



FBA newsletter

Vol. 1 No. 4
Summer 1998

Federal Bar Association - Eastern District of Michigan Chapter - 38 years of service to our Federal Bench and Bar



Gurewitz to be Honored and Gilman Remembered at Upcoming FBA Luncheon

On April 23, 1998, this Chapter will present Harold Gurewitz with the Leonard R. Gilman Award as an outstanding practitioner of criminal law. The award will be given during a luncheon to be held at the Crowne Plaza Hotel in downtown Detroit. The Award is given to those who emulate the excellence, professionalism and commitment to public service which exemplified the life of Len Gilman. Mr. Gurewitz received his undergraduate degree from Michigan State and his JD degree from Wayne State after serving honorably in the United States Army. He became an Assistant US Attorney in 1973, rising to become Chief of the Economic Crime Unit. During his tenure in the office, he was involved in what he described as the most boring HUD trial in history. The case was tried before Judge Churchill. This is of note because Harold met Mary Ellen Tucker, one of Judge Churchill's clerks during the trial, and, presumably to relieve the boredom, decided to marry her. Mary Ellen and Harold are the proud parents of 17 year old Abe.

Harold left the US Attorneys office in 1981 to enter private practice in the field of criminal defense work. He currently heads the firm of Gurewitz & Raben PLC in Birmingham, Michigan.

(cont'd on page 2)

Annual Dinner

The Eastern District of Michigan Chapter of the Federal Bar Association will hold its Annual Dinner, honoring the Judicial Officers of the Eastern District, on Friday, May 1, 1998 at the Detroit Institute of Arts.

Both the cocktail reception and the dinner, beginning at 5:30 p.m. and 7:00 p.m. respectively, will be held in

Prentis Court. Upon arrival, guests will be provided with an opportunity to view the paintings and objects in the 19th Century European Gallery.

Following dinner, guests will move to the comfort of the DIA's Lecture Hall where the evening's program

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Vision With Action

Some organizations have good ideas, but no follow through. Others work diligently, but with no vision. According to the noted futurist, Joel Barker, the truly successful must have both. He counsels that:

Vision without action is merely a dream.

Action without vision passes the time.

Vision with action can change the world.

This year our Chapter had both; and while we may not have changed the world, we have had a very productive year.

Our Officers took a fresh approach to develop a plan for this year. Mindful that even our most active and dedicated members have limited time to contribute, we believed that a clear, achievable plan would better position our Chapter to maximize its time and talent. An essential component of that process involved *listening*. We provided section and committee chairs with considerable opportunity to offer suggestions. It challenged our extended leadership to think about things. Many did and offered valuable input on what they wanted to see happen and how they could reasonably contribute. This enabled us to better appreciate what ideas were important to our members and thus created the opportunity to help *shape* the future of our Chapter rather than merely maintain its *status quo*. In that sense, the first and perhaps most important choice our leadership made was the choice to *serve*. Without it, one's capacity to lead becomes profoundly limited.

On September 16, 1997, our Board adopted a very ambitious Action Plan. It addressed, among other things, vision, goals, and assignments aimed, in part, at converting those emerging ideas into reality. We then widely circulated our Action Plan as an open invitation to anyone who cared enough to get involved and serve. Throughout our year, our Plan then served the two-fold role of motivating us to accomplish all we set out to do as well as prioritizing our efforts during hectic periods. In this sense, our Action Plan served as our shared vision.

A small army of members responded and contributed to our call to action. In the process, our vision became much more than "merely a dream". We strengthened tradition by hosting truly wonderful luncheons. We published four timely and substantive, *first class* Newsletters, hosted numerous seminars and social gatherings, and offered substantive input on proposed rule changes and practice in this federal district. In so doing, we became a rock solid bridge between Bench and Bar. Internally, we established a sound financial budget, reviewed and revised our Foundation structure and by-laws, updated our contract with our Executive Director, obtained 501(c)(3) status for our Judicial Portrait Foundation, and increased membership significantly. We also blazed exciting new trails by collaboratively hosting the truly

President's Column *(cont'd)*

memorable Martin Luther King celebration at Focus: HOPE, organizing informal monthly meetings with members of the federal bench, initiating a survey on racial, gender, and ethnic issues, and assisting in developing a Law Day celebration for the Levin Courthouse. As our year unfolded, things began falling into place "almost" like clockwork. To be sure, we remained proactive and did not merely "pass the time".

This past year stands as a shining example of what a service organization can accomplish when it has vision and takes action. The large number of *active* members we have allowed us to flourish. While we have made progress in recruitment, we should strive to increase membership particularly among those who have historically been underrepresented in our ranks. In these dynamic times, we need motivated individuals who are proud of their FBA membership if our Chapter is to continue to improve its enormous potential to serve. We need *your* help. The critical question is this: are you proud of our Chapter? If so, then please get or remain active. Our Action Plan shows you how (www.fedorg.com). If not, then our Officers would like to hear from you.

The future of this organization is so promising in large part because it has been gifted with talented, dedicated leadership for almost 40 years. The collective legacy left by our former Past Presidents stands tall. But for their efforts, much of what we accomplished this year would not have been possible. Indeed, they helped to form our Chapter's developmental path and, in a real sense, help to define what we are in the process of becoming. They deserve heartfelt, continued appreciation for what each of them and so many others have done to build and strengthen our very fine service organization.

It has been a true honor to serve as this year's President. I personally thank *everyone* who helped this Chapter grow in many ways. Growth can be difficult. It is also very rewarding. In particular, I wish to recognize and thank Chief Judge Anna Diggs Taylor whose unwavering support, tireless efforts, and poignant comments contributed so meaningfully to the success of many of our goals and activities. Another person who richly deserves recognition and thanks is my secretary, Nedra Coleman, who helped manage from behind the scenes. Although she is not an FBA member and did not volunteer, she willingly contributed as much as anyone to the success of our year. She is clearly an "unsung hero". Finally, I extend all good wishes to incoming President, Michael Leibson, on the important FBA work and opportunities that lie ahead for him and his fellow Officers.

I look forward to seeing *all* of our members and honored guests at our Annual Dinner on May 1, 1998 at the Detroit Institute of Arts. It promises to be a wonderful event as we celebrate the close of a most remarkable Chapter year. We have built momentum and created a spirit on which we can and should continue to build. Together, through vision with action, we can (and do) help to change the world even if only in some small way. As Walt Whitman so eloquently reminded, "The powerful play goes on, and you may contribute a verse."

Daniel P. Malone
President

(Annual Dinner cont'd from page 1)

and entertainment will be presented.

The program will include an election of new officers and transition of the Chapter leadership from outgoing President Dan Malone, to President-elect Mike Leibson. Commenting on this year's event, Leibson stated "I am looking forward to becoming President and performing with the (Habeas) Chorus Line at the DIA. I hope to build on the solid foundation established by Dan and his predecessors."

The entertainment will once again be provided by A (Habeas) Chorus Line, the group that has given spirited and entertaining performances at numerous past annual dinners. AHCL is Detroit's own parody troupe, composed entirely of lawyers and law-related personnel who lampoon everything from local issues to international events and from lawyers to judges to politicians.

This annual event is always well attended, providing a marvelous opportunity for members of the bar to mingle with members of the federal bench in a pleasant and relaxed environment. It will also provide an opportunity for chapter members to celebrate what our Chapter has accomplished this past year.

The cost for the evening is \$65.00 per person. Proceeds will be donated to the FBA Foundation. Further information may be obtained from one of the members of the Annual Dinner Committee: Julia Blakeslee (248) 433-7453; Barbara Buchanan (313) 259-7110 or Joanne Klimko (313) 225-7072.

Gilman Luncheon *(cont'd)*

Harold has given exceptional service to the City of Detroit, serving as Chairman, Legal Committee, Detroit Casino Study Commission (in 1988!), Detroit Board of Water Commissioners and Detroit Board of Police Commissioners.

Harold's partner, Margaret Raben has stated that "I did not know Len Gilman, but I believe that Harold absolutely epitomizes what this award represents. Harold is committed to his clients and to the fair and just application of the law to those accused and convicted of crimes. He has taught me that criminal defense is more than a constitutional command, it is an honorable practice of law".

In every aspect of his career and life, Harold has always acted in the finest tradition of Len Gilman's belief that the power of the law must be characterized by fairness and compassion.

The guest speaker at this year's luncheon will be Stephen Jones. Mr. Jones served as Timothy McVeigh's primary defense counsel. The reception will begin at 11:30 a.m. with lunch to follow at noon. The cost of a ticket is \$25.00 for FBA members and \$27.00 for non-members. Please call Christine Dowhan-Bailey for tickets at (313)226-6822.

Please join us in honoring Harold Gurewitz and remembering Len Gilman.

McCree Luncheon

The Federal Bar Association honored former Michigan governor William G. Milliken in February with the annual Wade Hampton McCree, Jr. Award for the Advancement of Social Justice. The award, named in memory of former U.S. Court of Appeals Judge and Solicitor General Wade McCree, honors the individual or group who best exemplify the spirit of Wade McCree through a significant contribution to the advancement of social justice.

Governor Milliken used the luncheon as a springboard for his campaign to repeal Michigan's "650 lifer" law. The law, which was passed during Governor Milliken's administration, provides a mandatory penalty of life imprisonment for any person possessing with intent to sell more than 650 grams of cocaine or heroin. Governor Milliken claims that the law puts too much sentencing discretion in the hands of prosecutors, who choose

whether to charge defendants under the law, rather than in the hands of judges, where it should be. He also noted that the law does not provide for consideration of mitigating circumstances or individual characteristics of defendants. Governor Milliken expressed his hope that members of the legal profession will join his fight to repeal the law.

Chapter Offers Seminar For New Lawyers

The semi-annual Seminar for New Lawyers will be held Tuesday and Wednesday, June 9 & 10, Room 115, of the Theodore Levin Courthouse, 231 West Lafayette in downtown Detroit.

This program is a "nuts and bolts" how-to-do-it approach to practice in federal and state courts, designed to assist recent law graduates in understanding the fundamental procedures followed in those courts. The seminar begins at 8:15 a.m. on June 9 with presentations on federal courts. It concludes on June 10 with state court practice.

The speakers at the seminar will include District Court Chief Judge Anna Diggs Taylor, U.S. Judge Julian Abele Cook Jr. and Magistrate Judge Virginia M. Morgan.

Co-chairs for the seminar are attorneys Christine Dowhan-Bailey, Catherine Wenger, Brian Figot, Grant Gilezan and Geneva Halliday.

The seminar will cost \$65 for members of the Federal Bar Association and \$85 to nonmembers. Admission includes a reception for the new attorneys on Tuesday, June 9. In addition, a luncheon will be held on Wednesday, June 10, at the Pontchartrain Hotel. The price also



McCree Luncheon. Left to Right: Hon. Anna Diggs Taylor, Michael C. Leibson, Governor William G. Milliken, Daniel P. Malone, Mrs. Wade H. McCree, Joel M. Shere, and Brian Figot.

includes course materials which contain form pleadings and memoranda expanding on the topics covered by the speakers. A special price of \$95 includes the seminar plus membership in the Federal Bar Association.

Reservation checks should be made payable to the FBA, Eastern District of Michigan Chapter, and mailed to New Lawyers Seminar, Post Office Box 71740, Madison Heights 48071. For questions call Dee Osterman at (248) 548-3450.

Young Lawyers Seminar

The Federal Bar Association, Eastern District of Michigan, Young Lawyers Section, in cooperation with the State Bar of Michigan, Young Lawyers Section, is sponsoring a seminar, entitled "*Financial Planning for Young Lawyers*". The seminar will take place on May 6, 1998, at 6:30 p.m., at the Southfield Hilton Garden Inn, located at 26000 American Drive in Southfield, Michigan.

Speakers will include Rick Bloom, a financial planner and attorney, Joe Maffesoli, from Fidelity Investments, and a representative from Consumer Credit Counseling Centers, Inc. The seminar will address investing, risk management, estate planning, products and services offered by Fidelity Investments, reducing consumer and educational debt and saving for retirement. Light hors d'oeuvres will be served before the program begins at 7:00 p.m. Questions and reservations for the seminar should be addressed to Amy L. Ryntz, Raymond & Prokop, P.C., (248) 357-3010.

Update on the State Bar of Michigan Task Force on Racial/Ethnic & Gender Issues

The State Bar of Michigan Board of Commissioners recently adopted the Final Report of the Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession. The report was one more step in a process that began a decade ago, and has prompted the Federal Bar Association to examine where we stand on race, ethnic and gender issues.

The State Bar Task Force, created by then State Bar President Victoria Roberts in 1996, investigated what, if any, progress had been made toward goals identified in a 1989 report. The 1989 report was prepared by two task forces, convened in 1987 by Chief Justice Dorothy Comstock Riley, to investigate racial, ethnic and gender issues in the courts.

The new Task Force, consisting of 30 experienced lawyers and judges and chaired by Saul Green and Dawn

(cont'd on page 6)

Yes!

**Richard Bisio, Esq.
Honigman Miller Schwartz
and Cohn**

Mediation can assist in settling cases before the time and expense of a full trial—a result that we should foster as a means of saving expenses for our clients while reaching a fair resolution. The statistics that Ronald Reosti cites show that mediation is underutilized in the Eastern District, frequently an ignored suggestion that the parties receive with an initial scheduling order.

Mediation—done properly—is a helpful means of bringing cases to a fair conclusion. As advocates, we would like to pride ourselves on our perceptive analysis of the strengths and weaknesses of our cases and assure our clients that our negotiating and litigating abilities will get the best outcome for them. An impartial third-party evaluation of a case, however, through mediation or other alternative dispute resolution, can often breathe fresh air into the thought processes of both attorneys and parties and help them more realistically evaluate the prospects for success (or failure) at trial and the advisability of settling a case. After a party lives through all the events that bring him or her to litigation and then the litigation process of retaining a lawyer, filing papers, and suffering through discovery and various motions, the party's view of the facts and the party's emotional investment in the party's "position" tend to become more inflexible. The adversarial litigation process discourages frank communication between litigating parties. Rather, it encourages looking at the other side as the enemy and viewing the facts through an advocate's eyes, criticizing the weaknesses of the other side and highlighting the strengths of one's own side. Attorneys, doing their job of probing the weaknesses of their opponents and building their own case, solidify their clients' adversarial view of a case and encourage a belief in the rightness of their cause and the weakness and invalidity of the opponent's position. Mediation is an opportunity to step back from this process and take advantage of a neutral assessment of a case—to critically evaluate how the story you have to tell will actually play to a neutral audience.

The positive effects of mediation depend on the parties' confidence in the impartiality and accuracy of the mediators' evaluation. It is crucial, then, that mediators be selected by a process that results in competent, experienced mediators who will be able to draw on experience in similar cases to make a reasonable evaluation that has the likelihood of acceptance by both sides. The Eastern District's use of the Mediation Tribunal Association, even with its specialized subject matter panels, is open to criticism on this point. Mediators may not have sufficient experience with the specialized subject matter or higher stakes of federal court litigation or time enough to give due consideration to a case. They thus may not be in a position to make a knowledgeable evaluation that would command the respect of the parties. In this situation parties should consider a special mediation panel, selected for their experience in the particular type of case involved. Although this would require the parties to bear the additional cost of specially retained mediators, the increased attention and more realistic evaluation may well be worth the extra expense.

Mediation in federal court does not carry with it the mandatory fee sanctions that it does in state court (unless the par-

Point

CounterPoint

ties stipulate to that). *Teidel v Northwestern Michigan College*, 865 F2d 88 (6th cir. 1988) (holding that a federal court may not impose fee-shifting sanctions for mediation rejection by local rule). But fee sanctions are not the primary motivating force behind settlements that result from mediation. When the Eastern District revised its local rules in 1992, the revision committee concluded that the court should retain the mediation process, even without the mandatory fee sanctions, stating:

Mediation has proven helpful in stimulating productive negotiations in civil cases. Indeed, the parties to lawsuits have, with increasing frequency, creatively adapted mediation to the particular circumstances of their cases. This trend has involved, by stipulation of the parties, special mediation and binding special mediation.

Addressing the effect of *Teidel*, the committee stated: *Teidel has not had a substantial impact upon the efficacy of mediation. The available data and anecdotal evidence strongly suggest that the sanctions provision do not drive the mediation process. See Mann, Mediation of Civil Cases*, 67 U.Detroit L.Rev. 531 (1990).

If my thesis that mediation can be a helpful tool in settling cases is correct, then why is it so little used in the Eastern District? The statistics showing the sparse use of mediation and the low acceptance rate in cases that are mediated in the Eastern District would certainly support a conclusion that mediation is not working well in this district. I suggest that the underutilization stems in part from the lack of reasoned consideration of the potential benefits of mediation. Parties are most often asked to consider stipulating to mediation at an initial scheduling conference or simply by a notice sent out with the court's initial scheduling order. A more appropriate time to consider mediation would be when a case is more fully developed through discovery. A status/settlement conference toward the end of discovery where the court and the parties explore the issues for trial and the prospects for settlement would be a time when there could be a more meaningful assessment of the potential benefits of mediation. That will happen, however, only if the court requires the parties to seriously consider mediation. The court should take a more active role in encouraging mediation by convening such a conference as a matter of routine.

Mediation can be a positive factor in helping to bring cases to a fair conclusion. It should be encouraged and used more often in the Eastern District.

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

What Do You Think? In our continuing effort to serve our members and to make this feature serve as a springboard for constructive discussion among our members, we have invited our co-chairs Michael C. Leibson, Assistant United States Attorney and John J. ... in future newsletters. The FBA Editorial Board reserves final discretion.

Topic

Is the Mediation Process Working in Our District?

No!

**Ron Reosti, Esq.
Reosti, James & Sirlin, P.C.**

are intended to provide brief arguments" on behalf of both sides of do not necessarily reflect the views of mediation or of the authors, who gave of their time.

In order to answer this question, it is necessary to define the criteria for determining if the process is "working". Normally when evaluating whether or not a mediation process is "working" we would look at the percentage of cases settled, either because the parties accepted the mediators' evaluation or because the evaluation served to expedite a settlement. Obviously it is difficult to get hard statistical data on cases where settlements are facilitated by mediation as opposed to those where both parties accept.

However, in evaluating whether mediation is working in the Eastern District of Michigan there is another more obvious criteria for determining if the process is working. Since mediation is for the most part voluntary, one criterion we could use is the percentage of cases which go to mediation.

Using information gathered from Ms. Judy Christie, Administrative Manager of the clerk's office for the Federal Court and Sue Kelly from the Wayne County Mediation Tribunal (with some extrapolation necessitated by gaps in the data), it appears that from May 1, 1996 to January 31, 1998 there were 4,154 cases eligible for mediation¹. Of these, 292 (7%) actually completed the process. In 31 (11.3%) of the 292 cases mediated both sides accepted the mediation. This percentage is less than the percentage of mediations accepted by both sides in Wayne County cases, which, according to Sue Kelly of the Mediation Tribunal, is between 20 and 25%.

It is not clear why the acceptance rate is so much lower in federal cases. One explanation could be the fact that the sanctions provided in Local Rule 16.3 do not include attorney fees unless the parties stipulate that attorney fees will be part of the sanctions. See *Tiedel v Northwestern Michigan College*, 865 F.2d 88 (CA6, 1988) and the comment to Local Rule 16.3. However, many, if not most, judges require the parties to stipulate to be covered by the Michigan Court Rules.

Although data on how many cases referred to mediation from Federal Court that are subject to such a stipulation is not available, the guess is that most cases are referred with a stipulation to be covered by the Michigan Court rule regarding sanctions.

One result of the practice of only referring cases to mediation when both sides agree to be bound by sanctions is that the

cases referred from Federal Court are unlike State cases where mediation is mandatory. One would think that this higher degree of voluntariness would result in a higher acceptance rate in Federal cases. In fact the opposite seems to be true; according to Ms. Kelly, the acceptance rate in Federal cases is roughly one-half (50%) of the rate in state cases.

The practice of requiring both sides to stipulate to be bound by the Michigan rule on sanctions is undoubtedly one reason why only 8% of the eligible cases are referred to mediation. (While it is true that the method of determining the number of cases eligible for referral used by Ms. Christy may have been overly inclusive, the percentage of cases referred would still be small even if we arbitrarily reduced the number of eligible cases by one-half).

Again, one would think that a system which only referred a small percentage of eligible cases and only cases where the parties had stipulated to mediation would result in a higher, not a lower acceptance rate.

Without a comprehensive survey of attorneys, we can only speculate as to why there is such a low acceptance rate. Lacking resources to conduct a comprehensive survey, I conducted an informal survey (I called a few attorneys I knew). My survey seemed to indicate that defendants were more likely to refuse to mediate than were plaintiffs, at least in personal injury, civil rights and employment cases. Undoubtedly this is in part the result of strategic judgments which reflect the perceived advantage to defendants in these kinds of cases of being in federal court.

It is also possible that the low acceptance rate reflects a lack of confidence in Wayne County Mediation. In fact, all attorneys I surveyed expressed dissatisfaction with the quality of the mediations in the state system. Common complaints were that the mediators were overloaded and did not have enough time to spend on individual cases, the difficulty of finding neutrals who were truly neutral and the lack of expertise in the specific area of the law involved in the mediations.

Dissatisfaction with the quality of Wayne County Mediation cannot, however, explain the disparity in acceptance rates between State and Federal cases. The reasons why the acceptance rate is so much lower in Federal cases remains a mystery.

Although we could not discover why mediation in Federal cases is apparently less successful than in State cases (based on acceptance rates), attorneys I surveyed agreed that mediation works best when both sides want to mediate and can choose the mediators.

Practical solutions are not obvious. Mandatory mediation in the Wayne County Mediation Tribunal would undoubtedly not be appropriate in many types of federal court litigation because of the specialized knowledge required to effectively mediate such cases, e.g. ERISA, Railway Labor Act, and other statutory matters. In other cases, especially diversity cases removed to Federal court, mandatory mediation is more justifiable.

In the final analysis, it is this writer's judgment that the biggest barriers to an effective mediation system are 1) the difficulty of devising an inexpensive system which provides mediators with specialized experience and with enough time to properly evaluate cases and 2) Defendants' perception in many areas of federal practice that they will succeed in a motion for summary judgment and are therefore unwilling to invest in the mediation process.

¹Local Rule 16.3 defines eligible cases as civil cases in which the United States is not a party and where the relief sought is primarily money damages. To arrive at the number of 4,154 cases, Ms. Christy used the numeric code for nature of suit which fit the definition in the rule.

and in the spirit of our District's newly adopted Civility Plan, we hope that among our members. Please send your comments/reactions to our newsletter and Dennise M. Barnes, Barris, Sott, Denn & Driker, for possible publication on which letters, or portions of letters, to publish.

(Task Force cont'd from page 3)

Van Hoek, found that only one area, judicial education, had been substantially addressed since the 1989 report. No recommendations regarding the discipline system or the implementation of plans had been substantially accomplished.

The Task Force found three crucial areas that should serve as foundations for change: (1) ethical standards and disciplinary systems; (2) education; and (3) implementation. The Task Force concluded that the single most important factor in realizing the goals of the 1989 report would be the creation of a permanent implementation effort. To that end, the task force proposed the creation of a Joint Commission on Diversity Issues and the Michigan Justice System by the Michigan Supreme Court and the State Bar of Michigan. The commission would identify substantive areas of investigation that were not addressed in 1989 and adopt a plan for implementing recommendations.

In looking to the future, the current Task Force believes that the following areas should be given priority: (1) creation of Domestic Violence Coordinating Councils to establish procedures in domestic violence cases; (2) amendment of Personal Protection Order statutes and court rules to provide that prosecuting attorneys be required to assist applicants; (3) evaluation of the impact of MCR 2.404 on mediation practices, to ensure that the mediation process be free from bias; (4) recruitment and retention of women and minority faculty in law schools; (5) hiring policies and practices geared toward better representation of women and minorities within the justice system; (6) mandatory legal education and court appointed counsel education; (7) court personnel training; (8) state court administrative office regulation and enforcement of local court operations in the areas of gender and race bias; and (9) "one court of justice" funding issues for the future which would be implemented by the Michigan Legislature and facilitate standardized administrative delivery systems, enforcement of gender-neutral policies and fully fund mandated requirements on state courts.



Members of A (Habeas) Chorus Line™ Front Left to Right: Jim Robb, Judy Zorn, Sara Fischer, Angela Williams, Mark Lezotte. Back Left to Right: Brian Figot, Mike Leibson, Justin Klimko, Joe LaBella.

Because task force reports do not address the federal justice system, the Federal Bar Association has decided to determine where we stand on the question of racial, ethnic and gender bias, whether we should be directing our attention to any changes, and if so, how such changes might best be implemented. Therefore, the FBA will shortly be submitting a brief survey to groups of attorneys who are part of the justice system in the Eastern District of Michigan. We view our survey as a first step in evaluating the perception or reality of bias in our district.

NOTICE: Proposed By-Law Amendments

The Board of Directors of the Federal Bar Association, Eastern District of Michigan Chapter, has approved proposed amendments to the Bylaws of the Federal Bar Foundation of Detroit. These amendments, which require a vote by the FBA membership, are noticed below. They will be offered and voted on at the FBA's Annual Meeting and Dinner on Friday, May 1, 1998.

The proposed amendments change the Foundation's Board of Trustees to consist of five Trustees, who must be members in good standing of the Chapter. The Foundation Trustees will be elected annually by the presiding members of the Chapter's Board of Directors.

A majority of the trustees will constitute a quorum at any meeting of the Board of Trustees.

The proposed amendments to the Bylaws of the Federal Bar Foundation of Detroit are as follows:

1. Section 1.1 of the Bylaws is hereby replaced in its entirety with the following:
 - 1.1 Members of Board of Trustees. The property and affairs of this Foundation shall be managed and controlled by its Board of Trustees, consisting of five (5) trustees. The members of the Board of Trustees shall be elected by the then presiding members of the Board of Directors of the Eastern District of Michigan Chapter of the Federal Bar Association. Trustees shall be eligible to be re-elected to successive terms of office without limitation, but must, at all times, be members in good standing of the Eastern District of Michigan Chapter of the Federal Bar Association.
2. Section 1.2 of the Bylaws is hereby replaced in its entirety with the following:
 - 1.2 Term of Office. The trustees shall be elected annually at a meeting of the Board of Directors of the Eastern District of Michigan Chapter of the Federal Bar Association. Each Trustee shall hold office until the election and qualification of his or her successor, until his or her death, or until he or she shall resign or

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be removed.

3. Section 2.6 of the Bylaws is hereby modified as follows:

2.6 A majority of the then Board of Trustees shall constitute a quorum at any meeting of the Board of Trustees.

4. Section 8.1(b) is hereby deleted and section 8.1(c) is hereby redesignated as section 8.1(b).

5. Any and all references to the "Detroit Chapter of the Federal Bar Association" shall be modified as follows: "Eastern District of Michigan Chapter of the Federal Bar Association."

The remaining provisions of the Bylaws of the Federal Bar Foundation of Detroit remain in full force and effect.

The main purpose of the Foundation is to raise funds for and award the annual Rakow Scholarships to students at each law school in Michigan. The awardees are J.D. degree candidates who demonstrate outstanding scholarly achievement in securities, corporations or business law, as determined by the law school dean.

The FBA Chapter's Board believes that these bylaw changes are in the best interest of the Foundation and recommends their approval.

WANTED - Volunteers For Federal Civil Pro Bono Project

For the last several years, the United States District Court for the Eastern District of Michigan has cooperated with the Volunteer Legal Services Office of the Detroit Metropolitan Bar Association in the operation of a Federal Civil Pro Bono program. Plaintiffs who have filed civil cases in pro per frequently request the Court to "appoint" a lawyer to represent them. 28 U.S.C. 1915 (d) provides that "[t]he court may request an attorney to represent any such person unable to employ counsel..." In Mallard v. United States District Court, 490 U.S. 296 (1989), the Supreme Court ruled that federal district courts could not, on the basis of this statute, require an unwilling attorney to represent an indigent litigant in a civil case. The Court did not review the possibility that federal courts possess "inherent authority" to require lawyers to serve because the lower courts did not invoke such authority in reaching their decisions. 490 U.S. at 310. The Court did note that its interpretation of the statute did not render it a "nullity" because "Section 1915 (d) may meaningfully be read to legitimize a court's request to represent a poor litigant and therefore confront a lawyer with an important ethical decision..." 490 U.S. at 308.

... We do not mean to question, let alone denigrate, lawyers' ethical obligation to assist those who are too poor to afford counsel, or to suggest that requests made pursuant to [Section] 1915 (d) may be lightly declined because they give rise to no ethical claim. On the contrary, in a time when the need for legal services among the poor is growing and public funding for such services has not kept pace, lawyers' ethical obligation to volunteer their time and skills pro bono publico is manifest...

490 U.S. at 310.

Calendar Of Events

FBA Gilman Luncheon

April 23, 1998

Location: The Crowne Plaza Pontchartrain

Contact: *Christine Dowhan-Bailey*
(313) 226-6822

Annual Dinner (Detroit Institute of Arts)

May 1, 1998

Contact: *Julia Blakeslee* (313) 961-8380

Young Lawyers' Seminar - Financial Planning

May 6, 1998, 6:30 p.m.

Location: Southfield Hilton Garden Inn

Contact: *Amy Ryntz* (248) 357-3010

Bankruptcy Section

Trial Advocacy Seminar

May 7-8, 1998

Contact: *Lynn Brimer* (313) 226-4790

Sixth Circuit Judicial Conference

May 12-15, 1998

Asheville, NC

Contact: *James Higgins* (513) 564-7200

FBA Golf Outing

June 12, 1998

Contact: *Michael Lavoie* (313) 225-7060

New Lawyers' Seminar

June 9-10, 1998

Location: Levin Courthouse

Contact: *Catherine Wenger* (313) 225-5575

During 1997, the District Court received forty-one requests for appointment of counsel from plaintiffs who had filed prisoner civil rights complaints seeking money damages and/or injunctive or declaratory relief under 42 U.S.C. 1983. The Court also received thirty-nine requests for counsel from plaintiffs who were not prisoners, but

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(Pro Bono cont'd from page 7)

who sought relief of a similar nature, i.e., damages or injunctive relief based on, for the most part, claims of a civil right's nature. To date, only one of the foregoing eighty requests has been granted. The remaining seventy-nine were either not referred to the Volunteer Legal Services Office, or, if referred, have not so far resulted in the obtaining of counsel for the requesting litigant. Obviously, this is a description of a "system" that is one in name only, and in serious need of refurbishing. The number of attorneys who have informed the Volunteer Legal Services Office of their willingness to at least consider taking on one of these cases has diminished. The first order of business is to increase this number. This article is an open invitation to the members of the Eastern District of Michigan Chapter of the Federal Bar Association, and any other lawyer who may see it, to call or write the Volunteer Legal Services Office of the Detroit Metropolitan Bar Association and volunteer. The Office is located at 2100 Buhl Building, 535 Griswold Street, Detroit, Michigan 48226. The telephone number is (313) 6120. The fax number is (313) 965-0842.

New Local Rules Added

On March 9, 1998 the Eastern District of Michigan bench adopted two new local rules that deal with materials sealed under protective orders. New Local Rule 5.3 deals with discovery materials sealed under protective order. It requires the attorneys of record in a case to present a

proposed order within 60 days after the entry of a final judgment and an appellate mandate, if appealed, specifying whether the material sealed with a protective order is (a) to be returned to the parties, or (b) unsealed and placed in the court file. Failure to present the order will result in the Court ordering the clerk to unseal the materials and place them in the case file.

New Local Rule 5.4 deals with sealed settlement agreements, and provides that, absent an order to the contrary, sealed agreements will remain sealed for only two years after which time they will be unsealed and placed in the case file. The Comments to these new rules make it clear that the Court intends to seriously enforce them. Copies of the new rules are available at the Court Clerk's office.

FBA GOLF OUTING

The Chapter will be holding its annual golf outing on Friday, June 12, 1998. This year's outing will be held at the Devil's Ridge Golf Club in Oxford, beginning promptly at 1:00 p.m., followed by cocktails, dinner and a door prize raffle. The cost of the event is only \$85.00 per person, which includes golf with a cart, lunch, drink tickets, and dinner, or \$40.00 per person for cocktails and dinner.

Please contact Michael Lavoie at (313) 225-7060 for a reservation form or to become a hole sponsor.

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