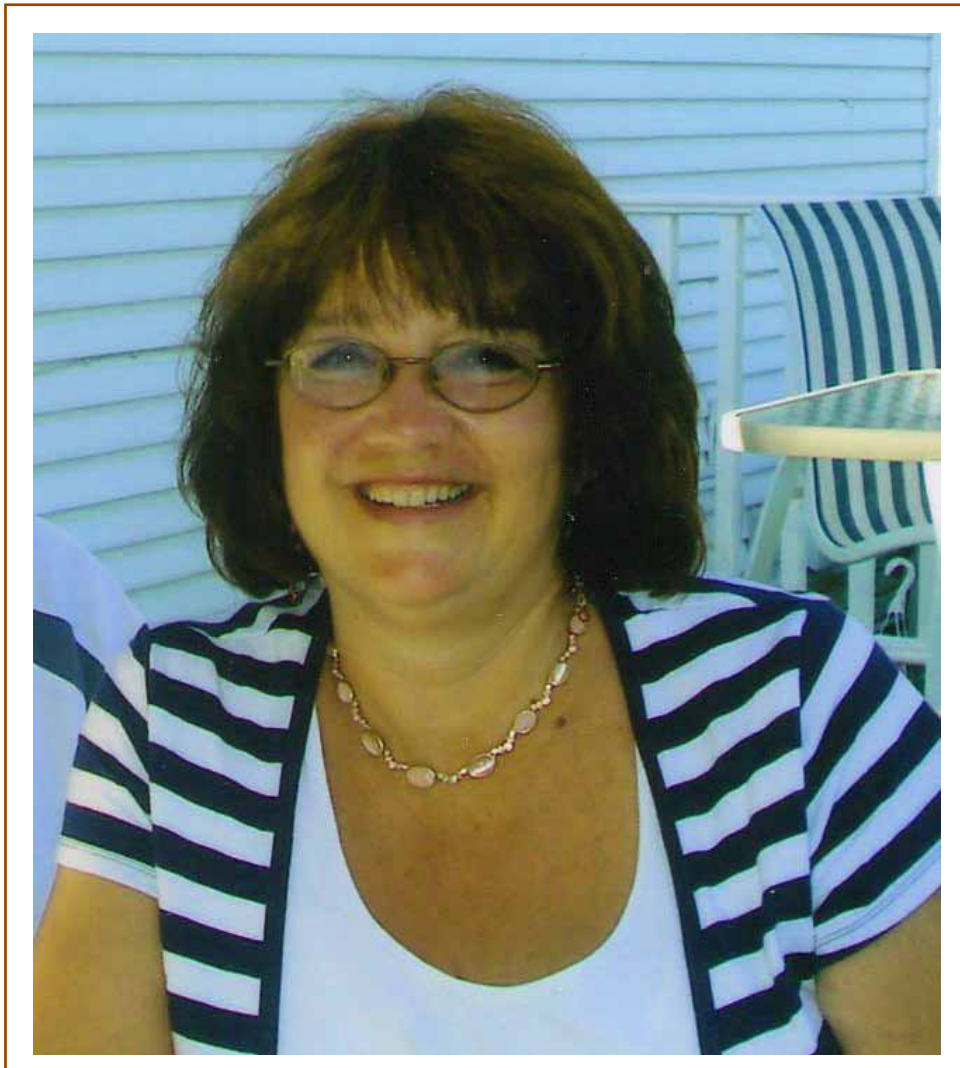


March/April 2011

BARBEAT

Genesee County Bar Association



Lynnmarie Johnson

Memories of a Campground Host:
Lynnmarie Johnson

2010 Amendments to the Michigan
Limited Liability Act

Genesee County's Newest Judge
Honorable Mark W. Latchana

"What's What on the Web"

The Patient Protection and
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By B.D. "Chris" Christenson, President



B.D. "Chris" Christenson

Every time I travel to Washington, D.C., I am humbled by the gravity. Every so often, the GCBA hosts a group of attorneys to be sworn in before the U.S. Supreme Court. Attorneys that meet the qualifications can be admitted to the bar to practice before that Court. The trip includes a sightseeing tour of many of the historical monuments in the area then culminates with the swearing-in ceremony. The morning of the swearing in crowds gather out in front of the courthouse and line up to enter. While waiting in line looking at the courthouse, you begin to take in the details, the columns and architecture, size, sculptures and the phrase "Equal Justice Under Law." The impact of that phrase and of the Court cannot be overstated. Everyone's life has been and continues to be affected by the Court's decisions: personal freedoms, race relations, labor relations, criminal situations, etc. There is no end to the impact of the Court. Once inside, there is a museum in the lower level that details the court history, and you continue to be humbled as you consider the attorneys and justices that roamed those very halls and courtrooms.

Our group was allowed to wait in a private conference room where the court staff detailed the chronology of events that would take place that morning, including the reading of a new opinion (something that is uncommon for a Monday). It was of particular interest because it was a Michigan case involving the confrontation clause and hearsay in a murder case. All in all, the members of the GCBA were treated to great weather, sightseeing, history lessons, a Michigan case opinion and spirited argument before the court.

Those being sworn in were:

- Erwin Meiers

- Laura Breckenridge
- Susan Schneberger
- Kendall Williams

For some it was a simple return to a town they have been to frequently. For others, it was the first time in the Nation's Capital, but for all, it was an inspiring reminder for why they became lawyers and what it meant to them individually. Sometimes we lose sight of what we do for a living and the impact that we have. While it is true that being at the Supreme Court is truly humbling, there is also a feeling of connectedness which suggests that we, as a profession, are part of something bigger than ourselves, but that we are still a part. When you are admitted to the Supreme Court you are allowed to sit past the "bar" with the other lawyers already admitted. Even though we may never practice before the Supreme Court, we are still lawyers with a responsibility to the profession, and it is nice to belong to that select group.



(Left to right) B.D. "Chris" Christenson, Erwin Meiers, Laura Breckenridge, Susan Schneberger, Carolyn Stubbs, Neotika "Nita" Nallamothu and Kendall Williams

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Memories of a Campground Host: Lynnmarie Johnson

By Roberta J.F.Wray



Lynnmarie Johnson

What do our colleagues in the law do when they are not lawyering? In the case of Lynnmarie Johnson (Law Day committee, Ask the Lawyers, legal aid work, bankruptcy law, Probate committee), even when she's on vacation she is helping others.

Lynnmarie is an avid camper and member of the Friends of the Holly Recreation Area. That combination turned into a family project for Lynnmarie and her late husband, Michael, who spent three weeks of each year as campground hosts in the Holly Recreation Area campground.

Campground hosts are problem solvers, playmates, mediators, guides, and suppliers of necessities for forgetful campers. They live at the campground and greet visitors with donuts, juice, and entertainment. They also keep an eye out for potential troublemakers.

Lynnmarie says in the 12 years she has been a campground host she has dealt with drunks, disturbances,

missing kids, and wounded campers, sometimes all in the same incident. Her worst experience occurred when she heard a young camper start screaming on the playground. "I ran to help and found he had stepped in a ground wasp nest," she said. "The wasps swarmed up his pant legs and stung him all over his body. I stripped off his pants and sent someone to get the boy's mother. It turned out the messenger was a little under the influence, and he forgot his errand. Three-quarters of an hour later, Mom showed up, also a little under the influence." By that time, Lynnmarie had applied first aid. The child was taken to the hospital for further treatment and survived the ordeal.

Her funniest episode occurred when she and Michael were sitting outside their camper in the dark one evening. Michael got up to go inside and Lynnmarie says, "I felt something furry against my bare

foot. I started to reach down, thinking our Pomeranian, 'Bear,' had escaped. Fortunately, I glimpsed some white against the blackness and stopped my movement just in time to avoid grabbing a skunk.

"Some campers have not been so fortunate. Once I heard a woman screaming for help. I could smell her before I could see her. She and her family had found a skunk eating their potato chips. They went after the critter with sticks. The result was predictable. The whole family, including the dog, got a thorough dousing."

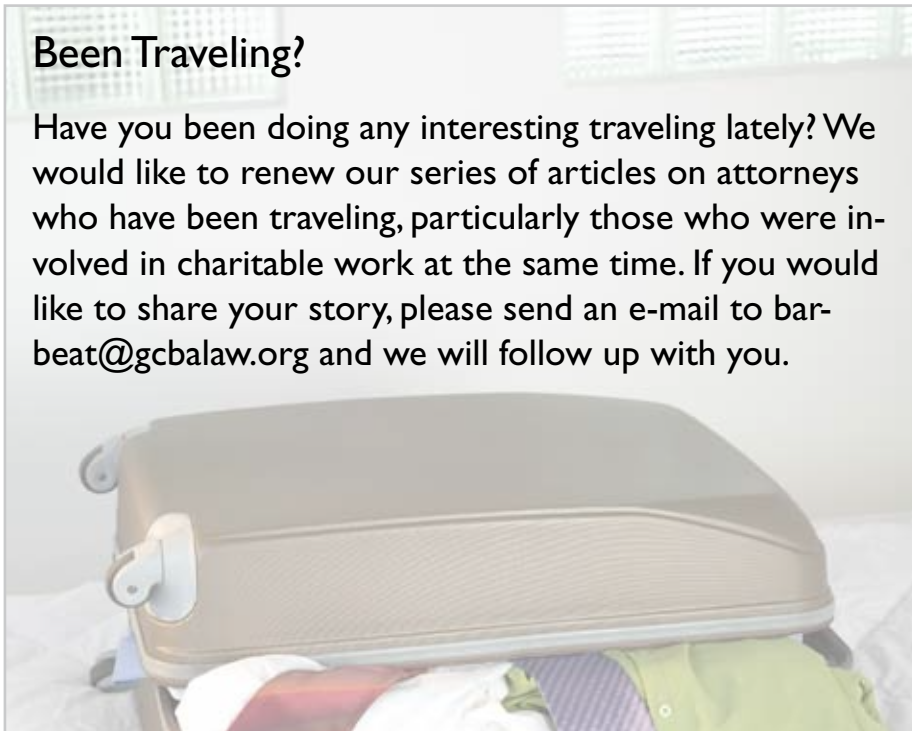
Knowledge of first aid is essential. One time a pickup camper rolled over; another time a man cut his leg with a hatchet. More often, Lynnmarie says, "Campground hosts solve smaller problems, such as supplying a spatula or a can opener to campers who did not foresee the need."

Campground hosts also oversee a "New Camper" program. It involves providing people (for a small fee) with a tent, cooler, lantern, and Coleman stove so they can try camping before they make the investment in all the necessary equipment.

After Michael's untimely death last year, Lynnmarie was not sure she would continue hosting. Ultimately the attraction of the woods and waters was enough to overcome any misgivings, so for three weeks at the end of every summer and into the early fall, Lynnmarie can still be found at the state campground that is associated with the Holly Recreation Area. Why? I suspect the answer might be some variation of helping others, the reason that many of us became lawyers in the first place.

Been Traveling?

Have you been doing any interesting traveling lately? We would like to renew our series of articles on attorneys who have been traveling, particularly those who were involved in charitable work at the same time. If you would like to share your story, please send an e-mail to barbeat@gcbalaw.org and we will follow up with you.



2010 Amendments to the Michigan Limited Liability Act

By Patric A. Parker



Patric A. Parker

Those of us who were practicing business lawyers in the early 1990s will remember the first inkling of a new business entity called a “limited liability company.” In 1993, Michigan adopted its Limited Liability Company Act, MCL 450.4101 et seq. (the “Act”).

The LLC has become the dominant business form, at least in Michigan. Except for big, publicly traded companies, almost all new entities are LLCs. Recent amendments effective December 16, 2010 modified 29 sections of the Act, but this article will focus only on Section 507, which limits a judgment creditor of a member of an LLC to a “charging order” as a sole remedy.

In today’s depressed economy it is not unusual for an LLC member to have a judgment entered against him or her individually. The issue then arises as to the right of that creditor to enforce that judgment against a member of the LLC and the assets owned by the LLC.

While the LLC entity was, in some sense, the love child produced by a union

of a corporation and a partnership, the dominant genes in that union came from the partnership side. The treatment of the debtor who is a shareholder in a corporation has always been different from the treatment of the debtor who was a partner in the partnership. A judgment creditor or bankruptcy trustee can seize the shares of stock held by a shareholder and step into the shareholder’s shoes. A partnership, however, has always been considered to be a different animal. Partners generally cannot be forced to take on a new or different partner without their consent. Most old-time law firm partnership agreements provide that the partners must affirmatively decide to have a new or substituted partner coming into their “family.” A creditor of a debtor-partner cannot force him/herself into partner status, or force the sale of partnership assets. The creditor has generally been left with the sole remedy of a “charging order” against the partnership, allowing the creditor to be entitled only to any

actual distribution made with respect to that partnership interest.

The charging order is also the procedure for the LLC member’s creditor. In the LLC context, however, the exclusivity of a charging order as the remedy for a creditor of an LLC member, especially in single-member LLCs, has been questioned in recent years. In cases around the country, creditors or bankruptcy trustees have been allowed to go beyond a charging order forcing the sale of assets owned by the LLC and collecting against those proceeds.

New Section 507 specifically disallows those attacks. In Michigan, a judgment creditor’s sole remedy is a charging order. The creditor cannot force the sale of real estate owned by the LLC or the dissolution of the LLC so it may receive cash for the debtor’s share. Many LLCs, such as those owning real estate, may not make regular distributions, leaving the creditor unable to collect. The debtor-member remains an LLC member, and retains all rights and powers except the right to receive distributions. Some commentators say that Michigan now has the strongest asset protection wall in the nation.

This is not an absolute unbreakable wall. You need to look closely at the situation before setting up an LLC for creditor protection purposes. There are still fraudulent transfer issues: if you set up a single-member LLC an hour before the appeals period runs on a million dollar judgment, you may well not be safe. The theories of “piercing the veil” and “alter ego” may also still be alive. In general, however, the amended Section 507 is one more reason why the LLC is the king among entity choices in Michigan.

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Genesee County's Newest Judge

Honorable Mark W. Latchana

By Roberta J.F. Wray



Hon. Mark W. Latchana

The most recent addition to the bench in Genesee County is The Honorable Mark W. Latchana, Michigan State University alumnus and 1997 graduate of Wayne State University Law School. Mark won election in November to the 67th District Court seat in Burton, taking over from his father-in-law, The Honorable Richard L. Hughes.

Judge Latchana is married. His wife is an attorney with a Lansing law firm. They have three children, Eva, 6, Abigail, 4, and William, 22 months.

Prior to his decision to seek the judgeship, Mark spent several years in the Genesee County Prosecutor's Office, where he served in the courtrooms of The Honorable Robert Ransom and The Honorable Judith

Fullerton. He says he gained great insight into the judicial process through his experience in their courts.

He enjoyed working for the County as an assistant prosecutor but eventually decided he wanted to try the challenge of private practice. He feels he had some success in that role, but he says, "I concluded that I could do more in the long run for the community working in the system.

"There's a huge learning curve to becoming a judge," he said. "It takes more than just the few days in judges' school in the first week in January.

"I've been told it will take six months to a year to become comfortable with courtroom procedures," he added. There is also a lot of work that judges do outside the view of the public that

he thinks may take longer to master.

The other judges are being very helpful with getting him settled into the new position. He says he also has the advantage of a knowledgeable court staff, especially Lynn Beldin Adamco, his reporter/secretary, who has had that position longer than Judge Latchana has been an attorney.

Judge Latchana says he has been inspired, encouraged and educated by many who are now his judicial colleagues. He commented, "I hope to be able to do that for some other young lawyers."

"What's What on the Web"

By LindaLee Massoud



LindaLee Massoud

The Centennial American Inn of Court sponsored what has become the third annual technology seminar on February 11, 2011. Diane Ebersole from the State Bar of Michigan's Practice Management Resource Center provided a two-hour discussion of new technology important to attorneys in practice.

Her three most important take-away points were:

1. Back up! Back up! Back up! (And check those back-ups to be sure they will restore correctly.)
2. Use integrated practice management software to streamline office operations.
3. Move toward less paper to facilitate the rest of the changes.

If you are interested in more information about these topics, Ms. Ebersole is available by telephone for general questions and can conduct an on-site technology review of your office for a low hourly rate. Contact her at 1-800-341-9715 or debersole@mail.michbar.org.



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The Patient Protection and Affordable Care Act: Highlights of Employers' Current Obligations

By Sean M. Siebigteroth



Sean M. Siebigteroth

A colleague chuckled knowingly when he learned I was preparing to write an article discussing provisions of the U.S. Patient Protection and Affordable Care Act of 2010 (Pub L 111-148, enacted Mar. 23, 2010) (PPACA) applicable to employers. He was rightly amused. The PPACA, the centerpiece of the federal government's historic health care reform legislation, is several hundred pages long. Moreover, much of the PPACA's content was left to be spelled out by the U.S. Department of Health and Human Services in the form of regulations—meaning, potentially, tens of thousands of pages of administrative rulemaking.

I quickly realized that anything purporting to be a comprehensive summary was far beyond the scope of this article. Nor will I discuss or assess the ongoing constitutional challenges to the PPACA. See, e.g., *Florida v Dep't of Health and Human Svc's*, 2011 US Dist LEXIS 8822 (ND Fla Jan. 31, 2011) (declaring entire PPACA unconstitutional because "individual mandate" provisions not severable); *Thomas More Law Ctr v Obama*, 720 FSupp2d 882 (ED Mich 2010) (Steeh, J.) (rejecting constitutional challenges to PPACA).

Instead, I will briefly highlight some key provisions of the PPACA which obligate employers to offer group health insurance coverage to their employees. I will focus on those provisions which are applicable now, with a particular emphasis on those provisions which are part of PPACA's Title I, Subtitle A ("Immediate Improvements in Health Care Coverage for All Americans"). Many provisions of the PPACA

(including the controversial "individual mandate" provisions) will not become effective until 2014 or later. Those more immediately effective provisions of the PPACA largely require improvements in health benefit coverage already provided by employers.

Grandfathered plans. Many of the currently operative provisions do not apply to "grandfathered" plans. A grandfathered plan is a renewed contract for group health plan coverage which enrolled at least one individual on March 23, 2010. PPACA § 1251. A change in cost-sharing, reduction or elimination of benefits, or certain changes in co-pays or contributions will cause a plan to lose its grandfathered status. *Id.*

No lifetime limits on coverage. Notwithstanding a group health plan's grandfathered status, Title I/Subtitle A of the PPACA requires elimination of any lifetime dollar limits on coverage for health benefits. The federal government has eliminated this requirement on a case-by-case basis for many group health plans and even for some states (not including Michigan).

Elimination of retroactive termination of coverage. Also regardless of whether a plan is "grandfathered" or not, under Title I/Subtitle A of the PPACA, a group health plan may not provide for the retroactive termination of coverage (except for fraud).

Preventive health services. The PPACA requires non-grandfathered plans to provide certain preventive services (e.g., immunizations) without cost-sharing (i.e., no copays, deductibles or coinsurance), effective

for plan years beginning on or after September 23, 2010. The scope of the preventive services that must be provided on a cost-free basis is identified in regulations promulgated by the U.S. Department of Health and Human Services.

Access to physicians and emergency services. For plan years beginning on or after September 23, 2010, non-grandfathered plans must allow access to the primary care and ob/gyn practitioners of the employee's choice if the practitioner participates in the plan network. Coverage and payment for out-of-network emergency services must be on par with emergency services provided within the plan network.

Longer coverage for dependents. Non-grandfathered plans must provide dependent coverage for children up to age 26.

Discrimination based on salary prohibited. For plan years beginning after September 23, 2010, insured group health plans may not discriminate in favor of highly compensated employees in terms of benefits or eligibility.

Appeals process. Group health plans which do not have grandfathered status must implement an effective appeals process for denial of coverage or claims, including some provision for external review, effective for plan years beginning after September 23, 2010.

Small-employer tax credit. Effective immediately, small (fewer than 25 employees) employers are eligible under the PPACA's Title I, Subtitle E for a tax credit worth up to

35 percent (25 percent for tax-exempt employers) of premium costs.

W-2 report of cost of health coverage. Effective for the 2012 tax year, Title IX of the PPACA requires all employers to report the cost of employer-sponsored health coverage on each covered employee's W-2 (reporting is voluntary for the 2011 tax year). The cost of that coverage, however, remains excludable from income under the Internal Revenue Code.

Conclusion and looking forward. As it currently stands, the PPACA will eventually impose significant regulatory and financial obligations on individuals (who will be required to maintain minimum health coverage or pay a penalty) and employers (who will be required to offer employee health benefits or pay a per-employee penalty). An excise tax of 40 percent on so-called "Cadillac" coverage provided by employers will also be imposed.

Of course, this presupposes the PPACA survives the constitutional challenges which will ultimately land in the Supreme Court. The PPACA's provisions which are still being fleshed out by regulation will be revisited by Congress in the coming years. All of these factors will challenge anyone providing legal, compliance, or strategic advice to employers regarding their benefit plans.

This joke was submitted for inclusion by Robert Chimovitz

The Greatest Letter Ever Printed on NFL Team Letterhead

In 1974, a Clevelander wrote the Browns complaining of the menace posed by the then-fad of throwing paper airplanes, and implicitly threatened litigation. The Browns' reponse is just about the most awesome thing ever committed to paper.



Tri-County Elder Abuse Summit

By Sherri C. Frame, J.D., LL.M. in Elder Law



Sherri C. Frame

The Tri-County Elder Abuse Summit was held to raise awareness of and to educate individuals about elder abuse and exploitation as well as prevention. Definitions of physical and emotional abuse, neglect, and financial exploitation can be found at MCL § 400.11.

The summit, sponsored by Adult Protective and Assessment Services, was held on February 3, 2011 at the Genesys Conference and Banquet Center in Grand Blanc. This was the first Tri-County Elder Abuse Summit. Two hundred seventy-six individuals attended on the day following the “Blizzard of 2011.”

Admission was free, made possible by donations from the Genesee County Bar Foundation and other sponsors. The summit was attended by attorneys, members of law enforcement, politicians, social workers, medical professionals, bank employees, government agency representatives, assisted living and nursing home directors, legal service providers, directors of senior health and service organizations, and many others.

The program speakers included the Honorable Jennie E. Barkey and attorney Dolores M. Coulter. The keynote speaker was Paul Greenwood, a deputy district attorney, who has been the head of the Elder Abuse and Protection Unit in San Diego County, California since 1996. He has been involved in the prosecution of over 400 felony cases of elder and dependent adult abuse. He also assisted in drafting elder abuse legislation in the state of California.

The summit was opened by a Genesee County Sheriff's Department color guard followed by Sheriff Robert Pickell's opening comments and a very poignant video featuring elder abuse

cases in Genesee County and an interview with Diane Nims, executive director of the Sheriff's Elder Abuse and Exploitation Prevention Program. The video demonstrated the successes of the program in Genesee County.

Lieutenant Governor Brian Calley described his personal experience of placing an elderly family member in long-term care just last year and his understanding of planning for and anticipating the needs of the elderly population.

Genesee County Probate Judge Jennie Barkey discussed guardianships and conservatorships in probate court cases involving elderly individuals. A surprise addition to the program was United States Congressman Dale E. Kildee, who spoke briefly emphasizing the importance of the “human dignity of elders.”

Ron Tatro, the director of Elder Abuse Prevention Services for Elder Law of Michigan, told the attendees that approximately 80,000 of Michigan's citizens that are aged 60 and older are the victims of physical abuse and financial exploitation.

Sheryl Thompson, director of the Genesee County Department of Human Services (DHS) led a team presentation with a powerful opening quote by President John F. Kennedy: “A society's quality and durability can best be measured by the respect and care given to its elder citizens.” She added that Genesee County DHS received 829 referrals for elder abuse in 2010 with the highest referral rate for financial exploitation.

Geriatric physician Cheri S. Mys-Curis, D.O., completed the morning session with her presentation of the cases and signs of elder abuse she sees in her medical practice. She said that 1 in 10 people will experience elder abuse.

Paul Greenwood described the importance of character and stated the way to measure a community is by “the way we care for our very young, the elderly, and the defenseless.” Greenwood noted the explosion of elder abuse, and he attributed it to several factors, including (1) age 65 and over being the “fastest growing age group” whose members are living longer, (2) lack of a cure for dementia, (3) “victims often do not report” the abuse or exploitation, (4) “third fastest growth job is home care,” (5) “minimal background checks” performed, and (6) high temptations and low risk factors for the perpetrators.

He said the dynamics of the situation are also very important to understand; specifically, seniors' fear and the harboring of feelings of shame may cause them to underreport abuse and exploitation, they may have concerns that exposure will lead to a loss of their independence, and they may be threatened by the perpetrator.

According to Greenwood, areas of special concern relate to signs of financial exploitation which he indicated include documents giving control to a suspect, including quit claim deeds, POAs, or a new will. In addition, he noted it can be a red flag if the long-time attorney for an elderly individual is replaced without warning. He reminded attorneys that that they should consult with the State Bar regarding attorney client privilege and communication in this area.

Greenwood presented and dispelled myths about elder abuse, some of which are: (1) Elderly people make terrible witnesses; (2) If [an] elderly victim

refuses to provide information, there is nothing that can be done; (3) If [an] elderly victim gives the money voluntarily, it is not a crime; (4) If the financial institution reimburses the elderly victim and then declines to seek prosecution, we have no victim; (5) If [the] victim is deceased before we discover the theft, we cannot prosecute; (6) Any case where the elderly victim is involved in a home repair and there is a dispute is always a civil matter; (7) "There is no point in reporting this incident to local law enforcement; they won't do anything about it"; (8) Elderly people die from natural causes.

Finally, attorney Dolores Coulter spoke regarding "Lessons Learned

from the Genesee County Senior Millage." She noted that MCL 400.576 authorizes counties to pass senior millages allowing up to 1 mill to be levied for services. Genesee County has .7 mills (generating \$7,750,919 in FY 2010; estimated \$6,800,000 for FY 2011). She described the planning of the Genesee County senior millage campaign in 2005-2006, getting the vote out, the administration of the millage, and lessons that have been learned from the senior millage campaign in Genesee County.

The Tri-County Elder Abuse Summit was planned by a subcommittee directed by Diane Nims, Assessment, Coordination & Referral Services/Office of the Genesee County

Sheriff Elder Abuse & Exploitation Prevention; Genesee County Bar Association members who served on the subcommittee included Dolores M. Coulter and Sherri C. Frame.

Local Resources: Sheriff's Elder Abuse & Exploitation Prevention 762-4022, <http://www.eaaep.com>; Adult Protective Services 760-2202; Abuse Hotline 800-996-6228; Genesee County Elder Abuse Resource Manual available by contacting attorney Coulter at (810) 603-0801 or coulterdm@sbcglobal.net.

Thank you to Deputy Tori Hank, Genesee County Sheriff's Department for the photographs.



① Paul Greenwood ② Dolores M. Coulter ③ (left to right) Sheriff Robert Pickell, Robert Crites, Edward Henneke ④ Hon. Jennie E. Barkey

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