

In Brief



February 2016

A Quarterly Publication of the McHenry County Bar Association

Law Day 2016

MIRANDA

more than words

In 2016, the nation marks the 50th anniversary of perhaps the nation's best-known U.S. Supreme Court case, *Miranda v. Arizona*. The Miranda Warning has become ingrained in law enforcement and has permeated popular consciousness through countless recitations in films and television shows. Yet Miranda is only part of the story when it comes to the procedures for ensuring justice. The 2016 Law Day theme — **Miranda: More than Words** — will explore the procedural protections afforded to all of us by the U.S. Constitution, how these rights are safeguarded by the courts, and why the preservation of these principles is essential to our liberty.

www.americanbar.org

Law Day 2016 Schedule of Events

March 11, 2016—Essay Contest Deadline April 11-29, 2016—Attorney school visits April 15, 2016—High School Law Day program at MCC May 6, 2016—Law Day luncheon

2014-15 Board of Governors

Board of Governors Meeting Highlights

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Technology

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Young/New Lawyers

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Past President

November 17, 2015

COMMISSION ON PROFES-SIONALISM:

Orientation luncheon to be held on December 9, 2015.

OUTREACH:

Thirty-eight people attended the Wills for Veterans CLE on November 11, 2015. Nine attorney's signed up to provide Wills for Veterans.

December 15, 2015

PRESIDENT'S REPORT:

J. Wombacher reported that the Federal Bar Association would like to cosponsor a seminar with the MCBA and the Winnebago Bar Association. J. Wombacher also reported that Camille Goodwin approached her about a pending Bill which would allow non-lawyers to be certified Family Law Practioners and that the ISBA has supported the Bill. She will contact T. Cynor for more information.

CIVIL PRACTICE: J. Schwemler reported that twenty-five people attended the seminar on December 8, 2015. The seminar was very well received.

COMMISSION FOR PROFES- SIONALISM: P. Carroll reported that there are five mentor/mentee pairs for this years mentoring program.

January 19, 2015

PRESIDENT'S REPORT:

J. Wombacher reported that the invitations for the joint CLE with the Federal Bar Association and the Winnebago Bar Association on February 19, 2016 have gone out.

LAW DAY:

One High School and six Elementary schools are currently signed up to participate in Law Day. Justice O'Malley will be the speaker at the Law Day luncheon.

LEGAL AID:

The Legal Aid Committee raised over \$9000 for the McHenry office of Prairie State. A big thank you goes out to all who donated and the committee for soliciting the donations.

New Members

Jennifer Haske Michael LaCava Alexandra Mackey Evan Randall Gregory Ruggie Eron McCormick James Geocaris

President's Page

Jamie Wombacher

2015/16 MCBA President

At nearly every jury trial I have been involved in one of the attorneys or the Judge has stated to the jurors that serving as jurors is one of the most important responsibilities that United States citizens have. I believe that most jurors take the responsibility seriously. Few lawyers ever have the opportunity to serve as a juror on a case, and those that have usually comment that it was an eye opening experience for them.

Unless you have been living under a rock for the past month you must be well aware that election season is upon us. There are political signs on every corner and street in the county. I have received mailings nearly daily, even though the primary election in Illinois is still over a month away. Most of my family still resides in Iowa. Monday night they proudly caucused for their respective candidates on both sides of the aisle. At the same time, I was at an event, and I mentioned that my family was caucusing and I received blank stares and even a few people asking what I was talking about. Several people in the room did not know it was election season. Shock and surprise barely describe my response, after all this is a Presidential election year.

All of the votes that McHenry County residents will be asked to cast are important. But some will impact the lives of the McHenry County Bar Association members. With several members of the United States Supreme Court entering their 80s, the next President of the United States potentially could appoint up to 4 justices. Locally, the primary includes races for candidates for State's Attorney and Circuit Court Judge. Voting is an important right granted to citizens; take responsibility for it. Do your due diligence, and select the candidates that you believe are the best for the job. I am *not* here to give my political views or urge you to vote for a certain candidate. However, I *am* here to encourage you to get involved!

NEW YEAR RESOLUTION - OR - NEW DAY ASPIRATION

Written by: Michael T. Reynolds for the Illinois Lawyers Assistance Program

During his lifetime from 1835 to 1910, Samuel Langhorne Clemens, better known as Mark Twain, was quoted as saying, "It's easy to quit smoking; I've done it a thousand times," and during his lifetime from 1880 to Christmas Day, 1946, William Claude Dukenfield, better known as W. C. Fields, was quoted as saying, "It's easy to quit drinking; I've done it a thousand times." Regarding the question as to which of these illustrious American figures said his quote first, this article has no answer, but one thing is clear: whatever the vice, staying stopped isn't easy.

People have aspired to modify their behavior and shake bad habits, or acquire good ones, throughout history. Attempts to change personal conduct, as of the start of a new year, date back to ancient Rome, when new year blessings were invoked from Janus, the Roman god of new beginnings and transitions, after whom the month of January is named.

In modern times, the practice of making and breaking New Year resolutions persists. As the manager of any health club can attest, the month of January is always marked by a tremendous surge in new members, while the following months of February, March and April bring an almost-corresponding number of defaults in the payment of monthly dues. This is why payment of annual dues is encouraged, and offered at a discount.

This phenomenon of failing at a New Year resolution has happened to innumerable individuals. What smoker hasn't ceremoniously smoked that "last" cigarette before the stroke of midnight on December 31st, only to be puffing away again with impunity within days or weeks. Which person battling a bulge hasn't begun a conscientious dietary regimen at the start of the year, only to find themselves pretty much back in their former eating pattern by Valentine's Day? Or how many times has someone joined the gym in January with every intention of working-out several times per week, only to have that resolve vanish within a few months?

Based on many a New Year reveler's tried and true experience, the making of New Year's resolutions has been simply setting one's self up for disappointment, an exercise in futility. Naturally, upon failure to keep the resolution, the typical reaction is to think, "Oh well, maybe I'll try again next year." Then we postpone the desired change in behavior for another twelve months, and the undesirable habit continues unabated.

But perhaps there's a better way to look at the possibility of implementing such a change in behavior. After all, when I think about it, how can I possibly prevent myself from having a few beers on St. Patrick's Day, or smoking just one cigarette on the 4th of July, or over-eating some of the holiday turkey on Thanksgiving, when it is only the first day of January? It simply can't be done on New Year's Day. All I can do on New Year's Day is not drink, smoke or over-eat on New Year's Day.

So, there may be a better, more effective, method of behavior modification that is not to resolve to make a desired change in lifestyle "forever," or even for a whole "new year," but simply for "one day at a time." Why, of course, I can abstain from anything for just one day. That which cannot possibly be done for a remaining lifetime, or for a full new year, just might be doable for a single day.

So, why wait until next January 1st? Why not aspire to live that new lifestyle . . . just for today? If that doesn't work, well, then each day can be a new beginning.

Rather than a simple denial of those guilty pleasures in the New Year, how about substituting a fun and positive pastime? Take an empty jar and, each evening, jot down on a small piece of paper something positive that happened that day, something for which you are grateful, and place it in the jar, one evening at a time. Then, on next New Year's Eve, open the jar and read about all of the awesome and pleasurable things that happened during the past year, for the fun of it.

If you need help quitting an unhealthy habit, want to establish healthier ones or are looking for assistance with putting anxiety and worry behind you, LAP is here to help. At no cost to you, and in strict confidentiality, you can call and set up an appointment. LAP offers assessments, short-term counseling, group therapy and referrals. LAP also offers the opportunity for confidential peer support from a trained LAP volunteer who has experienced a problem similar to yours, and who has managed it successfully.

For more information, visit our website at www.illinoislap.org. You can also call (312-726-6607 or 800-527-1233) or email us (gethelp@illinoislap.org) anytime. LAP is here to help.





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Ones to Watch

By Scott Jacobson

I'd like to begin by taking a moment to thank Judge Mary Nader, Erin Frommes, and the McHenry County Bar Association, not only for letting me write this column, but for consistently putting out a top-notch county bar publication. My name is Scott Jacobson. I was a state prosecutor for five years before becoming a law clerk to Justice Susan F. Hutchinson of the Second District Appellate Court, and relocating to Woodstock.

The plan is to use this column to address issues, both legal and practical, to "watch out" for. In this first edition, however, I'd like to discuss something I get asked often—How does the appellate court *actually* work?

Unlike the Illinois Supreme Court, which accepts about 1% of the merits cases appealed to it, the Illinois Appellate Court hears every case that is directly appealed from the circuit court. In other words, whether it's a criminal or civil case, if it's appealed from McHenry County (excepting workers' compensation cases), it will be heard in the Second District Appellate Court in Elgin. This means that the Justices, who almost uniformly were longtime trial judges, have developed a considerable breadth of experience over the years.

Once an appeal is perfected and the parties file their briefs, the case is randomly assigned to a three-judge panel and the Presiding Justice assigns a nominal author for each case. (Authorship can fluctuate depending upon the justices' alignment during deliberations.) After a case is assigned, the panelists then carefully examine the briefs and the record, discuss the cases with their colleagues, and determine whether oral argument will help the court to resolve a case.

Every appellate district has a different approach to oral argument. The Fifth District in Mount Vernon holds oral argument in every case. So, too, does the Illinois Supreme Court. It used to be that the First District and Second District rarely heard orals, but that hasn't been the case in the last few years. At least in the Second District, now, if you request an oral argument you're quite likely to get one—but there's an element of "be careful what you wish for." Oral argument was my favorite part of appellate practice, particularly before the Second District; however, the Second has a well-earned reputation for asking tough questions.

The time it takes to issue a disposition varies depending on the complexity of the case. The exception is child-custody cases, in which a disposition must be issued within 150 days from the filing of the notice of appeal under Illinois Supreme Court Rule 311. These cases immediately move to the top of the pile. Given how long it takes to prepare an appellate record and for the parties to read that record and file briefs, the court is generally left with about 30 days to issue a disposition in child-custody cases. Sometimes, even less. For this reason, extensions of time in child-custody cases are *strongly* disfavored.

Finally, I cannot implore readers enough that, if you practice in Illinois state courts, <u>illinoiscourts.gov</u> probably should be your homepage (after the MCBA's website, of course!). The Illinois Supreme Court's website is where all of the new and ever-changing rules, amendments, jury instructions, announcements, and reviewing court decisions are posted.

Scott Jacobson was a special assistant state's attorney with the Illinois State's Attorneys Appellate Prosecutor and was formerly of counsel to the Illinois State's Attorneys Association. He is currently a judicial clerk for the Honorable Susan F. Hutchinson of the Illinois Appellate Court, Second District, and lives in Woodstock, Illinois.

Wills for Veterans a Success By TJ Clifton

On November 11, 2015, the Bar Association hosted a "Wills for Veterans" event. The goal behind the event was to provide basic estate planning documents for Veterans in our area at no cost to the Veterans. Bar members Bernard Papp and Melissa Cooney presented to thirty-seven attendees about a multitude of topics involving estate planning, real estate and wills. The presentation topics ranged from the basic components of a simple will to complex estate planning topics to protect a client's wealth.

Prairie State Legal Services and the Bar Association advertised the program to area Veteran groups with Prairie State handling the intake of interested Veterans. After the program, attendees had the opportunity to sign up to help aid a Veteran in drafting a will. Over twenty attendees signed up to do so. Prairie State handled pairing Veterans with volunteer attorneys to prepare their estate documents. At this point, nine Veterans have been paired with attorneys with Prairie State seeking information from eight others prior to pairing them with an attorney.

Overall the program was a great success and a great way to educate the Bar Association while at the same time helping out our area Veterans.

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Pictured back row (L to R): Amy McMahon, Steve Elsner, Barbara Burget, Jill Heffron Front row (L to R): Kathy Dixon, Chris Johnson, Mark Weber



611 S. Main Street, Crystal Lake, Illinois 60014

Associate Judge Swearing in Ceremony Judge Michael E. Coppedge Judge Jeffrey L. Hirsch



Michael E. Coppedge and Chief Judge Michael J. Sullivan



Jeffrey L. Hirsch and Chief Judge Michael J. Sullivan

Congratulations to our two newest Associate Judges. The swearing in ceremony was held on November 10, 2015 at 11:00 a.m. Judge Coppedge is presiding over Orders of Protection, Dissolution proveups and Attorney general cases in Courtroom 365. Judge Hirsch is presiding over petty traffic and ordinance violations in Courtroom 102.



The currently sitting Judges listen as Chief Judge Michael J. Sullivan introduces and swears in Judges Coppedge and Hirsch.

Vehicle Impoundment and Administrative Fees

By: Bill Westfall

The community care taking function is one basis for vehicle impoundment. The Illinois Vehicle Code also establishes fees and procedures for impoundment subsequent to arrest.

The community care taking function is an exception to the warrant requirement of the 4th Amendment of U.S. Constitution. There are a number of exceptions, such as probable cause for an arrest or reasonable suspicion of a crime. The Community Caretaking doctrine is just another exception, and can be broken down into three areas: 1) Emergency Aid; 2) Automobile Impoundment and Inventory; and 3) Public Servant Exception. Generally speaking, it is also a legal foundation for the latter part of the phrase 'protect and serve.' This exception allows a police officer to make contact with society devoid of suspicion, absent investigative means, or to acquire evidence.

This topic is becoming more popular and is prevalent in multiple aspects of police encounters. Furthermore, municipal liability and tort immunity are the second largest area of municipal litigation. Because the 4th Amendment is imperative to our way of life, citizens are fairly knowledgeable in this area, or at least think they are, which results in anger and confusion, and, eventually, disagreements and altercations.

Many of the municipalities in the area have impoundment procedures. The problem arises when the driver of a vehicle is arrested and no one is there to take possession of the vehicle. The municipality is then responsible for undertaking this task. And as such, many impose a fee. Depending on where that vehicle is placed, incidents will arise: accidents, burglary, damage to property, etc. Without impoundment procedures, the municipality will be open to liability stemming from incidents that arise. Second, many municipalities enforce an impoundment fee, paid to the municipality before the vehicle is eligible for release. This is meant to cover costs, fees, and efforts of the municipality. The authority for such a fee is granted in 625 ILCS 5/11-208.7. This section also explicitly states thirteen grounds for which an impoundment fee can be imposed. Now, this does not mean the appropriate agency may not impound a vehicle for evidentiary, or other reasons, but they must have independent justifications for the impoundment and any associated fees.

Next, the statute doesn't set in terms of dollars the fee which is to be imposed, rather, the statue provides for a 'reasonable administrative fee related to its administrative and processing costs associated with the investigation, arrest, and detention of the offender, or the removal, impoundment, storage, and release of the vehicle.' Reasonable people currently disagree.

In the cases *People v. Ratliff* (218 Ill.App.3d 707), a 1996 Second District case, and *Carter v. City of Alton*, 2015 IL App (5th) 130544, two Illinois Appellate courts are at odds. While both Courts have merit, they appear to be the different sides of the same coin. But it will be interesting to see what, if any, developments come in the next few years regarding such procedures and fees.



HELP!!

Volunteers are needed to speak to 4th and 5th grade classrooms in McHenry County as part of the 2016 Law Day Celebration. Each volunteer is matched with a class or classes. The volunteer and teacher agree on the topic and time. Visits will take place from Monday, April 11 through Friday, April 29, 2016.

If you wish to volunteer, please send an email to: mhnader@co.mchenry.il.us

Save the date!

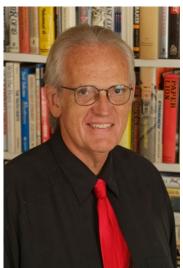
The McHenry County Bar Assoc. and Prairie State Legal Services will host the 2016 Legal Aid Awards luncheon

At Loyola's Retreat and Ecology Campus, Woodstock Tuesday May 24, 2016

On Tuesday May 24, 2016, Prairie State Legal Services and the McHenry County Bar Assoc. will present Lester Munson, ESPN writer and Legal Analyst, as our guest speaker at the annual Legal Aid Awards luncheon honoring our outstanding volunteers.

For 25 years, Mr. Munson has reported on money, celebrity, violence, sex, drugs, race, gender, greed, court decisions, falls from grace, and government actions in the sports industry. Mr. Munson is a graduate of Princeton University and the University of Chicago Law School and is a lawyer licensed to practice in Illinois. He is sure to provide a most interesting afternoon for all in attendance!

Please watch for the meeting announcement for the May Bar luncheon and be sure to RSVP promptly at that time so we can finalize the plans for the event. We look forward to seeing you there!



SAVE THE DATE MCBA 40TH ANNUAL GOLF OUTING AUGUST 5, 2016



Mark your calendars! We will return to Turnberry Country Club in Lakewood, IL this year for the **40th** Annual McHenry County Bar Association Golf Outing. This year's outing takes place on **Friday**, **August 5**, **2016** and the shotgun start will be at 11:00 a.m.

It is never too early to start gathering your foursomes to come out and enjoy a day on the golf course with us. We will have a day of fun, networking and contests for you to enjoy.

As we make our way toward summer, look for you invitation to arrive, take advantage of our Early Bird Registration and come out for a day of golf, fun and networking.

Hope to see everyone on **August 5th!**

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LAWYERS' ASSISTANCE PROGRAM: CONFIDENTIAL HELP AND OUTREACH

Lawyers are accustomed to stress, both the chronic and the episodic kinds, but we all know that sometimes the pressures of practicing law can be overwhelming. If you feel that you may be developing problematic ways of responding to stress, there is free and confidential help available to you through the Lawyers' Assistance Program, Inc. (LAP). LAP is a strictly free and confidential not-for-profit that has been helping lawyers, judges, law students and their families for over 30 years.

At no cost to yourself, and in strict confidentiality, you can call to speak with one of their licensed clinicians regarding stress, anxiety, work-life balance, career transition, substance abuse, grief, addiction and/or any other issue that may be impairing your health or your professional judgment. LAP provides free and confidential individual assessments, short-term counseling, gender specific support groups, two weekly 12-step support meetings and referrals for continued treatment when indicated. LAP also offers the opportunity for confidential peer support from a trained a LAP volunteer. Peer support volunteers are trained by LAP and hand-picked to meet your individual circumstances. LAP trained confidential peer support volunteers in McHenry County include:

Alexander Bud Richard Buelow Honorable Michael T. Caldwell Honorable Michael Chmiel H. Case Ellis	Gregory Morse Diane Mueller Brian Stevens Guy Youman
H. Case Ellis	

Getting in contact with a LAP peer support volunteer or clinician is easy – just call LAP (312-726-6607). Don't hesitate. Whether you are in solo practice, a member of a firm, a judge, or a law student, LAP's services are available to you. You can also call LAP if you are concerned about a colleague, a friend or a family member who is experiencing any of these problems. Our clinicians will help you find additional help for your loved one and assist you in coping with the stress that accompanies being a support system and/or caretaker for others.

The trained staff at LAP offer help in a respectful, non-judgmental way. LAP also offers presentations at law firms, law schools, and bar associations to help raise awareness about these issues, and the approaches available to address them. For more information, visit our website at www.illinoislap.org. Or contact us in our Chicago office, at 20 South Clark Street, Suite 1820, by calling 312-726-6607 or 800-527-1233. Or email us at gethelp@illinoislap.org. Don't ignore the problem. LAP is here to help.

CONGRATULATIONS to Judge Michael Chmiel for being granted the John Powers Crowley Award from the Lawyers Assistance Program.

Law Office with Space for Rent

Rent includes: private office, large conference room, comfortable reception area, high speed internet, professional copier, fax machine, kitchen and ample parking. Office located in downtown McHenry. \$450 per month, all utilities included. Prefer to rent to an attorney, but will consider other similar professions.

If interested, please contact Debbie at dshieralaw@gmail.com

IMMEDIATE JOB OPENING

Small, established 2-person, Crystal Lake (McHenry County) law firm has an immediate opening for an attorney with 1-3 years experience to practice family law in McHenry County. Must be independent, self-starter that can sympathize with clients and be aggressive in advocating their positions. Mentoring available, if needed.

Salary Range: \$50,000—\$55,000, depending on experience and

qualifications

Insurance: 1.) Malpractice: provided 2) Health: none provided

Associations: Will pay for McHenry County and Illinois State Bar

memberships

Vehicle: Need to use own vehicle, but we will reimburse for business

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Please email resume to lawfirmcl@sbcglobal.net

Trial Call

Case Number: 14SC2041

Plaintiff: Pekin Insurance Company & Walter Rueff

Defendant: Patrick Rush

Plaintiff's Attorney: Russell Barnett of ESP Kreuzer Cores

Defendant's Attorney: Burdelik Law Group

Trial Date: November 30, 2015 Judge: Michael T. Caldwell Verdict: Defendant

Last Demand: 80% Last Offer: 50%

Case Number: 13LA309 Plaintiff: Christina Puleo Defendant: Charles Peck

Plaintiff's Attorney: Freeman Tutaj, LLC

Defendant's Attorney: Mateer Goff & Associates, LLP

Trial Date: December 8-9, 2015 Judge: Michael T. Caldwell

Verdict: Defendant

Case Number: 13LA19 Plaintiff: Tina Parratore Defendant: William Ferguson

Plaintiff's Attorney: Hans Mast and Thomas Popovich

Defendant's Attorney: Cozzi & Goggin-Ward

Trial Date: January 4-5, 2016 Judge: Thomas A. Meyer Verdict: Plaintiff Medical: \$12,484.35 Pain & Suffering: \$1,000 Net Total Verdict: \$13,484.35

Case Number: 11LA391 Plaintiff: Eric Bjurstrom Defendant: John Bicknase

Plaintiff's Attorney: Kelly Lancaster of Botto Gilbert Lancaster Defendant's Attorney: Lewis Brisbois of Bisgaard & Smith

Trial Date: January 4-7, 2016 Judge: Michael T. Caldwell

Verdict: Plaintiff Medical: \$2,000 Pain & Suffering: \$375 Loss of Normal Life: \$375 Gross Verdict: \$2,750

Plaintiff's Contributory Negligence: 30%

Net Total Verdict: \$1,925

Case Number: 11LA391 Plaintiff: Kimberlynn Bjurstrom Defendant: John Bicknase

Plaintiff's Attorney: Kelly Lancaster of Botto Gilbert Lancaster Defendant's Attorney: Lewis Brisbois of Bisgaard & Smith

Trial Date: January 4-7, 2016 Judge: Michael T. Caldwell

Verdict: Defendant

Case Number: 11LA391 Plaintiff: Patrice Bjurstrom Defendant: John Bicknase

Plaintiff's Attorney: Kelly Lancaster of Botto Gilbert Lancaster Defendant's Attorney: Lewis Brisbois of Bisgaard & Smith

Trial Date: January 4-7, 2016 Judge: Michael T. Caldwell

Verdict: Plaintiff Medical: \$6,255.04 Pain & Suffering: \$2,000 Loss of Normal Life: \$2,000 Gross Verdict: \$10,255.04

Plaintiff Eric Bjurstrom's Contributory Negligence: 30%

Case Number: 13LA30 Plaintiff: Sean Hammett Defendant: Neal Robbins

Plaintiff's Attorney: Rozovics Law Firm

Defendant's Attorney: Kopka Pinkus Dolin & Eads, LLC

Trial Date: January 11-14, 2016 Judge: Michael T. Caldwell

Verdict: Plaintiff Medical: \$7,300 Gross Verdict: \$7,300

Plaintiff's Contributory Negligence: 50%

Net Total Verdict: \$3,650 Last Demand: \$50,000 Last Offer: \$15,000



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These homeowners and this ATG member represent what we strive for every day:

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MCBA Calendar of Meetings & Events

Date	Event	Location	Time
February 9, 2016	Family Law Section Meeting	MCBA Office	12:15
February 11, 2016	Criminal Law Section Meeting	MCBA Office	Noon
February 16, 2016	Board of Governors Meeting	MCBA Office	Noon
February 23, 2016	General Meeting	Home State Bank, Woodstock	Noon
March 3, 2016	Criminal Law Section Meeting	MCBA Office	Noon
March 8, 2016	Family Law Section Meeting	MCBA Office	12:15
March 15, 2016	Board of Governors Meeting	MCBA Office	Noon
March 22, 2016	General Meeting	Home State Bank, Woodstock	Noon
April 7, 2016	Criminal Law Section Meeting	MCBA Office	Noon
April 12, 2016	Family Law Section Meeting	MCBA Office	12:15
April 15, 2016	MCC Law Day High School Program	MCC	8:30—Noon
April 19, 2016	Board of Governors Meeting	MCBA Office	Noon
May 6, 2016	Law Day		

McHenry County Bar Association 110 South Johnson Street, Suite 210 Woodstock, IL 60098