DETROIT CHAPTER
FEDERAL BAR ASSOCIATION
NEWSLETTER

APRIL, 1990

NEIL H. FINK TO RECEIVE LEONARD GILMAN AWARD

A truly outstanding practitioner of criminal law, Neil H. Fink, Senior Partner, Evans & Luptak, in Detroit, will receive the Sixth Leonard R. Gilman Award on Thursday, April 12, 1990, at the Chapter's annual luncheon honoring Leonard Gilman. Mr. Fink has practiced criminal law in state and federal courts for over twenty (20) years.

The Honorable Stanley Marcus will be the featured speaker at the luncheon to be held in the Riverfront Ballroom of the Westin Hotel at 12:00 noon. It will be preceded by a reception beginning at 11:30 a.m.

Before becoming a United States District Judge, Judge Marcus was the United States Attorney for the Southern District of Florida, and was formerly Chief of the Organized Crime Strike Force here in Detroit. His many friends and acquaintances look forward to his return to his old stomping grounds.

The Leonard R. Gilman Award is presented to a deserving practitioner of criminal law, who best exemplifies the spirit of the late Leonard Gilman, United States Attorney for the Eastern District of Michigan. Incredibly, it has been over five years since Lenny Gilman passed away suddenly. The Detroit Chapter is pleased to make a small contribution to his memory by presenting an award each year to an outstanding practitioner of criminal law in the Detroit metropolitan area.

For reservations, please contact Larry Campbell, Program Chair, at (313)223-3703.

SPRING SESSION OF NEW LAWYERS SEMINAR SCHEDULED

The New Lawyers Seminar for newly admitted attorneys to the bar is scheduled for Tuesday and Wednesday, June 12 and 13, 1990, in the United States Courthouse. For more information, Contact Co-Chair Brian Figot, at (313) 356-4900, or Catherine F. Wenger at (313)963-6420.

NOTICE OF ANNUAL MEETING

The Detroit Chapter - Federal Bar Association will hold its annual meeting on Friday, May 11, 1990, at the Detroit Yacht Club at 7:00 p.m., for the purpose of electing officers and transacting other business. Nominations have been made for the following offices: Maura D.Corrigan, President; Joel Shere, President-Elect; Geneva Halliday, Vice-President; Edward Kronk Secretary; Lawrence Campbell, Treasurer. Members wishing to make other nominations or schedule business should contact Robert Forrest at (313)357-3010.

GOLF OUTING SCHEDULED JUNE 6, 1990

The Detroit Chapter will hold its annual golf outing at Fox Hills Country Club in Plymouth, Michigan, on Wednesday, June 6, 1990. Tee-off will be between 11:30 a.m., and 12:30 p.m., followed by food, drink and prizes (or come just for the dinner and prizes). Please contact Jack Kalmink at (313)259-1144 for more details and reservations. This year's golf outing looks to be bigger and better than ever.

ELEVENTH ANNUAL DINNER DANCE

The Eleventh Annual Dinner Dance will be held on Friday, May 11, 1990.

Excellent weather and an enthusiastic crowd are anticipated at the Eleventh Annual Dinner Dance honoring the federal judicial officers of the Eastern District of Michigan, to be held at the Detroit Yacht Club, Friday, May 11 1990. A reception will begin at 5:30 p.m., followed by dinner at 7:00 p.m., and the introduction of the federal judicial officers of the Eastern District of Michigan. The Johnny Trudell Band will provide music to accompany the dinner. Dancing will follow. We encourage all members and their guests to attend this most enjoyable function To make a reservation, please complete and return the enclosed form, or contact Dee Osterman at 548-3450.

LABOR RELATIONS SEMINAR

On March 2, 1990, over eighty individuals attended a seminar on significant labor and employment law decisions of the Sixth Circuit during 1988 and 1989, sponsored by the Labor Relations Law Sections of the Detroit Chapter of the Federal Bar Association, and the State Bar of Michigan, held in the United States Courthouse.

A distinguished panel, including the Honorable Bernard Friedman, United States District Judge; John F. Brady, Chairperson of the Labor Law Section of the Detroit Bar Association; and Eileen Nowikowski, Vice Chairperson of the Labor Relations Law Section of the State Bar of Michigan analyzed recent cases and trends.

Co-Chairs Andrew A. Nickelhoff and J. Kent Cooper are to be congratulated for their fine efforts.

COURTHOUSE NOTES

Gerald E. Rosen was sworn in as a United States District Judge for the Eastern District of Michigan in a private ceremony on March 14, 1990. Judge Rosen has assumed temporary quarters in the United States Courthouse in Detroit, Michigan. A public swearing-in ceremony honoring Judge Rosen will be held on Friday, March 30, 1990. Judge Rosen was formerly a partner with the Detroit Law Firm, Miller, Canfield, Paddock & Stone.

Robert H. Cleland, presently the Prosecuting Attorney for St. Clair County has been nominated by President Bush to be a United States District Judge. When confirmed, Mr. Cleland will sit in the United States Courthouse in Bay City, Michigan, succeeding Judge James P. Churchill, who took Senior status on January 1, 1990.

RAKOW AWARDS GIVEN

The Federal Bar Foundation was pleased to make its 1990 Edward Rakow Scholarship Awards to five deserving recipients from the five Michigan Law Schools at the Rakow Luncheon, held in the Westin Hotel on Thursday, March 15, 1990. The award winners were: Matthew Harris, University of Michigan School of Law; Jeffery S. Crampton, Detroit College of Law; Sherrill D. Wolford, University of Detroit School of Law; S. E. Phillips, Thomas Cooley School of Law; and Renee Giachino, Wayne State University School of Law. The recipients were accompanied by their respective faculty sponsors: Assistant Dean Jonathon Lowe from University of Michigan; Dean Arthur J. Lombard from Detroit College of Law; Loretta Lewins-Peck from University of Detroit School of Law; Dean Michael Cox from Thomas Cooley; and, Dean John Reed from Wayne State.

Kevin J. Arquit, Director, Bureau of Competition, Federal Trade Commission, Washington D.C., delivered remarks upon current anti-trust enforcement policies of the Federal Trade Commission, regarding health care profes-

sionals to the over 110 individuals in attendance. Mr. Arquit's remarks are excerpted below:

am pleased to be here today to discuss future Federal Trade Commission activities in the health care antitrust area. While one purpose of our meeting today is to promote antitrust compliance, this forum also provides an opportunity to engage in a two-way discussion of the FTC's enforcement perspective away from the more formal adversarial setting of a specific investigation. I certainly welcome your comments about where the Commission ought to be going. . . .

As a starting point, it is important to point out that even those who function as critics in other contexts acknowledge generally that the FTC has had a vigorous and highly successful health care antitrust program for more than a decade. . . .

You can be assured that these efforts will continue in the 90's. Chairman Steiger has made clear her desire to maintain the Commission's ongoing commitment to active law enforcement in this crucial sector of our economy. This means, of course, not just priding ourselves on past accomplishments, but actively seeking new and different types of situations where FTC intervention causes competition to flourish in health care markets. . . .

for the specific areas of Commission interest in health care, much of the conduct subject to challenge can be characterized, broadly speaking, as collective resistance to change. When competing health care providers get together and agree to attempt to block such change through boycotts or threats to boycott, the FTC has intervened and will continue to intervene.

I want to make it clear that we intervene not because we prefer HMO's to fee-for-service plans, or nurse-midwives over obstetricians. Our mission is to preserve and foster competitive conditions in health care markets, not to decide which actors are best suited to provide those services. If we come to the aid of insurance companies, HMO's, or any other players in the market, it is to eliminate illegal anti-competitive practices directed against them, not to make life easy for them or assure their survival. They can and should survive only if they meet the test of competition.

I also want to acknowledge at the outset that health care providers who engage in unlawful conduct by seeking to obstruct change often do so in the sincere belief that they are acting to promote the interests of the public. Nevertheless, however sincere the motives, our economic system does not permit a group of private competitors to suppress competition in order to impose its view of what is best for consumers.

The Supreme Court's recent decision in FTC v SUPERIOR COURT TRIAL LAWYERS ASSOCIATION reaffirms the principle that "vigilante action" in the form of naked boycotts by competitors will be summarily condemned. In upholding the Commission's per se condemnation of a price fixing boycott by attorneys representing indigent criminal defendants, the Court made it clear that the fact that the boycott was part of a broad public campaign to increase the fees paid by the District of Columbia government for its criminal justice program did not change the antitrust analysis. . . .

I want to discuss now what I mean by concerted resistance to change in health care markets. First, there are actual or threatened concerted refusals to deal with purchasers and third-party payers of health care services, such as agreements to obstruct cost containment efforts. This type of activity has long been the subject of Commission law enforcement action. . . .

The Department of Justice, in a case referred by the Commission, recently announced a federal grand jury indictment. The matter involves an alleged conspiracy by dentists in Tucson, Arizona to raise copayment fees paid by consumers under certain prepaid dental plans.

Another type of "collective resistance to change" that has come to our attention is the formation by competing providers of a "sham" organization, whose primary purpose is to resist the efforts of purchasers or payers to negotiate discounts or implement cost containment strategies. These organizations, all take the form of a preferred provider organization ("PPO") or independent physicians association ("IPA") The Supreme Court's decision in Maricopa (Arizona v. Maricopa County Medical Soc'y) made clear that otherwise competing physicians may not jointly agree on the prices they will charge for their services unless they have combined sufficiently to be "regarded as a single firm competing with other sellers in the market."

Yet another form of concerted activity to obstruct changes in health care delivery entails joint efforts to exclude new competitors, such as allied health care practitioners, HMOs, PPOs, multi-specialty clinics using salaried physicians, or other "alternative" health care arrangements. These "alternative" providers and novel arrangements present consumers with additional choices in obtaining health care services. They also exert competitive pressure on existing providers in the market, who must respond to the competition or risk losing business.

Finally, we continue to look at restraints imposed by provider groups such as professional associationss on truthful advertising or other information dissemination by their members. Restraints on advertising can inhibit innovation in health care markets, for example by making it more difficult for consumers to learn about new options available to them. The Commission has challenged anticompetitive private restraints on truthful advertising beginning with the AMA case, and continuing through the present. We firmly believe that in health care, as in other areas of the economy, effective competition depends upon the availability of such truthful information, which permits consumers to make informed choices about the purchase of goods and services, and the providers of those goods and services.

Lest I leave you with the impression that our only interest is horizontal restraints, let me briefly describe some other areas of Commission activity in health care. One of those is hospital mergers. . . .

We are actively looking at certain other arrangements in the health care area. For example, we currently are looking at certain types of tying arrangements, such as where a provider's market power in one area of services is used to force patients to use a related service by the provider. In one such case, we are investigating whether a physician who owned both outpatient and inpatient services required that patients using the outpatient service also used the inpatient service.

There are those who have claimed that the Commission and its staff have adopted a hostile attitude toward health care professionals generally. I disagree vehemently with any such characterization. We are not pro or anti any particular group; we are committed to taking action that maximizes benefits to American consumers.

I hope these remarks help to give you a sense of where the Commission is going with its health care program. As changes continue to take place in the health care sector, we will be seeking to promote competition and protect consumers by challenging private conspiracies to obstruct innovation, and by encouraging legitimate private "self regulatory" activity, such as peer review, that can serve to further the goals of the antitrust laws. I welcome your questions and comments.

PRO BONO PANEL MEMBERS SOUGHT

The following article appeared in an edition of The Third Branch, the Newsletter of the United States Courts.

Your efforts in assisting the court in pro bono representation are earnestly solicited.

(NOTE FROM JOHN P. MAYER, DISTRICT COURT EXECUTIVE, EASTERN DISTRICT MICHIGAN: Although several dozen attorneys continue to render valiant assistance to this Court in pro bono matters, the burden that they are obliged to bear is patently unreasonable. I requested the editor to run the foregoing article in the hopes that it would either inspire or shame additional Detroit law firms into either initiating or increasing their pro bono participation. Applications and informational matters concerning the Pro Bono Civil Assignment Panel for the United States District Court for the Eastern District of Michigan may be obtained by writing to the Panel, c/o Room 704, U.S.Courthouse, Detroit, Michigan 48226.)

FIRM PLEDGES PRO BONO ASSISTANCE TO S.D.N.Y.

Chief Judge Charles L. Brieant (SDNY) has announced that, in response to a request to the bar from the court, the firm of Paul, Weiss, Rifkind, Wharton & Garrison has agreed to represent pro bono all pro se prisoners in the court's backlog of such cases. There are some 55 cases that have passed initial scrutiny and have been determined by a judge to appear to have sufficient merit to warrant appointment of counsel but which have been without counsel for six months or more The cases are primarily prisoners' rights claims and other fact-intensive matters.

The court had attempted without success to obtain federal funding for a special counsel pilot program after attempts to secure voluntary pro bono counsel had been fruitless. Chief Judge Brieant asked the Pro Se Litigation Committee of the court to approach the private bar for assistance, and Paul, Weiss responded by agreeing to undertake representation of all the cases indentified by the court as part of the backlog. Cameron Clark, Esq., of the firm said, "We are pleased to have been called upon to help solve a serious problem afflicting a court in which we practice and upon which we make demands every day. We expect

these cases to provide our younger lawyers with significant courtroom experience and they have responded enthusiastically to our request for volunteers." Mr. Clark said that all the cases would be staffed with one associate and a supervising partner and that the firm would seek the advice and counsel of prisoners' rights experts of the Legal Aid Society.

PROPOSED REVISIONS OF LOCAL BANKRUPTCY RULES

Mary Turpin, Clerk, United States Bankruptcy Court has provided the following summary of the proposed Local Bankruptcy Rule Revisions and highlights of major changes.

The effort to help make more uniform, the practice of bankruptcy law in the Eastern District of Michigan by adopting local rules of procedure began as early as 1982. In January, 1986, a comprehensive set of local rules finally went into effect. In May, 1987, they were updated with local rules for Chapter 13 practice After three years of experience under these rules and the introduction of the United States trustee system, it is time to review and update these rules. One obvious change is the numbering system. Enclosed are distribution charts showing where the old rules can now be found, and from whence the newly-numbered rules came. Please note that in some cases, parts of a current rule may have been deleted and in other cases, new parts added. These changes will not be apparent from the distribution charts. The following is a summary of the other major revisions contemplated.

(1) For the most part, the revisions are an attempt at merely fine-tuning the rules. A notable exception, however, is the broadening of the "notice and opportunity for hearing" procedure. Originally, L.B.R. 112 provided for a 15-day notice period wherein any party who has an objection to a request for relief asserted by another could merely request a hearing and one would be held; otherwise, the request could be granted without a formal hearing, as the lack of an objection presumed universal consent. The only types of matters which could not be conducted in this manner were objections to claims and any matter which was identified in Bankruptcy Rule 2002, which includes, of course, hearings on fee applications, compromises (2002(a)), and hearings on the approval of disclosure statements in Chapter 11 cases and confirmation of plans. (Rule 2002 (b)). In our experience, the notice and opportunity for hearing procedure has been well accepted and is an effective tool for case administration. Accordingly, these revisions expand its use.

(2) A few rules were added to simplify the administration of Chapter 7 cases for trustees. A rule is proposed which would enforce the national requirement that petitioners clearly disclose whether the debts are owed jointly with another. See Official Form No. 6. This rule would provide that the failure of an individual petitioner to disclose that a debt is solely that of the petitioner, that is, not joint with the petitioner's non-filing spouse, would be sufficient grounds for the trustee to assume that the debt is jointly owed, so that he/she may timely object to the debtor's claim of exemptions under (522 (b)) of the Bankruptcy Code with respect to entiretyies property. See In re Grosslight, 757 F.2d 773 (6th Cir. 1985).

(3) The rule dealing with fee applications has been expanded to deal with applications by certain professionals of the bankruptcy estate, not just attorneys. Moreover, a rule is proposed which would fix a procedure for obtaining orders of employment of estate professionals. In this regard, it was thought no longer advisable to fix a presumptive cap on compensation for auctioneers, appraisers and real estate sales agents, since the United States trustee is now charged with administrative responsibility. In lieu thereof and to assist the United States trustee in this responsibility, it is now proposed that applications for the appointment of auctioneers, appraisers and real estate sales agents state the rate of compensation proposed and that as to auctioneers and appraisers, they contain an estimate of the expenses and the number of hours to complete the task.

(4) A few rules have been added which pertain solely to Chapter 11 cases.

(a) A rule would fix a deadline for the filing of a proof of claim or interest in Chapter 11 cases unless otherwise provided by the judge in the particular case. The deadline would be the same as if the case had originally been filed as a Chapter 7.

(b) Another rule proposes that plans be required to classify entities by name.

(c) Disclosure statements may be approved without a hearing if no one objects.

(d) A Chapter 11 plan may be confirmed without the submission of proofs under certain conditions.

(e) Rule 114 was substantially expanded to provide a method to obtain temporary approval of a stipulated cash collateral order at the inception of a case.

(5) Some minor revisions are also proposed with respect to the Chapter 13 rules.

(a) A new rule is proposed dealing with tardily filed proofs of claim.

(b) Procedures on applications for fees in Chapter 13 cases are set out in a proposed new rule.

(c) Clarifications of the contents of the plan, on the procedure for pre-confirmation plan modifications and on plan completion have been made.

(6) Finally, many rules would be amended, where necessary, to accommodate the advent of the United States trustee system.

(a) In this regard, a major revision of the procedure for sales of estate property has been proposed. The Court has been removed from the process to the extent intended by the Code and the Bankruptcy Rules. The responsibility for supervising trustees and their agents in the administrative task of liquidating estate assets would be left to the United States trustee.

(b) A new rule for the service of documents on the United States trustee is also proposed.

COURT QUESTIONNAIRE

In cooperation with the Federal Courts Committee of the State Bar of Michigan, the Detroit Chapter - Federal Bar Association encourages those members with particular concerns about courtesy in the Courts to complete and return the enclosed questionnaire to: Maura Corrigan, Esq., Plunkett & Cooney, 900 Marquette Bldg., Detroit, Michigan 48226.

N O T I C E

It has been brought to the attention of the United States Court Committee of the State Bar of Michigan that on occasion, attorneys who practice in the U.S.District Court for the Eastern and Western Districts of Michigan encounter what they consider to be objectionable or uncivil treatment by a judge. In response, judges may consider the conduct of attorneys in their courts to be largely responsible for the actions or reactions of the judges. Other than when such incidents lead to formal proceedings before the Sixth Circuit Judicial Council, there presently is no system or mechanism in place by which attorneys can register complaints regarding such conduct by a judge, or by which the court can address such matters.

The United States Courts Committee of the State Bar of Michigan would like to determine whether this is a problem of sufficient magnitude to suggest that some system or mechanism be established to bring to the attention of the chief judge of the district incidents of uncivility or objectionable behavior on the part of judges. Any system established would include a screening procedure so as not to overburden the chief judge with less than significant incidents.

To assist the committee in determining the need for such a procedure, please answer the questions below with respect to your practice in the U.S.District Court for the Eastern and Western Districts of Michigan during the last twelve month period.

ALL RESPONSES WILL BE KEPT CONFIDENTIAL.

- -

1. Have you been subjected to, or otherwise encountered, any instances of uncivility or objectionable behavior towards you, your client, or any other persons, by a judge in the Eastern or Western District of Michigan?

______Yes ______No

If your answer is "yes" describe the incident.

____

____

2. What, if anything, did you do to bring your concern or objection regarding this behavior to the Judge? If you did nothing, why not?.

____

3. If you brought it to the attention of the judge, what was the result?

_____

_____

4. What ,if anything, did you do to bring your concern or objection regarding this behavior to the attention of the chief judge? If you did nothing, why not?

_____

_____

5. If you brought it to the attention of the chiefjudge, what was the result?

_____

_____

6. (OPTIONAL) NAME OF JUDGE _____

(OPTIONAL) YOUR NAME _____

ADDRESS _____

_____

TELEPHONE _____

PLEASE RETURN THIS FORM BY APRIL 17, 1990 TO:

U.S. COURTS COMMITTEE
STATE BAR OF MICHIGAN
306 TOWNSEND
LANSING, MI. 48933

ANNUAL DINNER DANCE

WHEN: FRIDAY, MAY 11, 1990

WHERE: DETROIT YACHT CLUB

_____**RESERVATIONS AT $50.00 PER PERSON**

_____**AMOUNT ENCLOSED**

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ADDRESS _____

PHONE: _____

Return to: Detroit Chapter-FBA
P.O.Box 71740
Madison Hgts., Mi. 48071

SIXTH ANNUAL LEONARD R. GILMAN AWARD

LUNCHEON RESERVATION FORM

THURSDAY, APRIL 12, 1990 - RIVERFRONT BALLROOM
DETROIT WESTIN HOTEL

SPEAKER: HONORABLE STANLEY MARCUS

RESERVATIONS FOR: _____ at $20 for FBA Member

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PLEASE MAKE CHECKS PAYABLE TO: DETROIT CHAPTER FBA and FORWARD TO: LAWRENCE CAMPBELL, 800 FIRST NATIONAL BLDG., DETROIT, MI. 48226

DETROIT CHAPTER

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