



# OBITER DICTUM



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April 2008

## MCBA readies Law Day gala

After months of planning and community teamwork, MCBA's signature event takes place 11:30 a.m. to 1 p.m. Friday 2 May at the Muskegon Harbor Holiday Inn.

Hon. Jane M. Beckering of the Michigan Court of Appeals will be the featured speaker.

The noontime gathering presents the public with an annual reminder of the role of law in our lives and, specifically, the role of the bench and bar in our community.

Your bar association this year will honor outstanding community members for their roles in improving Lives through their efforts. An educator will be presented with the Golden Apple Award while another individual will be awarded the Liberty Bell



**Hon. Jane M. Beckering, Michigan Court of Appeals**

Award.

In addition, the MCBA will honor a number of local students from high school, middle school and elementary school levels.

For the first time, we are tabbing MCBA's Law Education Fund to allocate \$3,500 for the annual Law Day 2008 observance. The

money is being used for additional scholarships and prizes, said Jenny McNeill, MCBA vice-president.

Gov. Jennifer Granholm appointed Judge Beckering in October 2007 to the MCOA's Third District. This encompasses a 16-county area, including Muskegon County.

**Reservations Required**  
Please join us for the luncheon and the awards ceremony following.

Email Sally Williams at [wiliamssal@comcast.net](mailto:wiliamssal@comcast.net)  
231-744-6218

## Muskegon may lead nation by using HSAs as equitable divorce device

Muskegon County attorneys assisting clients in divorce soon may lead the way nationally in a novel solution to continued health insurance coverage.

The MCBA's Family Law Section devoted its April meeting to Health Savings Accounts (HSAs). On hand to explain them and their possible role in a divorce context were **Monica J. Bixeman** and **Robert J. Jacobs** of Community Shores Bank and **Jay D. Wallace Jr.**, of Edward Jones Investments.

**Hon. Neil G. Mullally**, who initiated the meeting's topic, said his interest in HSAs started after talking to small business owners who created them for their workers. On aver-

age, they can be 40% less costly than traditional approaches to health insurance. And maybe they might be valuable to couples in divorce, Judge Mullally said. COBRA is expensive and time-limited. Often a divorced spouse and children are left without health care coverage.

But nowhere in the country has he found where HSAs have been implemented in divorce cases, Judge Mullally said. The local bench is open to the concept as another tool to address health insurance coverage after divorce. If implemented, Muskegon may become the first county in the country utilizing HSAs in the divorce context. *Con't Page 3.*

## Help offered to increase law office efficiency

A more efficient law office is a more profitable one, and



**JoAnn Hathaway** of the State Bar of Michigan Practice Management Resource Center presented MCBA members with numerous tips to increase the bottom line.

Speaking at April's monthly meeting, Ms. Hathaway provided dozens of money-saving ideas, including these suggestions:

- **Invest in a practice management software system;** even if the software saves you fifteen minutes per day, this will add up significant time and financial savings; additionally, invest in training, regarding using this software after your purchase;
- **On-line dictation support;** dictate on-line or in your telephone 24-hours-a-day, 7-days-a-week at

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## Efficiency: Increasing your office's profitability

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@speak-right.com;

- Check out [www.jott.com](http://www.jott.com); sign up on line and call in from anywhere. Jott will email you a reminder list; this email can be sent to you, to groups, or to another individual
- Buy laser printers, not the more expensive ink-jet printers;
- Send documents you are emailing in PDF format. Free software to allow you to save files in the PDF format via Office 2007 is available at <http://tinyurl.com/v46jc>;
- Visit the Practice Management Resource Center for Practice Management needs at [www.michbar.org/pmrc/content.cfm](http://www.michbar.org/pmrc/content.cfm).

Does your office use Word Perfect or Office? Amicus, Timeslips or another software?

We'd like to know your experience with various office software. Jot a note to us at [mcbaobiter@yahoo.com](mailto:mcbaobiter@yahoo.com).

### UPCOMING MEETINGS OF INTEREST

The Public Defense Task Force will hold its Annual Conference Thursday 19 June 2008 from 9 a.m. to 5 p.m. The meeting, with a reception afterwards, will be held at the Lansing Center, 333 E. Michigan Ave, Lansing, MI 48933.

Please see [www.mipublicdefense.org](http://www.mipublicdefense.org) for further information or contact Michigan Campaign for Justice, 1115 S. Pennsylvania Ave. Suite 201, Lansing, MI 48912. Phone: 517-372-3050.

\* \* \*

The State Bar of Michigan's Family Law Section will host its annual Summer Seminar at The Homestead Resort, on the shores of Lake Michigan within the Sleeping Bear Dunes National Lakeshore, from Thursday July 24<sup>th</sup> thru Sunday July 27<sup>th</sup>. For more information, contact the Section at [www.michbar.org/](http://www.michbar.org/).

## Representative Assembly: How we make the rules

By Shon A. Cook

It occurred to me the other day as I sat next to David Kortering and about 100 other attorneys around the state at the Representative Assembly that our local bar may not know much about what the Representative Assembly is or does. Since David and I represent the 14<sup>th</sup> Judicial Circuit and the lawyers that work within our Circuit, it seems that a brief explanation would be in order.

The Representative Assembly has over 100 attorneys state-wide that represent the various Judicial Circuits. Depending on the size of the circuit, there are one to 21 attorneys appointed to represent each Circuit. The representation includes judges, prosecutor, private attorneys and government attorneys throughout the state. The assembly meets twice a year. The spring meeting is held at the Lansing Community College's western campus; the fall meeting is at the State Bar of Michigan's annual meeting.

Purpose of the Representative Assembly is to petition for and vote upon court ethics rules and legal resolutions that are then presented to the Supreme Court of the State of Michigan and the legislature through lobbying efforts. Many of the Court rules that were adopted started with the actions of the Representative Assembly. The Assembly does most of its work behind the scenes, with several committees working on special issues, nominations and awards and ethical considerations. The Board of the Representative Assembly is closely linked to the Board of the State Bar of Michigan.

At the past meeting, held April 12, 2008 in Lansing, the following was on the agenda:

1. **Dues Waiver for Active Military Members:** It was approved by nearly a unanimous vote that if a lawyer was in active duty that his/her membership dues could be waived up to four different occasions.

2. **Judicial and Political Endorsements by Assembly Officers:** This matter was tabled, as the executive board had tabled the issue the day before.

3. **Consideration of ABA Model Court Rule on Provision on Legal Services Following Determination of Major Disaster:**

This particular provision was two-fold. First, it addressed the legal needs of displaced individuals and their legal needs by allowing attorneys from outside states to perform pro bono legal work without being licensed in that particular state. Second, it allowed out of state attorneys to move the physical location of the law office from outside the practicing state, to a non-member state in the event of a disaster. The law firm could only practice law in the member state, but could have an office in a different state due to disaster. The provision was passed and approved. It is interesting to note that the malpractice arising from such volunteer or pro-bono work was not discussed.

4. **Consideration of MCR 6.210(B) – Preservation of Electronic Recording:** This particular provision provided that police and prosecutors had to maintain all recorded evidence (police video, confessions, booking videos, etc), and in the event the recordings were not maintained, then a jury instruction was to be given stating there was a presumption that the recording contained exculpatory information. This was a vigorously debated issue. *Continued on Page 4*

# Muskegon family lawyers investigate HSAs as another tool for divorcing

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### How Do They Work?

According to the financial panel, HSAs have two basic components – an account similar to an IRA, and a high deductible medical insurance policy.

There are qualification rules too numerous for this article, but in general the policy must employ a high deductible amount, thus reducing the cost of coverage. The account to hold contributions of pre-tax dollars from an individual or employer may be created at any bank, credit union, or brokerage.

Individuals requiring medical services would tap the fund up to the policy's deductible limit. After that, the insurance policy

spent on medical needs would remain tax-free.

There are no models for application of HSAs to divorcing clients. For example, Attorney Jeffrey Vanderstelt asked if a divorcing spouse's share of an HSA could role over like a 401k and be treated with a Qualified Domestic Relations Order. The panel: We don't know.



From left, Robert J. Jacobs and Monica J. Bixeman of Community Shores Bank and Jay D. Wallace Jr., of Edward Jones Investments.

As far as creating an HSA "any health insurance carrier can do it," Ms. Bixeman said. These include

Blue Cross/Blue Shield and Golden Rule, to name but two.

Mr. Jacobs said the HSA concept has been slow to take off, "but it's gaining momentum."

All three leading presidential candidates – Republican and Democrat alike - propose making employer-paid health premium contributions a taxable event, Mr. Jacobs said. Thus, HSAs are expected to gain momentum as employers look for less costly alternatives.

How attorneys might use these tools to assist couples in divorce remains a work in progress. One common scenario discussed was the long-term marriage where alimony is ordered, but COBRA benefits are prohibitive. In that case an amount sufficient to fund an HSA account and high deductible insurance policy could be ordered as part of the alimony payment.

**For More Information...**  
[www.treas.gov](http://www.treas.gov) then click on "Health Savings Accounts"  
[www.battlecreek.org/whats-new/chamber/bcbs/08-19-04.htm](http://www.battlecreek.org/whats-new/chamber/bcbs/08-19-04.htm)  
[www.mackinac.org/article.aspx?ID=9013](http://www.mackinac.org/article.aspx?ID=9013)  
[www.ehealthinsurance.com/ehi/IFPAvailableCarrierForState.ds?type=HSA&state=Michigan](http://www.ehealthinsurance.com/ehi/IFPAvailableCarrierForState.ds?type=HSA&state=Michigan)

**Jay D. Wallace Jr.**, Edward Jones Investments:  
231-799-8899, [jay.wallace@edwardjones.com](mailto:jay.wallace@edwardjones.com)

**Monica J. Bixeman**, Community Shores Bank:  
231-780-1855

**Robert J. Jacobs**, Community Shores Bank:  
231-780-1810.

kicks in, the panel said. Fund monies not spent continue to accrue interest or dividends, much like a 401k plan. At age 65, remaining funds may be cashed out. Funds spent for non-medical events would be taxed as ordinary income. But those

**Contact your Muskegon County Bar Association**

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**FYI: Your MCBA donated \$300 to Harbor Hospice in memory of the late Hon. John Namenye.**

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**COURTHOUSE-CONVENIENT OFFICE SPACE AVAILABLE**

Second-floor office space ideal for attorneys—in a building occupied by lawyers and across from the Kobza Hall of Justice—is available for lease.

Single offices or the entire suite of 1,600 square feet. All services. Call Rick Tolle at 231-726-1400.

## Graduation Invitation

You are cordially invited to a graduation — not high school, not college or law school. You're invited to the graduation of 11 individuals from the handcuffs of substance abuse.

Muskegon County's Sobriety Court will hold a graduation ceremony for 11 successful individuals who suffered through months of therapy to work on problems that led to criminal drunken driving charges.

The graduates—Bradley, Colin, David, Donald, Fred, Jack, Jackie, Jacob, Jeffery, Kristi, and Lesley — request the honor of your presence at the graduation. The ceremony will take place at 2 p.m. Friday 9 May 2008 at 14th Circuit Courtroom A. Reception follows.

The graduation ceremony will showcase the accomplishments of the sobriety court participants and the success of the Muskegon Sobriety Court Program since its inception in 2005.

All members of the Muskegon Sobriety Court team — the judge, prosecutor, public defender, law enforcement and treatment professionals, and the graduates' families, will be in attendance .

## MCBA welcomes new members

### Gregory R. Todd

The law offices of **David T. Bowen, P.C.**, announces that **Gregory R. Todd** has joined the firm as an associate attorney.

A native of West Michigan, Mr. Todd, received a bachelor's degree in business administration from Grand Valley State University.

He earned his Juris Doctorate *cum laude* from the Thomas M.

Cooley Law School where he was a Senior Associate Editor for the Thomas M. Cooley Law Review and his Class Representative for the Student Bar Association.

During his senior year of law school, he interned with the Ottawa County Prosecutor's Office."

### Will J. Green

**Will J. Green** recently opened a sole practice in Muskegon at 801 W. Norton Avenue, #462, Muskegon, MI 49441. Mr. Green comes to us most recently from Grand Rapids. Raised in Bloomfield Hills, he completed his undergraduate degree at the University of Michigan and law school at Washington University in St. Louis.



Gregory Todd

## How court rules are made

### Con't from Page 2

The matter was finally tabled and sent to the special issues committee for re-drafting of potential language. It is possible that we will take up this issue again at the fall meeting.

**5. Consideration of MCR 6.201 Discovery to Apply in Misdemeanors and Civil Infractions, as well as Felony Cases:** This matter was withdrawn by the proponent. It appears that there may be some re-drafting and the matter will be revisited at the fall meeting.

**6. Consideration of MCR 6.425 (c), Providing Copes of Presentence Reports to Defendant and Defense Counsel:** This matter was also vigorously debated. The two biggest concerns were the privacy of potential victims and identifying information and how quickly the pre-sentence report had to be provided to the Defendant/and/or his counsel. This matter was also tabled and sent back to the special issues committee for language evaluation.

**7. Consideration of Cell Phones by Lawyers in Courthouses:** This matter was unanimously passed, allowing for attorneys to have electronic devices in the Courthouse, but not the Courtroom.

All of the matters that were dealt with by the Representative Assembly are then presented to the Supreme Court for their review, public comment and eventual passage. You can follow the progress of these rule amendments in your Bar Journals and on the State Bar of Michigan website.

At the close of the Representative Assembly, we heard from Josh Ard, who chairs the Unauthorized Practice of Law and Member Assembly. He explained the problems that the state faces with continued non-lawyers practicing law, and the relief that the State Bar can seek. Currently, the only recourse is an injunction from the Court prohibiting the unauthorized practice. There is not a criminal law on the books and it appears that the legislature is reluctant to do so, given the Supreme Court's most recent decision on the unauthorized practice of law, which does not provide a clear and affirmative definition.

Any concerns, potential provisions, amendments to court rules or resolutions that anyone in the local Bar would like considered at the Representative Assembly can be forwarded to the attention of Shon A. Cook or David Korterling.

## So, where have you been lately?

Share with colleagues pix from your travels. Send to [mcbaobiter@yahoo.com](mailto:mcbaobiter@yahoo.com)

