

Creative Lawyering Benefits Victim

The Women Lawyers of Michigan Foundation supports legal education for women in Michigan by way of its scholarship funds. Last year, ten women from five law schools each received \$1500 toward their law school education. In its dedication to education, the WLAM Foundation also likes to highlight important case law, and recognize the attorneys who use law to improve the delivery of justice for women throughout the state.

The recent case of Alexander v Alexander, Lawyers Weekly No. 39654 (2000), has offered divorce lawyers who have a client who has been severely abused by their spouse, an option of combining an award for domestic violence with a divorce settlement in the divorce proceeding.

In Alexander, Minor Alexander (Husband) filed a divorce action against Diane Alexander (Wife) in 1999. During the divorce proceeding, it was discovered that Husband had severely abused Wife more than eight times throughout the couple's four-year marriage, causing serious injury more than once, as well as permanent injury. Upon this discovery, Wife's Attorney, Joseph Stewart, used the case of Gubin v Lodisey, 197 Mich App 84 (1993), to combine a domestic violence claim with the divorce settlement, resulting in a damages award of more than \$150,000 that was allocated and awarded as property and spousal support.

In Gubin, the court found that the wife did not need to file a separate civil action for fraud when the fraud was "so intimately involved with the marriage contract that it could not be separated," [wife claimed husband fraudulently induced her to marry in order to gain lawful residency in the United States]. The court stated that it would be an "inefficient allocation of judicial resources" to do otherwise, and that any relief granted from the fraud claim should be in the form of "alimony, alimony in gross or property," and not awarded separately. The husband, in opposing the judgment, argued the combination of the two claims should be dependent upon the husband's ability to pay, which the Gubin Court found to be without merit.

Similarly, in the Alexander case, Wayne Circuit Judge J. William Callahan analyzed the facts and found that a claim for domestic violence would also be "so intimately connected to the marriage itself that it cannot be readily separated." Upon finding the two cases consistent, Judge Callahan considered the \$150,000 award as property, and awarded the Wife \$100 a week for life, the family vehicle, and an amount

equal to \$75,000 from the Husband's interest in pensions and 401k plans.

While not all attorneys around the state agree with the method of combining a civil claim with a divorce settlement, Judge Callahan felt the family law judge is in the best position to make decisions regarding tort damages that occur within the context of the marriage, with the result one that is more fair and efficient for both the parties and the courts.

In all, an attorney should proceed with caution when considering the idea of combining a civil tort claim and a divorce settlement in a divorce proceeding. Opponents of the combination have raised due process issues and exempt property issues, both of which were summarily rejected in the above case due to strong evidence that supported extremely compelling facts. The controversy notwithstanding, WLAM salutes **Joseph Stewart** for his persuasive and astute lawyering on behalf of a victim of domestic violence.

**By Paula M. Talarico,
WLAM Foundation Trustee**

A copy of the Alexander opinion appears in the "News" section of the WLAM Foundation's web site, www.wlamfoundation.org.

Record Number of Award Applicants

Michigan's five accredited law schools received a record number of applications for the 2002 WLAM Foundation awards, which will be announced at the Foundation's Art & Awards Reception on March 21st. Nearly 100 women competed for the awards, given to law students who have demonstrated leadership on and commitment to the advancement of women in society. A total of \$16,000 will be awarded to ten outstanding women law students, for application to law school tuition costs.

Awardees will attend the Foundation's March 21st Reception, and their introduction to attendees is always an inspiration. A brief program will take place at 6:00, preceded and followed by the Foundation's Art Sale.