

BARBEAT

Genesee County Bar Association



The GCBA and the Importance of the Holiday Dinner

Meet Jenna Neumann—John S. Beagle Scholarship Winner

Make Your Heart Grow

What's on the Docket at SCOTUS?

An Eight-Member SCOTUS: Ball of Confusion

How is Your Anxiety Level?

Two Success Stories from Drug Court

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The GCBA and the Importance of the Holiday Dinner

By Michael A. Kowalko, President

Ever wonder why so many people have a less than flattering image of lawyers? Let me explain. We don't often do enough to promote the good things we do. There is, however, one gigantic exception – one lawyers' organization that is different – the GCBA.

The GCBA “exists to serve the professional needs of our members, improve the justice system, and educate the public about the law and role of lawyers.” And, one of the good things we do, perhaps the best thing, is our annual holiday dinner. To see the appreciation in the faces of the families, many of whom have not had a decent hot meal in a long time, in and of itself, makes this event worthwhile. But, to see the joy and wonder in the eyes of the young children getting their gifts from “Santa” is even better – beyond my ability to explain in writing.

As I write this article, it is only mid-October. The commercialization of Christmas has *already* begun at the stores. I understand it is economically necessary for many

businesses. I must confess that I enjoy the sights and sounds and decorations of the season. We all know, however, that the real meaning of the Holiday Season is to set our differences aside and that the greatest gift is to help those less fortunate. Perhaps this is why my eyes tear up whenever I watch the “Charlie Brown Christmas,” or hear the song, “Little Drummer Boy.” My daughters, when they were younger, would notice my eyes welling up and ask why I was sad. Not sad, I explained, but thankful. Life can be hard sometimes yet there is always some good that shines through for those of us who can see through its strange disguises.

We, the GCBA, can accomplish promoting the good things we do this Holiday Season by “walking the walk.” So please join me in volunteering time and/or donating money for this year's holiday dinner. If interested, please contact the GCBA staff at (810) 232-6012.



Michael A. Kowalko

Meet Jenna Neumann—John S. Beagle Scholarship Winner

By Hon. Duncan M. Beagle, GCBA Foundation

This year the Bar Foundation awarded the John S. Beagle Scholarship to an outstanding third year student at the University of Michigan Law School. Jenna Neumann is a resident of Genesee County and 2010 graduate of Luke M. Powers Catholic High School. She received her BS degree in Political Science from Kalamazoo College in 2014. She was motivated to become an attorney while in high school when she had the opportunity to shadow Judge Neithercut. She says she watched in fascination as attorneys presented their cases.

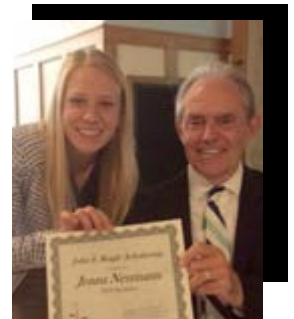
Jenna is dedicated to Genesee County and knows the importance of giving back to others in her community. While still in high school she started Chapters for Children, a service program to fight illiteracy in our community. New and slightly used books were donated and distributed to children at the Hurley Pediatric Emergency Room, Whaley Children's Center, Flushing Outreach Holiday Basket Program and multiple Catholic Charities locations. To this date over 50,000 books have been collected.

At Kalamazoo College, Jenna was President of the Pre-

Law Society and a panelist for the Student Code of Conduct. She also studied abroad in Caseres, Spain in her junior year. While at the University of Michigan, Jenna has been a student attorney for the International Refugee Assistance Program, as well as a legal intern for the Organization for Migration at the United Nations in Geneva, Switzerland where she researched migration issues. In addition to these positions, Jenna has served as the Associate Editor for the Michigan Law Review. Last summer, Jenna had the opportunity to intern in the Office of the General Counsel at an automotive company in the Greater Detroit area.

Now in her final year of law school, Jenna will soon begin the process of applying for Michigan Supreme Court clerkships. Jenna hopes to be a litigator after she graduates and believes the clerkship experience would help her to be successful.

In her spare time, Jenna enjoys the many outdoor activities that the great state of Michigan offers, including Sprint Triathlons and swimming.



Jenna Neumann and Judge Beagle

Make Your Heart Grow

By Brian Barkey

It seems like I have just finished the Crim and I look up and the leaves are changing and when I get home, there is a message from Tina to set up the first Holiday Dinner Committee meeting. How could something that we have done for 26 years sneak up on me like this?

And it is not a sense of obligation that makes Tina call, it is excitement. I see this as soon as I start working on it. People are enthusiastic and looking forward to it. The Masonic Temple, the Temple Dining Room, St. Paul's, the MTA – everyone cannot wait to get started on it.

The effect of this event on the people that work on it is something that always amazes me. At the first committee meeting where the project was explored 26 years ago, Tom Pabst announced that the Flint Trial Lawyers would match the money raised by contributions that night and by the end of the meeting we had enough. The night of that first dinner, we were all exhausted but no one wanted to go home until we had planned another event the following month to use the leftovers.

Over those next 26 years, I have watched this time after time. Last year, I learned that the appeal had reached beyond the legal community. Three area high schools sent

groups of high school students to volunteer at the Dinner as their community service project. While the attraction of helping people does not surprise me since it is what attracts all of us to this profession, I was surprised to see it had this effect on students.

They were wonderful volunteers. They were still filled with energy and working hard the entire night, which was especially welcome when some of us more, ahem, “seasoned” people were slowing down. After the Dinner was done and we were putting things away, one of these students sought me out with what he described as a “personal concern.” He explained that he was graduating that year and he wanted to know whether he could work on next year’s Dinner even though he was no longer a student. After he left, I made a mental note to look for him this year and ask him where he was going to law school.

Please join us for this wonderful community event. It is scheduled for Tuesday, December 20th from 4:00 to 7:00 pm and there are many, many volunteer opportunities from now until then. It will make your heart grow in your chest, I promise you.



Brian Barkey

What's on the Docket at SCOTUS?

By Roberta J.F.Wray

The issues before the Supreme Court this term range from electoral district gerrymandering to the requirements for pleading jurisdiction under the Foreign Sovereign Immunities Act. The cases cover issues in criminal, intellectual property, and regulatory taking, as well as violations of the Sherman Antitrust Act and standing of a city to sue a bank for damages under the Fair Housing Act.

Some other questions at issue this term:

In a situation where a church has been excluded from an otherwise neutral and secular aid program that provides grants to use scrap tires in playground construction as a safety material, has there been a violation of the Free Exercise and Equal Protection clauses where the state has no valid Establishment Clause concern? (*Trinity Lutheran Church of Columbia, Inc. v Pauley*)

Whether Texas' use of independent contractors to provide a mandated driver education program exempts it from provisions of the Americans with Disabilities Act

that prohibit state agencies from denying access to programs, services, and activities based on their disabilities, including hearing disabled. (*Ivy v Morath, Texas Commissioner of Education*)

Whether Congress' decision to impose a different physical-presence requirement on unwed citizen-mothers of foreign-born children than on other citizen-parents of foreign-born children through 8 U.S.C. 1401 and 1409 (1958) violates the Fifth Amendment's guarantee of equal protection; and whether the court of appeals erred in conferring U.S. citizenship on respondent, in the absence of any express statutory authority to do so. (*Lynch v Morales-Santana*)

It will be interesting to see which of these thirty-odd cases have clear-cut outcomes and which remain unresolved following consideration by the short-handed Supreme Court.



Roberta J.F. Wray

An Eight-Member SCOTUS: Ball of Confusion

By Glenn M. Simmington



Glenn M. Simmington

*“Ball of confusion
Oh yeah, that’s what the world is today
Woo, hey, hey”*

—The Temptations, 1971

Arguably, America has just closed the book on a 2015-16 presidential election campaign that was “wild and crazy.” Some may argue that this description is too mild. “Disgusting,” “divisive,” or “rancorous” would do better, they would say. To decry the process in such terms, however, may be to miss an important (if woefully thin) silver lining: for all the campaign’s unseemliness, the presidential candidates, and their legislative surrogates, at least got Americans talking about the tripartite structure of American Government.

*“Well, the only person talking about
love thy brother is the preacher
And it seems nobody’s interested in learning but the teacher”*

For example, when one of the candidates proclaimed that, as President, among his first acts would be “to put [the other] in jail,” the “checks and balances” inherent in a system with separate, but co-equal, executive and judicial branches were quickly cited – to destroy the notion that, in America, this was even possible.

Cool-headed discussions of “the Framers’ genius,” were actually a valuable by-product of the overall “political heat” of the recent electoral campaigns.

Legislative powers – and their limits – were also part of the mix. Senate leaders claiming sensitivity to the “dangers of judicial activism,” for example, boldly asserted senatorial power to “check” the ability of a second-term president (a “lame duck,” by their definition) to fill a vacant seat on the United States Supreme Court. Those same leaders have staked out the more expansive claim that a Senate majority may thwart the ability of any president, first-term or second-term, to fill such a vacancy on the Court. (“Any nominee,” they have said, “and not just any particular nominee.”)

As for the citizenry at large, that such senatorial claims to power are virtually unprecedented appears not to offend a sizeable portion. And that these claims portend an American future with a semi-permanent (or even permanent) eight-member Supreme Court seems similarly inoffensive in such circles. “At last,” goes the thinking, Senators who profess the ability to spot, and then put an end to, judicial activism “have ‘grown a pair.’”

*“Vote for me and I’ll set you free
Rap on, brother, rap on”*

The truth, however, may be more singular.

As a beneficial “check” on overall governmental power, “divided government” (that is, among three branches) was a founding principle when the Framers, in their genius, created our own. It is almost impossible to fathom, however, that their collective genius ever supposed that a permanent, or even semi-permanent, eight-member Supreme Court would (or could) “optimize” the well-understood judicial role of ensuring due process under the law.

(The Framers, of course, did not themselves prescribe a nine-member court. Choosing the number was left to Congress, by legislation, under Article I. But the original, six-member court, established by the 1789 Judiciary Act, was soon expanded to seven [1807], eventually to 10, and then to its current nine, in the 1869 Circuit Judges Act.)

Unresolved splits among the federal circuits are unacceptable, as a matter of sound policy, for the same reason that the twin constitutional principles of “void for vagueness” and “void for over-breadth” act to invalidate certain statutory provisions. When citizens are unable to decipher either the meaning of a law, or its scope, they become incapable of tailoring their behavior to conform to the law.

In a word, it is “confusion” that clarity in the law, and uniformity in its application, are constitutionally designed to prevent. To the greatest extent practicable, an optimally-functioning Supreme Court should act, collectively, to avoid both constitutional and legislative uncertainty. Whereas a nine-member Court, which issues “5-4 decisions,” is also a Court that produces constitutional and legal clarity, an eight-member Court, which can issue “4-4 decisions,” is incapable of providing the citizenry with clarifying rulings – decisions, that is, that comport with constitutional due process considerations.

As we have already seen since the death of Mr. Justice Scalia, the current eight-member Court has issued “evenly divided” rulings multiple times. If a pattern of such 4-4 rulings emerges, and then, with the aid of an “evenly-divided” Court, perpetuates itself, those who continue to insist on an eight-member Court are, wittingly or otherwise, promoting a “ball of confusion.”

“And oh, the beat goes on . . .”

— The Temptations, 1971

How is Your Anxiety Level?

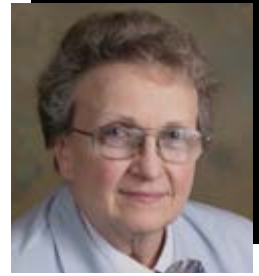
By Roberta J.F. Wray

We all feel anxious at one time or another. It seems to be a hazard of the profession, and while anxiety disorders are historically associated with childhood and early adulthood, they also affect older individuals.

The Senior Attorneys' October meeting zeroed in on the problem with a presentation by Tish Vincent, MSW, JD, LMSW, ACSW, CAADC; Program Administrator of Lawyers & Judges Assistance Programs for the State Bar of Michigan. Some anxiety is normal: a problem at work, taking an exam, making an important decision, or facing a diagnosis of a serious illness.

But if the feeling does not go away, gets worse over time, interferes with daily activities or relationships, it might be time to consult an expert. That is what the Lawyers & Judges Assistance Program is all about. The advice from Ms. Vincent included making it a point to discuss worrisome issues with someone.

Often people who are experiencing physical complaints do not consider the possibility that an underlying issue is contributing to their problem. They go to a doctor but fail to mention the external things that may be bothering them. The loss of youth, children, intense involvement with work, regret over past decisions are all things that can trigger anxiety which can, in turn, trigger physical complaints.



Roberta J.F. Wray

For people over 60, ten to twenty percent could be diagnosed with anxiety; 90 percent of those would be generalized anxiety that could respond to treatment. Bottom line, if you are feeling anxious and the feelings do not go away, talk to your doctor, or contact the Lawyers & Judges Assistance Program <http://www.michbar.org/generalinfo/ljap/home>. Your SBM dues provide the service. Use it.



Tish Vincent and Dick Ruhala

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Two Success Stories from Drug Court

By Hon. Mark Latchana

On October 17, 2016, the membership of the Genesee County Bar Association witnessed a miracle. At the monthly luncheon meeting they saw Twyla Chandler graduate from the Genesee County Adult Felony Drug Court Program. Our membership was privileged to see a woman achieve what might be the most important milestone in her life. Those of us that were there I am sure can recount her story. She has been in and out of the criminal justice system for over 20 years, always for offenses related to the use and abuse of controlled substances. She has tried rehab and other programs to get clean, but always went back to the street.

Thanks to the Genesee County Prosecutor's office, Ms. Chandler was allowed to participate in the Drug Court program. She came into the program broken and hopeless about her future. She worked a program of recovery that she can be proud of. During her time in the program she found ways to reinforce her choice to live substance-free and she encouraged others to do the same. By the time our membership saw her smiling face at graduation, she had moved from hopelessness and despair, to planning for a bright, sober, crime-free future. In short, she was a model participant and one that this community will be proud of for years to come.

Ms. Chandler was not alone at her graduation. The membership was also privileged to hear from Beverly Trowsse. She graduated from the program a little over two years ago. Several months ago, out of the blue, she came to our regularly scheduled Drug Court session on Monday afternoon. She presented a letter of thanks to the court and the team for all the hard work and effort that was put into her successful completion of the program and continued sobriety. She read that same letter to the membership at the luncheon. I submit to you that Ms. Trowsse deserves the credit for getting herself to where she is. The program can help guide and hold participants accountable for good and bad choices, but it is the participant that must effectuate change. She did that and continues to do that.

What many of you do not know is that Ms. Trowsse had her cell phone on the podium and had dialed her mother's number just prior to beginning her speech. She wanted her mother to hear what she had to say, and the fact that she was addressing a group of legal professionals. What we cannot know

and understand is the immense feeling of pride

and accomplishment graduates experience. Many have lived difficult and hard lives. They have destroyed friendships and disappointed family members. They have let themselves down repeatedly. We know based upon the statistics that drug court programs work. They are twice as effective at keeping people away and out of the criminal justice system and they cost half as much. Putting the statistics aside for a moment, to see the look of joy and accomplishment on the faces of people like Ms. Chandler and Ms. Trowsse is proof that the Drug Court Program is working.

These people, and many more like them are proof that people can change the course of their lives. If you are interested, please feel free to stop by any Monday afternoon at 2 p.m. in Courtroom B, McCree Building. You might just see another miracle or two.



Twyla Chandler



Beverly Trowsse

Protection Orders for Pets?

As of May this year, 30 states have some form of legislation allowing for inclusion of pets in civil protection orders for victims of domestic violence.

In recognition of the fact that 71% of pet-owning survivors reported that their abusers threatened, injured, or killed their pets, the Animal Welfare Institute has issued a Manual for Domestic Violence Attorneys Advocates, helping survivors obtain protective orders for pets.

Michigan is one of the states with such legislation, <http://tinyurl.com/PO4Pets>. There are more affected households with pets than with children.



Greetings from Women Lawyers Association of Michigan (WLAM)

By Samantha J. Orvis

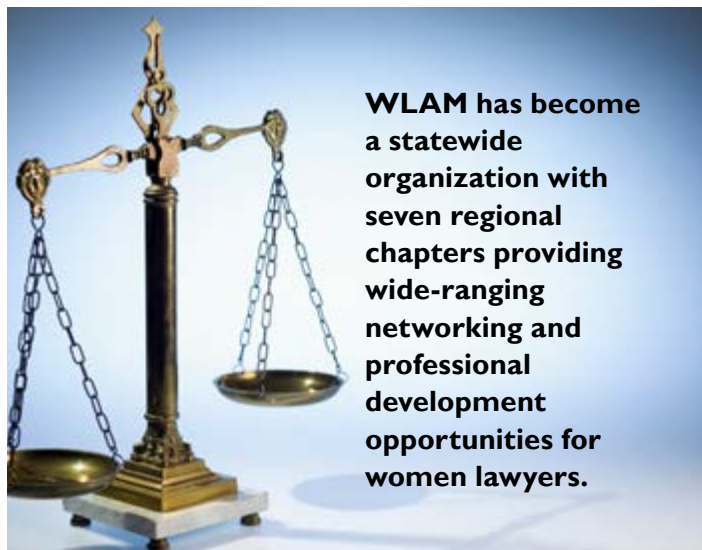


Samantha J. Orvis

As a newly appointed delegate to the Board of the GCBA, and as a delegate of Women Lawyers, I would like to tell you about the Women Lawyers Association of Michigan.

WLAM was founded in 1919 by five self-proclaimed “ardent Portias of Detroit.” Today, the organization has grown extensively in size and purpose. Membership includes attorneys, judges and law students. WLAM has become a statewide organization with seven regional chapters providing wide-ranging networking and professional development opportunities for women lawyers. Its mission is to advance the interests of women members of the legal profession, promote improvements in the administration of justice, and promote equality and social justice for all people. More information about WLAM can be found at <https://women-lawyers.org/new/about-wlam/>.

One of WLAM’s seven regional chapters is the “Oakland



WLAM has become a statewide organization with seven regional chapters providing wide-ranging networking and professional development opportunities for women lawyers.

Region” (also called the Women’s Bar Association) that encompasses Oakland, Lapeer, and Genesee counties. In the recent past, the Oakland Region’s activities have been focused in Oakland County given that an overwhelming number of the Oakland Region’s members work and/or reside there. One of my personal goals as a board member of the Oakland Region is to find new ways to reach our other members in both Genesee and Lapeer counties and also to foster meaningful partnerships with other regional and affinity bar associations.

Membership in WLAM offers numerous benefits, including discounted rates to attend WLAM events, discounted rates and services through a “partnership program,” receipt of *eFocus*, the quarterly electronic newsletter that highlights recent regional activities and upcoming events, along with

November/December 2016

news from WLAM’s president, and e-referrals specifically sent to WLAM members. Becoming active within a region, such as the Oakland Region (yes, that means you!), offers additional opportunities for networking, regional leadership, events, and volunteerism.

The Women’s Bar Association (WBA) has some exciting events coming up that you should keep an eye out for if you are open to traveling a short distance. Additional information can be found at the <http://www.wbaoakland.com/>. For example, the WBA hosts monthly informal networking events called “Bar Briefs,” at various venues that rotate each month. From 5-7 p.m. members, potential members, and friends of the bar, are invited to attend to mingle. A “Bar Briefs” event was held November 16, 2016 at Woodward Avenue Brewers in Ferndale. For the first time, WBA will host a “Bar Briefs” event in Genesee County in early 2017. We hope to see some GCBA members in attendance!

Every spring the WBA presents two distinguished awards: the Evelyn Forrest Distinguished Advocate Award and the Joan Young Judicial Excellence Award. The Distinguished Advocate Award is presented to a lawyer who excels in her field and exemplifies professionalism, advocacy, and dedication to furthering opportunities for women in the law. The Judicial Excellence Award honors a member of the judiciary who openly demonstrates her commitment to securing the rights of women in society, promoting equality and social justice for all, and demonstrating the highest caliber of judicial integrity. A call for nominations is sent out to all Oakland Region (WBA) members near the start of the year.

For additional information about WLAM or the Oakland region, please do not hesitate to contact me at sorvis@garanlucow.com.



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Supplemental Security Income (SSI) The Kids Cases

By Robert Crites



Robert Crites

When people, including many lawyers, think about claims for social security benefits based on disability, as opposed to old age, the test that comes to mind is whether the claimant is capable for engaging in competitive employment (i.e. working). If not, they are often eligible to receive social security disability (SSD) benefits or supplement security income (SSI) payments. Aside from the medical criteria which is the same for both SSD and SSI claims, eligibility for SSD depends on work history and SSI is available only for claimants who have very limited assets and income.

There is another category, of potential SSI benefits, which does not involve a medically based inability to work. In my office, we call them “kids cases.” Children can be eligible for SSI if they meet the criteria set forth in the Listings (such as IQ below 60, severe deficits with regard to two upper extremities or one lower extremity, etc.), which are also applicable to adults. Usually, however, the eligibility of a child for SSI benefits is determined by analyzing how that child functions in certain categories called “domains,” of which there are six, to wit:

- Acquiring and Utilizing Information
- Attending and Completing Tasks
- Interacting and Relating With Others
- Moving About and Manipulating Objects
- Caring for Himself / Herself
- Health and Physical Wellbeing

If a child has an extreme deficit in one of these domains, or a marked deficit in two, the child has met the functional criteria for eligibility for SSI benefits which are then paid to his/her caregiver, usually the parent.

As it turns out, most kids cases that we process relate to mental or emotional disorders and the same underlying disorder can create deficits in more than one domain. For instance, a child diagnosed with ADD (Attention Deficit

Disorder) or ADHD (Attention Deficit Hyperactivity Disorder) often has a very limited ability to “attend to and complete tasks”

which in turn often leads to a marked decrease in the child’s ability to “acquire and utilize information” and as a result we often find that these children are 2 – 3 grades behind in math and reading, etc. Children who have an Oppositional Defiant Disorder (ODD) frequently exhibit marked difficulties in their ability to manage their emotions, which is a significant aspect of “caring for himself / herself,” and their ability to “interact and relate with others.”

Many of these children come from homes that have only one involved parent and very little by way of assets and/or income. That being the case, if the child exhibits an extreme deficit in one domain, or more frequently, marked deficits in two domains, the judge will issue a favorable decision and the Social Security Administration will pay the caregiver as much as \$733.00 per month. These awards are typically retroactive to the date of application which can be as long as 1 ½ years prior to the hearing.

An important source of evidence in these cases is the observations of the teachers. They are obtained by having the teacher fill out a “teacher’s questionnaire” (Google supplemental security income - teacher questionnaire). Reading through one of these questionnaires provides an excellent overview of the many ways that deficits in the various domains manifest themselves on a day to day basis and the criteria used by the Social Security Administration when determining when a child is eligible for benefits.

Some children continue to receive benefits after the age of 18 because they meet the adult criteria for disability, however, typically the children lose their eligibility at age 18. The bottom line is that if you have a client with limited resources who has a child that is struggling in school, it might be worthwhile to explore the possibility that he/she would qualify for SSI benefits.

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Flint Attorney, John Nickola, Receives “Lifetime Achievement Award”

On October 6, 2016, the Flint Trial Lawyers Association awarded its prestigious “Lifetime Achievement Award” to Flint attorney, John Nickola. The award was presented at a ceremony recognizing Nickola’s distinguished legal career and his lifetime achievements for his “consistent excellence as a champion for the underdog, the weak, the powerless and those without a voice.” Accepting the award, Nickola expressed his appreciation for the recognition from members of such a fine organization and encouraged all lawyers to rededicate their commitment to provide their time and talents for the continuing improvement of the legal system and providing access to justice to all citizens.



John Nickola receiving the FTLA, “Career Achievement Award” from Tom Pabst (Past President of the FTLA 1991-1994) and current President, Cristine Wasserman (2016-2017).

November 3, 2016 Admission Ceremony

Robert Shelton, Chris Stritmatter, Kyle C. Walton, and Nicholas J. Goldsworthy sworn-in by Hon. Geoffrey L. Neithercut



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Law School: Thomas M. Cooley Law School

Attorney: John Louis Miller

Employer: Giarmarco, Mullins & Horton, P.C.
Undergrad School: Northern Michigan University
Law School: Michigan State University College of Law

Attorney: Julie A. Nichols

Employer: Legal Services of Eastern Michigan
Undergrad School: University of Michigan
Law School: Wayne State University Law School

Attorney: Lina Germain

Employer: Legal Services of Eastern Michigan
Undergrad School: Oakland University
Law School: Thomas M. Cooley Law School

Affiliate: Jane O'Dell

Employer: Community Resolution Center

Affiliate: Rachel Kelly-Edmonds Kanuszewski

Employer: Genesee County Prosecutors Office

Affiliate: Christine A. Lintz

Employer: Genesee County Circuit Court