

September/October 2015

# BARBEAT

Genesee County Bar Association



*7<sup>th</sup> Judicial Circuit Court, photo by Roberta J.F.Wray*

Please, Get a Hobby  
Meet Your New Board Members  
Shared v Separate Interest QDRO/EDROs  
Girls Court is in Session  
Senior Luncheon Meetings

Who's on the Bench?  
Hon. Duncan M. Beagle  
A Look At "Fracking" Law  
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# Table of Contents

<b>4 Please, Get a Hobby</b>	by Shayla D. Blankenship
<b>4 Meet Your New Board Members</b>	
<b>6 Shared v Separate Interest QDRO/EDROs</b>	by Barbara C. Dawes
<b>7 Girls Court is in Session</b>	by Hon. David J. Newblatt
<b>8 Senior Luncheon Meetings</b>	by Richard J. Ruhala
<b>8 Who's on the Bench?</b>	
<b>Hon. Duncan M. Beagle</b>	by Roberta J.F. Wray
<b>9 A Look At "Fracking" Law</b>	by Linda S. Berker
<b>10 Of Interest</b>	
<b>11 Welcome New Members</b>	

# Advertisers

Blue Cross Blue Shield of Michigan  
 inside cover

Larry Day  
 Mediation, Arbitration & Umpire Services 3

Salvation Army 5

Barristers' Ball 7

Robert M. Ransom, Private Judging 8

ERS Investigative Agency 10

Mokasoft, Sentencing Guidelines Calculator  
 back cover



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# *Please, Get a Hobby*

By Shayla D. Blankenship, President



Shayla D. Blankenship

**W**elcome Fall. I love the fall weather. I love the changing colors of the leaves. I love the crisp fall air. I love that I don't have to wear a big bulky coat to keep warm, and I love football. I'm sure that many of you, like me, work long hours in the office, and we donate much of our "free" time, to our local boards, organizations and charitable causes. But, it's important to find a hobby. We all need to find something that we like to do that reenergizes us and that we can have fun doing. I love taking my family and tail gating at a game. I love getting dressed up in my team attire, gathering around the television and cheering for

my favorite team. Whether your hobby is golf, gardening, fishing, knitting, motorcycles, or writing, I hope you make time to have fun.

All too often those of us that work in the legal field need to be reminded to take a break and engage in a hobby. We have high stress, demanding jobs. So, please go get a hobby if you don't have one already. Send us some pictures of you engaging in your favorite hobby and we will share them.

---

## *Meet Your New Board Members*

### **Tedd E. Bean**

*Family:* Wife, Barbara; child: Ryan

*Undergraduate school, degree and grad year:* The University of Michigan, BA, 1973

*Law School and grad year:* Detroit College of Law, 1976

*Bar Association member since:* 1978

*Area of practice:* Plaintiff's personal injury

*Office location:* 10751 S. Saginaw St. Grand Blanc, MI 48439; 810-695-6460; teddebean@ameritech.net

*Past GCBA committees and activities:* Bench & Bar, District Court Committee

*Reason you believe in service to the GCBA:* I have practiced in nearly every county in Michigan, and I strongly believe Genesee County is the very best in terms of our Bench, our lawyers, and the effect we have on our community. It is my honor to give back to a bar association that has allowed me to grow and prosper in such a wonderful environment.

### **Craig R. Fiederlein**

*Family:* Wife, Nancy; children: Emma and Melanie

*Undergraduate school, degree and grad year:* Michigan State University, BA with honors, 1993

*Law School and grad year:* University of Toledo College of Law, *cum laude* 1996

*Bar Association member since:* 1998

*Area(s) of practice:* Business/contract, probate, bankruptcy, estates/trusts

*Office location:* Christenson & Fiederlein, PC; 302 E. Court St., Flint, MI 48502, (810) 232-1112.

*Past GCBA committees and activities:* Holiday Dinner Volunteer

*Reasons you believe in service to the GCBA:* I believe that service to the bar association is an honor and the duty of a lawyer committed to the advancement of the profession of law in Genesee County.

### **Whitney S. Frazier, Mallory, VanDyne, Scott**

*Undergraduate school, degree and grad year:* Xavier University, BA, *cum laude*, 2009

*Law School and grad year:* University of Cincinnati College of Law, 2012

*Bar Association member since:* 2014

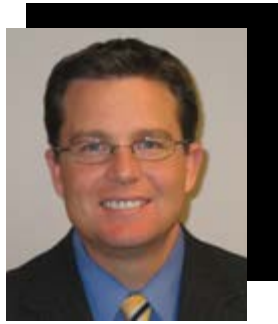
*Areas of Practice:* Criminal Law, Assistant Prosecuting Attorney, Warrant and Pre-Trial Division

*Office location:* Genesee County Prosecutor's Office; 630 S. Saginaw St., Flint, MI 48502; 810-768-7080; wfrazier@co.genesee.mi.us

*Reasons you believe in service to GCBA:* As lawyers our responsibility of service and leadership extends outside of the courtroom. The Genesee County Bar Association allows me to work with other lawyers who have the same commitment to service and leadership in Genesee County.



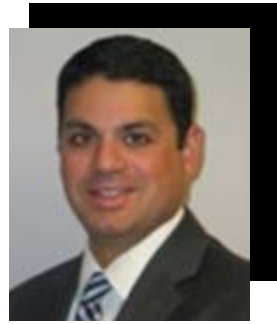
Tedd E. Bean



Craig R. Fiederlien



Whitney S. Frazier



Hon. Mark W. Latchana



Michael A. Tesner

**Hon. Mark W. Latchana**

*Family:* Wife, Elizabeth; Children: Eva, Abigail, and William

*Undergraduate school, degree and grad year:* Michigan State University, BA, 1994

*Law School and grad year:* Wayne State Law School, cum laude, 1997

*Bar Association member since:* 1997

*Area of practice:* 67th District Court Judge

*Office location:* 67th District Court, 4094 Manor Dr., Burton, MI 48519; 810-743-6116; mlatchana@co.genesee.mi.us

*Past GCBA committees and activities:* volunteering at the Annual Holiday Dinner

*Reasons you believe in service to the GCBA:* I have traveled to a number of other courts around the state and have seen how other legal communities function, I feel very fortunate to call Genesee County my home. Lawyers in our community work together to zealously represent their clients while still maintaining a professional and collegial relationship. This doesn't happen in many other communities. In addition, our legal community works together to help others. Having recognized how fortunate we are, I wanted to do my part to continue this great tradition.

**Michael A. Tesner**

*Family:* Wife: Kirstin; Children: Andrew and Erin

*Undergraduate school, degree and grad year:* Kalamazoo College, BA, 1988

*Law School and grad year:* Boston College Law School, 1991

*Bar Association member since:* 1997

*Area(s) of practice:* Assistant Prosecuting Attorney, presently assigned to Appeals Division

*Office location:* Genesee County Prosecutor's Office, 900 S. Saginaw St., Flint, MI 48502. (810) 257-3852; mtesner@co.genesee.mi.us

*Past GCBA committees and activities:* Appellate Practice Committee, Criminal Law & Defender Committee, Law Day Committee, Nominating Committee

*SBM involvement, if any:* Criminal Jurisprudence & Practice Committee

*Reasons you believe in service to the GCBA:* I believe in the mission of the GCBA, particularly to improve legal service and understanding to the public and to improve the quality of legal practice in our community. I believe these goals are best served through our joint efforts which are enhanced by the building of relationships between attorneys that foster collegiality and civility even as we may advocate conflicting positions on legal and social matters. Also, I believe that having been called to our profession, we share a responsibility to serve the community in which we live and work, and the GCBA excels at providing opportunities to do so.



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# Shared v Separate Interest QDRO/EDROs

By Barbara C. Dawes



Barbara C. Dawes

To divide a retirement account in a divorce, a Qualified Domestic Relations Order (QDRO) or an Eligible Domestic Relations Order (EDRO) must be entered with the court. There are two model QDRO/EDROs to divide a defined benefit retirement plan. The first is a separate interest model, where the QDRO/EDRO will pay the Alternate Payee's (AP) share of the benefit on the Alternate Payee's life. The second model is a shared payment QDRO/EDRO, which is where the QDRO/EDRO payments are based on the Participant's (P) life. This article will summarize the *separate* interest QDRO/EDRO and the *shared* interest QDRO/EDRO.

**Separate interest.** In a separate interest QDRO/EDRO, the benefit is payable on Alternate Payee's life. Therefore, as long as AP is alive, AP will receive his/her share of the benefit. One reason a separate interest QDRO/EDRO is beneficial is that the AP is generally eligible to begin drawing his/her share of the retirement benefit as soon as the P reaches early retirement age, whether P retires or continues to work. However, there are also consequences to selecting a separate interest QDRO/EDRO.

The most significant effect the separate interest QDRO/EDRO has on a participant is that once an AP begins to receive his/her share of the benefits and subsequently dies, the AP's share of the retirement benefit will not revert to the P. While the AP will have pre-retirement surviving spouse benefits, the AP is generally not allowed post-retirement surviving spouse benefits. The P's death does not affect the AP's share, so the AP will continue to receive benefits as long as the AP is alive.

The AP also needs to understand that if the plan has post retirement increases and the benefit is based on the AP's life, then the AP may not receive a pro rata share of the post retirement increases. Finally, if the AP draws early based upon his/her lifetime, the retirement benefit will be recalculated to be based on AP's lifetime. This generally means that a female AP will receive a lower benefit payment than if AP used the shared interest approach as a female has a longer life expectancy than a male.

**Shared interest.** If AP uses a shared interest approach, the AP is required to draw his/her share of the retirement benefit when the P begins to draw his/her retirement. In addition, a shared interest QDRO/EDRO will allow the AP to have the surviving spouse benefits, pre-retirement and post retirement. Furthermore, as a shared interest QDRO/EDRO, the AP will be allowed to have the post retirement increases, if any. Note that there is no reduction to AP's benefit if the QDRO/EDRO is a shared interest QDRO/EDRO. Finally, if the QDRO/EDRO is a shared interest QDRO/EDRO, then the AP's share of the retirement benefit will revert to the P upon AP's death after the commencement of benefits.

The requirements of every plan should be determined before a decision is made to have the QDRO/EDRO as a separate interest QDRO/EDRO or a shared interest QDRO/EDRO. There are some plans that will allow the AP to receive surviving spouse benefits, even if the QDRO/EDRO is a separate interest QDRO/EDRO. However, such plans are rare.

## Updated Record of Divorce Form

The Record of Divorce Form has been updated by the Department of Vital Records. These changes will reflect the U.S. Supreme Court's decision regarding marriage equality. The current form uses the words "Husband" and "Wife"; the new form uses the words "Plaintiff" and "Defendant."

The new form is required to be used beginning January 1, 2016. Clerk's offices will begin to accept the new forms October 1, 2015. County clerk offices will have hard copies; however, the form is also available online. The form may be completed online and simply printed off. The courts will accept the hard copies or copies printed online.

# Girls Court is in Session

By Honorable David J. Newblatt



Hon. David J. Newblatt

I am pleased to announce the creation of the Genesee County Girls Court, our county's newest specialty court; the first and only one in Michigan. Participants are girls at risk of falling victim to human trafficking who are between the ages of 14 and 17 and are respondents in the juvenile justice system. Girls Court provides specialty treatment, services and intensive judicial review to increase each participant's functionality and resiliency in order to reduce her risk of victimization, of going to prison, and of facing other negative results.

The theory of Girls Court rests on a new understanding of the effect of trauma on girls. Sexual abuse and other forms of trauma cause mental health issues which in turn cause behavior that is often criminalized by the juvenile justice system (running away, domestic violence, truancy, substance abuse). Unfortunately, these continued behaviors lead to an escalating response by the traditional delinquency system of detention and eventual residential placement. Confinement, in turn, further traumatizes the girls and creates a continuing cycle of victimization. In other words, instead of treating the underlying trauma, the system's response has been to create more trauma, worsening the mental health issues.

This dynamic was identified in the recently released report, *The Sexual Abuse to Prison Pipeline: The Girls' Story*, published by the Human Rights Project for Girls and co-authored with Georgetown Law Center on Poverty and Inequality and the Ms. Foundation for Women. This report is available from: <http://rights4girls.org/news/>. While the report argues that this cycle often results in adult prison sentences, traumatized girls are at risk for many other negative results including falling victim to human trafficking.

The aim of Girls Court is to exchange the traditional model of probation and confinement for a response that both treats the underlying trauma and understands the context of non-compliance and of further problematic behaviors. A trauma-informed approach focuses on fostering safety, self-empowerment and connectedness to the program and to supportive people.

Girls Court, in partnership with Wedgwood Christian Services' Manasseh Project, has developed a specialized therapy to meet the needs of this population that includes individual, group and family sessions. The Court has a holistic focus on each girl's needs: educational advocacy relationships with mentors from University of Michigan Women's Educational Center, arts programming with the

Buckham/GVRC Share Art Project and community programs and field trips. Girls Court has its own full-time coordinator and designated juvenile probation officer.

I conduct monthly judicial reviews involving the entire Girls Court team, the parents and, most importantly, each girl. The focus is positive and constructive in order to foster safety, empowerment and connectedness. When we do have to address non-compliance and negative behaviors, we try to have the lightest touch possible with sanctions. After the sanction, however, we start off fresh, in an effort to avoid the failure/escalation trap discussed above. We are looking for progress, not perfection. The most important priority is to keep the girl engaged by communicating that the team will not give up on her.

As a judge, I try to make the best decision I can on every case, but sometimes more is required. Sometimes we have to change our entire way of looking at a problem in order to do better. Girls Court is an effort to do that. We want to help the young women in our community by truly addressing their needs and building them up so that they can live happy and productive lives.

*Judge Newblatt is being honored by the Michigan Women's Hall of Fame with the 2015 Philip A. Hart Award for his efforts in establishing the Girls Court.*



# Senior Attorney Luncheon Meetings

By Richard J. Ruhala, Coordinator

On the second Thursday of each month (except for July and August), senior attorneys and their guests are invited to a luncheon for fellowship with other attorneys and occasional guest speakers. Most attorneys in attendance are 65 years of age or older, but attorneys of any age are welcome. This year our luncheons are at Valley Family Restaurant located on the southwest corner of Miller and Linden Roads.

The luncheons are held from noon to about 1:30 p.m. Individuals select and pay for their own lunch. Discussion usually centers on legal experience, some being unusual or humorous experiences, or “war” stories. A few meetings each year are conducted by guest speakers on such topics as

sports, finance, health, vacations, special projects, and adjustment to part time or pro bono work.

There are no dues or formal membership requirements, although most are members of the Genesee County Bar Association. There are no officers other than an “Executive Committee” that assists in hosting the meetings and calling attendees. Mainly, the meetings are intended to be an enjoyable experience. Dates for this year are October 8<sup>th</sup>, November 12<sup>th</sup>, December 10<sup>th</sup>, January 14<sup>th</sup>, February 11<sup>th</sup>, March 10<sup>th</sup>, April 14<sup>th</sup>, May 12<sup>th</sup> and June 9<sup>th</sup>.

Hope to see you there.



Richard J. Ruhala

## Who's on the Bench? Hon. Duncan M. Beagle

by Roberta J.F.Wray

When Duncan Beagle was young, he had no desire to be a lawyer. From the examples of his dad, John, and his grandfather, Charles Beagle, he knew practicing law meant long hours away from family. He was more interested in sports, playing football, basketball and baseball for Southwestern High School in the early 1960's. He attended Albion College, graduating in 1970.

It wasn't until after he tried teaching for a while that he decided to go to law school after all. He finished his J.D. at University of Detroit Law School in 1974. He has served as 67<sup>th</sup> District Court Administrator, Assistant Prosecutor, Friend of the Court referee, and as a criminal defense and family law practitioner.

During his private practice, Beagle represented a teenager who was accused of killing his father and his father's girlfriend. The young man was convicted, and following sentencing, Beagle agreed to allow an interview by the late Hugh Semple of TV 5 News.

He says, “At the end of the interview I looked over and the reporter was crying, the camera man was crying, the deputy was crying, and I asked the defendant if he could use a hug.” The youth blurted out, “If only my dad had done that!” The episode left the future judge with the conviction that while there are truly bad people in the world, “there are far more good people who make very bad decisions.”

In 1991, Beagle suffered a spinal cord infection that left him paralyzed and unable to continue his 20-year history of officiating high school sports. The illness, transverse myelitis, did not leave him without spirit, however, and later that year he married his best friend, Dana. To top off the year, Governor John Engler appointed Beagle to the Circuit Court bench.

Judge Beagle says he thinks his years officiating left him with a mind-set that is especially important in a judge, namely: fairness, impartiality and knowledge of and adherence to the rules.



Hon. Duncan M. Beagle



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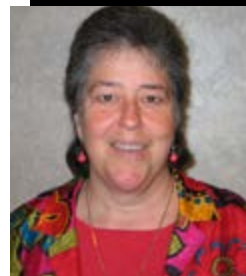
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# A Look At “Fracking” Law

By Linda S. Berker



Linda S. Berker

High volume hydraulic fracturing (HVHF), an industrial process for extracting natural gas from shale formations 3000 feet or more below the surface, began in Michigan after 2010. This process involves construction of a drilling rig and a huge well pad. Millions of gallons of water are pumped up from the drinking water aquifer and combined with toxic chemicals (which may include benzene, xylene and ethylene glycol), mixed with silica sand, and pumped down, up to 9000 feet, to create a well and then up to two miles horizontally through the shale formation to fracture the shale and release natural gas.<sup>1</sup> This noisy and smelly industrial process usually occurs 24 hours a day, 7 days a week for 3-4 weeks until the flow of natural gas begins. The well is then capped.

Significant evidence exists showing that HVHF activities “are inherently dangerous to people and their communities. Risks include adverse impacts on water, air, agriculture, public health and safety, property values, climate stability and economic vitality.”<sup>2</sup> In Michigan, as of 2014, there were only approximately twenty (20) active wells using HVHF. Of these, six (6) had associated contamination problems.<sup>3</sup>

HVHF is exempt from federal regulation under the Safe Drinking Water Act,<sup>4</sup> the Clean Water Act,<sup>5</sup> the Clean Air Act,<sup>6</sup> and the Resource Conservation and Recovery Act.<sup>7</sup> In Michigan, the state is the sole major regulator of HVHF.

The drop in the price of oil and natural gas has led to a cessation of new permit requests for HVHF wells to the Michigan Department of Environmental Quality (MDEQ). New state regulations are being considered at DEQ Fracking Rules ORR 2013-101 EQ; however, our state’s policy is to promote the extraction of natural gas on all public lands.

The greatest negative impacts of HVHF are to homes and farms adjacent to fracking activities. Statutes governing oil and gas leasing, MCLA Section 324.502, allow for the consideration of “applicable local ordinances,” and MCLA Section 324.61525(4) specifically provides that a Township may present written comments or recommendations to the supervisor. Townships are, nevertheless, prohibited from zoning for the location of fracking wells. The Michigan Township Zoning and Enabling Statute,<sup>8</sup> as interpreted by *Addison v Gout*, 435 Mich 809 (1990), provides that the supervisor of wells has exclusive jurisdiction to regulate and control the location, drilling, completion and operation of oil or gas wells, but that this exclusive jurisdiction does not extend to all aspects of the production process.

Cities and villages granted “home rule” under the Michigan Constitution, Const 1963, art 7, may ban, zone, lo-

cate and regulate fracking operations. Townships, where fracking operations are more likely to be located, are left with only the ability to enact nuisance-type ordinances which apply equally to all activities within a Township, including fracking or drilling operations. A township’s authority to limit HVHF is further curtailed in the *County of Alcona v Wolverine Environmental* 233 Mich App 238 (1999), which prohibits a township from requiring a part 91 Soil Erosion and Sedimentation Control Permit to regulate earth moving for well heads, access roads, pipelines or processing facilities.

HVHF has been banned in the State of New York and in many rural townships in Pennsylvania. The committee to ban fracking in Michigan, <http://banmichiganfracking.org>, has launched a legislative ballot initiative to place the issue on the 2016 ballot.

## Endnotes

- 1 The Human and Environmental Impact of Fracking: How Fracturing Shale for Gas Affects Us and Our World, Madelon L. Finkle, Ed., 2015, Prager.
- 2 Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extractions), Concerned Health Professionals of New York, July 10, 2014.
- 3 Michigan Department of Environmental Quality Website Statistics: 2014- Kingley, Grand Traverse County, Mechanical Failure at Oil/Gas Separator; 2013- Encana well in Kalkaska County, release of 300-400 gallons of flowback fluid; 2013- Encana well, Kalkaska County, water drawdown causes 29 wells at nearby homes to go dry; 2013- Lucas 1-13 well, Kalkaska County, thousands of gallons of frack fluid spilled; 2011- Heart D1-34, Benzie County, leak at well head during drilling spilling fracking fluid; 2010- Chevron, Antrim County, oil and brine leaks at well.
- 4 53 Fed Reg 25447 (June 6, 1988); Energy Policy Act of 2005, § 322, Codified at 42 USC § 300h (d)(1)(B)(ii)
- 5 33 USC Sections 1362(24) National Pollution Discharge Elimination System Program 33 USC § 1362(6)(B)
- 6 42 USC § 7412(n)(4)(A), (B).
- 7 42 USC § 6921(b)(2); 53 Fed. Reg. 25.445(1988)
- 8 Mich Compiled Laws, Chapter 125 (2006)

An item from James Nevins, Director of Communications for the Supreme Court addresses a major concern of long standing, especially in District Courts. Here is an excerpt.

**No incarceration for inability to pay court fines or costs**

An expert panel reaffirmed the commitment of Michigan courts that individuals *who are unable to pay court fines or costs* (italics added) cannot be incarcerated. The workgroup of 19 judges, court administrators, and other experts was created . . . in response to requests from trial courts for assistance in how and when to determine defendants' ability to pay court-ordered obligations.

"All of the members believe strongly in protecting the people's constitutional rights," said Judge John Hallacy, chief judge of the 10th District Court and chair of the Ability to Pay workgroup. "That's why the outcome of our deliberations begins with that premise and goes on to serve as a road map for judges to treat all defendants with financial obligations to the court consistently."

With respect to when the ability to pay is determined, the report notes: "Whenever a court attempts to enforce

a court-ordered financial obligation, the obligor must be given an opportunity to contest the enforcement on the basis of indigency and the court must assess the obligor's ability to pay." . . . The report of the workgroup provides extensive resource materials for trial courts to draw from in determining the ability to pay, establishing payment plans, and identifying enforcement alternatives.

In addition, the report notes how payment plan calculators can be useful in helping courts set reasonable payment plan amounts by taking into account an individual's other expenses. . . . (I)f the only source of income is public assistance, payment is strictly voluntary. The report also cites federal poverty guidelines and the federal means test as helpful tools in determining the ability to pay.

The report advises trial court judges that, when appropriate, they should explore enforcement alternatives and provide additional time to enable obligors to pay their court-ordered obligations. Also, if obligors are at risk of failing to meet their obligations but have demonstrated due diligence in attempting to comply, . . . "payment alternatives such as community service, earning a GED, and youth-oriented projects may be used." The goal in these cases is to reduce the obligation to the court while helping the obligor "pay back" the community. Finally, the report notes in cases when obligors have made good faith efforts to pay but are unable to pay, the court "may waive monetary assessments that are not mandated by statute."

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# Welcome New Members

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## **Viktoria Cooper, Affiliate**

Viktoria Cooper is originally from Flint. She attended Powers Catholic High School and The University of Michigan where she studied sociology and psychology. In addition to working for Attorney Eric Mead, she sometimes bartends at various downtown restaurants. She loves working downtown. She says the people are great, and it's like a family.

In her spare time Viktoria likes to travel. She has family in Puerto Rico and Detroit, so she spends as much time in those places as possible. She also loves BBQ and craft beer and supports downtown business whenever she can.

## **Troy Green, Attorney**

Troy Green was born and raised in Flint Township but now resides in West Bloomfield Twp. with his wife, Jackie and son, Camden. He was graduated from the University of Michigan, Ann Arbor in 2006 and Regent University School of Law in Virginia Beach, VA in 2009.

He opened his own practice, the Law Office of Troy D. Green (located at 2290 E. Hill Rd, Suite 105, Grand Blanc, MI 48439). He represents debtors in consumer bankruptcies (and related matters such debt settlements, FDCPA actions, short sales, and student loan issues) and also claimants in Defense Base Act lawsuits.

## **Katrina Jennings, Affiliate**

Katrina is currently the Judicial Secretary/Court Recorder for Judge Jennifer Manley. She attended Baker College to pursue a nursing career, but after caring for her then-ill son, Andrew, she realized that the medical field was not where she wanted to be. Once her son started elementary school she sought an opportunity to become a fill-in court recorder and worked as a temporary for a short time. A full-time position became available when Judge Conover's Secretary retired.



Troy D. Green



Katrina Jennings



Lori Matthews



Kristyne Traver

She joined the GCBA Affiliates to become more involved in the legal community.

She loves gardening and has begun canning pickles. She is married to Bob Jennings and has a son, Andrew. They live in Otisville.

## **Lori Matthews, Affiliate**

Lori Matthews graduated from Ferris State University with an Associate's Degree in Paralegal Studies. She worked in many legal settings before staying home with her son for six years. She chose to go back to work and filled in as a court clerk at 67<sup>th</sup> District Court. She received her certification as a Court Recorder and also filled in for the judges' secretaries at 67<sup>th</sup> District Court.

She currently works as a Paralegal for the Genesee County Prosecutor's Office in the Family Support Division. Lori has a 19-year-old son who attends Baker College. A lifelong resident of Goodrich, Lori recently moved to Grand Blanc.

## **Kristyne Traver, Affiliate**

Kristyne Traver lives in Otisville, MI with her husband of 22 years. She is employed as an Interstate Paralegal in the Family Support Division of the Genesee County Prosecutor's Office.

She is a member of the Intergovernmental Work Improvement Team, representing the Genesee County Prosecuting Attorney's Office, 2014.

Kris has earned an associate's degree in Paralegal Technology from Mott Community College, 1995, a BA in Criminal Justice from Ferris State University, 2008, and is a Notary Public. She previously worked in the law office of David J. Nickola.

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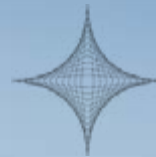
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