

The General Practitioner

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EDITOR'S NOTES

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Readers are invited to submit their own articles, comments and opinions to Maury Klein, Editor, 18930 W. Ten Mile Road, Suite 2500, Southfield, Michigan

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GP Annual Meeting Report

by Maury Klein

The Attorney-Judge Crossfire Program presented September 13, 2001 took place in the shadow of one of the most horrific events ever to befall our nation. That it took place at all should make us reflect that by carrying out our commitments, we say "No" to those who use terror as their weapon. We would like to thank all the Judges who contributed their time and participated: Hon Helene N. White; Hon. William L. Callahan; Hon. Dennis N. Powers; Hon Kenneth D. Post and last but not least the Hon. David J. Szymanski who made time for our program with less than two weeks notice.

In order to circulate the information discussed, my summation, based on notes taken, follows.

A proposed Supreme Court Administrative Order would require Judges to keep a record of appointments with the information to be provided to a commission which would in turn track the number of appointments. The concern being addressed is the perception of patronage by some judges coupled with a likelihood of the public linking such appointments to a one-hand-washes-the other perception. This proposal might lead to a 'blind draw' system.

While perception of improprieties is obviously a problem, several panelists noted that in a pinch, judges need to be able to count on criminal defense counsel or GALs to act promptly and efficiently to aid the court. In criminal matters, it was stressed that attorneys on the "appointment list" are there because they provide quality defense. A blind draw, while countering the appearance of patronage, might result in less effective or diligent attorneys being assigned to a more crucial situation.

On the subject of attorneys who do criminal work, one suggestion was that lawyers should not attempt to bluster their way through. Take your time, talk to the clerks and even the judges about what is expected. Ask questions and afterwards get feedback. Try to get to know your judge. One scenario presented had an attorney conducting a three-day-long jury trial when he or she would

have been much better served to waive a jury in favor of a bench trial in that courtroom.

What happens if a judge is abusive to counsel and litigants? One avenue attorneys can pursue while remaining confidential is to contact the appropriate Regional Director. All four regions are listed in the Bar Journal.

There was mention of the Wayne County Bench Bar Committee set up through the Family Court by Judge Mary Beth Kelly but subsequent follow-up led to the discovery that the meetings were not open to attorneys in general. That being said however, in future it is hoped that the committee might find a way to share its exchange of ideas with our membership.

Returning to the subject of practice tips especially those either new to the practice or perhaps re-focusing from other areas to a courtroom based practice: Study good attorneys in action. How to find these role models? Again, ask the judges for recommendations and check out the attorneys on motion days when they appear for hearing.

What did the Judges believe distinguish a good trial attorney: Focus. Identify the important issues and direct your evidence in support of your position.

What should you watch out for at the Appellate level: Preserve the record. Judge White stated unequivocally that the Court of Appeals may likely find a waiver if you do not argue your position on the record. Make offers of proof. Move for specific rulings and know the elements of your case so you can seek the required rulings.

What are the keys to persuasive writing? Our Judges indicated that the acronym IRAC should provide attorneys a framework: Issue; Rule; Application to the facts; and Conclusion. What problems do the judges see? One Judge contended that fully 80% of the time pleadings had no exhib-

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Fall ABA Report

by Richard T. White, Jr. and David Perkins

This conference was worthwhile on many levels. I attended a number of sessions that were offered. The following are my comments and observations.

The session on strategic planning stood out from the other programs. This was presented by Carole R. Gill, President, CRG Training & Consulting, Inc.

She stressed the importance of establishing a vision for the future of your section or bar association and then working back to the present otherwise she claims you will bog down with what doesn't work. In terms of time frames, vision is what you want to be in place in five years. Whereas, when you create your mission it is 12 to 18 months out.

Planning requires knowing the difference between Strategy (big picture) and Tactics (short term). In defining strategy in the planning context, the planner seeks answers to the questions - what and why. On the other hand, tactics requires the answers to "How", "When", "Who" and "Where".

In developing an "action plan" ownership needs to be built for results. The following points were made in commencing strategic planning:

1. Start sessions with activities that will encourage participation from all members.
2. Establish rules of engagement up front.
3. Clarify roles and responsibilities of each participating member.
4. Accept differences of opinions and value the uniqueness of individuals.
5. Listen actively to each person with an open mind.
6. Be willing to accept new possibilities.

Obstacles preventing or slowing achievement of a goal or set of goals is always upsetting and confronting. However, the speaker recommended that you see an obstacle as an opportunity for growth and change.

When in charge of a section or bar association, you need to keep in mind in directing your group that accountable means being responsible for getting the job done not personally doing the job per se.

Another session dealt with Leadership and Pro Bono legal services. The president, Karen S. Nobumoto of the California Bar Association presented a major program that they are involved with in California. She described a program consisting of mentoring students in depressed urban areas and raising funds to send key students to tour eastern (U.S.) seaboard schools. The program has been successful in demonstrating to the students that there is a much larger world than the community they live in. As a result of participation in this program, many of the students decided to enroll in college. Additionally, many of the students gave testimonials on the prepared videotape. Many of these students stated they were eager to mentor other young students on the message of "higher education."

A panel discussion on the accomplishments of various Pro Bono projects was conducted. One speaker spoke of projects involving the use of corporate sponsors, and working with other non-legal groups in a community project. An interesting tool mentioned was using law school students, Explorer Scouts (law unit) or high school students for administrative support of free legal aid programs. Another solid concept that was advocated was using experienced private lawyers to act as mentors to full-time legal aid lawyers rather than handling specific assignments. Finally, they reminded the group in attendance that a good source of assistance is the ABA Pro Bono Center.

Finally, a rather interesting speaker, Stuart Forsythe, who is well credentialed, spoke on the future of the legal profession. His detailed presentation can be accessed at

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GP Annual Meeting Report

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its attached. If you are going to attach a case, highlight the section you are quoting or relying upon.

Many lawyers in preparing their cases seemingly do not recognize the possibility that clients can and do lie. Without sufficient preparation, you (the lawyer) may present perjured testimony.

If that (perjury) comes to light, you will have no further credibility before that judge.

The Family Division of the court is here to stay and on that subject, it was stressed that a battery of experts is going to be a boon to anyone practicing in that forum. Line up an expert in each of the following fields:

- Pension expert
- Skip tracer
- Bankruptcy referral

- Polygraph expert
- Therapist
- Appraiser
- Police contact

Put your client in direct touch and have the client make direct financial arrangements. This will prevent the client from owing too much to the attorney and keep the client “on board” as a participant.

These notes summarize my recollections of our annual program. I hope they are of benefit to the readers.

Fall ABA Report

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www.Legalfuturist.com. (ABA GP 2001 Leaders) The essence of his presentation can be summed up in his phrase “The past creates the future.” He did not give any specific changes we could expect to see, however, he made the following points:

1. The profession’s control of “legal information” is ending due to the impact of do it yourself software and the internet.
2. Multi-jurisdictional practice, multi-disciplinary practice, document preparation services, and proper activities are all impacting the future of our profession.
3. Upper and lower income classes have access to legal services, but the middle class has been excluded.
4. He recommends reading various magazines, e.g., Demographics, Economist, Fast Company, and Foreign Policy for trends.

As is the case with futurists, the idea of our reference points constantly shifting was discussed using the example of Encyclopedia Britannica. They refused to see the advantage of implementing new technology resulting in the Company going bankrupt. Seems Bill Gates of Microsoft fame, purchased a fourth rate encyclopedia company, put the information on a CD disk and gave it away.

Finally, the issue of corporate sponsorship of a section or bar association was discussed. This becomes extremely sensitive due to the difficulty with associating with a respectable corporate sponsor. Attached are Policies and Procedures from the ABA as well as Guidelines and Procedures for Membership Benefit Programs.

Changes to MCR 2.602

by Elizabeth Silverman

I was recently notified that the Michigan Supreme Court did adopt the Proposed Amendments to Rule 2.602 of the Michigan Court Rules. This change, which will be effective January 1, 2002 is significant in that it requires specificity of any objection to a Proposed Order filed with the court. All too often, litigants, both in pro per and those represented by counsel, have been able to file a non-specific objection to prevent the entry of a Proposed Order to either delay entry of the Order or because the opposing party does not agree with the Court's ruling.

It is also important for all of our section members to be aware of the proposed change as failure to comply with the new requirements will result in the entry of an order with language contrary to the Court's ruling if proper objections are not filed.

The Court Rule, as amended, is as follows:

Rule 2.602 Entry of Judgments and Orders

(A) [Unchanged]

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

(1) The court may sign the judgment or order at the time it grants the relief provided by the judgment or order.

(2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment

or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.

(a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall sign it if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.

[(b)c] The party filing the objections must serve them on all parties as required by MCR 2.107, together with a notice of hearing and an alternate proposed judgment or order.

[(c)] [If objections are filed, the party who filed the proposed judgment or order must notice the judgment or order for settlement before the court within 7 days after receiving notice of the objections.] -THIS SUB-SECTION DELETED.

(4) A party may prepare a proposed judgment or order and notice if for settlement before the court.

(C) - (D) [Unchanged]

Bankruptcy Update

by Maury Klein

On December 1 of this year, a new signature page will be required for all bankruptcy filings. The "Voluntary Petition" page will contain an Exhibit C (which refers to a separate page which is itself also Exhibit C) requiring disclosure as to whether ". . . the debtor owns or has possession of any property that poses or is alleged to pose a threat of immediate and identifiable harm to public health or safety?"

The attachment page requires a listing / description of the property and the nature of the hazard.

Readers who do at least a few bankruptcies a year will recognize that the April amendments to debtors' Statement of Financial Affairs included new questions about environmental hazards and the addition of Exhibit C further brings this issue (environmental protection) to the fore.

The new forms are available at the Clerk's office.

Report on Traverse City Open Hearings

by Maury Klein

I attended the October 3rd Open Hearings during which the Supreme Court invited comments on proposals to change the court rules and structure of the courts. Six of the Seven Justices presided. This report follows based solely on my notes and references to rule or proposal numbers may or may not be accurate.

103-A2 dealt with changes in the rule requiring offers of proof and no speaker commented on the proposal.

The next order of business proposed a requirement that all criminal fines and costs would be due at the time of sentencing. A comment from the bench attendees expressed reservation but the concern was addressed by the Panel that some flexibility in making payment arrangement would remain.

Next up - a proposal would require that the Court of Appeals hearing docket would be predicated solely on the age of the appeal involved. No member of appellate bench or bar commented on this proposal.

A different appellate rule modification to 7.213 A would require attendance at a pre-hearing settlement conference of someone with full settlement authority. A spokesperson for the Appellate Practice Section opposed the requirement. Opposition was based on the claim that, as regards corporations, there may not be an individual who has such authority. It was suggested that the wording of 2.401 (F) be used.

The proposal of merger or unification of all trial courts, also called the "Single Court of Justice", brought the most responses which follow in order of presentation.

One speaker gave qualified approval because of insufficient family judges in less populous counties which in turn contributed to burn-out.

The District Judges supported the concept of a unified Trial Court. One speaker stated that the Family Court was created because domestic practitioners complained that they couldn't get their cases tried at all. His solution entailed dealing with judges who are lazy or incompetent instead of redesigning the court system.

The next speaker opined that the concept of the unified courts itself was not authorized by the Constitution.

The following speaker believed that the quality of the judiciary was dependent upon quality of judges.

The next speaker reported that in Washtenaw County, a unified demonstration project worked to decrease the caseload but also mentioned that more efficient technology had the impact of improving things.

A member each of the General Practice and Probate Sections commented that the Probate Court should be maintained as a separate entity for a variety of reasons including the non-adversarial nature of some proceedings and providing service to the unrepresented public.

The next open meetings will be held December 13 in Lansing and if you wish to comment, you may request permission in writing from Corbin R. Davis, Clerk of the Supreme Court.

Hot Tips

by Christopher Carlson

Earlier this year I attended, for the first time, the American Bar Association's Midyear Meeting in sunny San Diego, California. As would be expected, the turn out was tremendous, and the city was inundated with attorneys, judges and politicians from throughout the entire country. The event was a mixture of socials, seminars and meetings. During my stay, I was invited to attend a judges' social. This event was a great opportunity to meet and socialize with representative judges and attorneys from throughout the United States. I also attended a variety of seminars, including *Buying And Selling A Law Practice*, *Creating A Website For Your Practice*, *The Attorney's Use Of Electronic Database Searches*. However, as a general practitioner, I found one seminar particularly interesting and useful, *Welcome To 60 Tips In 60 Minutes - Prepare For The Law Office Technology Edition Of "Beat The Clock"*.

60 Tips In 60 Minutes was presented in a shotgun format in an attempt to provide as many useful, everyday tips to lawyers in about an hour. A few of the tips I found most useful, or just interesting, I wish to share.

Translating On The Fly

If you ever find yourself in need of translating a message from, or to, an overseas correspondent who is not fluent in English, try the following: <http://www.babelfish.altavista.com> and <http://www.freetranslation.com>. The former will translate the following languages to and from English: Chinese, French, German, Italian, Japanese, Korean, Portuguese and Spanish.

Hidden Data

Did you know your word processing documents can "snitch" your hidden thought processes? Apparently, if you send via e-mail word processing documents, your edits and deletes may not really be deleted, and can be discovered by your addressee. It was suggested by the presenters that if you are sending correspondence and pleadings by e-mail, send your documents as PDF files. If you are at all familiar with computers, you are probably familiar with Adobe Acrobat Reader, which is a common software program which reads and formats PDF files.

Cybersleuthing

If you need to do a little cybersleuthing, a great website for lawyers is www.craigball.com. You will find access to a variety of information particularly useful for attorneys. For example, if you click on "Handy Terrific Links For Attorneys" you will find access to many of daily and business newspapers, news feeds, magazines, financial markets and news, and a variety of other information too numerous to name. I have found most useful the web search engine at <http://www.craigball.com/searchcentral>. Apparently, not all search engines are created equal, and none have the capability of searching the entire web. Therefore, if you are trying to find something on the web without much success, you may want to run your search on more than one search engine. Craig Ball's search engine is a simple way to run your search on many search engines such as, Google, Dogpile, Yahoo, Excite, Hotbot, Goto.com, Altavista, Metacrawler and more.

Factual Research On The Net

An outstanding website for factual research, news, and pretty much anything else you can think of is www.refdesk.com. If you haven't visited this web site, take a few minutes or hours, and you will find a plethora of information, useful or not, but interesting.

Hard Drive Crash/No Backup

If you ever find yourself in the dilemma of having your computer hard drive crash, and you weren't backed up, find another computer, get on the internet, and go to <http://www.ontrack.com/EasyRecovery>. Although not free, if you're in a pinch there is help available.

Dictation From The Road

If you are on the road, in a hotel, or are otherwise in need of dictation and your secretary is unavailable, a web-based transcription service called [iDictate.com](http://idictate.com) may be of help. This service is available 24 hours a day, 7 days a week. Just call 1-877-DICTATE or visit <http://idictate.com>. Appar-

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Hot Tips

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ently this service costs about 1¢ per word, and the job turnaround time typically ranges from 24 minutes to 24 hours. Therefore, if you find yourself on the go, and without your secretary and laptop, or if you just can't type, iDictate.com may be just the help you need to help you in your crisis.

Internet Faxing

Did you know you can send and receive faxes through your computer over the internet? This could be particularly helpful if your work involves travel. Check out www.efax.com and www.jfax.com.

Although 60 Tips In 60 Minutes was presented more or less like a series of advertisements or "plugs" for various websites, gadgets and products, much of the tips provided are useful, or just interesting in one way or another. Technology is changing everyday, and everyday new products and services are introduced marketed towards making your job as a lawyer easier and more productive. As a young lawyer, I wonder what it was like without computers. In any event, learn to love your computer, find someone who will love it for you, or just ask your 10 year-old son or daughter for help.



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