawyer by Design*, and, *Hire and Retire* published by the ABA.



Bernie Finn

Sinas Dramis Law Firm (of Counsel)

Retired June 2019

berniefinn@sinasdramis.com

I was admitted to practice in Michigan in 1976. I was sworn in before the Honorable Jack Warren and practiced my entire career in Ingham County (with some practice in the surrounding counties.) In the early years, I practiced general litigation, serious criminal trial work including several dozen homicides, and domestic relations law. For the last 35 years, I restricted my practice to Domestic Relations work. Since 1987, I have been a partner in the Sinas Dramis Law Firm in Lansing, MI and am presently retired and serve as Of Counsel to the Firm.

Presently, my wife Jane and I live about 2/3rd of the year in our home in Meridian Township and the balance of the year in our home in Bonita Springs, Florida. I am not quite sure about retirement as that phase of our lives has just begun. One thing that is sure, however, is that every day is a gift. I have found that working on my genealogy is a great project. Wish I had done it sooner.

The most beneficial part of practicing law has been the attorney/client relationships with so many clients; making friendships with so many great lawyers and people, our support staff, and my great partners. It was really a great place to spend a career.

Allow me to offer a few suggestions for the newer (or aspiring) lawyers:

Treat every person with dignity and respect. That includes opposing counsel, the court, and members of the court staff. That includes everyone -the staff in your office, and other offices. People involved in your practice and everyday life.

Consider employment with the government - It is a great training ground and learning experience, and for many, will become a career. It also allows you to learn from the mistakes of others and saves you from not making the same mistakes at your client's expense. Some of the best lawyers I know in private practice have come from the Prosecutor's office, former Judicial Clerkships, and jobs in the government sector.

If you are in any type of litigation practice, always get to court at least one-half hour before your case is scheduled to be heard. This will give you the opportunity to see how the Judges work and rule, and, you will probably see a lot of good lawyering (and maybe some not so good lawyering that you might choose to avoid). Judges tend to be idiosyncratic (like us all). It will give you some idea of what works for that Judge, and what doesn't work,

Get a mentor, if you can; This is critical. Become friends with a lawyer in your office or a classmate a few years ahead of you, who you can bounce things off and give you input on challenging issues of the practice of law and interactions with other lawyers. All lawyers have been in your situation before and are amenable to helping you with suggestions. (You may have to tolerate some war stories along the way, but it is worth it.)

Get a good (and pleasant) legal assistant or paralegal. I can not say how many

times my legal assistant has helped me over the years. Stacy Harkness has been my legal assistant for more than 35 years. She has help avoid some serious faux pas. So many times, so, that I took to calling her "Radar O'Reilly" because she always sees the "incoming". Your secretary or legal assistant becomes your representative to the entire legal system and your clients, and might know more about the law and how the system works than you do.

The delivery of bad news to the client - All the news that you deliver to the client will not be "we won!!" Sometimes the news will not be so good and there is a tendency to delay awhile before you tell the client the bad news. Don't. Never wait. It won't get any easier over time, and the last thing you want to have happen is the client calling you and telling you that he or she hear the news from someone else, or worse yet, the other side. It is a good idea to have some notion about where the case will go from there as the client will invariably want to know.

Do a good job every time out. Remember people are watching in the courtroom. Other lawyers, Judges, clients and potential clients. The courtroom is a good place to show potential clients or the lawyers who may be waiting to have their case heard to be impressed with that new lawyer that they had never heard of before. Just be professional.

Hit the ball hard every day. The practice of law is difficult and arduous. It doesn't happen 9 to 5, Monday thru Friday. You need to work at it many more hours a week. Evenings and weekend are necessary in order to do the job well.

Finally, always remember that it is not being a lawyer that makes you special. It is what you do being a lawyer that can make you special.



Jim Graves

*Sinas, Dramis, Larkin, Graves
& Waldman, P.C.
Personal Injury Law
jimgraves@sinasdramis.com*

After 48 years in private practice, I'm grateful and pleased to work alongside my partners, associates and staff each day at Sinas, Dramis, Larkin, Graves & Waldman, P.C., protecting the rights of injured people and family

members who lost loved ones due to wrongful death. I have every intention of reaching the half-century mark in my practice before turning more attention to other life activities.

My personal injury/wrongful death practice is not my only pursuit, however. Time serving on the Boards of the ICBA, ICBF and John Voelker Foundation, a non-profit, has been fulfilling in many ways. Also, my wife, Shirley and I enjoy traveling and spending time at our seasonal place in northern Michigan kayaking, leisure reading, socializing with family and friends, and fly fishing when we're able to get away. (I find taking a break from the demands of work helps to refocus and reenergize me). Chicago trips to visit our son, his wife and our grandson, and trips to Boulder, CO to see our other son are special times we look forward to and enjoy.

If able to offer any advice to young lawyers, I would encourage them to find a mentor early in their career. This, to me is very important and valuable. My earliest mentor was my father (a lawyer) who instilled in me the importance of dedication to one's chosen work, civility, and professionalism. During my early years in practice, John "Jack" Cote' and Charles "Jack" Willingham were mentors. I learned much from both that still guides me today. Secondly, I would encourage young lawyers to become active in the ICBA and other specialty bars. Young lawyers have much to offer and contribute to their local bar associations. Finally, and most importantly, I would suggest they set a goal to balance the demands of their practice with time for their family, and themselves. This is difficult to do at times, but ultimately, I think is what we should strive to achieve.

BRIEFS Committee:

Link to guidelines and application for Ingham County Bar Foundation can be accessed [here](#).

SUMMIT GRANT APPLICATIONS TO:

Ingham County Bar Foundation
Peter Sheldon
Dickinson Wright PLLC
215 S Washington Sq Ste 200
Lansing, MI 48933
email: psheldon@dickinsonwright.com

DEADLINE FOR GRANTS: August 31, 2020



Patrick D. Hanes
phanes@haneslawfirm.com

In 1972, I decided to go to law school. I applied to some of the Detroit area law schools and was accepted. However, the Thomas M. Cooley Law School was scheduled to open, and I sent in an application thinking that remaining in Lansing would be far better than relocating to Detroit. A decision I have never regretted. I was accepted at Cooley and graduated in the very first class with classmates which remained in the area such as Larry Nolan, Gary Tyler and Dick O'Neill. Almost 44 years later, I am still in the private practice of law in the Lansing area dealing with commercial litigation and transactions,

and real estate development matters. While retirement niggles at my brain from time to time, I am not ready to pull that trigger.

I was fortunate to have strong mentoring relationships with people like Professor, and then, Supreme Court Justice John Fitzgerald, and my first employer and then law partner, John Bos. I also had the benefit, due to the nature of my practice, to have regular contact with attorneys such as Al Thomas, Bill Mackay, Jim Timmer, Ted Swift, Jud Werbelow and Mike Cavanaugh, all of whom had been, or would become, presidents of the Ingham County Bar Association. I had regular contact with attorneys like Don Fox, Don Hines, Ev Zach, and Dave Coey. Most important, all of these individuals were terrific lawyers who taught me the importance of being prepared and keeping your word. The phrase, "Your word is your bond," is a phrase that seems to have gone out of fashion. However, the individuals referenced above lived that phrase and it was probably the most important advice I ever received. "If you say you are going to do something, then do it." They would have been insulted to

receive a letter (email did not exist back then), confirming a conversation because their word was their bond. They lived it and breathed it. They didn't need to be told what they already told you.

What I like most about the practice of law, at least for my practice, is that I am learning new things every single day. With my practice, I am either litigating matters or negotiating and drafting contracts that force you to learn how businesses are run, how things are built, how different techniques are utilized and how business and development actually work in the real world. There is nothing more exciting than learning new things.

What I am doing now, besides practicing law, probably looks a lot like what I will do when I retire. I love playing the guitar, particularly with others which I do on a fixed, once a month schedule. Pickleball is a passion and will be as long as I can move around on the court. And now, with my first grandchild having arrived nine months ago, I will probably soon be moving into the major spoiling role of the doting grandfather with as much vigor and dedication as I put into my practice of law.





Jim Heos
jheos@nicholslaw.net

I, James Heos, have been practicing law since 1976. I was in the first graduating class at Thomas Cooley Law School. Employment for me ranged from Genessee County Prosecutor's Office, to Michigan Attorney General's Office, to Lansing City Attorney's Office, to Ingham County Prosecutor's Office to Church Kristselis managing partner. Although I have cut back my caseload, I have continued to work in the Nichols

Law firm. Litigation is my specialty, (criminal law, personal injury, medical malpractice, product liability). Retirement is allowing me to spend time with my wife, children and grandchildren. My relationship with the Nichols firm allows me to stay active in my field and work collaboratively with other attorneys, including my son, Matthew.

I have been blessed to be able to help clients through my work in personal injury. Usually their injuries had devastating effects on their lives. It has always been very rewarding to assist them through their difficult times. My goal has been to represent the rights of my clients. I have experienced the support of outstanding lawyers wherever I worked, including those professionals who were my opposition in litigation.

I have had very professional assistants whose work has supported my practice.

Without these competent individuals, my practice would not have been as enjoyable or successful. I cannot thank them enough. I learned early on to listen to colleagues, support staff, adversaries and judges.

Although the facts and the law make the case, it is important to make a good presentation that is easily understandable. I try to go to court and listen to other lawyers argue their cases to pick up ideas and concepts that will help me with future client representation. I want to learn something everyday and not be afraid to ask questions.

Whether you are trying a medical malpractice case for sixteen weeks, or a premise case for three days, every client deserves the best representation. I believe once you have take on a client, you have made a 24/7 commitment to serve them well.





Thomas M. Hitch
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I remember talking with my friends at the Court of Appeals, where I first started in the practice of law, that I would like to retire probably around the

age of 59 or 60. While some of those friends did follow that plan, I clearly have not. I will be 73 in September, and plan to continue practicing on a full-time basis for a couple more years, by remaining involved in my firm. My goal is to be a 50-year active member in the State Bar.

In law school, I was one of those rare birds that actually enjoyed it. It was not that it wasn't hard, because clearly it was. What I came to enjoy was the intellectual challenge that the law posed then, and has, throughout my years of practice. After all these years, I learn something new virtually every day as I represent, but more importantly, try to help my clients.

In the practice of law, I think it is important that one find that enjoyment, because practicing law is difficult. In the Lansing area there are many very bright, very capable lawyers. Enjoy the opportunity that you have when you encounter such attorneys, either as an adversary, as co-counsel, or otherwise collaborating with (such as two lawyers representing their clients trying to work

out the terms of a mutually satisfactory commercial transaction). Always try to find the best in whatever this relationship is because, in my opinion, it will help you grow and become a better lawyer.

I would also say it is very important, which is also difficult to do particularly when you are younger with families, to remain as physically active as you can. In my experience, the practice of law requires intellectual, emotional, and physical stamina. Take the time for physical exercise, as it provides a mental release (although one never, in my experience, stops thinking about the law), and helps your overall feeling of wellbeing.

I was told to include a photo, but I have not. One of my clients once told me that I have the perfect face for radio, and I have always followed that advice.

I sincerely hope for the lawyers who read my remarks, that they do have as much enjoyment in the law as I have and wish them the very best in their legal practice.



Max R. Hoffman, Jr.
mhoffman@fraserlawfirm.com

Mike,

Thanks for asking. In response I offer the following.

I wound down my practice about a year ago. I continue to appear on the Fraser firm's letterhead as Of Counsel, because I cannot seem to cut the final cord. My practice was mostly specialized in healthcare with a focus on licensing and regulation, healthcare fraud and abuse.

I have always enjoyed the company of lawyers, I miss the collegiality. My work provided introductions to fascinating people in both law and medicine. My

experiences have supplied stories to last a lifetime.

My suggestion to younger lawyers is to balance your time and energies between legal pursuits and life's other gifts: family, friends, faith, community, culture, the arts and more. I welcome retirement, but I also miss the practice and the people. At the same time, I am now without that little bell going off in the back of my mind telling me to attend to a task yet undone every time I think I have completed the work for today.

I have always had a weakness for old wooden boats. I can finally turn

to spending time building, repairing, sanding, varnishing and simply messing about in boats. Happily, it is easy to find people to share my penchant. Working alone and with others, I have built a fishing skiff (think rowboat) and a canoe. The forms for another canoe wait in the garage until warmer days. I joined a group of fellow enthusiasts at the Michigan Maritime Museum, repairing and restoring wood boats unique to the Great Lakes region. One of our projects, a Mackinaw boat, sits proudly at the entrance to the museum in South Haven.

-Max





Judge Houk

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What advice if any do you have for others in the practice? Find a group of lawyers to practice with whom you respect for their legal talents, their honesty and how they comport themselves as men or women. Some of

the most important advice I received early in my career came from older attorneys. Rose and I were married a few years and expecting our first child when Gay Hardy, later Solicitor General, asked me how we were going to handle childcare. I must have looked like the proverbial deer caught in the head lights. This was 1972 and well, my mother stayed at home. Gay politely disabused me of that sexist position.

What did you like about the practice of law? Three things: first, the friendships. Attorneys that I worked with and attorneys that I met through litigation. I still feel that way. Second, it was a great honor to represent the People of The State of Michigan as an Assistant Attorney General and as county prosecutor. You only had to do one

thing, “the right thing.” You didn’t have to worry so much about a client’s budget or whether it was really a position that you wanted to take on. Third, I enjoyed my seventeen years on the bench. Every day was a learning experience. It was also an opportunity to do justice in so many different ways. I loved working with probationers and trying to help them refocus their lives. I was still getting thank you letters ten years after I left the bench. I was involved in a number of significant cases that affected state government. I always took those seriously but enjoyed them so much because I knew how my decisions could affect the lives of many people.

What does retirement look like for you? Who knows?



Rose A. Houk

rosehouk@comcast.net

Where you last practiced or are continuing to practice:

I retired from practice in 2009. I was then an Assistant Attorney General and had been on staff for a little over 30 years. Before that, I was in private practice for 10 years.

Area of Law practiced or are continuing to practice:

While in private practice, I had a general law practice focusing on domestic law,

probate law, corporations, real estate law and bankruptcy law. While at the Attorney General’s office, I was in the Workers’ Compensation Division for 20 years. I represented the Bureau of Workers’ Compensation, the State Funds for Workers’ Compensation, such as the Self-Insured Fund, the Second Injury Fund, and the Workers’ Compensation Appellate Commission.

What are you doing now?

I am retired, sort of. I am retired from the active practice of law for general issues. I do, however, do some pro bono work for small charitable organizations. I am now pretty much confined to working in the latter capacity with the Michigan Garden Clubs, Inc. I assist small member clubs in incorporating and becoming a charitable organization.

1. What advice if any do you have for others in the practice?

What advice to give others in the practice of law - it is law practice 101 - take time for your clients. The

biggest complaint I hear from those who go to attorneys today is that they can’t get hold of them, they won’t talk to me, they don’t tell me what is going on - in other words, the attorney, no matter, large or small firm, are not taking time for the client. I think this is true for the more experienced attorney as well as the younger attorneys.

2. What did you like about the practice of law?

In private practice, I loved working for my clients, I liked them (well, almost all of them) and some have become lifelong friends. I also enjoyed the clients I represented in public agencies; they were extremely knowledgeable about their area of government, attentive listeners and always grateful for advice I could give them about how to give the customer good and clear advice on questions posed.

continued

3. What are you doing now?

I am retired, but I have no idea what that means. I like to say I work harder now than when I was still working, I just don't get a paycheck to go along with it. We have traveled a little bit; I provide childcare intermittently for my youngest grandson and try to keep a home together. I garden, I belong to the area garden club, am an officer there, and then volunteer for the Michigan Garden Clubs, Inc.

4. What does retirement look like for you?

I am not sure how to describe what retirement looks like beyond what I have said above. It really is a mixed bag, some things I miss a lot about being in practice, some things I don't miss at all, like getting up at the crack of dawn, keeping time records, having employees. I miss the camaraderie but do get that through my volunteer efforts. There is another life beyond

being a practicing attorney, but it requires a lot of different skills from those of an attorney. Some skills are easily learned, and some never are accomplished. I guess it is sort of like being an attorney.



Joe Kimble
kimblej@cooley.edu

Joe Kimble Is Quite Unretired

In 2014, I stepped away from the Classroom at WMU-Cooley Law School - after 30 years of teaching legal writing and legal drafting - but I'm busy every day in the home office. I probably need an intervention.

In 2017, I published a third law book, *Seeing Through Legalese: More Essays on Plain Language*. And I published my first children's book, *Mr. Mouthful Learns His Lesson*, whose main character (like too many lawyers, sadly) is fond of big words. Check out

videos of elementary school visits on YouTube (search under the book's title). My favorite comment so far is from a third or fourth grader who pronounced, "You know, that's a strange concept for a book." A second Mr. Mouthful book is in the works.

I am in my 31st year as editor of the Plain Language column in the *Michigan Bar Journal*, serve as senior editor of *The Scribes Journal of Legal Writing*, and write an editing column called Redlines for *Judicature*, a scholarly journal for judges.

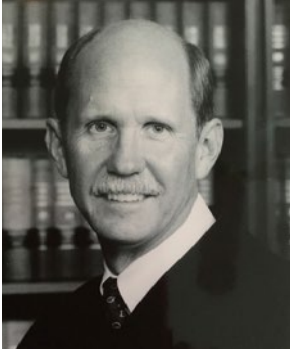
Besides my interest in legal writing, I've published a number of articles, op-eds, and blog posts about the theory of interpretation called textualism. I am not a fan of textualism as it operates in practice. Many of those articles are collected on SSRN, ssrn.com/author=624332. *Briefs* readers might be especially interested in the article called "What the Michigan Supreme Court Wrought in the Name of Textualism and Plain Meaning: A Study of Cases Overruled, 2000–2015." I have also been speaking on textualism (and its canons of construction) to law students and legal groups across the country.

Since 2000, I've been a drafting consultant to the Standing Committee

on Federal Court Rules. That involves reviewing all new and amended federal rules. In the first decade of the 2000s, it involved a complete redraft (without making substantive changes) of the Federal Rules of Civil Procedure and Federal Rules of Evidence. At the moment, I'm one of three consultants who are redrafting the Federal Rules of Bankruptcy.

In 2018, WMU-Cooley announced that it was creating the Kimble Center for Legal Drafting, which has an educational and public-service mission. Last November, the Center held its first free drafting seminar for lawyers, law students, and paralegals. The Center also aims to produce a limited number of user-friendly legal documents for the public. By the time this article appears, the Center may have released a user-friendly medical power of attorney.

I stay active by walking, hiking, running, and doing yoga. My basketball days, though, are probably winding down. I continue to collect rock and blues art. The next time you visit WMU-Cooley, walk around the sixth floor. Short of that, here's a piece that appeared in the *City Pulse* (page 9): <https://www.lansingcitypulse.com/stories/nov-29-2017-issue,12298>.



Honorable Don Owens

dowens@courts.mi.gov

My name is Don Owens. I was in the private practice of law in Lansing from 1969 to 1974. I enjoyed helping my clients with their legal issues but, disliked keeping track of my time and billing clients.

I was able to continue helping people (without having to bill them!) when I was fortunate enough to become an Ingham County Probate and Juvenile Court judge in 1974. It was enormously satisfying to be a probate and juvenile court judge. While proceedings were often highly adversarial, most of the court's work was of a protective and helping nature. I particularly enjoyed jury trials, even though they took longer and were more work than bench trials. It was exciting to see what the jury would decide and whether I agreed with their verdict. More importantly, it gave Ingham County citizens a chance to see how their courts really worked and to see firsthand how hard lawyers worked to protect their clients' rights (and that the reality of life in court was very different from what they saw on television!).

With the creation of the Family Division of the Circuit Court, I served as an Ingham County Circuit Court judge by assignment from the beginning of 1998 until late in 1999, when I was given the privilege of becoming a judge of the Michigan Court of Appeals.

The great variety of legal issues we dealt with in the Court of Appeals was intellectually stimulating and challenging (especially public utility law - very important to our state, but not one of my favorites!). While I liked appellate work, I greatly missed the personal contact with lawyers that I enjoyed as a trial court judge. The work routine of an appellate court judge is a generally solitary one, involving reading and writing all day, every day, in the office and at home, usually interacting only with one's judicial assistant and law clerk, and only seeing lawyers in the courtroom the two days a month when oral arguments are held. I was unable to run for reelection in 2016 because the Michigan Constitution prohibits judges from being elected after reaching the age of 70 years. I was sorry to have to leave the court and would have run that year if not for the constitutional age limit.

I have not practiced law since retiring, but maintain my State Bar membership, just in case. I serve on the board of directors of 3 homeowner and condo associations (I see my role, at least in part, as keeping them out of legal trouble) and have had my deposition taken twice (an interesting experience for a former judge).

Rather than have advice for lawyers (other than to be prepared, represent each client to the best of your ability, and always keep your word), I would like to share some of the things I have learned in my close to 43 years on the bench.

My advice for judges:

Be patient.

Be courteous.

Be humble.

Be fair and impartial.

Rule calmly and dispassionately.

Decide cases as promptly as possible.

While settlement negotiations and mediation have their place and can be

quite successful, your job as a judge is to decide cases and thereby resolve disputes. Don't force litigants to settle if they want their day in court. Justice sometimes requires a decision for one side or the other.

Be prepared before entering the courtroom by reading the pleadings and briefs in advance.

Know the law.

Don't hesitate to look up the law or court rule before making a ruling; that will go a long way to minimizing error.

If you realize that you have made a mistake, correct it before an appellate court has to.

Treat litigants and their lawyers as you would like to be treated if you were in their place.

Always let lawyers "save face," especially when ruling against them.

Never criticize or belittle a lawyer in front of his or her client.

Treat everyone with the respect they are due as a fellow human being, no matter what they may have done (litigants) or how poor you think their arguments may be (lawyers).

Don't succumb to the Black Robe Syndrome: they are standing when you enter the courtroom and calling you "your honor" not for you personally, but as a sign of respect for the high office you hold.

Don't let the power you have over litigants' personal or financial lives go to your head; remember that as a public servant, you are there to serve them by ensuring that justice is done.

As a judge, I always tried to do those things. To the extent I failed, I am deeply regretful. To the extent I succeeded, I became a better judge.

Traveling TO ITALY WITH MICKI

By Micki Pasteur
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My husband Ernie and I traveled frequently before retirement, however, my retirement and escape from the world of “billable hours” provided me the opportunity to take our travel adventures to another level. I was able to use the luxury of my new-found time to research areas and plan unique features to produce unforgettable travel experiences. For example, our recent trip to Italy, will give you a good picture of what I mean.



Once we decided that we wanted to spend five weeks abroad, and selected Italy as our destination, I went directly to the local bookstore and bought several travel books on various Italian regions. I found that Italy offers lots of diversity and history, likely because it was originally made up of city-states that banded together for self-protection. Fortunately, each area was able to retain its unique culture, customs and food. Narrowing our trip down to five regions was difficult and after picking the areas we wanted to visit I had to determine how we were going to get there, how easy it was to travel around, and maybe most important, where we were going to stay. Fortunately, Italy has a fabulous train network that allowed us to travel easily around the country. Our biggest

decision was whether to take local or high-speed trains and which train stations to use, since we wanted to keep use of a rental car to a minimum.

Finding the perfect place to stay was an interesting exercise. We eliminated using hotels because we wanted accommodations with abundant space and a kitchen. I’m happy to report that we located great places through AirBnb, and similar online Italian travel sites. None of them disappointed, regardless of the area. Without exception, we found welcoming landlords and residents, who went out of their way to make our visit pleasant and memorable.

We began by visiting the Naples/Sorrento region. Naples is a high density, older urban area, with classic Italian neighborhood cafes. My husband defines all cities we visit by the quality of the food. This one scored an A+. We had some unique dishes with grilled octopus, as well as seafood stew with pastry topping. Right across the bay from Naples sits Sorrento, a beautiful resort city. Our apartment was on the harbor in Sorrento, which gave us easy access to day trips, including Capri, Pompeii, and the Amalfi Coast. Our landlady left fresh fruit and pastries in our room each day, and we made a special friend at the Café in the harbor.

From Sorrento we headed northeast on the train to Venice, which was a pleasant surprise. We had heard mixed reviews of this city, but fell in love with its atmosphere and unique charm. Here we were joined on our journey by my old law partner, Nancy Little, as well as our daughter Tracy and her good friend Tori. We had a spacious



apartment one block from St. Mark’s Square, which was bustling with tourists. The prison tour across the Bridge of Sighs was a highlight. Side trips to the islands of Murano, where hand-blown glass is made, and San Michele, the cemetery island where you can have your remains buried for a maximum of 10 years, were informative [no burials are permitted on the main Venetian Islands due to space and water level]. From there we travelled to downtown Florence, which boasts of the Uffizi museum and Domo, both of which were amazing. It also has an extensive food market in the center, where we bought fresh fish and fixins. My husband, who is a great chef, cooked a feast for the group, which we still remember fondly.



From there we rented our only car to get to the Tuscany region, where we challenged the GPS system to find a farmhouse at the end of a narrow dirt road. Success allowed us the chance to relax for a few days while breathing the crisp air and drinking local wine on the farmhouse patio, which overlooked vineyards cascading down a sloping hill. It was a view right out of the travel documentaries! Of course, we completed a do-it-yourself wine tour and side trip to Sienna. Otherwise, the days here were pure relaxation.

Next it was on to Cinque Terre. Monterosso al Mare was our selected destination in this area of cliff towns. We had hoped to find a small apartment overlooking the Mediterranean, but that was hard to come by. We finally settled on a rent-by-owner villa that had a fantastic view. However, we had to walk up 144 steps to get there. As you can imagine, we were in really good shape by the time we were ready to move on. My spouse fondly remembers Monterosso by the daily mussels we ate for appetizers, and the seafood bonanza served by the restaurant down the street. The cook there required 45 minutes from the time we ordered to create this masterpiece. It consisted of every type of seafood on the menu baked together in a deep clay pot with a tomato stew. Delicious! We took home the leftovers and were able to have another couple of unforgettable meals. We happened to be there in the midst of the lemon festival, with whole pigs being grilled on site. Side trips to the leaning tower of Pisa and the Harbor Cruise were other highlights.

From Monterosso, it was onward to our last destination, Rome! Anyone who has visited Rome knows that it is right out of the history books, and Dan Brown's Angels & Demons. Our apartment was one block from the Spanish Steps, and

easy walking distance to all major sites, as well as the local flea market. You could easily spend a month in Rome and not see everything, but we did our best to take in much of it in one week. The tour of the Colosseum and its underbelly of subfloors was amazing, especially when you consider when it was built. In addition, the extensive original artwork at the Vatican was breathtaking. As I'm writing this summary, I'm remembering what a fantastic trip Italy was. Thanks for giving me the opportunity to relive it again with you.



“ I was able to use the luxury of my new-found time to research areas and plan unique features to produce unforgettable travel experiences.

- Micki Pasteur

Don't FEAR RETIREMENT

By Frank Harrison Reynolds
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Living in St Augustine, Florida is enjoyable even in these most difficult times. What normally is a bustling community now is quiet with very little outside activity. This makes me more creative with my time and how I spend it. Pattie and I are able to get out for daily walks and our days are remarkably full. They seem to fly by in the blink of an eye.

I practiced law for 40 years after teaching for 10 years at Pattengill Junior High School in Lansing, Michigan. Many memories remind me of the blessings and good fortune that came my way. Most of them are because of the great people I have met and with whom I have shared time.



It is nice to be able to keep in touch with old friends and colleagues on a regular basis. I have at least one conversation a week with

folks who want to discuss case issues and get a second opinion. Sometimes we discuss other professional issues and talk about life in general. It is a good way to stay connected when dealing with the limitations all of us are dealing with during this pandemic. I would be doing this regardless, but it is especially meaningful at this time.

Continuing to be a member of the Ingham County Bar Association keeps me informed about what is currently happening and is a good adjunct to the

benefits it has provided me over many years of membership. I have always promoted membership and would advise our Ingham County attorneys to be members if they are not already. These relationships are life long and keep us connected even after retirement.

Don't fear retirement. I enjoyed teaching, an active legal practice and the courtroom, but am discovering there are so many more things I can now do with the gift of time. I spent a sufficient amount of time thinking about retirement and what I might do. Be introspective. It is important to plan for it, mentally, financially and otherwise. For me, this is a time for leisure reading, volunteer activities and active travel (except for of late). I remember the Sunday drives as a kid and have revived this adventure. I am free of the restraints of the calendar and the clock.

This is a pleasant time in our lives with much more to come. Stay healthy, happy and safe. Do keep in touch.





“ Living in St. Augustine,
Florida is enjoyable even in
these most difficult times.
- Frank Harrison Reynolds ”



Don't
FEAR RETIREMENT





Webb A. (Tony) Smith

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Advice: Recognize how fortunate you are to be part of the greatest profession there is. Work hard, enjoy and appreciate your opportunities. Times flies so make good use of each chance you have to help clients and grow professionally. Respect the Judges you appear in front of, learn from your colleagues and appreciate your opponents.

Area of law practiced, or continue to practice: Commercial litigation, Oil and Gas, Insurance Defense, Malpractice Defense, and anything else that would get me in the Courtroom.

Where did or do you practice? Working at Foster Swift Collins & Swift (remotely from Florida in the winter).

What does retirement look like?
Not sure.



Nancy A. Wonch

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Thank you for this opportunity. I have retired for the most part, although I have a few long time clients whom I will probably outlive given their ages but I am no longer mediating divorces or taking on new clients. I strongly believe in making room for the next generation of lawyers and I think my own self-interest requires that I put down the responsibility of carrying the legal problems of others and just enjoy life.

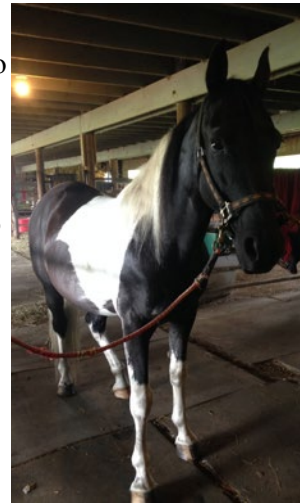
I have moved to the shores of East Grand Traverse Bay. I love it here (although we have to work on our

shoreline due to historically high water levels) and feel an affinity with the water and the wildlife. I do need some horses to take care of so I will be volunteering at a place called Peace Ranch which provides equine therapy to veterans with PTSD. Even though I am retired, I have recently signed up with the SBM to do Powers of Attorney and simple wills for first responders, pro bono, during the pandemic. I don't know how many clients I will get but I figure with a law license and a notary commission as well as an equally trapped in our home witness (my husband), we can do some good (or some damage 😊).

I am also sewing my second set of pandemic masks having constructed and distributed 25 of them to family and friends who are immune compromised or have to go to work or just to the store, despite the pandemic.

The advice I have for lawyers coming up is to use their knowledge, skills, and ethics to do good, always. Not just for money or acclaim, but just for the sake of doing good. Just to do good and to do it within the bounds of the Michigan Rules of Professional Conduct. Lawyers

have been at the forefront of every single important movement, whether democracy, civil rights, diplomacy, the environment, etc., and we must continue to lead, no matter what, because we have the ability and the responsibility to do so. I suggest to everyone an assignment I used to require of my students. Think about what you want your legacy to be and draft an obituary -- no matter your age. What do you want your loved ones and your community to read and remember about you? The sooner the better! That's your plan for your life and career. Then follow it.



Best regards.

PS: Also only say 10% of what you're thinking at any given time...

Diary OF A FREE-LUNCH MONITOR

By Otto Stockmeyer
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According to the American Association of Retired Persons, so-called “free lunch” seminars are often used to lure people into investing in unsuitable or

even fraudulent products. To help older Americans avoid being scammed out of their investments, AARP and the North American Securities Administrators Association developed the Free Lunch Monitor Program

Volunteer monitors attend free lunch or dinner investment seminars and, using a checklist developed by AARP, report what takes place. The first-hand observations help AARP and regulators determine if investment professionals are truly working in the best interest of investors. Information on the program is available at <https://createthegood.aarp.org/volunteer-guides/spot-free-lunch-investment-scam.html>.

Soon after I retired, sure enough, I began receiving colorful postcards inviting me to free seminars on “retirement planning,” “new tax laws,” “Social Security maximization,” “wealth management,” and like topics. All involved dinners, not lunches, and most featured a picture of a steak or the logo of a local steakhouse. Like many retirees, three of my favorite words

are Food, Finances, and Free. So I enlisted as an AARP monitor. This is my experience.

NOVEMBER 14:

My first investment seminar took place at the Henry Center, attached to the University Club in Lansing. The invitation promised a “complimentary gourmet meal” where “our guests can expect to have a little fun, a good meal and obtain some meaningful information.” A luscious steak was pictured.

Our host, a SEC Registered Investment Advisor, ran a one-man firm in Grand Ledge, associated with a multistate securities brokerage. He was down-to-earth, promising to “help you guys out big time.” He promised a “fiduciary level of service” which means “doing the right thing for you.”

The program--which I learned always comes first--lasted about an hour. It was very general. He offered “full-service retirement planning” to those who accepted his invitation to make an office appointment. No products were pitched, other than his services. Steak was indeed among the limited menu choices following the seminar. There was precious little fun, or actionable information, but the meal was good.

I declined an office appointment. There was no pressure and no follow-up. I sent my checklist to AARP but felt like a failure for not identifying anything untoward.

FEBRUARY 27:

My second invitation was to a “complimentary financial dining event” at Spag’s restaurant in Williamston. The postcard promised information on “new tax laws,” and “new changes to IRAs.” But nothing in the hour-and-a-half presentation dealt with any new laws or regulations.

Our host was from Fowlerville. I later learned from brokercheck.finra.org that an individual by the same name, from the same town, was barred by the SEC for attempted cheating on a licensing exam. Coincidence?

I think his main purpose was to sell annuities. One product he mentioned paid 3¼% for 10 years. That didn’t sound impressive to me. Nor was the meal anything special, a limited menu of pasta and such. But then, no steak was promised or pictured.

MARCH 6:

Things improved markedly with the next invitation, for a “complimentary gourmet meal” at Lansing’s Capital Prime steakhouse. “Expect to have a little fun, a good meal and obtain some meaningful information,” it promised. Where have I read that before?

The hosts were two Registered Investment Advisors, one from Portland and one from Sunfield. Recalling that previous hosts were from Grand Ledge and Fowlerville, I could understand why they were prospecting in Lansing. But why would they think Lansingites would travel to the boonies for investment advice?

continued

Again, the presentation didn't match up with the invitation, which promised that we would learn about: "How to avoid taxes on IRA distributions," "Where you should never put your IRA," and "Good versus Bad IRAs." Instead, the pitch was for equity-indexed annuities. Do seminar hosts even read their invitations?

But steak was on the limited menu we were offered, and it was excellent. Later I learned that the chart on display, which showed how an annuity outpaced the S&P 500 index over the past twenty years, did not include stock dividends. With dividends reinvested, the S&P would have outpaced the annuity by 33%.

MAY 8:

This time it was back to Capital Prime in response to an invitation that promised, "Come listen to an attorney, CPA, and licensed Wealth Managers deliver a UNIQUE presentation on life, taxes, Michigan laws, finances and how they relate to each other!" Now that's a tall order.

Although the weather was clear, only one speaker showed up. He was neither a lawyer nor a CPA (nor a Registered Investment Advisor), but he did have one year of law school. He was from Tawas City--another out-of-towner.

He talked a lot about trusts, including advice that if your assets were more than \$2 million, use a revocable trust; otherwise use an irrevocable trust to avoid Medicare spend-down requirements. It was probably the most specific advice I received from any speaker. He offered trusts at the special price of \$250 through an affiliated law firm.

The dinner was the best yet. Steak was again on the menu, plus free mixed drinks for the asking. How can he afford it on \$250 trusts?

JANUARY 8

Finally, a local guy who lives and works in nearby Okemos. And a Registered Investment Advisor. His postcard, picturing a steak, promised to tell us "10 things about IRA Required Minimum Distributions" at my new favorite restaurant, Capital Prime. And he came accompanied by two assistants and at least four satisfied clients. Come to think of it, some of my tablemates at prior seminars were clients as well.

Unfortunately, only about fifteen minutes of his one-hour presentation touched on RMDs. Most of his time was devoted minimizing fees, taxes, and risk. Particularly risk: "I don't believe in risk," he said. And "We need to make adjustments to your portfolio to reduce your risk." Annuities, maybe?

This time we were invited to order off the main menu, but mixed drinks were on us. Tiring of steak, I went for the \$19 lamb chops. As with other seminars, someone came around to our table to schedule an office appointment. And, again, a simple "No, thank you" sufficed.

FEBRUARY 11

Different invitation, different location, but it turned out to be the same guy from Okemos. This time the postcard offered "An inside look into leaving a legacy: What the wealthy know and you should, too" with "a deep dive into some of the current strategies available that redesign the way people do retirement." A steak was pictured, but the location was the Coral Gables restaurant in East Lansing.

The host was a polished speaker, but his anecdotes (which I had already heard once) went on too long. This might be because, according to information on the SEC's website (adviserinfo.sec.gov), he is a former church pastor. In addition to his Okemos investment firm, he runs an insurance agency with a

very similar name to which he devotes more than 50% of his time. His only associate spends 80% of his time selling insurance.

I received a third invitation from the Okemos advisor, this one on "Trump's New Tax Plan: Help or Hindrance?" Although his program was back at Capital Prime, I declined. Been there, heard that.

Then all of a sudden, the investment-seminar postcards stopped. Had I been found out? I still encounter free-meal invitations to learn about timeshares, reverse mortgages, retirement facilities, pre-planned funerals, and even replacement windows. I decline them all; I'm a monitor, not a moocher.

During my year as a Free Lunch Monitor¹ I did not observe any fraudulent representations or high-pressure tactics. But then I also never accepted invitations for a one-on-one meeting with a sponsor to learn what really was being pitched, and how.

My Do's and Don'ts for seniors receiving investment-seminar invitations are these: Don't expect the topics discussed to necessarily match the invitation. Don't expect the information to be specific enough to act on. Do expect to be encouraged to meet with the host for a follow-up consultation. And do enjoy the steak . . . with more than a few grains of salt.

1. I suspect that AARP continues to use the title Free Lunch Monitor, despite the investment-seminar trade's shift to dinners, to reflect economist Milton Friedman's caution, "There's no such thing as a free lunch." The expression refers to the once-common practice of saloons providing a "free" lunch to patrons who purchased at least one drink. In 1872 the *New York Times* decried "loafers and free-lunch men" who "devours whatever he can and, while the bartender is occupied, tries to escape unnoticed." Earl Bronsteen, *The Adventures Of A Free Lunch Junkie* 65 (2011).

Thank you FOR THIS OPPORTUNITY

By Michael Nichols
mnichols@nicholslaw.net



The last thing I needed to do during the quaran-vid shutdown was write another article for BRIEFS, let alone take responsibility for the content for a full-on monthly edition. I for one have had about 60-days-worth of a to-do list and I figure the time saved from having to drive to court or to the office or put on slacks, shoes and a belt for court appearances was going to help me “catch up.” However, between trying to keep my 10-year old off tiktok and on her lesson plan for distance learning, reading and analyzing the Emergency Powers Act and Emergency Management Act (2 distinct sources of statutory authority for the executive branch) which I thought was important – time management continues to be a “thing” for me.

Reading the entries from our esteemed members of 70+ vintage and touching base with them was one of the most important things that I could cram into my days and nights. Apart from trying to find creative ways to maintain the “professional atmosphere” against the competing thought of “if I don’t have to wear anything but PJ’s – why should I put on a tie and pretend ...” this endeavor is an amazing function of our ICBA. I am that close to building a Les Nessman-style pretend office with masking tape and a faux doorframe.

A lot of the people who submit their updates achieved remarkable things in admirable legal careers. I cannot possibly cover all of the categories but the lineup of “authors” include some of the giants of probate law, a court of appeals judge, former trial court judges, law professors (I swear I heard Professor Kimble’s voice in those old-school Sony cassette headphones while I walked through the Brennan library on that research and writing treasure hunt that we did in our LRW 1st semester class as I read his entry), the guy who tried and won an amazing not guilty verdict in an internationally-covered groundbreaking prosecution in the early 90’s, just to name a few.

It was great to hear Max Hoffman say about his retirement and avocation building small boats “if I wake up at 3am, I am not worrying about what I need to do to make sure I’m not letting down that person who is relying on me.” On the other hand, Max mused that he misses the daily interaction with other lawyers. We enjoy a special fellowship that we should not take for granted.

The thread that I noted among the entries is almost unanimous in the admonition to find a mentor; ask questions.

Social distancing will bring new challenges to our responsibility to mentor and foster fellowship. I formed the conclusion that we are never going back in many ways in the practice. We are not going back to the way that things used to be and if we are going to reshape properly our justice system and the practice on the other side of this pandemic we have to take the lessons from all of these giants – many of whom are now in the sunshine of life – and remind ourselves of this: no question about our role or that of our government, courts, democracy is out of bounds.

COURT APPOINTED SPECIAL ADVOCATE (CASA) PANEL PRESENTATION, JANUARY 15, 2020

By Liz Nobis
liznobis@gmail.com



CASA is a nationwide program that can be found in almost every state. National statistics show that children with a CASA are more likely to succeed in school and are half as likely to re-enter the foster care system, among other things.

in Michigan 27 of the 83 counties have CASA programs. Clinton County has had CASA for five years. I became involved with CASA in Clinton County at its inception.

My career was at Lansing Community College preparing people to work as paralegals. In that role, I heard mention of CASA over the years and was intrigued. Not too long after I retired, I learned Clinton County was starting up a program. I read about it in the local Clinton County News, where our Executive Director, Kelly Schafer, posted notices often. I met with Kelly, and as a result of that meeting, had the privilege of serving on the first board of directors, and also serving as a CASA. As I mentioned, I had already retired when I became a CASA. We do, though, have CASAs who are in the work force, yet find the time to be effective CASAs.

I went through the first CASA training. Our group included people from many walks of life. Together we learned the

impact of trauma and neglect and abuse on children and how we could play a role in helping a child by being a supportive adult and forming a stable relationship with the child or children when their lives have been disrupted. We learned about resources and strategies. We learned what services are available so that we could later determine which ones might be useful for a particular child.

I am now involved with my third CASA family, and those three cases have brought me to 10 children, ranging from pre-school to high school.

I believe that what CASAs can offer to complement what is provided by case workers and Legal Guardian ad Litem comes from our time with the children. We visit them every 7-10 days, so we get to know them pretty well. We stay with the child from the time Judge Sullivan assigns us to a case until the child or children are either returned to their birth parents or are placed in a permanent home, usually through adoption. These children come into the court system in Clinton County, but they might be placed outside the county, so visits among our advocates have led us to Ingham, Eaton, Gratiot, Kent, Shiawassee counties and maybe some that I have not included. (We do have the option of being reimbursed for mileage.) We might visit them at their homes, at parks, at malls, at residential facilities, at schools, at daycare, before or after therapy appointments, and at other locations I'm sure I have not included.

We do have some other responsibilities, too. We keep track of our time and activities we spend on our case. We provide a written report for the judge before each court hearing that includes

our observations and recommendations, and then we attend the hearing. While our observations most often confirm what others involved in the case have learned, we do on occasion come up with important information that has not yet been brought forward to the judge. This is due to the close relationships and rapport we have with the children as a result of frequent contact with them.

We advocates meet once a month to discuss our cases, and this helps us work through issues that might arise in our individual cases and also gives us an opportunity to vent and often to brag about the accomplishments and progress of "our kiddos."

When I first considered becoming a CASA, I mentioned it to a friend who looked a bit stricken and asked me if I understood what this involved. Granted, it's a volunteer job that's not for everybody, but for me it has been the best volunteer work I have ever done, no contest. Some of that might be a tad selfish; I have made friends and established connections, and I have learned so much along the way. One thing I have learned is that while there are people in the world who neglect and abuse children (sometimes because they grew up in similar circumstances and cannot break the chain), there are also people who have kindness and love and patience beyond measure, who open their lives and futures to these children so they can thrive.

I think all of us CASAs feel like we really do make a difference at the most fundamental level - one-on-one with a child in need - and that's why we do what we do.

Why

WERE THERE SO MANY CARS ON THE ROAD AND CAN A MICHIGAN GOVERNOR UNILATERALLY LEGISLATE?

By Michael Nichols
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The suspension of constitutional liberties to the extent reasonable in order for a government to protect life in a time of crisis was addressed by the U.S. Supreme Court in *Jacobsen v Massachusetts*, 197 SCt 11 (1905). A pastor named Henning Jacobsen resisted getting a vaccination despite a law that compelled people to get vaccinated in the smallpox outbreak that occurred around 1903-1904. The Court agreed that the law was valid and enforceable: “there are manifold restraints to which each person is necessarily subject for the common good.”

The short answer: yes, at least in Michigan the governor can suspend civil liberties to the degree reasonably necessary to protect the common good. Michigan’s Constitution at Article V created the executive branch. Interestingly, the legislature conferred powers in the Governor distinct from the powers conferred in the executive branch by way of a separate statute. The latest constitution was drafted and approved in 1963. It says NOTHING about emergency powers. When

the Governor announced her Emergency Order that intended to cabin human conduct in the state under the threat of a criminal charge - she was not cloaked at all by the Michigan Constitution. I am fascinated by all things constitutional theory so I have been ruminating and doing some research in between zoom conferences and email filings.

The governor most recently extended several of the Executive Orders and issued some new EOs during the week of April 13, 2020. If one reads through the EO’s in order from the oldest to the most recent, it is clear that the governor initially used the older Governor’s Emergency Powers Act in imposing the substantive order. It was EO 2020-33 that really cranked down on conduct and movement and that is the order that declared a disaster and relied on MCL 30.401. That was the expanded declaration. The governor’s position is that was the order that started the 28 day clock by declaring a disaster. That 28 day limit is why the management of a crisis is now part of a political process. This will create a fascinating study for the history books.

It seems as if the governor knew exactly what was coming, specifically significant pushback from the opposite party, which controls both houses of the legislature, in the way that she slowly opened up the faucet of her powers. Then the protest heard round the country happened on what would have been “tax day.” Iron-

ically, this was also scheduled to be the state bar of Michigan’s “legislative day.” The governor responded by scheduling a news conference that same day, from inside the building in which she said she literally watched and listened to the howls and horns just feet away from her desk. She almost doubled-down on the stayhome-staysafe orders and hinted that the grievous shutdown that the protestors were gathered to petition her over may be prolonged by virtue of the manner of the petitioning. It was a very strange *tete a tete*.

On Friday, April 17, 2020, the governor gave an update on the COVID-19 numbers. She was finally asked about the incarcerated population. A reporter for WLNS TV asked her about what she was going to do about reducing the prison population. She gave an answer that I did not understand. It was to the effect that requests for commutations have to go through the parole board anyway and there is a process and all that.

This is where I have to disclose my bias - I have 3 clients in a custodial facility, 2 of whom are in prison and I do not believe any of these individuals are a threat to society. Ted Koeppel’s reporting for the CBS News Streaming service on this issue has been poignant (google “the challenge of social distancing in prison” to find it). I have to imagine that they are not the only people who are in prison for as long as they are for the reason that at sentencing, the judge scored the sentenc-

continued

ing guidelines, weighed the sentencing factors under *People v Snow*, 385 Mich 585 (1972) and imposed a sentence based on factors that would have been weighed much differently now.

In Michigan - a minimum means a minimum - no early release.

Rehabilitation, deterrence, protection of society and punishment: these are the sentencing factors under Michigan law, analyzed within the framework of the properly-scored sentencing guidelines, which remain advisory. When a judge imposes a sentence, I am convinced that most judges try to do the right thing based on the person before them, what they did and the wishes or concerns of the victims. Judges are still people and I cannot discount that often they concern themselves with the message that they have to send to the community. I will steal a phrase from one of our local judges: “the market price” for that kind of crime or conduct committed when the person already has a record.

Would that message be a little less important or would the sentencing factors be weighed differently by a judge imposing a sentence that sends someone to a facility with invisible bullets flying around? Social distancing cannot co-exist in a place of confinement. The governor does have the power. She has the power without issuing one EO right now. She can expedite any commutation petition right now.

She can also issue an order that does exactly what many of her (as of this writing) 54 EO’s have done: relaxes adherence to statutory requirements. She can, for a period of time, relax adherence to Michigan’s truth-in-sentencing law. Remember, Michigan abolished the so-called “good time” credits in the late 1980’s. We took a baby-step toward early release with PA 14, 2019 for medical-

ly frail inmates. The legislative analysis recognizes that Michigan’s general fund still allocates 2 BILLION for Michigan prisons. Other than the time it will take, it makes sense for a life-saving standpoint, a money-saving standpoint and a chance to reset our justice system to allow judges to look anew at sentences without regard to MCR 6.429.

As to the governor’s current powers to single-handedly legislate.

Here are the statutes: MCL 10.31; 10.32 and 10.33 (The Governor’s Emergency Powers act) and MCL 30.401 (The Emergency Management Act). They grew out of 2 different crises: World War II in the instance of the former and the Cold War in the instance of the latter. The legislature GAVE AWAY to the Governor the power to enact laws, including criminal laws. From MCL 10.31:

“Sec. 1. (1) During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled, either upon application of the mayor of a city, sheriff of a county, or the commissioner of the Michigan state police or upon his or her own volition, the governor may proclaim a state of emergency and designate the area involved.”

So step 1 is that a public crisis, disaster, rioting, catastrophe or the broad term “similar public emergency within the state OR reasonable apprehension of immediate danger of a public emergency of that kind ...” arises.

It would seem that people disagree that there is a public crisis or disaster happening right now but can reasonable minds disagree that her apprehension

of a public emergency is anything BUT reasonable?

The governor’s authority is invoked once she makes the statement, as she did on Monday. The rest of (1) states:

“After making the proclamation or declaration, the governor may promulgate REASONABLE orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control. Those orders, rules, and regulations may include, but are not limited to, providing for the control of traffic, including public and private transportation, within the area or any section of the area; designation of specific zones within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control of places of amusement and assembly and of persons on public streets and thoroughfares; establishment of a curfew; control of the sale, transportation ...” (EMPHASIS SUPPLIED)

There is more:

“AND USE OF ALCOHOLIC BEVERAGES and liquors; and control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety.”

Now, the invocation of the “shelter in place” followed “requests” and “suggestions” - so if you start hearing the Governor say “hey watch your drinking” or words to that effect it might be time to start building that speakeasy within your own home. So, for everyone complaining that the Orders were too strict remember: it could have been worse.

Section (2) states:

“(2) The orders, rules, and regulations

promulgated under subsection (1) are effective from the date and in the manner prescribed in the orders, rules, and regulations and shall be made public as provided in the orders, rules, and regulations. The orders, rules, and regulations may be amended, modified, or rescinded, in the manner in which they were promulgated, from time to time by the governor during the pendency of the emergency, but shall cease to be in effect upon declaration by the governor that the emergency no longer exists.”

Therefore, once the declaration of a state of emergency is rescinded or she rescinds the order, the state of the law is in place.

Furthermore, the governor’s authority is exclusive or in other words, preempts local control. From *Walsh v City of River Rouge*, 385 Mich 621 (1971):

“We consider only the question of preemption of the field by the statute giving to the Governor exclusive power since our determination of that issue is dispositive of this case. P.A.1945, No. 302, is reproduced in its entirety in Appendix #3. A point-by-point comparison of the powers therein granted to the Governor, with the powers granted to the Mayor of River Rouge by Ordinance #228, will reveal that every power granted to the Mayor by the ordinance is also granted to the Governor by Act 302. It should be further noted that Act 302 provides: “* * * when public safety is imperiled, either upon application of the mayor of a city, sheriff of a county, the commissioner of the Michigan state police, or upon his own volition, the governor may proclaim a state of emergency and designate the area involved.” (Walsh at 628).

Governor George Romney (yes - Mitt’s Dad); vetoed a bill in 1968 that would have given local governments the power to utilize emergency orders. In his veto message he stated:

On July 1, 1968, Governor George Romney returned Enrolled House Bill No. 3302 without his approval, stating in his message:

““No one realizes more than I that local law enforcement is the first line of defense in the battle against crime and violence. Over the years I have consistently proposed and supported measures designed to give more strength and more training to local law enforcement officials.”

““However, civil disorders, riots or other similar public disorders and emergencies pose special law enforcement problems. Experience has shown that normally, at the first sign of any civil disorder which might get beyond the control of local officials, contact has been made with state officials for assistance. State Police have assisted local units when needed. When any disorder has exceeded the control of the local police and State Police, National Guard have been committed if deemed necessary in the combined judgment of local officials, the State Police and myself.” (Walsh at 629-630) (cleaned up).

For those of you who are history nuts - the legislature again passed this bill in the next session and Governor Miliken likewise vetoed it, stating:

““This measure would arm the chief executive officers of all cities, villages, townships and charter townships with the authority of proclaiming, by executive order, a state of ‘civil emergency’ within the confines of their respective political units and to issue pursuant thereto orders restricting and regulating public activity.

‘Various forms of this bill have been introduced in the Legislature in recent years. In 1968, a similar measure was presented to former Governor Romney for his signature; but was vetoed by him,

his rationale being set forth in his letter of July 1, 1968, returning to the House of Representatives Enrolled House Bill 3302. His rationale was sound, and, although the measure before me is technically substantially improved, the basic policy question of affording this kind of authority to local units of government still remains at the heart of the matter.”

““I am cognizant of the fact that Attorney General Kelley, in a letter opinion of August 15, 1968, to Representative Arthur J. Law, indicated that in some instances some local units of government may be able to avail themselves of this authority.

‘But it should be noted that in Mr. Kelley’s letter opinion on page 9 he appended to his legal conclusion the following:

“I firmly believe that under almost all circumstances it would be much wiser to rely upon a full scale response, coordinated by the state, than to permit piecemeal measures by individual communities. Scores of separate units of government exist in many metropolitan areas. Their reactions to emergencies could result in a crazy-quilt response which could provide loopholes which could prove disastrous.’

‘More recently, in Mr. Kelley’s letter to me dated July 29, 1970, he reiterated that position verbatim. I totally concur” (Walsh at 632-633).

As the Walsh court stated, this is a very “broad” grant of authority to the executive:

“Act 302 is a broad grant of extraordinary powers with a specific provision that mayors may apply to the Governor for the exercise by him of such powers and a declaration by the legislature that the provisions of the act are to be broadly construed to effect its purpose” (Walsh at 640).

continued

Morgan - I am sorry that the use of pronouns is so masculine - we do better now. Also, it is not lost on me that on this court sat 2 former governors, John Swainson and G. Mennen “Soapy” Williams.

The limit on this authority is on the lawful possession of weapons, which interestingly enough, appears to have been grafted on to this statute in 2006:

“(3) Subsection (1) does not authorize the seizure, taking, or confiscation of lawfully possessed firearms, ammunition, or other weapons.”

The only other case on WestLaw (TM) that interprets the statute is a 1979 prosecution of a 19 year old man for violating a local curfew imposed by the City of Detroit in *People v Smith*. Here, the question was whether this local act was preempted by MCL 10.31, et seq. The court held that it was not because there was no statewide declaration of a civil emergency and the issue here was the City of Detroit imposing a curfew as part of its charter revision. It is noteworthy that the Court of Appeals recognized that probable cause is not out the window by a civil disturbance law:

“An officer who has probable cause to believe that a misdemeanor has been committed in his presence may make an investigatory stop in order to acquire additional information to confirm or refute his belief. *People v. Ward*, 73 Mich.App. 555, 561, 252 N.W.2d 514 (1977). However, probable cause is not sufficient to justify a warrantless misdemeanor arrest. M.C.L. s 764.15; M.S.A. s 28.874.

“Therefore, a police officer cannot arrest a suspected curfew violator, absent proof that the violator is in fact a juvenile,” (*People v Smith*, 87 Mich App 730, 735, 736)(1079). Note - MCL 764.15 now allows for an officer to make an arrest

without a warrantless misdemeanor if it is punishable by up to 92 days IF the officer possesses SUFFICIENT PROBABLE CAUSE. There is another provision in the domestic violence act that requires an arrest in some cases but that is beyond the scope of this article.

Note: The Emergency Management Act at MCL 30.401, gives the governor specific powers and obligations and it appears to be much broader. However, it requires that - absent legislative approval - the “disaster” is considered over after 28 days from the issuance of the disaster decree. I liken the difference between the 2 statutes as an “emergency” that is imminent or is upon the state, even if it is only reasonably perceived vs a “disaster” which has occurred or is occurring. It is fascinating that in the initial series of orders, the governor only invoked or relied upon MCL 10.31 in her substantive orders. When she tightened down on the orders, she then invoked her powers under MCL 30.401.

Is this martial law? In my opinion, no. Neither the 4th Amendment nor the right of habeas are suspended. Martial law is the suspension of ALL civil laws in a time of hostility:

(...)’arising out of the exigencies thereof, arbitrary in its character, and depending only on the will of the commander of an army, which is established and administered in a place or district of hostile territory held in belligerent possession, or, sometimes, in places occupied or pervaded by insurgents or mole, and which suspends all existing civil laws, as well as the civil authority and the ordinary administration of justice. See *In re Ezeta* (D.C.) 62 Fed. 972; *Dlekelman v. U.S.* 11 Ct. Cl. 439; *Coin. v. Shortall*. 206 Pa. 165, 55 ALL 932, G.) L R. A. 193. S13 Ani Si. Rep. 7.7!); *Grifltn v. Wilcox*, 21 Ind 377. See, also, ‘Military Law’

“Martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is in truth and reality no law, but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance, and therefore it ought not to be permitted in time of peace, when the king’s courts are open for all persons to receive justice according to the laws of the land.” 1 Bi. Comm. 413.

Martial law is neither more nor less than the will of the general who commands the army. It overrides and suppresses all existing civil laws, civil officers, and civil authorities, by the arbitrary exercise of military power; arid every citizen or subject—in other words, the entire population of the country, within the confines of its power—is subjected to the mere will or caprice of the commander. He holds the lives, liberty, and property of all in the palm of his hand. Martial law is regulated by no known or established system or code of laws, as it is over and above all of them. The commander is the legislator, judge, and executioner. *In re Egan*, 5 Blatchf. 321, Fed. Cas. No. 4,303. (Black’s Law Dictionary, (online) djvu 2nd edition, p 774).

The limits of the governor’s authority imposed by the, let’s call it the “enabling” statute passed by the legislature are also the reason why she has not declared the school year over. She has yet to declare that she is giving credit for on-line or distance learning for public schools probably because of practical reasons and fairness. The ability of kids around the state to learn on-line varies greatly.

You may be critical of the decision or lack of a decision to declare the school year over but there is a good reason - the power is not hers to wield. Article 8 of

the Michigan Constitution confers that power exclusively with the board of education:

“Sec. 3. Leadership and general supervision over ALL public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.”

So, if you have a child who attends private school and is getting credit for the on-line learning she is doing -- but your neighbor has a child in public school and the fate of that child hinges on patching together snow days that were unused and a potential problem with either not getting credit or going into the summer to get credit for the school year -- that tuition check probably looks like a great deal right now.

Governor Whitmer’s Executive Order, issued March 23, 2020 to eliminate physical public interaction leaves room for interpretation. You can see the order at the top of our website at <http://www.nicholslawyers.com>. Lawyers are debating whether a criminal prosecution can succeed in light of the arguable vagueness of the travel prohibition. Clearly, the elephant in the room for the lawyer is whether it is a specific intent crime. There are non-standard criminal jury

instructions that I found while doing an annotations search on WestLaw (TM) and found 2 versions - one for a case in which the judge rules that specific intent is required and one for when the judge decides no specific intent finding is necessary for a conviction.

It is all fascinating.

The order does NOT force businesses to shutter. At section 1, it states “[t]his order is to be construed broadly to prohibit in-person work that is necessary to protect or sustain life.” Perhaps the “sustain” part is where it gets confusing. The order also specifically allows for work in any and all fields but promotes “remote” work.

Section 5a, allows business to designate essential employees in writing before April 1, 2020 and allows those individuals to travel as necessary to facilitate remote work. A reason is so that the person has a defense if they are in public or driving and law enforcement intercedes them. Therefore, it does not matter if you are critical to infrastructure or “essential” as many people are putting it. If you were designated as a critical employee to keep your business running, you may need to be on the road, at the office, in the store, what have you for the purpose of keeping things going so other members of the team can work from home.

Here is a quote from a not-so-famous founder, James Wilson: “Without liberty, law loses its nature and its name,

and becomes oppression. Without law, liberty also loses its nature and its name, and becomes licentiousness.” – “Of the Study of the Law in the United States,” 1790. The Governor of the State has broad authority IN AN EMERGENCY by virtue of the Emergency Powers of the Governor Act of 1945 and the Michigan Constitution of 1963. The right to assemble is cabined at this moment by the need to prevent the spread of a disease with an unknown power to harm any of us. I have heard and seen many reasons for us to exercise our liberty in a manner for the greater good - and that is to abide.

A resource with some answers to your questions can be found by going to Michigan.gov and following the link to Coronavirus response box and then click the link at “directives, executive orders and FAQ’s.”

Author’s note: This article was written on March 28, 2020 as a look at the state of Michigan law and presented to illustrate how the state of emergency and its effect on the law in Michigan unfolded throughout the developing situation. There are now over 100 Executive Orders (EO’s). The EO’s are also under challenge in Michigan House Speaker and Michigan Senate Majority Leader vs. Michigan Governor. The reader is warned to check the most recent orders at michiganlegislature.org for an accurate picture of the law as modified by the EO’s.

THE GOVERNOR OF MICHIGAN DRILLS DOWN ON SOME EVERY DAY LIFE ISSUES AS THE CURVE DATA SHOWS HOPE

By Michael Nichols
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The governor has re-written the motor vehicle code on a temporary basis to allow for an extension to renew your driver license in the State of Michigan. If your license expired between February 1, 2020 and June 1, 2020, you are encouraged to renew plates and conduct any other business that you are able to conduct electronically, but if you drive without having renewed your license by the deadline IF your license expired after February 1, 2020, you cannot be prosecuted or ticketed for violating MCL 257.904.

“Until June 30, 2020, driving with a vehicle registration, operator’s license, or chauffeur’s license that expired on or after February 1, 2020 does not constitute a violation of the Michigan Vehicle Code. Law enforcement officials must not arrest any person nor impound any vehicle as a result of a vehicle registration, operator’s license, or chauffeur’s license that expired on or after February 1, 2020 ...” (EO 2020-47, L 6)

You now have additional time to comply with the vehicle code *without* paying a registration fee.

“The Department of State must not assess a late fee at renewal for a license or registration that expired between February 1, 2020 and May 31, 2020, so long as renewal occurs by June 30, 2020. Nothing in this order prevents the Secretary of State from suspending or revoking an operator’s or chauffeur’s license, commercial learner’s permit, vehicle designations, or endorsements on an operator’s or chauffeur’s license pursuant to the Michigan Vehicle Code.” (EO 2020-47-6)

It appears that a lot of moving parts and questions remain for motor vehicle carriers. It is a particularly nettlesome set of laws, regulations and even compacts by which state and federally-licensed commercial motor carriers have to comply if they travel state-to-state. Part of EO 2020-47 addresses this unique area of commerce along with EO 2020-40.

The Michigan Attorney General continues to post “FAQ’s” at the Attorney General’s website, which you can find by going to the State of Michigan website and clicking the appropriate links. Usually, this site lags about a day or 2 before questions are answered. Some of the questions do not appear to be “frequently” asked so much as they are “we-better-answer-that” type questions.

Headlines on one of the other EO’s regarding “liquor buy-back” read to the effect of “Governor allows liquor control commission to buy back booze.” That does not seem to be quite accurate. It is really more like a “cash movement” idea. My first question when I discussed this order at a partners meeting (my

wife is my law partner – so our partners meeting is often an impromptu case review over coffee (am) or wine (pm)): “but what about handling all those bottles of booze that were sitting on the shelves as a pool of COVID-germs and then tracking the inventory?” The order is really more like a permission slip to leverage the inventory that is regulated by the liquor control commission (LCC) in exchange for cash:

“Upon advancing cash to a licensee pursuant to this buyback program, the Commission will hold legal title to all spirits purchased by the licensee before March 16, 2020 that are in the licensee’s inventory at the time the licensee opts into this buyback program. But, in recognition of the risks of COVID-19 infection and transmission associated with in-person contact, the Commission must not take physical possession of any such spirits except as provided in this order or any order that may follow from it. The licensee must take all reasonable care to account for and preserve the inventory of any such spirits.

A licensee that opts into this buyback program may, at any time until the Commission takes physical possession of spirits it owns, repay to the Commission the full amount advanced to the licensee. Upon repayment of the full buyback amount, the licensee will again hold title to the spirits in its possession.

The Commission may take physical possession of any spirits held by any licensee to which the Commission holds legal title at any time later than 90 days after the end of the declared states of emergency and disaster.” (EO 2020-46, 1-3).

continued

It is sort of a system within which the licensee can take cash, but hold and preserve the inventory and, when ready, buy it back. Perhaps the idea is that as bars and restaurants receive government loans/grants through the PPP (also known as the CARES Act) or they start getting back on their feet then the different bars and restaurants can buy back their “spirits.” For now, they can get cash against inventory. Think like taking cash from the bank in Monopoly™ for a house or hotel on Park Place™.

The governor also formally extended the ban on places of public accommodation, like bars and restaurants from operating with EO 2020-43. It is probably no coincidence that the governor issued 2 EO’s that are designed to provide help to individuals and businesses at the same time that she issued an EO that extends what many people read as a draconian “lockdown” on the economy and on the same day that she spoke to the media on the heels of criticism from libertarian groups, businesses and others.

Last points: there are some helpful resources for the citizen who wants to understand the immediate power shift from 3 co-equal branches of government to a form of government that vests unequal weight to the executive, in order to quickly and effectively protect people and property. It seems as if the history was based on mass insurrection or war on our shores (think War of

1812), but a Supreme Court Opinion that was issued in the face of the flu pandemic of 1918 helps shed some light on how the judicial branch may analyze the definition of “reasonableness” of a president or a governor’s actions in a crisis or disaster:

<https://www.oyez.org/cases/1900-1940/197us11>

A recent opinion piece written by 2 law professors: Elizabeth Goitein and Andrew Boyle, at the Brennan Center for Justice at NYU law, is a fascinating history of the president’s “secret powers”:

<https://www.nytimes.com/2020/04/10/opinion/trump-coronavirus-emergency-powers.html>

The Michigan Supreme Court analysis on the Governor’s Emergency Powers under MCL 10.31 et seq AND mcl 30.401 et seq: *Walsh v City of River Rouge*, 385 Mich 623 (1971) is a very thorough and interesting historical analysis of these powers and the reason for them.

If you want to keep connected with what is going on in Michigan government and the responses and questions that are getting asked and answered (sometimes) – find a media outlet you trust or enjoy and follow and subscribe. A lot of those are available right now (like the NY Times) for no or low cost. Two of my favorites are the Times and for Michigan

government news, Chad Livengood at Crain’s Detroit Business.

Now if your nerves fray over all the economic anxiety and gloom, but you like following legal issues – a real life story that commemorates great and courageous lawyering but warns of the danger of unchecked government conduct and blind acceptance of the explanations of our elected leaders: check out the documentary series “How to Fix a Drug Scandal” on Netflix. This is the real-life story of the Massachusetts Crime Lab Scandal – all of 10 years old, of the perfidious conduct of Annie Dookhan and Sonja Farouk. I followed the scandal as it played out, cite it frequently and heard the lawyers speak. The lesson? Demand; analyze and question the data.

Author’s note: This article was written on April 14, 2020 as a look at the state of Michigan law and presented to illustrate how the state of emergency and its effect on the law in Michigan unfolded throughout the developing situation. There are now over 100 Executive Orders (EO’s). The EO’s are also under challenge in Michigan House Speaker and Michigan Senate Majority Leader vs. Michigan Governor. The reader is warned to check the most recent orders at michiganlegislature.org for an accurate picture of the law as modified by the EO’s.



ICBA-YLS

Young Lawyer Spotlight:

Melanie Smith

MELANIE SMITH is a young lawyer practicing in Ingham County, Michigan. Melanie currently sits on the regional Board of Directors for the Women Lawyers Association of Michigan as the Treasurer and is constantly striving to be involved with and give back to her communities. Melanie is an outgoing introvert - she has no problem meeting new people and engaging in conversation, but at the end of the day, her favorite thing to do is curl up on the couch with a good book and her animals.

Where do you work and what do you do there?

I am an Assistant Prosecuting Attorney for the Ingham County Prosecutor's Office. I am currently assigned to the District Court Unit and work exclusively in Judge Alderson's courtroom in the 54A District Court for the City of Lansing. I handle all misdemeanor cases on the Judge's docket, as well as all felony matters through the preliminary hearing stage of the case. I am also tasked with sitting on the team of the 54A Felony Sobriety Court, which takes defendants convicted with OWI 3rds into a 2-year program working towards sobriety and an overall healthy lifestyle.

Where did you go to school?

I attended Flushing Community Schools for K-12, located in Genesee County. I started at Central Michigan University in the Fall of 2009 and graduated May

2014 with a BSBA in Economics, Legal Studies, and Leadership. I started MSU College of Law that fall and graduated in May 2017 with my JD.

When were you admitted to practice in Michigan?

I was sworn into the Ingham County Bar by Court of Appeals Judge Amy Ronayne Krause in late 2017. I am not admitted to practice anywhere besides Michigan, and I don't plan to be. Michigan is home and always will be.

Why did you go into the legal field?

All through college, I knew I wanted to help people, but I couldn't figure out in what capacity. I thought teaching or social work and a handful of other possibilities before I realized if I wanted to make real change, I needed to start at the top of the chain, the laws. I went to law school to draft and enact new and better laws to protect women and children. Then I learned I liked being in the courtroom too much to not become a litigator, so prosecution was an easy choice from there.

What advice do you have for those considering law school?

Make sure you have passion for whatever it is you are going there for. Law school is expensive, it can isolate you from family and friends, it is mentally hard, but also physically and emotionally hard. If during those moments of



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weakness and questioning everything, if you have to have your passion to keep you afloat, or you likely won't make it through. Law school shouldn't just be "the next step" after college because you aren't ready to get a job or because your parents said you're good at arguing so you should go to law school. And once you've made the decision to go, apply for every scholarship you can find and choose the school where you can minimize your debt.

If you weren't a lawyer, what would you do?

I think I would be extremely happy as a teacher. What prevented me from going that direction in the first place is the attachment I knew I would inevitably form with my students. If a kid came in looking hungry or dirty or abused, I would not be able to hold my tongue and not say something or spring into action. I would want to take them all home with

me to know they were safe and loved. I also would love to work at an animal rescue like the Capital Area Humane Society, helping little fur babies find their forever.

Where did you grow up?

I grew up in Flushing, MI, about an hour east of Lansing. Both of my parents graduated from Flushing, as well, and both sets of my grandparents resided in Flushing. It is a great small town, and I really loved my childhood there.

Who is your biggest role model and why?

Jesus Christ. He literally gave everything he had, his life, for ours. I try to live to give to others every day of my life, knowing I will fall short. But having a relationship with God allows me to go to bed proud of my successes and unashamed of my failures and mistakes, knowing that tomorrow is a new day to try again.

What do you do in your free time?

I spend every Sunday morning teaching 2-5-year old's at my church and help throughout the week as needed on other community outreach projects we are involved with. I've been a homeowner for just shy of 2 years, so lots of renovation and improvement projects inside and outside. Reading is a huge passion of mine and I try and read a mix of genres, aiming to read at least 1 non-work-related book per week.

Do you have any pets? If so, tell us about them.

I have a cat I named Teigen after modern day icon Chrissy Teigen. Not sure who is sassier. And I have a 1-year old black lab mix named Quinn. That was his name when he came to us through New Hope Pet Rescue. If I could have picked his name, I would have chosen Dobby, like the house elf from Harry Potter, because they have the same ears.

LET BRIEFS HELP SPREAD THE WORD ABOUT YOUR EVENT!

If your organization has an upcoming law-related event, send it to BRIEFS so we can share it with the legal community.

Please provide the **1)** Event Name, **2)** Location, **3)** Date, **4)** Time and **5)** pertinent information describing the event, and we'll publish it in BRIEFS.

Send items to briefs@inghambar.org. The deadline is the 15th of each month for the following month's issue (i.e., April 15th for the May issue).





ICBA-YLS

Educational Event – Part II: Collateral Consequences

By Aylysh Gallagher
aylyshgallagher@gmail.com



On February 27, 2020, ICBA-YLS held a free educational event – Part II: Collateral Consequences. The attendance for the event was amazing, and the topics included: Driver's License Sanctions, No Fault Insurance, Sex Offender Registration, and Alternative Options for Clients.

A big thank you to Michael J. Nichols from The Nichols Law Firm. He was our first presenter and started the night off right teaching us valuable information regarding driver's license sanctions. Then Stephen Foucrier and Bob Wood, both from Willingham Cote', P.C., did a segment on the changes and consequences in no fault insurance law. We began wrapping up the night with Alternative Options for Clients that was jointly

presented by Aylysh Gallagher, an assistant prosecuting attorney from Ingham County Prosecutor's Office, and Dustyn Coontz from Coontz Law. Finally, the closing piece was on the Sex Offender's Registration and that was presented by Teddy Eisenhut, an assistant prosecuting attorney from Ingham County Prosecutor's Office. The recent changes in the law to no fault insurance and the new case law effecting the sex offender registry and parts of the Holmes Youthful Trainee Act (HYTA) made this training even more relevant and valuable to the lawyers that attended.

This free event was made possible because of Clark Hill, PLC – a big thank you to them! Clark Hill, PLC generously sponsored the event by providing a delicious free dinner to the participants and hosting at their lovely offices in Old Town. It was overall a great night for learning, eating, and meeting new lawyers.

We also wanted to announce that the ICBA- YLS Litigation Bootcamp scheduled for April 25, 2020, has been postponed until the fall. If you would like more information about the event, please email Aylysh Gallagher at agallagher@ingham.org if you have any questions.



ICBA would like to thank all of its generous sponsors for sponsoring the 2020 Shrimp Dinner. While we had to cancel the dinner because of COVID-19, the work of ICBA continues as we strive to support our members and legal community during these unusual times.

WE COULDN'T DO SO WITHOUT THE GENEROUS SUPPORT OF THE FOLLOWING FIRMS:

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We look forward to seeing you at an ICBA event in the near future and at the

Shrimp Dinner 2021!



Criminal Defense Law Section

The Criminal Defense Law Section is comprised of criminal defense attorneys who defend people accused of committing crimes. The Section is dedicated to sharing knowledge related to emerging and important topics specific to criminal defense. The Section is also committed to offering opportunities for attorneys to hone critical skills needed to defend those accused by the government.

If you are looking for a way to learn about the latest in forensics or practice your evidentiary knowledge, they you'll want to join this section. The Section meets at the State Bar of Michigan, 306

Townsend St., Rooms 1 and 2, in Lansing.

If you have suggestions for future topics, please contact Section Co-Chairs Mary Chartier, Takura Nyamfukudza or Christopher Wickman.

Upcoming Meetings: TBA

There is no cost to attend meetings. Speakers and topics will be announced. To RSVP for the Criminal Defense Law Section meetings, email Chris Wickman at cwickman@nicholslaw.net.

Employment and Labor Law Section

The Employment and Labor Law Section holds its meetings from noon to 1 p.m. each month at WMU-Cooley Law School, 300 S. Capitol Ave., Room 911, in downtown Lansing.

Section Co-Chair is John Maise. Contact John if you have ideas for topics and speakers.

Stay tuned for an updated schedule of events.

Upcoming Meetings: TBA

If you have questions about Section meetings, please email John at jmaise@whiteschneider.com.

Family Law Section

The Family Law Section meets on the second Wednesday of the month from noon to 1 p.m. in Rooms 1 and 2 of the State Bar of Michigan Building, 306 Townsend St., in Lansing. Lunch is provided.

Section Co-Chairs are Brooke VanBuren-Hay, Jennipher Martinez and Erica Terranova.

Upcoming Meetings:

- TBA

If you have suggestions for meeting topics, want to sponsor a lunch or just have general questions, please email erica@baileyterranova.com.

Paralegal/Legal Assistant Section

The Paralegal/Legal Assistant Section offers free networking and educational events for legal staff in Ingham County. Meetings are held the third Wednesday of each month at the State Bar of Michigan Building, 306 Townsend St., in Lansing.

Section Co-Chairs are Elizabeth Cary, a Paralegal at Chartier & Nyamfukudza, PLC, and Heidi Pierce, a Paralegal at Fraser Trebilcock.

Upcoming Meetings:

- TBA

If you have questions or would like to learn more about the Section, contact Elizabeth at lizzy@cndefenders.com.



Probate and Trust Section

The Probate and Trust Section holds its meetings the third Tuesday of each month from noon to 1 p.m. at WMU-Cooley Law School, Room 911, 300 S. Capitol Ave. in Lansing.

Section Co-Chairs are Sally Babbitt and April Alleman. If you plan to attend a meeting, please RSVP to April Alleman at april@crenshawpeterson.com.

Upcoming Meetings:

- TBA

Join The Section's Facebook Page

The Probate and Trust Section has a group Facebook page: [ICBA Probate & Trust Law Section](#). The Section encourages members to join the group. As a way to streamline RSVPs and minimize emails, you can RSVP for the Section meetings via this Facebook page. (Please let us know if you are not on Facebook.)

Lunch Sponsors

The sponsored lunches have been a very popular replacement for the brown bag lunches of old. The Section would like to continue the sponsored lunches. If you are interested in sponsoring a ¼ (\$100), a ½ (\$200) or full (\$400) lunch, please call Sally Babbitt at 517-507-3306 or email sally@sallybabbittlaw.com.

Real Estate Section

The Real Estate Section holds its meetings at WMU-Cooley Law School, Room 911, 300 S. Capitol Ave. in downtown Lansing.

Section Co-Chairs are Bill Tomblin and Christopher Patterson.

Upcoming Meetings:

- TBA

Lunch is served at meetings. Upcoming speakers and topics will be announced. Member input is always appreciated. If you plan to attend a meeting, please RSVP to Bill Tomblin at Wdtomblaw@aol.com.

Bankruptcy Law Section

The Bankruptcy Law Section meets at noon on the fourth Thursday of each month at WMU-Cooley Law School, 300 S. Capitol Ave., Room 911, in downtown Lansing.

Upcoming Meetings:

- TBA

Please feel free to join the Bankruptcy Section for its monthly meetings. Contact Section Co-Chairs Patricia Scott or Norm Witte for details.

To RSVP for meetings, contact Patricia Scott at pscott@fosterswift.com.



ICBA Sponsorship Opportunities

For more than 120 years, the Ingham County Bar Association has continued its tradition of service to the legal profession and the greater Lansing community.

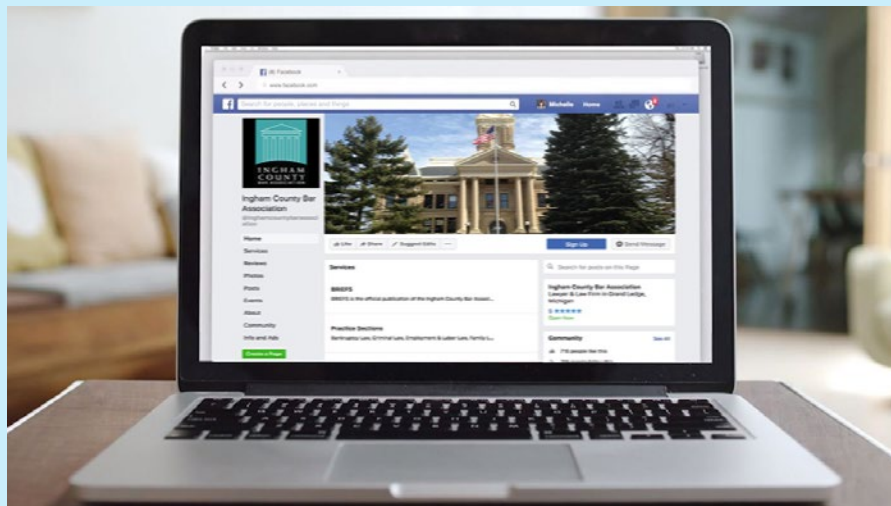
As part of its longstanding commitment to the profession, the ICBA hosts events throughout the year that are educational and entertaining, in addition to networking opportunities for members. These events are made possible by the generous support of ICBA members.

One way for members to support the ICBA is through its annual sponsorship packages. The ICBA now offers

a program that focuses on the increasing importance of social media marketing.

Law firms have the opportunity for their Facebook posts to be “shared” on the ICBA’s Facebook page. This means a law firm’s Facebook content will be seen by a larger audience, including ICBA members and those with whom ICBA has a relationship, thereby giving the law firm a greater presence throughout the legal community.

For more information on ICBA sponsorship opportunities, click the links below.



2020-2021 Firm/Corporate Sponsorship Opportunities
2020-2021 Vendor Sponsorship Opportunities





By Michael Nichols
mnichols@nicholslaw.net

We got 5 new executive orders within 24 hours in light of the legislature's resolution to refuse to grant a continuing state of disaster/state of emergency. Remember, the earlier-enacted (by the legislature) Governors Emergency Powers Act of 1945 is more generally addressed to a State of Emergency that gives the executive somewhat generalized *police powers* and that is important. The Emergency Management Act of 1976 addresses a disaster and confers upon the Executive more specific powers: in particular the authority to engage in rule-making for administrative rules that interpret and implement statutes. Here are the 3 executive orders:

EO 66: Accordingly, acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. The state of emergency declared under the Emergency Management Act in Executive Order 2020-33 is terminated.
2. The state of disaster declared under the Emergency Management Act in Executive Order 2020-33 is terminated.

Given under my hand and the Great Seal of the State of Michigan.

EO 67: Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. A state of emergency remains declared across the State of Michigan under the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.
2. This order is effective immediately and continues through May 28, 2020 at 11:59 pm. 3. I will evaluate the continuing need for this order prior to its expiration.
3. Executive Order 2020-33 is rescinded and replaced. All previous orders that rested on Executive Order 2020-33 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.

EO 68: Acting under the Michigan Constitution of 1963 and Michigan law:

1. I now declare a state of emergency and a state of disaster across the State of Michigan under the Emergency Management Act.
2. The Emergency Management and Homeland Security Division of the Department of State Police must coordinate and maximize all state efforts that may be activated to state service to assist local governments and officials and may call upon all state departments to utilize available resources to assist.
3. This order is effective immediately and continues through May 28, 2020 at 11:59 pm.
4. I will evaluate the continuing need for this order prior to its expiration.
5. All previous orders that rested on Executive Order 2020-33 now rest on this order.

Given under my hand and the Great Seal of the State of Michigan.

All dated April 30th, 2020.

Then there is EO 2020-69, which is a redux of EO 2020-43, which was a redux of EO 2020-20, issued back on March 23rd. So what the heck can we do and not do? It seems as if we are back to the state of the state on April 24, 2020, when she issued EO 2020-59, (which rescinded the more restrictive and controversial EO 2020-42, because she brought all prior orders not otherwise rescinded under the "new" EO's 66-69. So as far as I can tell – the main guidance for most average folks is here at EO 2020-42:

<http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-59.pdf>

You can buy seeds at Meijer or Walmart if you have to go out to buy necessities, but otherwise stay home. So what is her authority to do this? Remember talking about the Supreme Court case, *Jacobsen v Massachusetts* that endorsed the ability of a state to require vaccinations for healthy individuals due to an epidemic?

This is from a Michigan case that was found by my friend and colleague, attorney John Lewis in Big Rapids. Our Michigan Supreme Court held the following in a case in which a public health order required *Healthy* kids to get vaccinated for smallpox, referencing the history of judicial interpretations of executive orders in times of crisis:

"They are not all in accord and in some instances are not reconcilable. There is, however, a very marked trend in them in one direction, that which upholds the right of the state, in the exercise of its police power and in the interest of the public health, to enact such laws, such rules and regulations, and will prevent the spread of this dread disease. The

continued

power of the state to require vaccination in case the disease was present in a community was upheld in *Jacobson v. Massachusetts*, 197 U. S. 11, 25 Sup. Ct. 358, 49 L. Ed. 643, 3 Ann. Cas. 765,” *People Ex Rel Hill v Board of Ed of City of Lansing*, 224 Mich 388, 1923

The *Hill* case came before the statutes that we have all been wrestling to interpret were enacted. The governor cannot just continue the disaster declaration. She can continue the emergency declaration under MCL 10.31-10.33. So, the question becomes the extent to which she can use her “broad police power” to cabin our rights to move about, exercise our constitutional rights and otherwise

constrain our daily lives. I have no doubt that after the resolutions to sue her, SR 0114 of 2020 and HR 0250 of 2020 – here:

<http://www.legislature.mi.gov/documents/2019-2020/resolutionadopted/House/pdf/2020-HAR-0250.pdf>

<http://www.legislature.mi.gov/documents/2019-2020/resolutionadopted/Senate/pdf/2020-SAR-0114.pdf>

So, it will be up to the courts to decide. I predict that so long as the orders are only as restrictive as necessary to be “reasonably related” to protect life during the pandemic, the courts will

continue to side with the governor. The good news? We are getting close to the end of this phase.

Author’s note: This article was written on May 1, 2020 as a look at the state of Michigan law and presented to illustrate how the state of emergency and its effect on the law in Michigan unfolded throughout the developing situation. There are now over 100 Executive Orders (EO’s). The EO’s are also under challenge in Michigan House Speaker and Michigan Senate Majority Leader vs. Michigan Governor. The reader is warned to check the most recent orders at michiganlegislature.org for an accurate picture of the law as modified by the EO’s.

ICBA Membership Scholarship Application

The Ingham County Bar Association may offer scholarships to prospective members who are experiencing a hardship and cannot pay the standard rates to be an active member of the bar.

Scholarship recipients remain anonymous. It is the discretion of the ICBA President to grant any scholarships. Scholarships can only be approved on an annual basis (i.e., the scholarship does not automatically renew year-to-year).

The scholarship application can be accessed [here](#).

BRIEFS AUTHOR GUIDELINES & POLICIES

IN GENERAL

Publication Schedule

BRIEFS is published by the Ingham County Bar Association six times a year (September, November, January, February, April and June).

Copy Deadline

Content submissions are due the 15th of the month for the following month's issue (e.g., deadline is May 15 for the June issue). Late submissions are accepted at the discretion of the editor.

BRIEFS Committee Meetings

A minimum of four committee meetings are held each fiscal year. Additional meetings are held, as necessary. To be added to the mailing list for meeting notices, email the editor at briefs@inghambar.org.

Author and Article Pictures

The preferred picture format is full-color .jpg (JPEG) files, 72 dpi or better. For head shots, the resolution should be high enough to be viewed clearly when approximating a 2" x 3" photo online. Please do not send thumbnail photos, as they will not be published.

Article Length

Article length varies, so the following is only a guideline. Articles may be edited to fit a specific amount of space.

Raising the Bar

Announcements: 100-200 words

Local Legal Events

Notices: 100-150 words

Columns: 300-500 words

Articles: 700-1,000 words

Article Ideas

Writing an article for BRIEFS is an excellent way to publicize your expertise, and we encourage your submissions. Please send ideas for articles or completed articles to Angela Wall, Editor, at briefs@inghambar.org. Within 24 hours, you will receive an email confirmation that your article was received.

Author Information

Along with your article, please include your full name, e-mail address and a short biography (2-3 sentences). Please also send a photo of yourself, preferably in .jpg (JPEG) format and in color, if possible.

MEMBER ANNOUNCEMENTS

News of career moves, presentations, honors, recognitions,

etc. is published in the "Raising The Bar" section. We accept and publish announcements only for ICBA members.

BRIEFS does not accept or publish announcements based on peer recognition and review sites, such as Super Lawyers, Best Lawyers, Best Law Firms, etc.

BRIEFS does publish honors and awards given by legal publications such as Michigan Lawyers Weekly (i.e., Leaders in the Law) under the following conditions:

1. BRIEFS will only publish such announcements for ICBA members.
2. Announcements will appear only in Raising The Bar and are limited to 50-75 words.
3. Announcements must comply with any applicable copyright/trademark requirements of the publication.
4. ICBA takes no responsibility for the published announcement.

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Please take note that the Ingham County Bar Association does not do Lawyer Referrals. If you need to use this service provided by the State Bar of Michigan, please call them at **(800) 968-0738** between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, to speak with a lawyer referral representative or you can use the links below.

- [Lawyer Referral and Information Service Registration Form](#)
- [LRIS Quick Reference Guide](#)
- [Become a Lawyer Referral Service Panel Member](#)



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BRIEFS

Feedback? briefs@inghambar.org

NEXT ISSUE:

July 2020 featuring our Young Lawyers

Have a great Spring!



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