



FBA newsletter

Vol. 4 No. 4
Summer 1997

Federal Bar Association - Eastern District of Michigan Chapter - 37 years of service to our Federal Bench and Bar



Ross G. Parker: 1997 Gilman Award Recipient

On April 17, 1997, the Eastern District of Michigan Chapter of the Federal Bar Association will present Assistant U.S. Attorney Ross G. Parker with the Leonard R. Gilman Award at the Doubletree Hotel in downtown Detroit. The Gilman Award is presented annually to an outstanding practitioner of criminal law. The award salutes the memory of Leonard R. Gilman and other outstanding practitioners of criminal law who seek to emulate his aggressive, yet compassionate style of advocacy and his excellence, professionalism, and commitment to public service.

Ross G. Parker received his appointment to the U.S. Attorney's office on January 9, 1978. After graduating Magna Cum Laude from the University of Pittsburgh and receiving Order of the Coif in 1974, Mr. Parker worked for the Honorable Michael Cavanagh. Mr. Parker started with the U.S. Attorney in the Controlled Substance Unit in 1978. From 1981 until 1989, Ross Parker was the Chief of that unit. Later, U.S. Attorney Leonard Gilman promoted him to the Chief of the Criminal Division. Mr. Parker was Chief of the Criminal Division until promoted to Chief Assistant U.S. Attorney by U.S. Attorney Stephen Markman. Mr. Parker was Chief Assistant U.S. Attorney from September of 1989 until May of 1994. Mr. Parker is currently assigned to the Controlled Substance Unit.

Neil Fink, a former Gilman award recipient, said of Ross Parker: "Ross is a credit to the profession. He is not only a skillful advocate, but he understands the system and realizes that both sides need to do their jobs. He does not see the process as us versus them. If Lenny [Gilman] is looking down, he is clapping. All the good things about

Lenny are in Ross."

"Ross epitomizes what the Gilman award is about," says Chief Assistant U.S. Attorney and former Gilman award recipient Alan Gershel, "he is fair and reasonable. He is highly regarded in the [U.S. Attorney's] office and by the bench and defense bar."

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President's Column

I have been honored to serve as your chapter president this year. The great support and energy demonstrated by our members has produced a series of excellent events and activities, including this newsletter, which provides a unique forum through which we can learn from one another and appreciate the views of divergent voices. We are blessed with an outstanding cadre of lawyers and judges who care deeply about our profession, our community, and our system of justice. My gratitude to them for their assistance and support is without limit. You only need look at the schedule of upcoming events to see what their efforts provide.

One upcoming event of particular note is the April 17th Gilman Luncheon at which the Honorable Ann Williams will be the featured speaker. Judge Williams, from the Northern District of Illinois, is a close friend to many of us and a national leader within the judiciary. Ross Parker, Assistant United States Attorney, is this year's recipient of the Leonard Gilman Award, which is presented annually to an outstanding practitioner of criminal law. The luncheon and the award celebrates Len's life and shows our appreciation for the high level of criminal practice exhibited by both defense and prosecution in this community. These lawyers are daily concerned with constitutional principles which protect us all, and this special recognition permits each of us to focus on the reasons that we became lawyers and the role of law in society. In the words of Robert Kennedy:

"Every time we turn our heads the other way when we see the law flouted—when we tolerate what we know to be wrong—when we close our eyes and ears to the corrupt because we are too busy, or too frightened—when we fail to speak up and speak out—we strike a blow against freedom and decency and justice." Come see why we honor them.

May 2, 1997 is our Annual Banquet and election of new officers. Our own Habeas Chorus Line will entertain us with their lively and irreverent, albeit apparently Constitutionally-protected, parodies. Dan Malone, our president-elect, will take over the chapter leadership at that time, and continue our active schedule of New Lawyers Seminar, the Golf Outing, and plans for our fall program. As you can see from the quality of the newsletter, which has been Dan's special project this year, the chapter will continue to remain strong and active. I have enjoyed working with the FBA this year, and will be available to support President Malone as he takes charge. To all of you, thanks, and as they say—"I'll see you in court."

Hon. Virginia Morgan

(cont'd on page 2)

Ross Parker has received numerous awards and commendations from the U.S. Justice Department, Federal Bureau of Investigations, the U.S. Postal Inspector, the Drug Enforcement Agency, the Veterans Administration and the West Bloomfield Schools.

Please join the Eastern District of Michigan Chapter of the FBA in honoring Ross Parker. This year's speaker will be the Honorable Ann Williams, United States District Judge, United States District Court for the Northern District of Illinois. The reception will start at 11:30 with lunch to follow at noon. To obtain tickets contact Brian Figot or Karen Namee at (810) 649-1900. The cost will be \$25.00 for FBA members and \$27.00 for non-members.

McCree Luncheon Inspirational

The annual Wade Hampton McCree, Jr. Award Luncheon featured a memorable and moving tribute to Father William T. Cunningham, the recipient of this year's Wade H. McCree, Jr. Award for the Advancement of Social Justice. Father Cunningham, the co-founder and executive director of Focus: HOPE, was honored for his contributions to civil and human rights.

Focus: HOPE co-founder Eleanor Josaitis accepted the award in the absence of Father Cunningham, who was unable to attend the luncheon at the Doubletree Hotel due to recent surgery in his continuing battle with cancer. After lunch, 175 attendees signed a card in honor of Father Cunningham's birthday, which coincided with the February 20 luncheon.



Sixth Circuit Chief Judge Boyce F. Martin, Jr. and FBA Chapter President, the Honorable Virginia Morgan after the McCree Luncheon.



Mrs. Wade H. McCree, Jr. and Sixth Circuit Judge Damon Keith after the McCree Luncheon.

Keynote Speaker Chief Judge Boyce F. Martin, Jr. of the United States Court of Appeals for the Sixth Circuit remarked that he was proud to attend an event commemorating the achievements of Father Cunningham and Focus: HOPE, and that it was inspiring to see that our chapter recognizes and rewards achievements in social justice.

What Has Our FBA Chapter Done for You Lately?

Some associations may seem to involve not much more than dues renewals. That hardly applies to our FBA Chapter. Indeed, this past year has been a banner year for the

FBA-Eastern District of Michigan Chapter. Here are some highlights.

The FBA continued its long-running luncheon programs, beginning with September's "State of the Court" luncheon, at which Judge Cook gave his last state of the court address as Chief Judge. In December, the FBA

hosted the annual Rakow Awards Luncheon, honoring the Federal Bar Foundation scholarship recipients and featuring a panel discussion with Judges Horace Gilmore, Lawrence Zatkoff, Gerald Rosen, and John Corbett O'Meara. In February, the FBA honored Father William T. Cunningham, co-founder of Focus: HOPE at the annual Wade H. McCree luncheon. The annual Leonard Gilman Award luncheon, honoring Ross G. Parker, will be held April 17, 1997.

The FBA also continued its many annual social events this past year. In May, the FBA hosted its annual dinner at the International Institute in Greektown. The dinner featured a performance by "A Habeas Chorus Line," who will also be performing at this year's dinner, to be held on May 2, 1997 at the Pontchartrain. In June, the FBA once again hosted the FBA Golf Outing at the Links at Pinewood. Over seventy people participated in the scramble tournament and dinner reception. This year's outing will be on June 13 at Rochester Hills Golf & Country Club (see cover).

The FBA's many sections and committees were active over the past year sponsoring a number of educational and informative programs for FBA members. The Bankruptcy Section hosted luncheons in October, February, and



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March, each featuring a different U.S. Bankruptcy Judge from the Eastern District. In January, the Bankruptcy and Taxation Sections hosted a joint seminar addressing the procedural and substantive tax effects of bankruptcy. The Bankruptcy Section also established, in conjunction with the Detroit Metropolitan Bar Association, the Pro Bono Program for bankruptcy. In March, the Taxation Section co-sponsored with the State Bar of Michigan an IRS liaison meeting, at which practitioners were able to ask questions of, and interact with, officials from the IRS. The Civil Litigation Section published the FBA's updated *Federal Practice Manual*, which features biographies of the District, Magistrate, and Bankruptcy Judges and useful information concerning each judge's standing orders, practices, and procedures. The Criminal Law Section recently announced the formation of a brown bag lunch series that will focus on discussions of the law. The Intellectual Property Section sponsored two seminars, one featuring Judge Lawrence Zatkoff who spoke on "What Trial Counsel Can Do to Simplify Patent Litigation," and the other featuring Judge Avern Cohn who spoke on "The Role of the Trial Judge in Patent Litigation in Light of *Markman v. Westview*." The Government Practice and Corporate Counsel Section, together with the American Corporate Counsel Association, co-sponsored a seminar on the First Amendment and the internet. Finally, the Younger Lawyers Section recently sponsored a seminar entitled "From Green to Gold: Client and Professional Development for the Younger Lawyer," featuring a discussion of learning strategies and techniques for client and professional development.

The Rules and Practice Committee was instrumental in the adoption of Local Rule 16.1(f), relating to pre-trial conferences, which became effective on December 2, 1996.

The New Lawyer's Seminar Committee sponsored invaluable seminars on the practice of law in the federal and state courts for new lawyers. The popular seminars are held each year in June and December and continue to draw rave reviews from participants. The Trial Advocacy Committee once again sponsored its annual two-day trial advocacy program providing practitioners with practical information regarding witness preparation, direct and cross-examination, and motion practice matters. The program featured many federal District Judges and Magistrate Judges, and was attended by over 50 practitioners. In July, the Younger Lawyers Section sponsored a seminar on "Motion Practice in Federal Court: The Good, Bad, and Ugly." The seminar featured presentations by judges, the Clerk's Office, law clerks, and experienced practitioners.

The FBA also made continued strides to sustain useful dialogue between the bench and the bar. In late October,

the FBA co-hosted with the Western District of Michigan FBA chapter the third Shanty Creek Bench-Bar Conference. The conference featured workshops on various areas of federal practice, including civility, discovery, access to the court and alternative dispute resolution. In January, the FBA sponsored the "Passing of the Gavel" ceremony, commemorating the passing of the Eastern District's Chief Judgeship from Judge Julian Abele Cook to Judge Anna Diggs Taylor. The ceremony featured presentations by Magistrate Judge Virginia Morgan, members of Judge

Cook's and Judge Taylor's families, Sixth Circuit Judge Damon J. Keith, Detroit Mayor Dennis Archer, and Michigan Supreme Court Chief Justice Conrad Mallett. The ceremony was followed by a reception at the Detroit Club.

The FBA also continued its tradition of service to the community over the past year. The Pro-Bono Committee recently met with several federal judges to discuss pro bono activity and the establishment of a Judge's pro-bono

committee. The FBA also conducted thirty-two tours of the courthouse for elementary, middle, and high school students. The tours generally exposed the students to a wide variety of courthouse activities, including the Marshal's Office, the Chief Judge's courtroom, and a court proceeding.

The FBA's many activities produced large dividends. Foremost is its commitment to serving bench and bar in this District. The Membership Committee recruited 37

(cont'd on page 6)



A (Habeas) Chorus Line



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Phone (313) 868-9709

Yes!

**Richard J. Seryak, Esq.
Miller, Canfield, Paddock and
Stone, P.L.C.**

The March 1996 issue of the ABA Journal reports that after five years since its passage, the Americans With Disabilities Act "has not fulfilled the greatest fears of its critics — or the greatest hopes of its supporters."¹ Most of the claims filed with the EEOC have been by individuals already employed. Back problems, mental disorders and neurological illnesses comprise a substantial portion of the EEOC's docket. A threshold issue in many of the reported cases is whether plaintiff has a physical or mental impairment that substantially limits one or more of the major life activities. In determining whether an individual is substantially limited in a major life activity, the EEOC considers the nature, severity, duration and long term impact of the impairment. 29 C.F.R. '1630.2(j)(2). In addition, the ADA provides that a "qualified individual with a disability [is] an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. '§12111(8).

The courts have properly recognized that not every impairment qualifies an individual for ADA protections.² When plaintiff claims a disability that substantially limits the major life activity of working, plaintiff must show significant restrictions in the ability to perform "either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 CFR '§1630.2(j)(3)(i). Accordingly, a person's inability to perform one aspect of a job while retaining the ability to perform the work in general is not a substantial limitation on the activity of working. Words v. Sherwood Medical Co., 5 AD Cases 394 (W.D. Mo. 1996) (back injury and resultant low back pain did not constitute a disability under the ADA where plaintiff's physician returned her to work with restrictions against prolonged standing or sitting and lifting of more than ten pounds); Oswalt v. Sara Lee Corp., 5 AD Cases 385 (5th Cir. 1996) (high blood pressure alone is insufficient for ADA protection).

"Major life activity" cannot be interpreted to mean "working at the specific job of one's choice." Roth v. Lutheran General Hospital, 57 F.3d 1446, 1455 (7th Cir. 1995) (no objective medical findings that physician suffering from strabismus (a condition in which the eyes are not correctly aligned) was so significantly restricted by his visual impairment as to be incapable of performing night calls); Heilweil v. Mount Sinai Hospital, 32 F.3d 718 (2nd Cir. 1994) (plaintiff's asthma, which did not prevent her from exercising, was not a condition which substantially limited a major life activity). The inability to perform either a particular job for a particular employer or a narrow range of jobs is not a protected disability. Gupton v. Commonwealth of Virginia, 14 F.3d 203 (4th Cir. 1994) (allergy to tobacco smoke); Maulding v. Sullivan, 961 F.2d 694, 698 (8th Cir. 1992) (sensitivity to chemicals in a lab).

The impairment that affects a person's major life activities must be a significant one. The ADA should not allow an individual with marginal impairment to use the disability laws as "bargaining chips to gain a competitive advantage."

Point

CounterPoint

Roth, 57 F.3d at 1460. Courts have thus properly required more than a showing that an impairment barred an individual from performing one particular job in a particular facility.

Cases involving mental illness, anxiety reaction or stress-related conditions have forced the courts to analyze whether these conditions substantially limit a major life activity and, if so, whether the individual is qualified under the ADA. Fortunately, in several instances the courts have been circumspect in extending ADA protections to these types of impairments. Smith v. Blue Cross-Blue Shield of Kansas, Inc. 894 F. Supp. 1463 (D. Kan. 1995), aff'd 102 F.3d 1075 (10th Cir. 1996) (customer correspondent who experienced panic attacks and generalized anxiety disorder was not qualified under the ADA); Larkins v. CIBA Vision Corp., 858 F. Supp. 1572 (N.D. Ga. 1994) (employer was not required to restructure job of customer service representative who experienced panic attacks and anxiety disorder); Mears v. Gulfstream Aerospace Corp., 905 F. Supp. 1075 (S.D. Ga. 1995), aff'd 87 F.3d 1331 (11th Cir. 1996) (TABLE) (employee diagnosed with depressive neurosis and agoraphobia who was under "so much stress [she] could not function" was not qualified; employer was not required to assign plaintiff so as to avoid contact with former supervisor); Marschand v. Norfolk & Western Railroad Company, 876 F. Supp. 1528 (N.D. Ind. 1995), aff'd 81 F.3d 714 (7th Cir. 1996) (post-traumatic stress syndrome following a grade-crossing accident that killed three persons did not create a significant barrier to employment generally); Mannell v. American Tobacco Co., 871 F. Supp. 854 (E.D. Va. 1994) (chronic fatigue immune deficiency syndrome); Palmer v. Circuit Court of Cook County, 905 F. Supp. 499 (N.D. Ill. 1995) (depression, paranoia, and personality conflict with an antagonizing supervisor); Lewis v. Zilog, Inc., 908 F. Supp. 931 (N.D. Ga. 1995) (bipolar mood disorder).

In cases of marginal impairments or anxiety-related conditions, the courts should continue to require a clear showing that a major life activity has been substantially limited and that plaintiff is qualified to perform the essential functions of the position.

1 Stansky, "Opening Doors" ABA Journal (March, 1996), p. 66.

2 Temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities. EEOC Technical Assistance Manual On The Employment Provisions (Title I) Of The ADA (January, 1992), II-5.

These columns are in statements of the "best argument" the issue presented. They do not represent the views of the Federal Bar Association, which generously gave the space.

What Do You Think? In our continuing effort to serve our members a this feature serves as a springboard for constructive discussion among our Past President, Tom Cranmer, Miro Weiner & Kramer, or our Newsletter Editor, publication in future newsletters. The FBA Editorial Board reserves the right to edit or omit any material.

Topic

Is it Clear When an Impairment is a Protected Disability Under the ADA?

intended to provide brief
ments" on behalf of both sides of
not necessarily reflect the views of
ation or of the authors, who
ave of their time.

No!

**Timothy G. Hagan, Esq.
Huizenga, Hagan &
Hergt, P.C.**

The American with Disabilities Act (ADA) was enacted into law in 1990. The statute was broadly drafted and it was widely felt that it would have a substantial impact on the way that Americans live and work.

Unfortunately, the statute has been subjected to a series of extremely restrictive interpretations which substantially undercut the law's impact. One of the major areas of judicial attack upon the statute flows from 41 U.S.C. 1202(g) which defines a disability as:

- A. a physical impairment that substantially limits one or more of the major life activities of the individual;
- B. a record of such impairment; or,
- C. being regarded as having such an impairment.

Many courts have imposed heavy burden of when a condition has a substantial limitation on a major life activity, while simultaneously taking a rosy view of claimants physical problems. The net effect of this approach is to exclude large numbers of people who deserve the protection of the law.

The courts have found workers with carpal tunnel syndrome to be excluded from coverage even though they are restricted from performing repetitive factory work. Wooten v. Farmland Foods, 58 F.3d 382, 4 AD Cases 920 (8th Cir.) Lamury v. Bowing Co., 5 AD cases 39, 42-3 (D. Kan. 1995), Finks v. Kitzman, 881 F.Supp 1347 4 AD 663 (D. Iowa, 1995). In Deckert v. City of Ulysses, 4 AD Cases 1569 (D. Kan. 1995), the Court found that an insulin dependent diabetic was not handicapped. In Ennis v. Association of Business & Educational Radio, Inc., 53 F.3d 55, 4 AD cases 589 (4th Cir. 1995), the Court found that HIV positive status did not constitute a disability. The cases tend to downplay the problems posed by the plaintiffs' physical conditions. Thus, the fact that the person is able to perform some work other than that for which they are rejected is taken as proof positive that they are not disabled. The practical impact is that people who suffer from significantly disabling conditions are subject to arbitrary discharge based solely upon their

condition. Ironically, when the condition is less disabling the employer's termination or refusal to hire becomes more irrational and less justified. However, it simultaneously stands an increased chance of being found legal.

The decisions defy common sense and are inconsistent with Congressional intent. Congress expressly found that "43,000,000 Americans have one or more physical or mental disabilities". 42 U.S.C. 1201(a)(1). If people who have carpal tunnel syndrome, insulin dependent diabetes, and HIV are not disabled, then it's clear that coverage will only be extended to a small fraction of the 43,000,000 people that Congress intended to cover.

Section 12114 of the ADA deals with the use of illegal drugs and alcohol. It provides, in essence, that a recovered drug addict or an alcoholic is a qualified individual with a "disability", but that those who use alcohol at work or who are current users of illegal drugs are not.

However, a drug addict or an alcoholic who is truly recovered can lead a normal life in most respects and can perform most jobs despite their condition. When one views the effects of their condition through the kind of rose colored glasses that the courts have used to view carpal tunnel syndrome, HIV and insulin dependent diabetes then they would probably be viewed as not protected by the ADA, although §12114 makes it clear what Congress intended that they should be.

There are a number of courts, though they appear to be in the minority, who have interpreted the ADA in a way that gives protection to a broad portion of the 43,000,000 Americans whom it was intended to cover. In Smith v. Kitterman, Inc., 897 F.Supp 423 4 AD 1487 (W.D. Mo. 1995), the court found that a person with carpal tunnel syndrome was covered by the ADA, at least at the summary judgment stage. The court was unimpressed by the fact that the person had held a series of jobs following her discharge. The court noted that she performed those jobs in pain and against the advice of her doctor. Moreover, the fact that she had held a succession of temporary jobs served to demonstrate that her physical condition had an adverse impact upon her ability to find steady work. In Milton v. Bob Maddox Chrysler Plymouth, Inc., 868 F.Supp, 4 AD cases 458 (DC S. Ga. 1994), the court extended protection to a mechanic who lacked a left lung. The court found that the person could perform the basic duties of his job with some slight accommodation from participating in general shop cleanup at the end of the day. The court found that his lack of lung substantially limited his ability to breathe, which it quite appropriately found to be a significant life activity. These cases take an approach that is consistent with sound public policy and Congressional intent. There is reason to hope that this approach will win out in the long run.

In recent years, the United States Supreme Court has been more expansive in its enforcement of employment rights than many of the lower courts have been. In McKennon v. Nashville Banner Publishing Co., 115 S. Ct. 879, 130 L. Ed. 852 (1995), the Court placed significant limitations on the after acquired evidence defense. In O'Connor v. Howe, 116 S. Ct. 1307 (1996) the court reversed the Fourth Circuit's holding that an ADEA plaintiff could only prevail if he demonstrated that he was replaced by a person who was under 40. In Variety Corp. v. Howe, 116 S. Ct. 1065 (1996) the Court imposed fiduciary obligations under ERISA which have substantially stronger teeth than anything previously imposed by the lower Courts. Hopefully, in the long run, the Court will impose standards under the ADA which are more consistent with Congressional intent than the rulings which are cited above.

and in the spirit of our District's newly adopted Civility Plan, we hope that
g our members. Please send your comments/reactions to our immedi-
newsletter Editor, Daniel P. Malone (Butzel Long - Detroit) for possible
nal discretion on which letters, or portions of letters, to publish.

new members over the past year, leading to committee chair Grant Gilezan being awarded the National Membership Award by the National FBA. Through the efforts of this committee, our chapter continues to grow. The FBA hopes to continue to provide useful programming to its members, and welcomes any suggestions you might have. In the meantime, encourage your colleagues to join!

Chapter's Rules And Practice Committee Seeks Membership Comments

The Chapter's Rules and Practice Committee is composed of Ed Kronk (chair), Larry Campbell, Dennis Clark, Duane Ice, Phyllis Morey and Tom Porter. The Committee is charged with:

- Monitoring rules and practice developments affecting Chapter members.
- Providing the Court with comments and suggestions on behalf of Chapter members concerning rules and practice matters affecting bench and bar in the Eastern District of Michigan.
- Facilitating communications between the Court and Chapter members on rules and practice matters.

Consistent with its charge, the Committee will endeavor to keep the membership posted on developments of interest. In return, the Committee actively seeks input from Chapter members regarding rules and practice issues of interest to the Chapter. When time allows, the Committee will seek input from the membership at large on proposed rule changes. In addition to this kind of formal input, however, the Committee encourages Chapter members to identify practical issues of concern regarding current rules, proposed rule changes or other matters that may be considered by the Committee in the interest of promoting the fair and efficient administration of justice under the rules and orders affecting practice before the Court in this district.

Chapter members are urged to contact any of the Committee members with matters for consideration by the Committee.

Federal Bar Association National News

The national headquarters of the Federal Bar Association now has a web site called FBA Online. The URL for the web site is: -

<http://www.access.digex.net/~fedbar/>

This new web site is designed to provide updated information to attorneys, judges, and law students across the country who are involved with or have an interest in the field of federal law. One very useful feature of the web site is the FBA Calendar of Upcoming Events. This calendar is a complete listing of all activities of FBA

Chapters, Circuits, Divisions, and Sections. If you have an FBA event planned, please notify Brenda O'Leary at (202) 638-0252 or by e-mail at fedbar@access.digex.net, and she will include it in the calendar. She would also like to be notified of the web addresses of any links you would like to see added to the FBA web site. Another useful feature of the web site is The Federal Lawyer Online, which is the online version of *The Federal Lawyer* magazine sent to FBA members ten times a year. Other features of the web site include, an online membership application, a local chapter listing, Section/Division information, and numerous links to other web sites which will be useful to FBA members.

The 1997 FBA Spring Meeting will be held at the Doubletree Hotel in Arlington, Virginia on April 18 and 19, 1997. For more information on the meeting call the FBA at (202) 638-0252 or by email at fedbar@access.digex.net.

The annual FBA Supreme Court Admissions Ceremony will take place on May 27, 1997 and will be followed by a continental breakfast hosted by Supreme Court Justice Ruth Bader Ginsburg. For more information or to request an application, call Nikecia Carter at the number listed above.

The FBA Annual Meeting will be held in Puerto Rico on September 24 - 27, 1997. Call Anne Bendicksen, the FBA Director of Meetings & Education for more information, at (202) 638-0252.

In Memoriam Marcel G. Phillips - FBA Stalwart

Marcel Charles Phillips passed away on December 21, 1996, at age 84. Marce was, among his many other accomplishments, a stalwart leader in and proponent of the Federal Bar Association.

Marce was a longtime leader of the Detroit Chapter (presently the Eastern District of Michigan Chapter) of the FBA. He was Chapter President in 1973-74, when the chapter began to enjoy significant growth and advancement. After his term as president, Marce continued as a chapter leader emeritus. He was a mentor and sage counsel of Detroit Chapter officers for many years. He was dedicated to the continuation and betterment of the

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Federal Bar Association and always got great enjoyment from its successes.

Marcel Phillips was also active for many years at the national level of the Federal Bar Association. He served faithfully as a member of the National Council for over 20 years, through 1995. He also served a term as National Vice President for the Sixth Circuit.

Civility Principles In Practice

On February 5, 1996, the judges of the United States District Court for the Eastern District of Michigan approved civility principles to govern the conduct of attorneys and judges during the trial process. The "standards are designed to encourage us, judges and attorneys, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism." The civility principles are divided into four categories: 1) attorneys' responsibilities to other counsel; 2) attorneys' responsibilities to the court; 3) court's responsibility to attorneys; and 4) judges' responsibilities to each other.

The principles are applicable to "all judges and attorneys participating in any proceeding in the Eastern District." With respect to attorneys' conduct, the guidelines cover such issues as treating opposing counsel, parties, and witnesses courteously, refraining from seeking court sanctions absent conducting a reasonable investigation, adhering to all promises in good faith, using good faith efforts to resolve objections to pleadings and discovery requests, and using the discovery process properly and not as a means of harassment. The court's responsibilities to attorneys include acting courteously and respectfully to litigants and counsel, refraining from using hostile or derogatory words in opinions and orders, and attempting to decide matters in a prompt fashion. Violations of the civility guidelines are not *per se* actionable; rather, they are expected to be followed by judges and attorneys voluntarily. The court has the responsibility to bring to an attorney's attention, uncivil conduct which it observes.

As Court Administrator John P. Mayer aptly points out, "Uncivil conduct causes undue delay, increases expense to clients, and denigrates the legal process." The FBA would like to encourage all lawyers to re-familiarize themselves with the civility principles. Law firm department and section heads should also take steps to ensure that younger attorneys under their supervision are aware of and conform their conduct to the civility principles. The civility principles are published with the local court rules, and copies are also available at the Clerk's office on the 5th floor of the Theodore Levin United States Courthouse.

FBA Practice Manuals

The 1996 FBA Practice Manual is an informative, practical guide to the Judges of the Eastern District of Michigan bench. For more information, contact Barb Radke at (313) 234-5210.

Schedule Of Events

Intellectual Property Seminar

April 8, 1997

Panel discussion featuring Judge Avern Cohn

4:00-6:00 pm at U.S. District Court E.D.Mich., Rm. 115

Topic: The U.S. Supreme Court Has Spoken on the Doctrine of Equivalents—What did it say? Did it change anything?

Contact William Abbatt at (810) 358-4400

Brown Bag Lunch Seminar

April 10, 1997

Topic: Issues of Criminal Law

12:00p.m. at U.S. District Court E.D.Mich., by invitation

Contact U.S. Magistrate Judge Virginia M. Morgan at (313) 234-5210

Leonard R. Gilman Award Luncheon

April 17, 1997

Speaker: Hon. Ann Williams, United States District Judge, Court for the Northern District of Illinois

Award Recipient: Asst US Atty Ross Parker

11:30 a.m. at Doubletree Hotel

Cost: \$25 for FBA members, \$27 for non-members

Contact Brian Figot or Kristen Namee at (810) 649-1900

FBA National Meeting

April 19, 1997

Washington, D.C.

Contact Brenda O'Leary at (202) 638-0252

Nominating Committee Luncheon (Past Presidents)

April 24, 1997

12:00 p.m. at Detroit Club by invitation

Criminal Law Section Lunch Seminar

April 30, 1997

12:15 p.m.

Speaker: Judge Rosen

Federal Courts Attorney Disciplinary Procedures

At U.S. Attorney's Office, 211 W. Fort

Contact Wayne Pratt at (313) 226-9583

Annual Meeting, Banquet

May 2, 1997

Pontchartrain Hotel

Contact Julia Blakeslee at (313) 961-8380

Sixth Circuit Judicial Conference

May 14-16, 1997

Opryland Hotel, Nashville, Tennessee

Contact Circuit Executive James Higgins at (513) 564-7200

U.S. Supreme Court Admissions Ceremony

May 27, 1997

Deadline for applications April 9, 1997

10:00 am, in Washington, D.C.

Contact Nikecia Carter at (202) 638-0252

New Lawyer Seminar

June 10-11, 1997

U.S. District Court E.D.Mich., Rm. 115

Contact Brian Figot at (810) 649-1900 or

Catherine Wenger at (313) 225-5574

Golf Outing

June 13, 1997

Rochester Hills Country Club

Contact Mike Lavoie at (313) 225-7060

1997 Federal Bar Association Golf Outing

Friday, June 13, 1997
Rochester Hills Golf & Country Club
655 Michelson, Rochester Hills, Michigan

Join us as The Eastern District of Michigan Chapter of the Federal Bar Association continues one of its old traditions. The best-ball scramble tournament will begin with a shotgun start at 1:00 p.m. Complimentary lunch and soft drinks will be available throughout the day in the clubhouse. Beer and soft drinks will be available for purchase on the course. After the tournament, enjoy cocktails (cash bar), a dinner buffet, and a door prize raffle.

The cost of the event is only \$60.00 per person, and includes green fees, cart, lunch and dinner buffet. If you are unable to join us for golf, please join us for cocktails and dinner at 6:00 p.m. for \$20.00.

_____ Lunch/Golf/Dinner Reservations @\$60.00 per person

_____ Dinner Reservations @ \$20.00 per person

Register a team of two, three or four golfers!
(please include payment for all players)

Name _____

1. _____

Address _____

2. _____

3. _____

Phone (_____) _____

4. _____

Please return this form and your payment to: (make checks payable to FBA-Eastern District of Michigan Chapter)

Michael J. Lavoie

Butzel Long

150 W. Jefferson, Ste. 900 Detroit, Michigan 48226-4430

For questions, call Michael Lavoie at (313) 225-7060

Eastern District of Michigan Chapter, F.B.A.
P.O. Box 71740
Madison Heights, MI 48071

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Miro Weiner & Kramer
(810) 258-1202

Co-Chairperson
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Butzel Long, P.C.
(313) 225-7032

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Robert D. Stein & Associates, P.C.
(810) 350-8000

BARBARA MCQUADE
Butzel Long, P.C.
(313) 225-7000

STEPHEN F. PEREIRA
(810) 574-3893

M BRYAN SCHNEIDER
Law Clerk to U.S. Magistrate Judge
Paul J. Komives
(313) 234-5200

JULIE SCHWARTZ SILBERG
The Schwartz Law Firm
(810) 553-9400

JODY L. STURTZ
Law Clerk to U.S. Magistrate Judge
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(313) 234-5200

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