



OBITER DICTUM



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Judicial changes continuing *Judges Graves, Ruck end careers*

First, it was Hon. James M. Graves Jr., who in December 2012 ended a 36-year career that began in the 1970s. At the end of March 2013, Hon. John C. Ruck turned in his gavel after 17 years on the bench. The MCBA and the community lauded both men for extraordinary service in exemplary careers.

Their retirement decisions opened new career paths for others as well.

Voters in November 2012 elected Annette R. Smedley to succeed Judge Graves; she was sworn in on 28 December. Gov. Rick Snyder is to choose Judge Ruck's successor.

According to Mlive.com, there are six contenders: Joseph Bush, Kathy Hoogstra, Hon. Gregory C. Pittman, Michael G. Walsh, David Wells and John Wiewiora. Also in the running: James Scheurle. Mr. Bush, Mr. Walsh, and Mr. Wells ran in the 2012 primary for the seat ultimately won by Judge Smedley.



Muskegon's judiciary honors Judge James M. Graves Jr. with a portrait and reception. From left, Judges Hicks, Ladas-Hoopes, Graves, Smedley, Ruck, Marietti, and Mullally.



Left; Hon. Annette R. Smedley takes the oath of office from Hon. Gregory C. Pittman; Al Swanson assists. Right: Judge Ruck's staff poses with the judge at the unveiling of his portrait. From left, Judy Carnes, Suzie Flowers, Judge Ruck, Randy Patino, and Mike Whittaker.



Still working amid portrait hoopla.



L-R: Ruck retirement cake, MCBA Pres. Waterstradt with presentation; J. Graves with successor J. Smedley.

Court ‘scrutiny’ sparks lively debate

Michigan’s courts are under increased scrutiny – and increased pressure – **James Hughes**, the State Court Administrative Office (SCAO) Regional Administrator, told MCBA members in a 13 February meeting.

Local judges and MCBA members pushed back against some of the proposed changes, saying the data may well result in injustice.

SCAO is looking for “greater accountability for our courts through better data and transparency,” Mr. Hughes said. “Our data should be readily available to the public.”

What SCAO plans, he said, are “performance dashboards” to bring information about court performance to citizens of each county.

“Judges are taking this very seriously as are the magistrates and the clerks,” Mr. Hughes said. “The citizens who pay the taxes and the litigants expect us to take them seriously.”

By May 2014, SCAO will begin putting data onto the Internet that would include a courts’ case-clearance rates; that is, a comparison of the number of cases filed and the number of cases disposed of in a given year. Other data could include child support collection rates and recidivism rates for sobriety and drug courts.

The SCAO also envisions a “public satisfaction survey ... with questions like ‘Did the judge listen to the case? Was the clerk’s office responsive?’”

By 2015, Internet-available data would include juror utilization rates. A year later, the integrity and reliability of case files would go public, he said.

While Mr. Hughes said Muskegon County courts are “doing fine,” the prospect of what could be incomplete or misleading data becoming available sparked debate.

Chief Probate Judge Neil G. Mullally said he and his colleagues are “trying to be as flexible as we can,” but concern exists as to “what form the data will be published.”



**James Hughes,
SCAO Regional
Administrator**

For example, local courts have been meeting case guidelines for years, Judge Mullally said. Comparing counties with lower caseloads would provide an unfair and inaccurate snapshot of Muskegon’s courts’ performance. “(We want) a level playing field for the reporting that will be done.”

Chief 60th District Judge Maria Ladas-Hoopes said that while SCAO is seeking a “good balance to improve the court,” the result will cause changes. For example, “we’re not going to be accepting adjournments like we used to.”

Chief 14th Circuit Judge William C. Marietti said the idea of quantifying justice is not realistic – or just. “I’ve had a very understanding policy regarding adjournments, if it’s helpful to having the case resolved,” he said. “I find that to be justice ... just as fast as possible.”

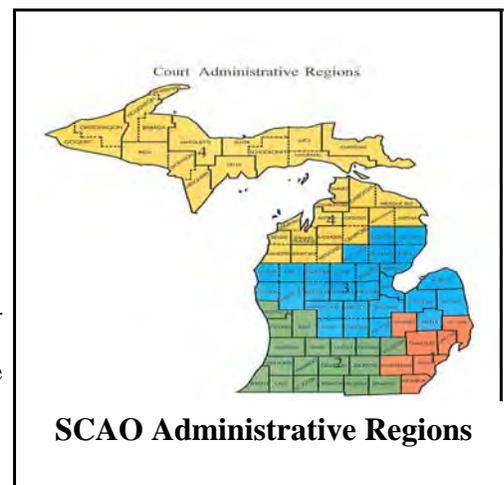
Additionally, Judge Marietti said, “We’re short about a whole judge in Muskegon County. The civil and criminal dockets are stretched...Don’t compare me to a county with half the caseload. That’s not equitable.”

Richard J. Pasarela, retired 60th District judge, said the SCAO plan violates the law of unintended consequences. For example, the prosecutor’s office often is at the mercy of a police officer’s schedule. If the officer is unavailable, it’s likely a “nolle pros” would be issued and “we’d start all over again – a waste of everyone’s time and effort.”

D.J. Hilson, county prosecutor, asked Mr. Hughes why SCAO “is trying to fix what isn’t broken? ... You’re creating (a situation) that does not need to be created.”

Tim Maat, chief assistant prosecutor, said family courts look to a child’s best interest, but SCAO is adding another variable – public scrutiny. This, he said, does a “disservice to the children we’re trying to serve and protect. If all parties agree to an adjournment, it should not be held against the judge.”

Judge Mullally said attorneys in past years had the ability to run their cases as they saw fit. That changed over time to having courts take the role of imposing time restraints. Now, public scrutiny forces greater pressure on judges that will, in turn, be felt by attorneys.



Law Day 2013: Wednesday 1 May at Lake House

New format for Barristers' Ball gets mixed reviews

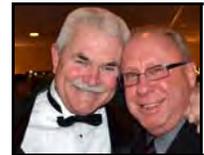
December's Barristers' Ball held a new format. Gone was the traditional sit-down dinner. Instead, there were more opportunities to socialize while enjoying appetizers and a longer window for an open bar.

Although no formal poll was taken, comments indicate a mixed review. Many enjoyed the more open format, but said the appetizers were fewer and less diverse

than in earlier years. Others simply missed the formal dinner—usually a selection of steak, chicken, or fish.

Still, there was what appeared to be a record turnout for the annual pre-holiday gala.

Dinner or no dinner, the disc jockey did his job. The music lured dancers onto the dance floor as others socialized into the night.



MCBA members and their spouses or significant others enjoyed the annual Barristers' Ball—despite differences of opinion on the new format.



25th Annual Golf Outing teeing off at Old Channel Trail this year

MCBA's 25th Annual Law Day Golf Outing will be held on **Wednesday 5 June**. The quarter-century event begins with noon registration at **Old Channel Trail Golf Course** followed by a 1 pm. Shotgun start. Dinner and prizes follow. Prize winners must be present to win. REGISTRATION is available on a first-come, first-paid basis. Space is limited to the first 72 players. For a guaranteed spot, register early. Entry fees must be received with your registration. Send a completed registration form – recently sent by email to all MCBA members – and a check payable to Muskegon County Bar Association, P.O. Box 88, Muskegon, MI 49443. Questions: Kevin M. Huss, 2013 Golf Outing Chairman, Even & Franks PLLC, 231-724-4320, kevinhuss@muskegonlaw.com.

Public Defender system on track for change

Muskegon County Administrator Bonnie Hammersley is proposing sweeping changes to local public defender services.

What's proposed is a "hybrid" system involving a new county "Public Defender Department" augmented by contract attorneys for conflict cases and appeals. It would replace the current system with 16 contract attorneys representing clients in district, family, probate, and circuit courts. The Muskegon County Board of Commissioners has yet to weigh in on the historic proposal.

For decades, a local firm managed indigent defense for the county. In recent years, area judges and court administrators began making changes. In part, the changes were modifications necessary to modernize procedures and in part to distance us from ongoing statewide litigation.

Months in research and planning, Ms. Hammersley's proposal would seek parity with the prosecutor's office. It would hire a county Public Defender, 12 assistant PDs, a paralegal, and two court services support personnel. The County Board

would appoint the Public Defender to oversee and direct the department. He or she also would serve as part of the administration's department director team but would maintain a court caseload.

The PD Department would represent all criminal, juvenile, family, and special civil law clients and "provide a wide array of services related to the County's indigent defense delivery system as well as responding to legal questions from the public."

In exchange for a staff position, PDs would be restricted from having private practices.

This fiscal year's PD budget is \$1.1 million; next year – under the proposed new system – the budget would increase by \$161,066.

Muskegon County in its approach to indigent defense appears to be ahead of the curve statewide. A 2008 study found Michigan ranked 44th in state spending for indigent defense. As a result, Gov. Rick Snyder appointed a statewide taskforce in 2011 that last year presented nine reform recommendations.

Changing courts: Status quo is all over for us

Muskegon's courts have undergone major changes in recent months and will continue to experience new ways of addressing citizen needs, a panel of family court administrators told the Family Law Section in late December 2012.

Sandy Vander Hyde, Patrick Finnegan, and Daniel Coffee, outlined three major developments on local courts:

Concurrent Jurisdiction Plan. In the works for some years, Muskegon's district, circuit, and probate courts are working together in a number of areas. The State Court Administrative Office (SCAO) has approved Muskegon's working model, which awaits state Supreme Court ratification.

Business Court. The Supremes last year mandated the creation of business courts for circuits with three or more judges. Beginning 1 January 2013, Probate Chief Judge Neil G. Mullally will take on the business court in addition to his probate court duties. At the same time, his family court caseload has been given to incoming Judge Annette Smedley who also inherited family cases from Chief Circuit Judge William C. Marietti. The net result: Judges John C. Ruck's successor, Gregory C. Pittman, and Annette Smedley will serve as family court judges. Judge Timothy G. Hicks and Judge Marietti will have full-time civil and criminal dockets.

Plans to restructure schedules and duties for family court contract attorneys must wait until the next fiscal year, October 2013, Ms. VanderHyde said. At that time, it's anticipated the court will hire another referee in order to assign a referee to each family

court judge. Also prompting the change: A 65% increase in abuse-neglect cases.

Performance Measures. SCAO announced it will make public court data. How such information would be presented – by county, by judge, by state areas – has not been determined. Muskegon's numbers are "really good," Ms. VanderHyde said.

Mr. Coffee, known as "The Mayor" to family court workers, also outlined changes published in the 2013 Child Support Manual. The SCAO provides a 30-minute video on the topic. Further, practitioners are advised a new Uniform Child Support Order (UCSO) is to be used as of 1 January 2013. The form is also available on-line.

Coming in the not-too-distant future: E-filing on the state level. Stay tuned.

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