

March/April 2009

BARBEAT

Genesee County Bar Association



Kym L. Worthy
Wayne County Prosecutor

Simple Steps to Reduce
Litigation Costs for Clients

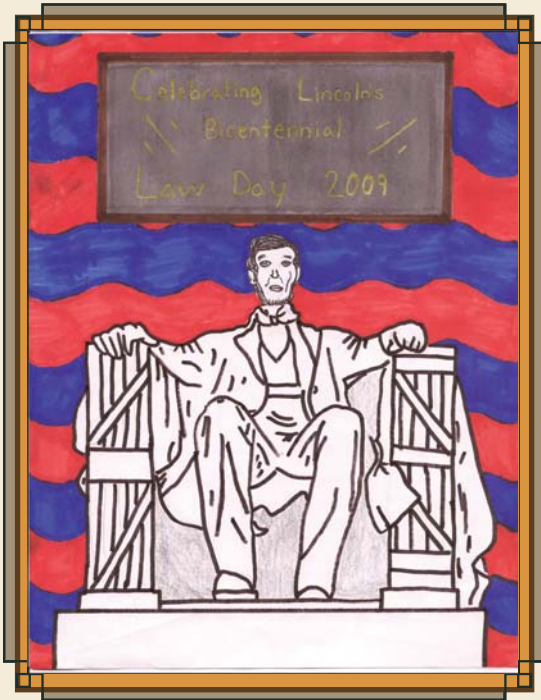
Update on Driver Responsibility
Act—New Legislation

What You Need to Know about the
Lawyers in Genesee County

Michigan Court of Appeals Judge
Michael J. Kelly One of Our Own

2009 Law Day Coloring Contest Winners

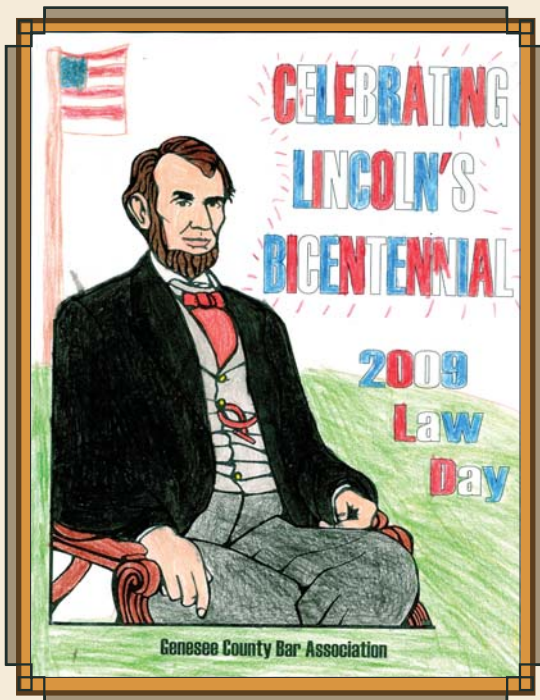
Nearly 750 entries were received this year.



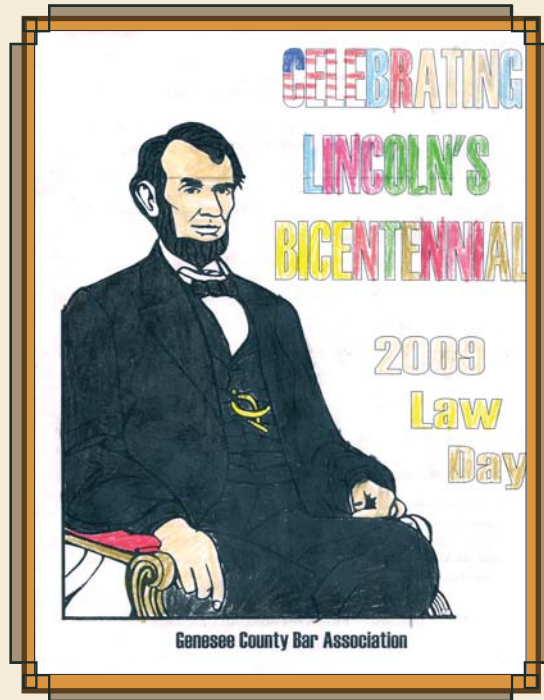
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4th grade winner, City School



3rd grade winner, St. John School



2nd grade winner, Holy Reedemer

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Law Day 2009: “A Legacy of Liberty—Celebrating Lincoln’s Bicentennial”

By David S. Leyton, President



David S. Leyton

It was a long winter, but spring has finally sprung, and I am looking forward to warm, sunny days and a great summer ahead! It's also that time of year when our bar association looks forward to the annual Law Day activities that are held on May 1 each year.

Law Day was established in 1958 by then President Dwight D. Eisenhower as a counter to the May Day observances in the Soviet Union and its satellites. It has generally evolved into a way to help educate students and citizens of this country about the Constitution and the law and the responsibilities of citizenship.

Law Day goes far beyond simply recognizing lawyers and our role in society. Rather, it explores and celebrates the principle that voluntary adherence to the rule of law expands, rather than limits, the opportunities for freedom for all of us. Further, it affirms that a viable democracy requires understanding of the nature and basis of our freedoms and recognition of the individual responsibilities that those freedoms impose.

The theme for this year's Law Day is “A Legacy of Liberty—Celebrating Lincoln’s Bicentennial,” which is intended to encourage all Americans to explore the legacy of Abraham Lincoln, a lawyer by profession and regarded by many as one of our nation's greatest and most eloquent presidents.

The law truly affects each and every citizen in our society from the youngest to the oldest, and the GCBA sponsors Law Day activities for everyone.

In our popular high school Mock Trial program, students, with the help of local attorneys, prepare and try

a case selected for its relevance to student life. While students prepare for months in advance, the actual Mock Trial activities are condensed into one day beginning with jury orientation in the morning for all students, followed by lunch, and concluding with the trial in circuit court.

Law Day goes far beyond simply recognizing lawyers and our role in society. Rather, it explores and celebrates the principle that voluntary adherence to the rule of law expands, rather than limits, the opportunities for freedom for all of us.

An additional high school program that the GCBA has sponsored for the past nine years is called “Teens and the Law.” This successful program uses a speakers’ bureau format with local attorneys who visit schools to discuss the law in a way that is relevant to their lifestyles and not usually covered in civics and government classes.

For younger students, the GCBA encourages discussion of the rights and responsibilities of citizenship and has developed age-appropriate activities for county-wide participation including the very popular coloring and poster contests for second through fifth graders.

Not to be left out, senior citizens also benefit from our Law Day activities through our Senior Outreach program. Volunteer attorneys speak to senior citizens throughout the county about estate planning, durable power of

attorney, and many other important issues relevant to seniors.

Along with all these great programs, a highlight for members of the GCBA is the annual Law Day Luncheon, which serves as a centerpiece for the day's events and is a time for us to honor members of the community with three very prestigious awards: the Liberty Bell, the Golden Apple, and the Crime Victim Advocate of the Year. This year's luncheon will be held on Friday, May 1, at the Masonic Temple in downtown Flint at 11:15 am, and our guest speaker will be the Honorable Kym Worthy, Wayne County prosecutor. Come join your fellow GCBA members and the dozens of Mock Trial students who will be in attendance and help us salute our award winners and celebrate Law Day!

Whether we consciously think about it or not, we lawyers are on the front lines every day, in one sense or another, defending individual rights guaranteed in the Constitution and preserving the American form of government, which was so simply but powerfully described by Lincoln in his Gettysburg Address as a government “of the people, by the people, and for the people.”

It can be said that every day is Law Day for members of the Genesee County Bar Association; however, May 1 continues to hold special significance as the officially proclaimed “Law Day” here in the United States, and I hope you will join us in our celebrations. Through our daily work as lawyers, Lincoln's legacy lives on!

Simple Steps to Reduce Litigation Costs for Clients

By Shayla Blankenship, Family Law Committee Chair



Shayla Blankenship

In this economy, money is tough to come by and litigants are becoming more and more aware of each dollar spent in litigation. As attorneys during the current economic climate, one of our common goals should be to alleviate our clients' costs when possible, and here are a few suggestions for your consideration.

As an initial step, attorneys and litigants should attempt settlement and negotiations before the trial date. The parties should be aware of what issues will likely settle and which will not. Those issues that are agreed upon can be placed into an order and thus reduce the number of issues the court must be called on to decide. This step requires minimal effort, yet the cost and time saving rewards are great for both the judicial system and the client. One of the most efficient ways to accomplish this is to schedule an informal settlement conference with the parties and attorneys. The conference forces the attorney to be prepared to discuss the case with his or her client and become aware of positions taken by the client well in advance of any formal settlement conference the court may schedule.

Second, attorneys need to give their clients reasonable expectations to assist the client in reaching toward a settlement. The reality is that if a trial is held, the client will most likely not get everything demanded; thus, it is cost-effective and prudent to realistically give your client this information. A client who is informed about the process and what to expect is often more at ease and agreeable in discussions. That client has less to fear about the process itself and is free to concentrate on the issues at hand. The

client must be made aware that several matters will be scheduled on the same date and time as the matter at hand. The court may or may not reach the client's matter, and in the meantime, the court expects the parties to be further discussing resolution.

A client who is informed as to the process and what to expect is often more at ease and agreeable in discussions.

Third, communication with the court and its staff is vital before the trial date. If your client is traveling a great distance or needs special assistance, or if there is a request to be available by telephone, you must communicate that with the court and its staff immediately. Often it is necessary to contact the court a few days before the scheduled matter to check on the status of the court's docket. For a client to travel a great distance, incurring the cost not only of the travel but of a day's lost wages and attorney's fees, only to be told that the court would never have reached the matter is too much for most litigants to bear. Once made aware of the circumstance, the court must do all it can to address the issues for the litigant in a timely fashion on the day of the scheduled matter.

Certainly the court plays a vital role in assisting in settlement and resolving a matter. When litigants appear before the court, it is helpful for the court to be informed that the parties have attempted settlement, place what is agreed upon in the record, and narrow the issues for the court. The court must then be prepared to address those issues in a timely fashion. The court must be mindful that delays are

very costly to litigants.

It means another day off work, more attorney fees, and the hassle of making life arrangements.

It is imperative for the public to understand that the court and those officers charged with litigating their matter care about their circumstances. They must know that all are striving in cohesion to move their matter forward in the most cost-effective manner possible. If a litigant is told to "come again another day" with no real concern about the financial and emotional cost to the litigant, the litigant usually feels disillusioned and angry with the justice system, and ultimately the decision the court reaches will fall on deaf ears.

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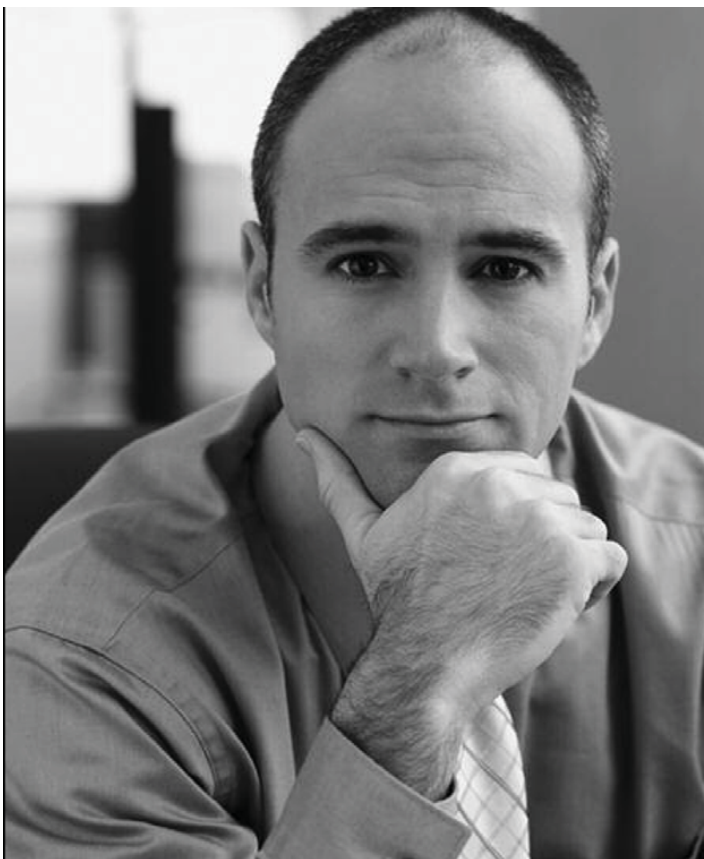
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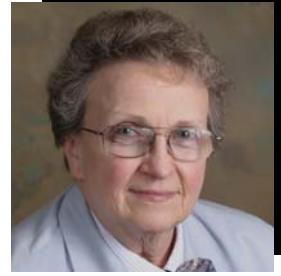
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Update on Driver Responsibility Act— New Legislation

By Roberta J.F. Wray



Roberta J.F. Wray

Michigan's fiscal health has been in jeopardy for at least a decade due to the erosion of the manufacturing tax base and the loss of taxes paid by employers and employees. A rainy day fund built up in the 1980s was used up in the 90s. By 2003, a new revenue source was needed to continue to pay for vital state services.

New Jersey had adopted a Driver Responsibility Act, designed, so they said, to discourage inappropriate driver behavior, such as drunk driving. It was also seen as a source of revenue that could be imposed without an increase in taxes. Michigan's lawmakers decided to try New Jersey's plan. Little thought appears to have been given, before its adoption in 2003, to the collateral damage that it might cause—damage such as increased unemployment rolls, welfare rolls, eligibility for food stamps and other aid, and loss of income tax revenues from those who might have been employed but for the lack of a valid driver's license either to *qualify them* for a job or to *get them* to a job.

Over the period of five fiscal years, from October 1, 2003, through September 30, 2008, \$775,465,700 has been assessed by the State of Michigan in driver responsibility fees. Only \$398,542,398, or slightly more than half, has actually been collected.

One part of the Act imposed a fee of \$150 per year for two years on people who failed to produce valid proof of insurance when asked by a police officer. Often they actually *had* valid insurance and simply could not find it in their cluttered glove box. Sometimes they *found the errant document* before the officer finished with the traffic stop, but after the ticket was written. Needless to say, there was

a huge outcry from innocent people who were caught in the trap.

Early in 2004, that part of the law was amended so that a person who gets such a ticket can now have it waived as long as he or she shows the court proof of valid insurance at the time the ticket was issued and pays a \$25 administrative fee. For those who fail to present proof of valid insurance within a specified time, the driver responsibility fee was raised to \$200 a year for two years.

And there it remains, pending the fate of a new Senate Bill No. 127, introduced on January 26, 2009, by Senator Cameron Brown and cosponsored by Senator Deborah Cherry and nine others. Senate Bill No. 127 would, after January 1, 2010, rescind those parts of the Driver Responsibility Act that assess fees for failure to present proof of insurance or for having an expired driver's license. It has been referred to the Committee on Judiciary.

Currently, once a driver fails to pay or establish a payment plan within 60 days of the infraction being reported to the secretary of state, his or her license is

suspended.

It remains suspended

until the entire driver's responsibility fee and an additional fee of \$125, called a reinstatement fee, have been paid.

Last year's Law Day Forum was about the Driver Responsibility Act. Judge Larry Stecco, State Budget Director Robert Emerson, and Senator John Gleason participated. Audience members described the hardship presented to them by having to fully pay driver's responsibility fees and reinstatement fees before their licenses can be reinstated. Several said they had been offered well-paid jobs that would permit them to pay their fees if only they could obtain their driver's licenses. They asked if some way could be found that would permit them to get their licenses back while paying on the outstanding fees. Emerson and Gleason promised to see if some such arrangement could be worked out. HB 6455 is the result.

Effective April 1, 2009, Enrolled House Bill No. 6455 amends the Michigan Vehicle Code to:

- Permit the secretary of state to

Continued on next page

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authorize the payment of **any** driver responsibility fee in installments for a maximum period of 24 months. (Originally, drivers had to make payment in full for amounts **less** than \$500, and in installments on **\$500 or more** for a maximum of 12 months.)

- Require the secretary of state, if an individual's driving privileges were revoked for failure to pay a driver responsibility fee, to reinstate the individual's driving privileges if he or she requests an installment plan and makes proper payments under it.
- Require the secretary of state to suspend a person's driving privileges if he or she establishes an

installment plan but fails to make full or timely payments under it.

- Require a payment plan to include license reinstatement fees, upon an individual's request.
- Authorize the secretary of state to reinstate a license under these provisions only once.

Part of the rationale for allowing the reinstatement of driving privileges while payments are being made is that it could result in better collections. It is reasonable to conclude that thousands of Michigan citizens cannot afford to pay the fees and have no assets that the State can seize.

Why is it the "drivers' responsibility" to relieve the state of

its economic distress? Don't we all have a stake in this? It affects those least able to afford it, and no one has come rushing forward with statistics to show any appreciable impact on traffic safety resulting from the 5 ½-year-old law.

Senators Deborah Cherry and John Gleason, along with others in both houses of the legislature, would like to see the Driver Responsibility Act rescinded completely. Judges and magistrates from throughout the state have been pressing for its repeal, almost since the day it was enacted, but even 50 percent of \$775,465,700 is a huge chunk of revenue in a cash-starved state with the highest unemployment rate in the nation.

What You Need to Know about the Lawyers in Genesee County

By Walter Griffin

During my term as president of the Genesee County Bar Association, I had the good fortune to write an article highlighting interesting facts about members of our association which otherwise would go unproclaimed. Following is an updated list.

All American hockey player at the University of Michigan; participated in two NCAA National Titles:

Douglas Philpott

Lost to Elza Papp in a primary for judge: **Duke Parker**

Law Review—Wayne State University, 1970: **Brian Barkey**

Played golf at the University of Michigan: **Nancy Chinonis**

Played on the 1977 Notre Dame championship football team:

Timothy Simon

Marine fighter pilot in WWII:

Max Dean

Basketball player at MSU:

Tim Bograkos

Soccer player at MSU: **Paul Vance**

Daughter of Adwyna Goodwin Anderson, the first African-American woman member of the GCBA in 1974: **Kathie Dones-Carson**

Bomber Pilot, WWII: **Reese Dean**

Bike racer:

Hon. Geoffrey Neithercut

Certified nutritionist: **Sandra Carlson**

Two-year state champion basketball

player, St. Mathews High School, and coach of the year—*Detroit Free Press* (Powers High School) 1997:

Brian MacDonald

Lettered in wrestling, freshmen year at U of M: **Olaf Karlstrom**

Michigan amateur golf champion and member of Michigan Golf Hall of Fame: **John Lindholm**

The nation's first on-air female photo journalist: **Roberta Wray**

University of Michigan swimmer and world masters swimming champion: **Larry Day**



Walter Griffin

Played football with the ex-coach of the Detroit Lions and San Francisco 49ers Coach Steve Mariucci:

Michael Kowalko

Ran against each other for prosecutor in 1960: **Reese Stipes v. Jerry O'Rourke**

MENSA members: **Lynne Taft, and Sally Shaheen Joseph**

Qualified for the 2002 Michigan Amateur in golf: **Tom Warda**

Her relay team placed first in a 5000+ women's mini-triathlon: **Susan Schneberger**

Pilot ground instructor: **LindaLee Massoud**

Admitted to the Hall of Fame of Albion College; grandfather was prosecutor in Genesee County; the youngest person to serve as GCBA president: **Hon. Duncan M. Beagle**

Served in the army in the desert during WWII: **Gilbert Rubenstein**

Flew across the Atlantic in his own single-engine plane to prove he could do it: **John Siler**

Professional singer: **Sally Shaheen Joseph**

Both he and his father landed at Normandy on D-Day, WWII: **Jack Wright**

Member of Greater Flint Sports Hall of Fame: **Hon. Thomas C. Yeotis**

Played football at Kalamazoo College: **George Hamo**

Former assistant Flint city attorney: **Hon. Judith A. Fullerton**

Young aspiring author of "Rabbit Stew": **John Streby**

Old aspiring author of "The L Shaped Room": **Bob Beltz**

Former basketball referee for Michigan High School League: **Steve Spender**

Former city attorney; son became all-time champion on the television show "Jeopardy": **Charlie Forrest**

Father was president of the Genesee County Medical Society in 1970: **Ron Sirna**

Hurley ICU neonatal nurse: **Teresa Knight**

Avid game bird hunter: **Carl Bekofske**

First job after graduation from Duke University was selling women's shoes: **Tim Knecht**

Halfback at the University of Michigan: **Richard Ruhala**

Played freshman football for Princeton University: **Bob Segar**

Former City of Flint police officers: **William Coppel and Ron Higginson**

Former teachers: **Karen Folks, Olof Karlstrom, Jade Edwards, Carolyn Boegner, and LindaLee Massoud**

Graduated captain from Culver Military Academy: **John Pavlis**

2009 Law Day Luncheon & Awards Ceremony

Featuring Wayne County Prosecutor Kym L. Worthy

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Michigan Court of Appeals Judge Michael J. Kelly One of Our Own

By Michael J. Behm, President, Flint Trial Lawyers



Hon. Michael J. Kelly

As many *Bar Beat* readers may know, the GCBA's own Michael J. Kelly was elected to the Michigan Court of Appeals in November. Mike defeated Ingham County Judge Paula Manderfield in the general election by 63,655 votes, or by close to 8 percentage points. Mike ran in the 4th District (58 counties in the upper half of the lower peninsula and all of the UP) where he and his wife, Jamie, have been residents for eight years. As a Court of Appeals judge, Mike will review and decide upon cases involving citizens from all over Michigan.

Practitioners and their clients are fortunate that Judge Kelly will be sitting on our Court of Appeals. Having practiced for 21 years, and as a solo practitioner for the last 13 years, Mike tried 102 jury trials and represented either the appellant or respondent in 53 cases in the Court of Appeals, and while we have all witnessed the gradual, but negative, insertion of politics and special interests into our appellate courts over the past 15 years, Judge Kelly's philosophy of fairness and a non-political application of the law will come as a welcome respite to many of us.

When you realize who mentored Mike as a young attorney, it is easy to understand how and why Mike will be a fair-minded judge on our Court of Appeals. After graduating from Detroit College of Law in 1988, where he participated in the London Law Program, through Regents College, Mike worked for GCBA member Edwin Jakeway. When asked what he learned from Ed, Mike responded, "I consider myself to be the most fortunate lawyer in Michigan to have worked for Ed Jakeway. Whatever

success I had in my career I attribute to him. Not only is he a great lawyer, but he was the perfect mentor. We all know that law school doesn't teach you how to practice law; your first employer has to teach you. Mr. Jakeway could not have been any more patient and kind to me. I couldn't even begin to describe everything I learned from him, and no lawyer I know could be a better example of a true gentleman."

Like his father, Bill Kelly, Mike pursued a career as a lawyer. Unfortunately, Bill retired from the practice of law in 1990 because of health reasons. While Mike was never able to work with his father, he helped wrap up his dad's workers' compensation appellate practice on behalf of Buick Motor Division and, today, still runs into some of his father's former clients who hold his father in very high regard. When asked if he had any other mentors in the GCBA, Mike

said, "The greatest thing about the Genesee County Bar is that advice and assistance are always a phone call away. I found we have a very unselfish Bar, and there was not a lawyer in the county that I could not call for advice. Not only did I talk to Ed Jakeway frequently after I went out on my own in 1995, but other great lawyers in town, like Henry Hanflik, Kurt Brown, and Greg Gibbs (to name just a few) would never hesitate to take the time to assist me."

Hopefully, the Michigan Court of Appeals is moving away from an age of politics where form is valued over substance. Rest assured that our native son, Michael J. Kelly, will apply the law in a fair manner because of the experiences he has had and the values he learned as a member of the GCBA over the past 21 years.

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Upcoming events:

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| April 16 | Traffic Law |
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| May 21 | Foreclosure |
| May 28 | Estate Planning |
| June 11 | Bankruptcy |

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1. Business Law Committee chair Rick Harris comments on property taxes.
2. Assistant prosecuting attorney Shari Baran discusses child support issues.
3. Rex Anderson explains the debt collection process.
4. Family Law Committee chair Shayla Blankenship and committee member Stephanie Satkowiak review handouts.
5. Property tax panelists (l-r) Grand Blanc Township assessor Peggy Nolde, appraiser A. Michael Cook, and Chief Tax Tribunal judge Patricia Halm.

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