



# FBA newsletter

Vol. 1 No. 5  
Winter 1998

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



## Rakow Awards Luncheon To Feature Special Honor For Justice Boyle

Michigan Supreme Court Justice Patricia J. Boyle will be honored at the upcoming Federal Bar Association meeting. Justice Boyle is stepping down from the bench when her term expires at the end of the year.

The meeting and luncheon will be held on November 24, 1998, at the Crowne Plaza Ponchartrain Hotel, where the chapter will gather for the annual Rakow Awards Luncheon.

The luncheon also will feature the presentation of the annual Rakow awards, presented each year by the chapter to one student from each of Michigan's five law schools. The recipients are each selected by their schools. The award is named for Edward H. Rakow, who served as Assistant Regional Administrator for the Securities and Exchange Commission in Detroit for 26 years. Rakow was instrumental in founding the Eastern District of Michigan chapter of the FBA. *(cont'd on page 2)*

## Pro Bono Lawyers Honored At State Of Court Luncheon

The Eastern District of Michigan Chapter of the Federal Bar Association hosted its annual State of the Court Luncheon on September 23, 1998 at the Crown Plaza Pontchartrain Hotel. The Honorable Anna Diggs Taylor, Chief Judge of the United States District Court for the Eastern District of Michigan delivered the state of the court address. She reported that the "state of the Court is good." New case filings rose 15% in the Eastern District of Michigan last year. A new jury plan for the Eastern

District of Michigan was approved by the Sixth Circuit in March 1998. The Honorable Horace Gilmore was also recognized for his 42 years of service.

Judge Taylor concluded her address by announcing that she will be stepping down as

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## President's Column

Recently, I introduced a performance by "A (Habeas) Chorus Line" by noting, humorously, that we were the only lawyers specializing in the field of legal parody not named Clinton or Starr.

Unfortunately, the humorless behavior of these two lawyers has demonstrated some of the worst excesses of our profession. On one side there is the prosecutor totally focused on bringing down his target by any lawful means and on the other side we have numerous lawyers (including the target) resorting to every lawful mean to avoid admitting the prosecutors charges. Both sides claim that their behavior is both lawful and ethical. Both sides seem oblivious to the concept of "collateral damage" (a term borrowed from the military which refers to unintended deaths and property damage resulting from an attack on a military target). The collateral damage here includes the possibility of making it difficult, if not impossible, for federal prosecutors to successfully pursue certain perjury cases (a matter of some note to me personally), the uncertain precedential value of the various attempts to create or abrogate a number of testimonial privileges and a further erosion of public respect for a profession which quibbles over the definition of the word "is".

This legal battle between presidential and prosecutorial scorpions in a bottle reinforces the already high tendency in the legal profession (and many other places in our society) to accept the view that if a course of action is not by rule considered unethical or by law considered illegal, then it is appropriate to take that action. The fact is, however, that what may be technically ethical or legal does not necessarily make it right. In every instance of decision making in our profession, there are two questions which need to be asked:

1. Can it be done?  
(i.e., is it ethical &/or legal) and
2. Should it be done?

I believe that a truly ethical choice requires that both questions be answered in the affirmative.

In deciding these questions we must be aware of what we, as lawyers, are really about. Lawyers deal in power-the power to distribute and redistribute goods and services and, in the case of criminal law, the power to take away freedom. Virtually every case, criminal and civil, involves someone getting or giving up something, or being commanded to do or not do something. Lawyers write the laws, enforce the laws and often attempt to avoid the consequences of the law. The very fact that it is the law which regulates individual and community conduct explains why many revolutionary movements have been headed by people trained in the law including, (for better or worse) Jefferson, Adams, Lenin, Castro, and Gandhi, to name a few.

Any decision made to proceed with a legal action has impact on others. It is easy to say indict someone or sue someone and almost as easy to do it - but remember that

*(cont'd on page 2)*



## President's Column *(cont'd)*

the persons indicted or sued will, in most instances, have to reorder their lives for the duration of the law suit.

Thus, we see the import of the second question: "should this thing be done". Too often lawyers view their role as "hired guns" who are to do what the paying client wants regardless of the consequences to others or to our profession. By disregarding the role of counselor (we are, after all, attorneys & counselors) we invite the criticism often leveled at us that we are creators of a divisive society of litigators hell bent on maximizing lawyers profits at the expense of the community.

Some years ago, an accomplished trial lawyer made the following comments:

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.

... Let no young man choosing the law for a calling for a moment yield to the popular belief [that lawyers are necessarily dishonest] - resolve to be honest at all events; and if in your own judgement you cannot be an honest lawyer, resolve to be honest without being a lawyer.

The lawyer was Abraham Lincoln and the year was 1850. Much obviously has changed since 1850 (not the least of which is the fact that young women may now choose the law as a calling) but some things have not changed: there is still a popular belief that lawyers are dishonest by nature and, in the era of court TV and law as entertainment, there is an even more pressing need for lawyers to resolve to be honest in all events. The fact that our chapter annually honors the names of Wade McCree, Leonard Gilman and Edward Rakow is part of our attempt to promote honesty and integrity in our profession and demonstrate our commitment to encouraging, again in Lincoln's words, the "better angels of our nature".

Michael Leibson

*(Annual Dinner cont'd from page 1)*

Chief Judge and taking Senior Status on December 31, 1998. The FBA is truly appreciative of Judge Taylor's hard work and dedication during her tenure as Chief Judge of the Eastern District.

In addition to Judge Taylor's address, the Honorable Denise Page Hood presented awards to lawyers participating in the Court's Pro Bono Program. The lawyers participating in this program received plaques honoring their service.

## Justice Boyle *(cont'd)*

Justice Boyle has sat on the Michigan Supreme Court since 1983. She served as a judge for the U.S. District Court from 1978 to 1983 and Detroit Recorder's Court from 1976 to 1978. Before becoming a judge, Justice Boyle was a prosecutor, serving as Chief Appellate Attorney for the Wayne County Prosecutor's Office and as an assistant U.S. attorney for the U.S. Attorney's Office in Detroit.

The program will begin with a reception at 11:30 a.m. Lunch will be served at noon followed by the scholarship presentations. The cost is \$25 for members and \$27 for non-members. For tickets, contact Program Chair Dennis Clark at (313) 983-4768.

This year's luncheon series is sponsored by the following law firms, which the chapter gratefully acknowledges:

Barris, Sott, Denn & Driker, P.L.L.C.  
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Charfoos & Christenson  
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Honigman, Miller, Schwartz & Cohn  
Jaffe, Raitt, Heuer & Weiss, P.C.  
Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C.  
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## Chapter Offers Seminar For New Lawyers

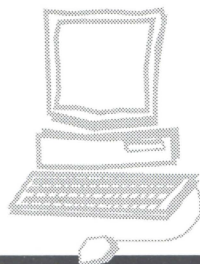
The semi-annual Seminar for New Lawyers will be held Tuesday and Wednesday, December 8 & 9, in the first floor conference room, Room 115, of the Theodore Levin United States Courthouse in Detroit. This program offers a "nuts and bolts" how-to-do-it approach to practice in federal and state courts, designed to assist recent law graduates in understanding the fundamental procedures followed in those courts. The seminar begins at 8:30 a.m. on December 8 with presentations on federal court practice, and concludes on December 9 with presentations on

*(cont'd on page 3)*

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state court practice. The faculty of the seminar will include District Court Chief Judge Anna Diggs Taylor, U.S. Judges Julian Abele Cook, Jr. and Bernard Friedman, 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 for non-members. Admission includes a reception for the new attorneys on Tuesday, December 8, following the investiture ceremony at the Theodore Levin U.S. Courthouse. In addition, a luncheon will be held on Wednesday, December 9, at the Pontchartrain Hotel. The price also includes course materials which contain form pleadings and memoranda expanding on the topics covered by the faculty. *A special price of \$109 includes the seminar plus admission to the Federal Bar Association.* Reservation checks should be made payable to the 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.

## **Zatkoff To Succeed Diggs Taylor As Chief Judge Of Eastern District**

The Honorable Lawrence P. Zatkoff will succeed the Honorable Anna Diggs Taylor as Chief Judge when Judge Taylor assumes senior status on December 31, 1998. He will serve as our district's 12th Chief Judge (the position of Chief Judge was created in 1948). A "Passing the Gavel" ceremony will be held on January 12, 1999, to celebrate the transition.

The Chief Judge has primary responsibility for the management and administration of the Court. In this district, the Chief Judge presides over a number of judicial committees—such as the Court Administration Committee, the Budget Committee, the Rules Committee, and the Advisory Committee on Ethics—which handle the business of operating the Court.

Judge Taylor became Chief Judge on January 1, 1996, following the assumption of senior status by Judge Julian Abele Cook, Jr. According to Judge Zatkoff, "In her two years as Chief

Judge, Judge Taylor has demonstrated her apt leadership and continued the effective administration of justice in this Court."

Judge Zatkoff was appointed to the U.S. District Court by President Reagan in 1986, and will become the first Reagan-appointee to hold the position of Chief Judge in this Court. Judge Zatkoff graduated from the University of Detroit in 1962, and received his Juris Doctorate from the Detroit College of Law in 1966. In addition to a number of years spent in private practice, Judge Zatkoff has served in a number of government positions. In 1967 he was an assistant prosecuting attorney in Macomb County, and from 1969 to 1972 he served as a government appeal agent for the Selective Service Administration. Prior to his appointment to the federal bench, Judge Zatkoff served as a Macomb County Probate Judge and Macomb County Circuit Judge.

Judge Zatkoff is or has been affiliated with a number of legal associations, including the American Bar Association, American Judicature Society, National Organization on Legal Problems of Education, State Bar of Michigan, Michigan Committee for the Prevention of Child Abuse, Macomb County Bar Association, and Detroit Bar Association. He is also a member of the National League of Families, Veterans of Foreign Wars, and Selfridge Air National Guard Base Community Council, and is a Trustee of St. Joseph Hospital—Mt. Clemens.

## **Martin Luther King Day**

On January 18, 1999, this chapter in partnership with Focus: HOPE and the Wolverine Bar Association will again honor the life of Dr. Martin Luther King, Jr. in a gathering at Focus: HOPE. The high points of the program will include remarks by Reverend Samuel Kyles. Rev.

Kyles was one of the individuals who was in the company of Dr. King on the night of his murder at the Lorraine Motel in Memphis. Those who have heard Rev. Kyles speak know that his presentation will give deeper meaning to our understanding of Dr. King's life and work. The remainder of the program will provide a challenge to us to continue to strive to meet the goals of equality and human dignity which are yet unmet in all the years since April of 1968.

As Chief Judge Anna Diggs Taylor noted at last year's event:

## **FBA Practice Manuals**

Whether you appear regularly in federal court, or only on a limited basis, this manual provides helpful information for your practice. The manual, in substantially similar format to its predecessor, contains updated profiles of the members of the bench, including the Bankruptcy and Magistrate Judges. In addition it contains valuable information on the Judge's chamber and courtroom practices on issues including the applicability of recent amendments to the Federal Rules of Civil Procedure, removal practices, standing orders, temporary restraining orders and preliminary injunctions, pretrial and status conferences, mediation, class actions, pleas and sentences, and trial.

For more information, contact Barb Radke at (313) 234-5210.



The work of the King movement is not done, and must not be celebrated as a moment in history. The work of that generation was only a start, arrested too soon. They did not live to hand on their torch of hope, but it is now our duty to pick up the fallen torch and carry it forward.

This program will begin at noon and will last approximately one hour. Tickets will be available by mid December at a cost of \$10.00.

## Local Court Rules Amended

On September 8, 1998, the Court approved amendments to several of the local court rules. Local Rule 7.1, relating to motion practice, has been amended in two important respects. First, the amendment clarifies the prior rule requiring a brief to accompany all motions and responses. Under the amendment, the brief may be contained within the motion, but if so, the brief must begin on a new page and be clearly identified as a brief. The amendment also sets a new briefing schedule that distinguishes between dispositive and non-dispositive motions. Responses to dispositive motions must be filed within 21 days after service. Responses to non-dispositive motions must be filed within 14 days after service of the motion. Reply briefs supporting dispositive or non-dispositive motions must be filed within 7 days after service of the response.

Amended Local Rule 16.3 now applies Michigan Court Rule 2.403 to civil cases that the court selects for mediation. Cases will be mediated by the Wayne County Mediation Tribunal Association or another Michigan state trial court medication system unless the court orders otherwise. Parties may stipulate to procedural rules for mediation. The amendment further provides that when Federal Rule of Civil Procedure 68, relating to offers of judgment, and Local Rule 16.3 require an award of costs, Rule 68 supersedes the local rule for the costs to which it applies and the local rule applies to any other costs.

The amendments to the Local Rules also expand the authority of magistrate judges. Local Rule 72.1 has been amended to allow magistrate judges to conduct civil proceedings upon the consent of the judge to the whom the case is assigned and with the consent of the parties. Local Rule 73.1 has been added. LR 73.1 allows a magistrate judge, with the consent of all parties, to conduct all proceedings in a civil case and order entry of judgment in the case. Review of matters referred under LR 73.1 is in the court of appeals, while matters referred under LR 72.1 are reviewed by the district judge.

## New Affiliation Between FBA and Historical Society

The Federal Bar Association's Eastern District of Michigan Chapter and the Historical Society For The United States District Court For The Eastern District Of

Michigan are now working together to advance their common interests and missions. Both organizations share: an interest in our federal district court; presenting events that relate to the federal courts; and an overlap in membership.

The Historical Society, founded in 1992, preserves the history of our federal district court and the men and women associated with it. Its activities include: an oral history program that collects and preserves the reminiscences of retired or senior judges and court officials; its newsletter, published three times each year, with articles on interesting historical topics; and its annual meeting, which has featured distinguished speakers such as Gerald Gunther and John Hope Franklin.

As part of this new affiliation, the FBA and the Historical Society will hold a joint luncheon meeting each year featuring a speaker on a historical topic of interest to our respective members. In addition, you can now join the Historical Society when you renew your membership in the FBA each year. Other joint activities are also planned.

The FBA and the Historical Society believe their new affiliation will compliment each other's goals and activities and will enhance the advantages of membership in each organization.

## McCree Award Nominations Sought

The Wade H. McCree, Jr. Award for the Advancement of Social Justice will be presented at an FBA chapter luncheon in February, 1999. The award honors individuals in our community who have made significant contributions to the advancement of social justice. The selection committee composed of officers of the Eastern District of Michigan Chapter of the FBA and their designees considers of special significance contributions advancing social justice in areas involving poverty, promoting economic or educational opportunity, or fighting discrimination involving race, gender, ethnicity, national origin, religion or economic status. The recipient may be selected from any field of endeavor including law, social service, community organization, volunteer activities, journalism, academics, etc.

If you wish to nominate an individual for consider-

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(cont'd on page 5)



(McCree cont'd from page 4)

ation as a recipient of the McCree Award, please send your letter of nomination no later than December 10, 1998 to Joel M. Shere Co-Chairperson of the McCree Award Committee, Cooper, Walinski & Cramer, 121 W. Washington St., Suite 200, Ann Arbor 48104.

## **ACCA To Hold Annual Meeting**

The Government-Corporate Practice Section invites its members to attend the upcoming Michigan Chapter of American Corporate Counsel Association's annual meeting on December 10, 1998 at 4:30 p.m. at the Birmingham Community House. The featured speaker, John Jessen, will address the impact of electronic data on corporations and in litigation. The fee to non-members is \$30.00 including refreshments.

## **Geneva Halliday Elected To National Office**

Former Chapter President Geneva Halliday was elected Chair of the Vice-Presidents for the Judicial Circuits at the October 7-10, 1998 FBA Convention in San Antonio, Texas. This position gives her a seat on the influential FBA National Executive Committee which governs the FBA between National Council meetings.

## **African-American Federal Judges Gather In Detroit**

African-American federal judges and many others gathered for a conference entitled "Marching Toward Justice" in Detroit on September 24-27, 1998. Co-sponsored by the Just the Beginning Foundation, an organization dedicated to celebrating and documenting African-American contributions to the federal judiciary, and the Damon J. Keith Law Collection of African-American Legal History, the conference featured panels on judicial independence and affirmative action, among other topics. Panelists included many federal judges, U.S. Attorneys, journalists and historians. The Chapter helped support the conference and several officers and members attended.

## **Passing the Gavel Ceremony**

A ceremony marking the transfer of the office of Chief Judge from Judge Taylor to Judge Zatkoff is scheduled for Tuesday, January 12, 1999, at 3:00 p.m. in Courtroom 716 of the Levin U. S. Courthouse, Detroit, Michigan.

A reception hosted by the Eastern District of Michigan Chapter of the FBA will follow in the Feikens Conference Center, Room 722 Levin U.S. Courthouse. All FBA members are invited to attend. If you'd like to make a contribution to the FBA to sponsor the reception, please call Mike Leibson, President, Eastern District of Michigan Chapter, FBA at (313) 226-9615.

## **CALENDER OF EVENTS**

### **Rakow Awards Luncheon**

November 24, 1998

Location: The Crowne Plaza Ponchartrain Hotel

Contact: Dennis Clark (313) 983-4768

see related article p.1

### **Seminar for New Lawyers**

December 8 and 9, 1998

Location: Levin Courthouse, room 115

Contact: Dee Osterman (248) 548-3450

see related article p.2

### **McCree Award Nominations Due**

December 10, 1998

Contact: Joel Schere (734) 663-6535

see related article p.4

### **December 10, 1998**

Joint Event for the FBA Tax and Bankruptcy Committees Holiday Reception in Honor of the Federal Judges in the Eastern District of Michigan  
Detroit Club - 6:00 p.m. to 8:00 p.m.

RSVP to Eric M. Nemeth at (313) 357-3010 or Lynn M. Brimer at 313-226-2003.

Cost is \$20.00 per person

### **Passing the Gavel Ceremony**

January 12, 1999

Location: Levin Courthouse, room 716

Contact: Mike Leibson at (313) 226-9615

see related article p.5

### **Martin Luther King Day/Focus: Hope**

January 18, 1999

Contact: Mike Leibson at (313) 226-9615

see related article p.3

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**Are you Proud of our FBA Chapter? If not, we want to hear about it.  
If so, why not encourage colleagues to join?**

## **MEMBERSHIP INFORMATION**

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Home Address: \_\_\_\_\_

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Government Employee Yes \_\_\_\_\_ No \_\_\_\_\_ Court or Agency \_\_\_\_\_

\_\_\_\_\_ Renewal \_\_\_\_\_ New Member Referred by \_\_\_\_\_

Preferred location for mailings/phone contacts: \_\_\_\_\_ Business \_\_\_\_\_ Home \_\_\_\_\_

**Dues Information:** The Chapter dues are supplemental to annual dues paid to the National Federal Bar Association.  
Local dues are for the period from October 1 thru September 30.

Regular member \$15.00 \_\_\_\_\_ Sustaining member \$50.00 \_\_\_\_\_ Admitted to Bar less than 5 years \$10.00 \_\_\_\_\_

(Make check payable to Eastern District of Michigan Chapter, Federal Bar Association)

RETURN THIS STATEMENT WITH YOUR DUES PAYMENT

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

*\*For further information, contact Grant Gilezan, Dykema Gossett PLLC (313) 568-6789*

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