

BARBEAT

Genesee County Bar Association



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by Chief Justice Robert Young**

Left to right are Chief Justice Young; Vice-President Lori A. Buiteweg, of Ann Arbor; Secretary Lawrence P. Nolan, of Eaton Rapids; President-Elect Thomas C. Rombach, of New Baltimore; and Treasurer Donald G. Rockwell, of Flint.

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A Brief Overview**

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It Is a Big Deal, Don!

By Erwin F. Meiers, III, President

Both congratulations and thanks are due to GCBA Past President Donald Rockwell who was recently elected Treasurer of the State Bar of Michigan. Obviously, his term as president of the GCBA (2000-2001) was not the end of his service. Instead, he found new ways to serve. He has spent countless hours on committees and special projects of the GCBA, including photographing and presenting PowerPoint slide shows for Law Day for many years.

In addition, Don began serving the legal profession on a higher level. He was elected to the State Bar of Michigan Representative Assembly in 2004 as one of three members of the policy-making body of the SBM from the 7th Circuit.

In 2008, after Francine Cullari decided not to seek a final term, Don was elected to the Board of Commissioners, the governing board of SBM. He has served on various committees focusing on the Finance Committee,

the Audit Committee and the Diversity and Inclusion Committee, among others. Now he has been elected Treasurer of the State Bar. This means that Don is on track to be State Bar President in 2018, an almost automatic progression, and the culmination of a long history of service to the legal community.

Don would like to characterize his new office as “no big deal,” but, *it is a big deal*. Therefore, we congratulate him on his great accomplishment, one not attained by a GCBA member in more than 60 years (our last State Bar President was Harry Gault in 1947-1948). We sincerely thank him for his constant and continued service.



Donald G. Rockwell

Meet Your Board of Directors



Jade J. Edwards



Richard S. Harris



Lynne A. Taft



Hon. Joseph J. Farah



Jessica J. Hammon

Jade J. Edwards 2015

Undergraduate school, degree, year: University of Michigan, BA, Political Science, Minor in Spanish, 2001.

Law School, grad year: MSU College of Law, 2005

Bar Association member since: 2008

Area(s) of practice: Family, criminal, probate, general civil

Contact info: 436 S. Saginaw St., #300, Flint, MI 48502, (810) 424-4050, attorneyjadeedwards@gmail.com

Past committees, activities, state bar involvement: GCBA past and present committees: Professional Practice and Ethics, Family Court, Golf Outing, Law Day; Board Member. State Bar of Michigan-Young Lawyers Executive Council, attorney advisor for Mock Trial Team

Reasons you believe in service to the GCBA: I believe in advancing the profession and improving the public perception of attorneys by my own example. I also believe in giving back to the community and believe that advancing our profession and giving back to the community can and should go hand-in-hand.

Richard S. Harris 2015

Undergraduate school, degree, grad year: Oberlin College, AB Government, 1972.

Law School, grad year: Case-Western Reserve University School of Law, Wayne State University Law School, J.D., 1975, New York University Law School, LL.M. Taxation, 1976

Bar Association member since: 1988.

Area(s) of practice: Estate planning, business organizations, taxation, business and real estate transactions.

Contact info: G-5111 W. Bristol Road, Flint, MI 48507, (810) 732-7360, (810) 230-1400, rharris@blclinks.net

Past committees, activities, state bar involvement: Past Chairman of the Business Law Committee; lecturer on business, estate and tax matters in GCBA seminars and other community groups; member of several sections in the State Bar of Michigan; member, Collections Committee, FIA; former Adjunct Lecturer, U of M-Flint; Former President, Flint Estate Planning Council; former treasurer, Friends of Sloan Museum.

Reasons you believe in service to the GCBA: Develop relationships with and meet new colleagues, help the local legal profession publicize itself, enhance the reputation of lawyers in the community to the public, encourage the GCBA to support continuing legal education, the Holiday Dinner, and social events for legal professionals.

Lynne A. Taft 2015

Family: Spouse, James Draper; children, son David, two grandchildren.

Undergraduate school, degree, year: Western Michigan University, BA, English/ Library Science, 1974.

Law School and grad year: Thomas M. Cooley Law School, 1989.

Bar association member since: 1987.

Areas of practice: Family, criminal, child custody and support, parenting time

Contact info: 720 Church Street, Flint, MI, 48502 (810) 767-2474.

Past committees and activities: Law Day Committee Chair, Family Law Committee, Chair Criminal Law Committee, Hurley Foundation Board, Friends of Modern Art, FIA, Flint Women and Girls Fund Committee of Community Foundation of Flint, Commander of Flint Power Squadron, Centennial American Inn of Court.

Reasons you believe in service to the GCBA: I learned from my father's example of giving back and being actively involved in one's community. I became an attorney to help people. The GCBA is an ideal place to help my fellow attorneys as well as members of the public.

Hon. Joseph J. Farah 2015

Undergraduate school, Degree, Year: Michigan State University 1975.

Law School and grad year: Thomas M. Cooley 1979.

Bar Association member since: 1979.

Areas of Practice: Judge, 7th Circuit Court

Contact Info: 900 S. Saginaw St., #305, Flint, MI 48502, 810-257-3270.

Past committees and activities: President of the Board of Law Examiners, Adjunct Professor of Evidence at Cooley Law School, and a member of the boards of the MJA, Cooley Law School, Metropolitan Community Development, and Centennial American Inn of Court.

Reasons you believe in service to the GCBA: An active, vital bar association is both a tribute and a service to its members.

Jessica J. Hammon - Young Lawyers Delegate

Undergraduate School, degree, grad year: University of Michigan, Political Science, 2003

Law School and grad year: Ave Maria School of Law, 2008

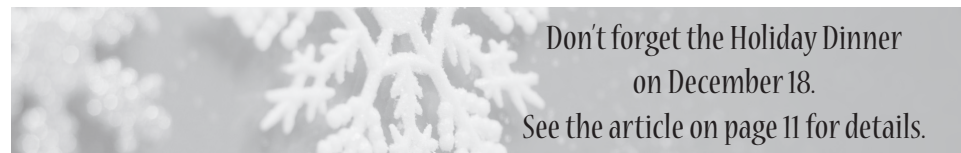
Bar Association Member since: 2008

Areas of Practice: Family and child welfare law

Contact Info: 328 S. Saginaw St., Ste. 907, Flint, MI 48502 (810) 234-0818 jessicahammonlaw@gmail.com

Past committees and activities: Chair, Young Lawyers; Golf Committee

Reasons you believe in service to GCBA: The Genesee County Bar Association is an attorney's best way to network with colleagues, further their legal education, and serve the greater community. I am proud to be a member of this great group of people.



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November/December 2013

Genesee County Bar Association **BARBEAT**

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The Affordable Care Act—A Brief Overview

By Kaylie Kinney, Legal Services of Eastern Michigan



Kaylie Kinney

The Patient Protection and Affordable Care Act will begin mandating individual health care insurance in 2014. Most people will only be minimally affected by the ACA, but those who do not have employer-sponsored insurance options and business owners will see more substantial effects.

Universal Changes to Coverage

Many of the changes under the ACA add new restrictions on insurance companies. They can no longer:

- Bar children for preexisting conditions.
- Bar children on family health insurance plans who are under age 26.
- Rescind or cancel coverage because of illness.
- Set lifetime limits on significant benefits.
- Condition coverage on the absence of pre-existing medical conditions.
- Charge women higher premiums (the only bases for charging different premium rates under the ACA are family size, tobacco use, geographic area and age).
- Charge older adults more than three times what younger

adults are charged.

The ACA also *changes coverage requirements*:

- Covered services include doctor's visits, prescriptions, hospitalizations, pregnancy services and other essential care.
- New plans must cover contraceptive methods and counseling for all women, when they are prescribed and are provided by an in-network provider.
- Plans must provide support and equipment options for breast feeding.
- Flexible spending accounts, limited to \$2,500 per year, may be used to pay for copayments, deductibles, some drugs, and other health care costs.

Marketplace and Individual Mandate

Under the ACA, anyone uninsured for more than three months in a year may face a tax penalty. The 2014 penalty has a maximum of \$285 per family. Parents are responsible for insuring their children. The penalty will increase over



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time. Some individuals may be exempt from paying the penalties on a case-by-case basis.

Health care coverage can now be purchased by accessing the Healthcare Marketplace. The application will also reflect eligibility for Medicaid, CHIP, tax credits or other programs. Open enrollment for 2014 is from October 1, 2013 - March 31, 2014. Four tiers of coverage will be available through the Marketplace with different plans covering 60% - 90% of expected health care costs.

Catastrophic plans will be available only to people under age 30 and to people who have received certain "hardship exemptions." Catastrophic plans will have lower premiums and higher deductibles and will not qualify for tax credits to lower monthly premiums.

Lower income people will receive a government subsidy to help them purchase insurance on the exchange in the form of a federal premium tax credit. An individual or family is eligible if their income is between 100 percent and 400 percent of the federal poverty level and they are not eligible for other affordable coverage.

The Marketplace requires basic identification, income and existing insurance information for everyone in the household, regardless of whether they need insurance or not.

No one is required to purchase insurance from the Marketplace. However, other plans might not meet ACA limits and might subject purchasers to the tax penalty.

Employer-sponsored plans

Employees with employer-sponsored plans will see very little change. Some plans may be required to provide more coverage to meet ACA standards; others may be grandfathered in with current coverage levels.

The Medicaid Expansion

No one will lose Medicaid because of the ACA but more people will be eligible. In Michigan, residents who earn less than 133 percent of the

federal poverty level will become eligible, regardless of age or family status as of April 1, 2014.

Medicare

The ACA does not substantially change Medicare. However, seniors who are in the Medicare prescription drug coverage gap known as the "donut hole" will receive discounts on covered prescription drugs.

Self-Employment

Self-employed workers are subject to the same rules as individuals under the ACA.

Small Business Ownership

Businesses with fewer than 50 employees will not face any penalties for not offering coverage to their employees. However, these businesses may have options that incentivize offering sponsored coverage. Even tax-exempt non-profits are still offered the benefits and are responsible for the burdens under the ACA.

All employers must give all employees notice of all health care insurance options available through the employer. Notices must be in writing. There is no penalty for not providing the information at this time.

Small businesses have access to the Small Business Health Options Program (SHOP) in each state. This Marketplace, specifically for small businesses, will work to find affordable and accessible insurance options for businesses with fewer than 50 employees. The SHOP works to reduce premiums by pooling small businesses into larger groups. Business contributions to employee premiums are tax deductible.

More information

- Michigan Health Insurance Consumer Assistance Program (HICAP)
Phone: (877) 999-6442
<http://www.michigan.gov/hicap>
- To explore coverage options in your state and to find out which private insurance plans, public programs, SHOP and community services are available to you: <http://www.Healthcare.gov>
- Representative John Dingell's office has published a more detailed ACA guide: http://dingell.house.gov/sites/dingell.house.gov/files/Dingell-AffordableCareActGuidebook_0.pdf



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I Resolutely Resolve

By Richard Morley Barron



Richard Morley Barron

Looking forward towards 2014 we each would profit, I submit, from resolving to be a better, more civil, attorney. This does not mean just being a more pleasant professional; rather, it means operating in an often-adversarial context with an appropriate professional attitude and sincere respect for the judiciary and fellow members of the Bar. Doing so should enhance our sense of well-being, our reputation and our bottom line.

Your resolutions for the New Year might include the following:

1. Remember that I am always seen as a member of the legal profession in performing my daily activities, so I resolve to not say or do things that I would not want to publicly defend.
2. Remember that opposing counsel may well be under even more personal and professional stress than I, so I resolve to give opposing counsel the benefit of any reasonable doubt knowing that each of us has had a bad day from time to time.
3. Remember that the judge has a lot more cases than I do, so I resolve to be respectful to the Court even when I am convinced that the Court is wrong.
4. Remember that pleadings will not only be read by opposing counsel, but by an impartial judge as well, so I resolve to not plead matters that are false, not consistent with the law, or are just ridiculous.
5. Remember that the client who sometimes seems demanding or unreasonable is paying the bill and is entitled to our patience and politeness, so I resolve to understand the client's real wants and needs and to give them an honest professional judgment of the merits of their position.
6. Remember that the client is not paying for a process but a result, so I resolve to discuss ADR as well as litigation with my client and discuss the quickest, least expensive, likely solution that meets the client's needs.
7. Remember that almost no one likes to be involved in litigation, so I resolve to be unfailingly polite to deponents and witnesses and respectful of their time.
8. Remember that some people are consistently hostile and rude and setting a civil example is unlikely to change their conduct, so I resolve to set my own professional standards and not let them be lowered by the bad behavior of others.
9. Remember that sometimes others, including judges, attorneys or litigants, will attempt to take unfair advantage of a client, so I resolve to boldly identify and firmly address such actions, but in a professional and respectful manner.
10. Remember that resolutions are easy to make but difficult to carry out, so I resolve to be perseverant and patient with myself.

Updates in Criminal Law



Amy K. Harris

A Comprehensive Overview of the New Interrogation Recording Requirement

By Amy K. Harris, Criminal Law Committee Chair

Effective March 28, 2013, law enforcement officials in the State of Michigan must make a time-stamped audiovisual recording of the entirety of an interrogation if they have the equipment to do so.¹ While this broad statement is what you may have heard about this new law, the devil is, as always, in the details, which must be understood to effectively utilize this rule.

Time Frame

The statute directs the Michigan Commission on Law Enforcement Standards (MCOLES) to create standards for recording equipment. These standards were released on September 18, 2013.¹ Law enforcement agencies that possess complying equipment must begin recording interrogations within 60 days.² If an agency receives funding from the State for their equipment, they must begin recording within 120 days of receiving funding.³

Who Must Comply

Applicable law enforcement officials include: police officers, sheriff's deputies, prosecutors, college public safety officers, DNR officers, and any individual acting at the direction of one of the above. Issues may arise not only when law enforcement fails to record, but also when someone sent in by law enforcement is not recorded. Ponder this: if an inmate is sent in to question another inmate, and there is recording equipment in the jail, must those interrogations be video recorded?

What Cases Require Recording

The recording requirement applies to “major felonies,” defined as felonies punishable by 20 years or above and also Criminal Sexual Conduct in the third degree. As law enforcement officials will not always know what crime will be charged, it is expected that officers will err on the side of caution and recordings will be made more often than not.

What Conversations Must be Recorded

Custodial interrogations, in their entirety, must be recorded if they are held at a place of detention, that is, a police station, jail, prison, or other holding cell.⁵ *Miranda* warnings must be included in the recording.⁶

While the statute does not define “entire interrogation,” legislative intent demonstrates that even the “small talk” between law enforcement and the defendant should be included. The goal is for juries to see the entirety of the interrogation that led up to a confession so they may decide not only if the confession was voluntary, but if it was reliable.⁷

Discovery

A discovery request for the recording must be made, and once that request is made, the prosecution must provide a copy of the recording to the defense. The prosecution is not required to pay for a transcript of the recording.⁸

Objection

A person may object to being recorded, and that objection must be noted either by a signed document or on the recording itself. If the defendant refuses to note his objection, the law enforcement official is to note the refusal and the objection, either on the recording, or in their own document.

Regardless of objection, or even without the knowledge of the defendant, a recording may be made.⁹

Consequences

Michigan’s statute does not require suppression of an unrecorded interrogation. Officers are still allowed to testify as to the conversation, and a cautionary jury instruction is to be provided.¹⁰ The instruction reads:

You heard police officer testimony regarding a statement alleged to have been made by the defendant during a custodial interrogation. However, the police failed to make an audiovisual recording of the interrogation. You may still consider the police testimony, but I instruct you that it is the law of this state to record statements of an individual in custodial detention who is under interrogation for a major felony, as charged here, and you may consider the absence of a recording in evaluating the evidence relating to the defendant’s statement.¹¹

A defendant is not entitled to this instruction if they objected to being recorded and that objection was properly documented.¹²

Therefore, if your case is a 20-year felony or above, or CSC 3rd, the entire law enforcement interrogation at the police station or jail must be recorded. This recording must be provided pursuant to a discovery request, and if the recording did not happen, the defense is entitled to the cautionary jury instruction.

Endnotes

- 1 Available for review at <https://www.michigan.gov/mcoles>.
- 2 MCLA 763.11(4)
- 3 MCLA 763.11(3)
- 4 See MCOLES September 2013 newsletter http://www.michigan.gov/documents/mcoles/MCOLES_Sept_2013_433174_7.
- 5 MCLA 763.7
- 6 MCLA 763.8(2)
- 7 See <http://www.provinginnocence.org/mi-videotaping-custodial-interrogations-law.html> for further discussion.
- 8 MCLA 763.8(5)
- 9 MCLA 763.8(3)
- 10 MCLA 763.9
- 11 MI-NSJICR 2:63
- 12 MCLA 763.9

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“Victim or Criminal?”

By Shelley R. Spivack



Shelley R. Spivack

While many of us spent the last weekend in July enjoying the delights of a “Pure Michigan” summer, the FBI, along with state and local partners and the National Center for Missing and Exploited Children, spent the weekend rescuing over a hundred sexually exploited children nationwide. “Operation Cross Country VII,” was a three-day enforcement action to address commercial child sex trafficking throughout the country. Law enforcement targeted cities such as Detroit, where the largest number of traffickers was arrested (18) and the second largest number of children rescued (10).

“Operation Cross Country VII,” a part of the Innocence Lost National Initiative was established in 2003 to address the growing issue of child prostitution. It has rescued over 2,700 children from the streets and secured 1350 convictions. The prominence of Detroit in the latest sting reminds us that Michigan’s children remain extremely vulnerable to child sexual exploitation due to our location as an international border state as well as the economic devastation found in many of our cities.

What happens to these children after they are rescued? Where are they placed? What services are they offered? Can they be charged as delinquents?

The federal Trafficking Victims Protection Act (TVPA) treats sexually exploited children under the age of 18 as victims of a crime, but state laws treat many of these same children as criminals. Only 18 states have enacted statutes providing some measure of “safe harbor” protection to minor victims of human trafficking and commercial sexual exploitation from prosecution for crimes committed under the control of their exploiters.

In 2006 Michigan amended its criminal code to prosecute those who engage in human trafficking and the sexual exploitation of children (MCL 750.462a-j); however, our laws do not directly address the prosecution of sexually exploited children. Instead they set forth a minimum age, 16, for a person to be charged with prostitution (MCL 750.448). Thus, a 16-year-old rescued in a sweep could be prosecuted for prostitution and detained in a secure juvenile detention facility. While juveniles under 16 could not be charged with prostitution, they could be charged as status offenders (“incurability” or “runaway”); and juveniles both under and over the age of 16 could face prosecution for acts that may have been committed while working for a pimp or trafficker.

All this may soon change. On October 3rd, a group of bills was introduced in the state legislature to address the

needs of victims of child sexual exploitation and to strengthen the state’s anti-trafficking laws (SB 584-602 and HB 5026). Two “safe harbor” bills were introduced.

- **SB 585** would raise the minimum age for prostitution offenses to 18; and
- **SB 586** would require the court to conduct a hearing to determine whether a juvenile charged with a prostitution offense was a victim of human trafficking and, if so, to refer the child to DHS for care as a victim.
- **Other bills** would expand the definition of child neglect and abuse to cover trafficked children; add sex trafficking and commercial sexual exploitation of children as grounds for termination of parental rights; and require DHS to perform psychological examinations on trafficked children and offer appropriate medical, counseling, and foster care services.

Efforts to combat human trafficking and child sexual exploitation are not only occurring on the streets in Detroit and in the State Capitol. Here in Genesee County, a Task Force was formed in April to address issues of labor and sex trafficking in our county. The Task Force now includes representatives from the medical, social service, law enforcement, religious, academic, and legal communities. Representatives from the Genesee County Sheriff’s and Prosecutor’s offices have been active members of the Task Force. Greater public awareness, education, and advocacy are three of the group’s primary objectives.

For more information on this issue and listings of resources you can contact the following organizations:

- The Genesee County Human Trafficking Task Force, (jaykommareddi@gmail.com);
- The Michigan Human Trafficking Task Force, <http://www.humantrafficking.msu.edu/>;
- The University of Michigan Human Trafficking Law Clinic, <http://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/humantraffickingclinic.aspx>, and
- The Polaris Project <http://www.polarisproject.org/state-map/michigan>.

The Need Has Never Been Greater— Holiday Dinner 2013

By Brian M. Barkey

Every time I start working on the GCBA Holiday Dinner, I am amazed that we have conducted this event 23 times in 22 years. And every year, I look at the need as greater than every previous year. This year is no different.

Before it was closed by the US Congress' inaction, the US Census Bureau announced the latest statistics for income and poverty level in cities in the United States. Flint, Michigan ranked second in the entire state for the number of children living below poverty level.

Fifty-eight percent of the children living in Flint were living in impoverished families. There is a time within my memory when Flint led the country in average family income, and there were factories operating all over this area paying wages to their employees that we would even now characterize (after adjusting for inflation) as generous. What a free fall we have taken.

Last year my prediction came true. We set a new record for activity at every level. Over 150 GCBA volunteers contributed their time to feed 1,298 people and distribute 585 presents. The volunteers in the Santa room tell me that an alarming number of children are told not to open their

present while they are there. I fear that this means our present might be their only one.

Members of this Association have generously supported this event for 22 years by contributing money (occasionally twice in one year if they fear that we have not raised enough) and volunteering and bringing their family and friends to help. There are a dozen of you who have worked at the Dinner, without fail, for its entire history.

This year, all the signs point toward another record. All the economic indicators and census figures show that the need has never been greater. And no matter your political views, our children have had no say in being born or who would be their caregivers. In short, we need your help this year. Please consider a financial contribution, if you can. Please consider joining us to help on Wednesday, December 18th. Doors open at 4:00 p.m. and we close when the last meal is served and when Santa wishes the last child a happy holiday.



Brian M. Barkey

Who's On the Bench? Hon. Michael J. Theile

By Roberta J.F. Wray

When he was a young man, Michael Theile was interested in marketing and received his BBA from Western Michigan University in 1971. Within a few years, he decided the business world wasn't for him, and with the encouragement of his extended family, he decided to enroll at the then fledgling Thomas M. Cooley Law School. He obtained his JD as a member of the Felch Class of 1977.

While his initial thought was to become a prosecutor, he wound up in private practice. In 1984, he obtained a contract position as Special Assistant to Attorney General Frank J. Kelley in the area of workers' compensation. That led to a position as magistrate in the Workers' Comp Division of the Department of Labor in what he calls, "the most politicized part of government."

Finally, in 2007 he was appointed by Governor Granholm to fill the vacancy created by the retirement of Judge Robert Ransom. He says one of the best things about being a judge is "being able to concentrate on the work at hand without worrying about overhead, the next case, or disgruntled clients."

As a family court judge, Judge Theile had the opportunity to preside over the now completed experiment called PACT, Parents and Children Together, a specialty court that he thinks should be re-funded.

He still works with the Friend of the Court and some volunteers to carry on when possible.

"We were making a difference," he says. "We were getting the non-custodial parent involved early and working with parents who were not married to each other. There was intense oversight. We were dealing with work readiness, anger management, and regular drug testing, rather than rushing to create court-ordered orphans."

Judge Theile says he's disappointed in attorneys who are disrespectful of each other and the court. He especially appreciates the efforts of his secretary/recorder Ruby Allen at making sure *in pro per* litigants are treated fairly and respectfully by attorneys in his court.



Hon. Michael J. Theile

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