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Douglas B. Shapiro takes Oath of Office

New Michigan Court of Appeals Judge

BY ROBERTA GUBBINS
Legal News

"I believe," said the Honorable Douglas B. Shapiro, at his investiture as Judge, Michigan Court of Appeals, on March 25th at the Hall of Justice in Lansing, "that we must be concerned with form and procedure, but that that concern should be based on the determination to assure a level playing field so that we are more likely to get at the truth and that the form and the procedure are not ends within themselves. And I believe that while we need technical and procedural requirements to create that level playing field, it is also important that those requirements be clearly explained by the bench before they are applied to the bar and litigants. This is only fair."

"In the end, lawyers can only show each other the level of civility that courts show to them. If the message from the court is that form will be allowed to trump substance, then, ironically, lawyers will be compelled by their own ethical duties to their clients, to employ every procedural device and even trickery to win their case regardless of its negative affect on the truth finding process and the damage that it causes to the civility and professionalism within the bar. So I believe that truth finding and civility go hand in hand and need each other, and without civility in our bench and the bar, it is difficult to do justice."

"I have seen the marvelous civility between the judges on this Court of Appeals; the willingness to listen to other's



Chief Justice Marilyn Kelly administers oath of office to Doug Shapiro, newly appointed to the Third Judicial District. Michigan Court of Appeals. — Legal News photo by Roberta Gubbins

views and to have respect for those each disagrees with. I very much look forward to my service with this exceptional group of women and men. I hope I can do this job as well as it deserves to be done and I look

forward to the chance to do my best."

The investiture ceremony, attended by Circuit Court, Court of Appeals and Supreme Court Justices, was opened by the Honorable Christopher M. Murray; Nor-

man D. Tucker was Master of Ceremonies. "Doug won the respect of judges and juries," said Andrew S. Muth, commenting

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The Top TEN Mistakes in Real Estate Transactions

—Jeff Hicks explains at Luncheon Lecture

BY ROBERTA GUBBINS
Legal News

Number one: Failure to specify whether an easement is exclusive or non-exclusive & who is responsible for maintenance. This is one of the top ten mistakes in real estate transactions that has "generated a lot of work for attorneys over the years," began Jeff Hicks of Hicks and Mullet, to the lawyers gathered to eat lunch and listen at the ICBA Luncheon Lecture held on March 18, 2009 at the State Bar of Michigan.

"We see a lot of litigation in this area regarding access to a lake or river. The time to be proactive in drafting the scope of the easement is at the time it is being done. Determine if it is exclusive or non-exclusive, if not indicated, it will be non-exclusive; who is going to maintain

and repair it; is it for swimming and bathing? The real problem is at some point you could have a judge tell you what you meant to put in your document years ago when you were putting it together and what the parties agreed to. The time to take care of that is at the time of drafting."

"The big issue with water rights is—is it to the exclusion of the servient estate? Can my guy who owns the property over which the easement runs use it as well. This is one that a whole lot of people don't give a lot of thought to at the time of signing."

"Utility easements are another one—generally, the utilities will provide their own easement form. They do not want to deviate from that form—but a lot of time there are unanswered questions. The classic issue is about repair—they may want to seed and use straw but your client may have an established lawn and want sod."

Number two: Failing to order

title work prior to accepting a deed in lieu of forfeiture or foreclosure. "It is an absolute requirement that prior to a foreclosure that you order title work to see what you are dealing with. The last one we saw was Habitat for Humanity—we got the deed back but there was more to it than they bargained for and they ended up owning some of the problems that the previous owner had."

Number three: Failing to have all interested parties sign a purchase agreement. "It comes up when a male client has signed a purchase agreement and you find out he was married and the wife either doesn't know about the transaction or is divorced and she has a dower interest."

Number four: Adding "and other good and valuable consideration" to the amount in the description of the consideration in a conveyancing instrument. "The deed will not be recorded by the Register of Deeds because



Jeff Hicks

they don't know what value to put on that phrase for transfer tax purposes. Don't use it—if your purchase price is \$150,000 that is what it is. Title companies report that this is becoming a major problem."

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Judge Lisa Sullivan, Clinton Co. Probate Court speaks to ICBA on effective practices

BY ROBERTA GUBBINS
Legal News

"The best start in an effective practice preparation is to find out where you are practicing," said Honorable Lisa Sullivan, speaking on March 17th to the members of the ICBA Probate Section meeting as they enjoyed green lemonade with their lunch in honor of Saint Patrick's Day. The meeting was held at the State Bar of Michigan in Lansing.

"We (the courts in Clinton County) in the last few years have been trying to come into the 21st century. The Probate Court has been working on putting our forms and some of our instructions and preferences on the web site," she said.

"Since we are a small county, which means you can be more one on one with the people who come to the window." Judge

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Sullivan Speaks on Effective Practices

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Sullivan, a probate and family law judge, gets families in distress. "I feel that, as a judge, rather than advocating for one aspect of a case, it is nice to take a look at the whole picture to find a workable solution and try to minimize the conflict in the family."

"Litigants are more effective when they keep that (the effort to minimize conflict) in mind. You can be a zealous, effective advocate without being harsh and overly aggressive in your mannerisms. Some of the best attorneys can keep it civil and still be prepared and get the best result for their client."

"The staff in Clinton County is the best staff there is. They want to help you. Take advantage of that. If you work with them, you help them do their job better. Call and ask," she said.

Judge Sullivan recommends using SCAO (State Court Administrators Office) forms to avoid having forms sent back because they don't meet the filing requirements.

"Timely file things—the probate area is not as consistent about timely filing matters. I get very few responses—so that if I have it, it impacts my ability to make a better decision and your ability to respond to questions I may have in the hearing time. In your pleadings or petitions, cite the facts and authority to support what you want. It gives me a chance to review the statute or the case to see if it is on point, if it is distinguishable."

"Be specific about what you want. A lot of times, people are very general—'grant our motion'—well what do you want? Do you want sell real estate, for example, what do you want the listing price to be, period of time to review if the property does not sell."

"I try to be on time for hearings and keep them to the time that we have allotted. I am willing to give you as much time as you need, but you need to be there on time and talk to opposing counsel ahead of time."

"When you call to ask for time for your hearing, be realistic—tell the staff how much time you will need—a half hour, a full day—if you are honest about the time needed, I can work you in easier. I believe in these areas of the law—domestic relations and probate—if it has to come to court and it is contested, the quicker you get a resolution, the better it is for the families."

"If I give a date and there is a conflict, let us know early on. If a change is made, it is nice for staff if you offer to do the re-notice of hearing. My policy



Ryan Wilson, Co-chair, Ingham County Bar Association Probate Section, and Honorable Lisa Sullivan, Chief Judge, Clinton County Probate Court, at Section meeting on March 17th. —Legal News photo by Roberta M. Gubbins

is that if I request a change, then the court is more than willing to do the re-notice."

"When e-mailing staff, they ask that you be clear about what you are looking for. If you get several dates to run by the other attorney, please get back to staff as soon as you can. They are not going to hold four blocks of time for very long. If you want copies back from the court, please include a self addressed stamped envelope."

"I find extremely helpful to identify the areas of conflict—if you have resolved three of five contested issues, we put a settlement on the record or tell me a "stip" (stipulation) is coming so we can move on to the two areas of conflict. Let me know if ADR (Alternative Dispute Resolution) is an option for you."

"Be succinct – give me new information. Let me know that you have read a response and give your reply to that response."

"I have video recording in my courtroom—I am running the cameras, taking notes, reading and trying to look at the exhibits. I have a bin that has exhibit markers—I would prefer you have your exhibits pre-marked. It helps me if you have copies available for opposing counsel, and have proposed orders. If I ask you to do an order, please follow up—I like to see something in seven days."

"Don't e-mail me directly. I don't want there to be any perception that there is ex-parte communications going on. If parties want a phone conference, I am more

than willing to do that."

In answer to questions, Judge Sullivan said,

"We make DVDs of the proceedings. I can type in my findings on SCAO orders as the matter progresses. We were allowing attorneys to buy the DVDs to check their orders. We found, however, that some were making their way to MySpace, YouTube, etc. so now we will send DVDs to a certified court reporter for transcripts. The DVDs must be returned. If people want to listen in order to prepare an order, they can schedule to come in on the courtroom computer."

How is your docket divided?

The abuse and neglect is probably 25% of my docket, domestic is 50% and then the probate.

Can you appoint two patient advocates to serve together?

I've not had that come before me. I don't like to discourage anything that allows consulting with one another—they have to live with that decision.

The next meeting of the Probate Section is April 21st at noon at the Michael Franck building. Josh Ard will speak on handling the difficult client.

Judge Lisa Sullivan was appointed and elected as judge of the Clinton County Probate Court in 2004. She earned her law degree from Thomas M. Cooley Law School and graduated from the University of Notre Dame.

Mistakes in Real Estate Transactions

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Number six is related: *Failing to follow the recording requirements of MCL 565.201.* "Common examples are—no 2.5 inch margin at the top or text smaller than 10.5 or failing to put the jurat above the notary. The way I look at this is that it is the 800-pound gorilla—how much are we really going to fight with the register of deeds about satisfying their requirements. Make sure you do it correctly upfront. I haven't seen one come back for paper weight yet—the law requires 'not less than 20 pound weight,' but it could happen."

Number five: *Assuming incorrectly how a party or your client wants to take title to property.* "For example, they are husband and wife—they will take title by the entireties. Not necessarily, maybe they want to take it in the name of their trust or in name of husband only and wife signs off on it—the assumption is what creates the confusion. It only takes a second to ask. If not done, there could be tax issues or it could be part of a larger estate plan. It is much easier to fix it up front than to go back after the fact and create a second deed."

Number seven: *Failure to have a split approved under the Michigan Land Division Act.* "This is more common than one might think. This comes about when a client comes in, has a transaction that 'I've executed with my neighbor 'or' we've agreed on a price and we want you to document the deal.' Many times it is not an instance of if the split will be approved, it is just how long the process will take. In some cases, the municipality can approve the split at the counter and others will tell you that you have a long wait. If (you're not) sure if it qualifies as a split, confer with the municipality—they can offer a wealth of knowledge—seek the help up front."

"This (failure to have split approved) will not keep you from closing the transaction—you can still convey the property and then you have an assessor who won't assign a tax-id number—why? Because he does not recognize the split. That means that the seller is still paying the tax on the larger parcel."

Number eight: *Failure to prepare/require authorizing resolutions and/or verify the status of a buyer/seller that is an entity (such as) a corporation, LLC, etc.* This came up last Monday. We had resolutions but at the last minute, a corporation became a member of the LLC." Hicks found that the entity did not exist in eyes of the State of Michigan. "There was a corpora-

tion with that name, but it had been automatically dissolved in 1993. That individual entered the operating agreement as an individual—he wanted to enter into it as a corporation. Requiring the resolutions, certificate of good standing from the State, requiring a letter from the lawyer attesting to the fact that it exists" is the best practice.

Number nine: *Failing to take into account that taxes are prorated differently in different areas of the state.* "This is one of the top issues that the title companies see. The classic language says 'the taxes shall be prorated.' How? For example, the Detroit area calculates taxes differently than the Lansing area. Hicks recommends that the purchase agreement state exactly how the taxes will be prorated."

Number ten: *Failing to verify ownership of real property when drafting a deed for a client, when you have not previously been a party to the transaction.* This is a situation where the client calls and asks the lawyer to 'just prepare the deed.' "This is another one that came from the title company. The problem is that the way "the parties want the deed drafted is not indicative of how the chain of title exists. Husband and wife convey to a neighbor but it turns out that this is a second wife, or the husband just got married—maybe the property is in trust."

Hicks recommended that lawyers decline to represent that client. Any deed that a lawyer prepares should include at a bare minimum a review of a title commitment, or a review of the chain of title.

Other issues to be aware of include:

- Failure to file for or rescind a homestead exemption
- Failing to record pertinent documents—memorandum of a land contract, a deed, etc.
- Real Estate agents failing to fill in ALL the blanks on a standardized Buy & Sell agreement--Hicks noted that many people buy a home with less consideration than buying a car.
- Failure to perform or provide for due diligence prior to purchasing—this relates to commercial property.

Jeff Hicks is a graduate of Wayne State University Law School and earned his Bachelor of Arts degree in Political Science-Prelaw from Michigan State University. He is the Chairman of the Delta Township Zoning Board of Appeals, and the Delta Township Sign Board of Appeals. He is also the Chairman of the Lansing Regional Chamber of Commerce's Delta Government Relations Committee. He can be reached at 517-321-9770.

Miller Canfield expands in Toronto, Merges with Gaertner Tobin LLP

DETROIT, MI (27 March 2009) - The law firm of Miller Canfield announced today that it is expanding its Toronto practice with the merger of Toronto-based Gaertner Tobin LLP. The merger will expand Miller Canfield's client service capabilities in Canada and builds on its global footprint. With more than 370 lawyers worldwide in offices in the United States, Canada, Poland and China, Miller Canfield offers

its increasingly global clients a broad array of integrated legal and business services.

Gaertner Tobin is a 10-lawyer law firm with primary areas of practice in business law, commercial and retail leasing, real estate, litigation, immigration and labour law. Joining Miller Canfield as Principals are Arie Gaertner and Dennis Tobin. Peter Hand and Peter Math will join as Senior Counsel. Also joining the firm are

lawyers Bruce Baron, Alex Kolandjian, Jerry Kreindler, Julia Lee, Alexander Torgov, and Andrew Zinman.

"Our strategic growth in Toronto will allow us to provide seamless legal representation to clients with operations or doing business throughout North America," said Michael W. Hartmann, CEO of Miller Canfield.

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