Spring 2015 • Volume 1

MBA Messenger

MBA Judges Night 2015

Milwaukee Bar Association
424 E. Wells St.
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Regular Features

Be Part of the Messenger

Please send your articles, editorials, or anecdotes to bwegner@milwbar.org or mail them to Editor, Milwaukee Bar Association, 424 East Wells Street, Milwaukee, WI 53202. We look forward to hearing from you!

If you would like to participate, we have seats available on the *Messenger* Committee. Please contact James Temmer, jtemmer@milwbar.org.

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Molly Staab, *Office Manager*

Britt Wegner, *Director, Lawyer Referral & Information Service*

Milwaukee Justice Center Staff

Mary Ferwerda, *Executive Director*

Angela D. Cunningham, *Legal Director*

Omar Mallick, *Attorney Supervisor*

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Letter From the Editor

Charles Barr, Editor

This time around, the *Messenger* approached its landing on your desk so stuffed with timely content that a full-length LFTE would have turned it into a crash landing. Thus, you might say I was politely invited to eject from the aircraft.

And, hey, maybe it's not such a bad idea for the editor to put a cork in it for a change. This editor, anyway. *Ergo,* I commend to you our convenient Table of Contents.

We hope you enjoy this issue of the *Messenger,* and consider this: next time I talk at ya, it'll be baseball season. Yes!

—C.B.

MBA Membership Events

Thursday, February 26

6:00 – 8:00 p.m.
Wisconsin Club
Appetizers and cash bar

Jazz in the Park Open Houses

Kickoff event: Thursday, June 4
5:00 – 7:00 p.m.
Wine and appetizers

Needed:

Law Day Volunteers

Law Day 2015 is right around the corner, and the Milwaukee Bar Association is seeking volunteers for its free walk-in legal clinics. On Saturday, May 9, Milwaukee-area libraries will host the free clinics, which offer a one-on-one meeting with an attorney to any interested member of the public. These meetings will provide information and referrals appropriate for each individual's legal situation. We are currently seeking volunteers from 10:00 – 2:00 at various libraries in Milwaukee.

Please contact Britt Wegner at 414-276-5931 or bwegner@milwbar.org if you are interested in participating.

Annual Milwaukee Justice Center Campaign Is Around the Corner

The MBA Foundation's Annual Milwaukee Justice Center Campaign will run from March 23 to April 3. It's easy to help sustain the MBA's signature public service project, a unique, award-winning model that has put our legal community on the national *pro bono* map. Visit the MBA's website, www.milwbar.org., and click on Milwaukee Justice Center to donate.

The MJC assisted more than 10,000 needy individuals in 2014 due to the generosity of our donors. Please help us continue our commitment to improve access to justice in Milwaukee.

P.S.: You can make donations any time the spirit is willing and the credit card or checkbook is at hand. March 23 to April 3 is merely when we bug you about it.

The Mobile Legal Clinic team accepts the State Bar of Wisconsin's "Top 5 Legal Innovator" Award at the December meeting of the State Bar Board of Governors. From left, Mike Gonring, Frank Daily, Dawn Caldart, Angela Schultz, and Mary Ferwerda.

Member News

Francis W. Deisinger of Reinhart Boerner Van Deuren and **Kevin J. Lyons** of Davis & Kuelthau have been nominated to run for the office of president of the State Bar of Wisconsin.

Davis & Kuelthau announced that **William A. Jennaro** has joined the firm's Litigation Practice in its Milwaukee office. His practice primarily focuses on mediation and arbitration.


Thomas W. Kyle


Terese Halfmann


Anne Saghir

Hupy and Abraham announced that **Thomas W. Kyle** and **Terese Halfmann** have joined the firm. Both concentrate their practices in nursing home abuse.

The firm also announced the hire of **Anne Saghir.** She concentrates in personal injury matters at the firm's Madison office.


John C. Thomure, Jr.

Petrie & Stocking announced that **John C. Thomure, Jr.** has joined the firm. He concentrates his practice in general corporate matters, real estate transactions, and import and export control laws.


Katherine Maloney Perhach

Quarles & Brady announced the selection of **Katherine Maloney Perhach** as the Milwaukee office managing partner effective January 1, 2015. She succeeds **Kathryn M. Buono,** who is joining Briggs & Stratton Corporation as Vice President, Secretary, and General Counsel.

Reinhart Boerner Van Deuren announced that five of the firm's attorneys have been named shareholders: **James D. Borchardt** and **Gordon M. Wright** in the Intellectual Property Practice, **Robert S. Driscoll** in the Labor and Employment Practice, **Jennifer L. Naeger** in the Litigation Practice and as chair of the firm's Food and Beverage Law Practice Group, and **Mindy Foss Rice** in the Banking and Finance Practice. The firm also welcomed **Robert J. Heinrich** as a partner in its Banking and Finance Practice.


James D. Borchardt


Gordon M. Wright


Robert S. Driscoll


Jennifer L. Naeger

The firm welcomed **Albert Ortiz** as an associate in its Banking and Finance Practice.


Albert Ortiz


Mindy Foss Rice


Robert J. Heinrich

Wisconsin Association for Justice has elected **Ann S. Jacobs** of Jacobs Injury Law as its 2015 President. **Benjamin S. Wagner** of Habush, Habush & Rottier was elected Vice-President.

Volunteer Spotlight

Richard Hart


Richard Hart

Richard Hart graduated from Marquette University Law School in 1977 and has been in private practice in Milwaukee ever since. Richard has a general practice that concentrates in family law, criminal defense, probate, and real estate. He practices with his son Eric and his long time associate, Pamela Resnick, in the Historic Third Ward.

Richard has accepted referrals from the MBA Modest Means Program since its inception. He also receives referrals from several community service programs to assist individuals with legal questions and concerns, and provides *pro bono* representation.

Richard has been co-chair of the MBA Bench/Bar Circuit Court Family Committee for the past eight years. He has been chair of the Milwaukee Circuit Court Guardian ad Litem Training Program since it began 14 years ago. He is on the board and serves as treasurer of the Foley Inns of Court.

Richard has served as a program moderator and presenter in various CLE programs for the Inns of Court, as well as for MBA CLE programs in family and criminal law. He has presented programs throughout the Milwaukee community on topics such as how juveniles can avoid putting themselves at risk, and how the elderly should plan for their well-being. He has spoken to school groups on constitutional law, criminal law, and family law; and has presented CLE seminars on criminal law issues for the State Public Defender Office and the Wisconsin Association of Criminal Defense Lawyers.

The Governor's Office, the City of Milwaukee Common Council, and the Milwaukee County Board of Supervisors have each declared a "Richard H. Hart Day" in recognition of his volunteer activities and service to youth sports organizations in the community.

Richard feels that the most important function of the programs in which he volunteers is to provide assistance to the many people who fall through the financial cracks and who are unable to afford or otherwise obtain competent legal advice. He states that an issue that would be insignificant in the personal life of the attorney may be extremely important in the daily life of the individual who needs assistance. He adds that it is important that attorneys provide such assistance in order to live up to their oath to employ their training and experience to serve those who cannot afford private counsel. In addition, volunteer work promotes good relations between the legal community and the public, and helps improve the public's perception of attorneys.

For his unflagging example of how an attorney can and should give back to his community, Richard Hart has earned his turn in the Volunteer Spotlight.

Message From the President

Attorney David G. Peterson, Reinhart Boerner Van Deuren

Kudos to our staff and executive director at the Milwaukee Bar Association for their excellent work day in and day out! Behind the scenes, Jim, Sabrina, Katy, Britt, Molly, Dorothy, Mary, Angela, and Omar all work long hours to make sure the MBA runs smoothly. The quality of their work is evident in the programs and events happening year round. If you see any of them at an event or the MBA offices, please take a minute to say "Thank you!" for their dedicated work at the MBA. Having been on the MBA board for several years, I have gained a real appreciation for how fortunate we are to have each of them working for us.

Our bar association is continuing to evolve and improve to meet our needs. We are planning several new events over the next year to begin a dialogue about the future of the legal profession. Our goal is for the MBA to provide a forum where you can keep up on the latest trends and learn of changes that are coming down the road. Watch for e-mails and other announcements of what is coming. Some of the events will be quite casual and others may be more formal. We have established a Future of the Legal Profession Committee to lead this effort. If you would like to get involved with the committee or have thoughts or ideas you would like to share, please contact Jim Temmer at the MBA or the committee chair, MBA board member Tom Reed.

Hopefully you got a chance to attend Judges Night. If you did not, please plan to attend next February. As you can see from the photos in this issue of the *Messenger,* the evening was a lot of fun and very well attended. It was a wonderful opportunity to honor the judiciary serving Milwaukee County, and it is one of our better traditions.

Speaking of traditions, please mark your calendar and plan to attend the annual MBA Memorial Service on Friday, May 29 at noon in the Milwaukee County Courthouse. We take time at the service to honor our members who have passed away in the last year, and share a story or two about their contributions to our community. The service is always well attended, and provides a great opportunity to reflect on the relationships that we develop in our profession.

We are currently seeking nominations for the awards that are presented at our Annual Meeting. The categories are Distinguished Service, Lawyer of the Year, Lifetime Achievement, and the E. Michael McCann Public Service Award. If you know of a judge or attorney who deserves one of these awards, please contact the MBA and submit his or her name for consideration by the awards committee. The Annual Meeting will take place on June 18 at the Italian Conference Center.

On a personal note, I am really looking forward to March Madness, as well as the start of the Milwaukee Brewers season. I think this might finally be the year for the Brew Crew!

MBA Seeks Candidates for Office and Award Nominations

The MBA invites you to consider running for one of the three seats on the board of directors that are up for election this spring. We also seek candidates for the office of vice-president, which succeeds to the offices of president-elect and president over a three-year period. Serving on the MBA board or as an officer is a professionally enriching and rewarding experience, and the MBA has an experienced and talented staff with which it is a pleasure to work.

The MBA is also calling for nominations for its Distinguished Service, Lawyer of the Year, Lifetime Achievement, and Public Service Awards. These awards are bestowed at our annual meeting in June.

Please contact MBA Executive Director Jim Temmer (414-276-5934, jtemmer@milwbar.org) as soon as possible if you would like to throw your hat into the ring, to make award nominations, or with questions.

New Leadership to Take MJC Forward

Justin A. Metzger, Milwaukee Justice Center

The New Year saw new leadership step up at the Milwaukee Justice Center. Legal Director Mary Ferwerda assumed the role of Executive Director, while the Legal Director position has been filled by MJC newcomer Angela Cunningham.

Angela, a graduate of UW-Madison and Northwestern University School of Law, has been dedicated to public service for years. Prior to attending law school, she worked with NJM Management Services in Kenosha, where she assisted the Kenosha County Department of Human Services, and then with the Evangelical Lutheran Church of America's (ELCA) Outreach Center in Kenosha.

It was during her tenure with the ELCA Outreach Center that Angela realized she could provide even greater benefit to those in need if she were an attorney. So she enrolled at Northwestern Law School.

"I noticed many of my clients at the outreach center faced legal issues that compounded their already difficult lives," Angela said. "People were getting evicted from their homes, wages were being garnished, and some lost their children in family court actions. I decided to go to law school because I wanted to be able to help people like my clients."

Since her graduation from Northwestern in 2012, Angela has worked as a volunteer, then paralegal, then attorney with Legal Action of Wisconsin in Kenosha. She remains actively involved in the Kenosha community, serving on various boards.

Angela says her goal is to see the MJC assist everyone who comes to the front desk.

Mary Ferwerda is not new to the MJC. She has been part of the staff since joining as a part-time attorney supervisor in 2013.
"It's been an exhilarating two years," said Mary. "I'm humbled by the opportunities that I've had to professionally thrive here, and excited about all the good things to come."

Mary started her professional life as a youth care worker at Boys Town in Omaha before moving into education administration at Creighton University, and then at Marquette. While a law student at Marquette, Mary volunteered with the Marquette Volunteer Legal Clinics, where she got her first exposure to the MJC. Fast forward a few years, and a lot has changed.

"We are on the edge of opportunity, as we make our home in this new and expansive space in the courthouse," Mary said. "We have a great foundation on which to build and grow our services. Our team is all relatively new, as well, and this confluence of energy and ideas is so positive and inspiring. It's a fantastic time to be a part of this organization."

Virtual Money Is the Next Challenge Under the Trust Account Rule

Attorney Dean R. Dietrich, Ruder Ware

Virtual money (sometimes called Bitcoin) is the next challenge for lawyers in today's world of technology. International companies are contemplating the use of virtual money to provide payment for services and may ask Wisconsin law firms to accept this form of payment. While lawyers can agree to take almost anything in payment for services, how they deal with virtual money under the Wisconsin trust account rule (SCR 20:1.15) is a far more complex question.

Virtual money allows people to purchase and sell services on an international basis without the delay of the banking process. Virtual money (such as Bitcoin) can be converted to cash and then properly handled under the trust account rule and the tax regulations. The volatility of virtual money is another question—one that goes beyond the scope of this article.

Lawyers who accept virtual money to pay for services rendered have the flexibility to accept payment and decide whether they want to cash in the virtual money or take the risk of holding it.

If the law firm contemplates accepting virtual money as an advance payment for services to be rendered in the future, the flexibility of the law firm is very limited. Due to the requirements of the trust account rule, the only real alternative for the law firm is immediately to "cash in" the virtual money, deposit the conventional currency into the law firm trust account, and then follow the trust account rule for payment when services have been rendered. *See* SCR 20:1.15(b)(4) and (g)(1).

If the law firm wishes to accept virtual money as an advance payment, but follows the alternate notification procedures that allow the law firm to use the money immediately, the firm could continue to receive the virtual money as payment and handle the virtual money as it sees fit.

The law firm must, however, notify the client that it is taking the virtual money as payment and intends to use it as immediate income to the firm, and also agree that any dispute regarding fees will be resolved pursuant to the fee arbitration procedures of the Milwaukee Bar Association or the State Bar of Wisconsin. The law firm must also give a final accounting to the client when the services have been completed, and again advise the client of the right to request binding fee arbitration if there is a dispute regarding the fees charged. This alternate procedure is found in SCR 20:1.15(b)(4m) of the Wisconsin Rules of Professional Conduct.

In short, lawyers can receive payment for services from a client using virtual money. Lawyers must keep in mind, however, that if the payment is an advance payment for future services, under SCR 20:1.15(b)(4) the virtual money must be converted to conventional currency and handled appropriately under the trust account rule.

Dean R. Dietrich, Marquette 1977, of Ruder Ware, Wausau, is past chair of the State Bar Professional Ethics Committee. He can be reached at ddietrich@ruderware.com.

CLE Calendar

Spring 2015

All CLEs at MBA unless otherwise noted.

March 10, 2015
Estate & Trust (Probate) Section
Planning with Beneficiary Defective Trusts
This presentation focuses on the tax implications of beneficiary defective trusts and situations where beneficiary defective trusts are utilized for estate planning purposes.
Presenter: M. Rhett Holland, Michael Best & Friedrich
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 17, 2015
Taxation Section and Milwaukee Tax Club, co-sponsors
View from the Bench
The latest developments from the point of view of a U.S. Tax Court Judge
Presenter: Honorable Ronald L. Buch, U.S. Tax Court
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 18, 2015
Health Law Section
Current State of HIPAA Enforcement
As the Office for Civil Rights continues to increase its enforcement of the HIPAA privacy, security and breach notification rules, covered entities and business associates have even more incentive to review their HIPAA compliance programs. An investigator in OCR's Region V office discusses the landscape of HIPAA enforcement following the HITECH Act, including the direct liability of business associates and lawyers. The presentation also discusses common compliance issues and how to avoid them.
Presenter: Abby Bonjean, Investigator, U.S. Department of Health and Human Services, Office for Civil Rights, Region V (Chicago)
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 20, 2015
Corporate Counsel Section
Anatomy of a Patent Filing
Gain a better understanding or get a refresher on the mechanics of preparing and filing for a patent, including the process, dealing with existing patents, and protecting the patent in the future.
Presenter: Michael T. Griggs, Boyle Fredrickson
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 25, 2015
Labor & Employment Section
Updates and Practice Tips From the Wisconsin Equal Rights Division
A panel of Wisconsin Equal Rights Division administrative law judges discusses recent updates at the ERD and responds to questions.
Presenters: administrative law judges TBA, Equal Rights Division
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 26, 2015
MBA Lawyer Referral and Information Service
The Affordable Care Act, Child Support, and Tax Deductions: What Family Law Practitioners Need to Know; and Health Insurance: How Did We Get Here?
Presenters: Nidhi Kashyap, Staff Attorney, and John K. Conley, Legal Counsel, Milwaukee County Child Support Services
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 26, 2015
MBA Presents
Attorneys' Guide to College Funding
Learn strategies that may save you and your clients thousands of dollars on the cost of college. This session covers specific college funding strategies and issues including:
- gifting, shifting income and assets
- unique strategies for business owners and the self-employed
- leveraging cash flow
- the impact of divorce on college planning
- estate planning mistakes that cost families

The session examines actual case studies of families and the outcomes that resulted from proactive planning.
Presenter: Brad Baldridge, CFP® | College Funding Consultant
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

March 27, 2015
Bench/Bar Family Court Committee and Family Law Section, co-sponsors

continued next page

Welcome New MBA Members!

Marie G. Bahoora, *Michael Best & Friedrich*
Daniel L. Barnes, *Godfrey & Kahn*
Robert J. Bartel, *Ogletree Deakins*
La Keisha Butler, *Milwaukee City Attorneys Office*
Benjamin J. Clarke, *Godfrey & Kahn*
Patrick Coffey, *Whyte Hirschboeck Dudek*
Timothy G. Costello, *Ogletree Deakins*
Matthew S. Covey, *Godfrey & Kahn*
Angela D. Cunningham, *Milwaukee Justice Center*
Christine Davies D'Angelo, *D'Angelo & Jones*
Christopher D'Errico, *Marquette University Law School*
Brian T. Fahl, *Kravit, Hovel & Krawczyk*
Allison Flanagan, *Milwaukee City Attorneys Office*
Jennifer Flynn, *Kim & LaVoy*
Jessica L. Franken, *Quarles & Brady*
Seth W. Goettelman, *Quarles & Brady*
Rachel E. Grischke, *Laufenberg, Jassak & Laufenberg*
Katherine Halopka-Ivery
Danielle Hensley
Mary E. Hughes, *Whyte Hirschboeck Dudek*
Kathleen Hume, *Hume Law Office*
Josh Johanningmeier, *Godfrey & Kahn*
Michael T. Jones, *Michael Best & Friedrich*
Monica Irelan Karas
Ari Kasper, *Whyte Hirschboeck Dudek*
Anne Berleman Kearney, *Appellate Consulting Group*
Mark Kmiecik, *Davis & Kuelthau*
David R. Konkel, *Godfrey & Kahn*
Steve Kruzel, *Quarles & Brady*
Lindsey A. Larson, *Beck, Chaet, Bamberger & Polsky*
Trevor Leverson, *Leverson Lucey & Metz*
David Loeffler, *Ogletree Deakins*
M. Scott McBride, *Andrus Intellectual Property Law*
Brigid Moroney, *The Marcus Corporation*
Vincent M. Morrone, *Michael Best & Friedrich*
Albert Ortiz, *Reinhart Boerner Van Deuren*
Michael Ostermeyer, *Quarles & Brady*
Blaine Patino, *Patino Law Offices*
James A. Pellegrini, *Reinhart Boerner Van Deuren*
Nicole Penegor, *Legal Aid Society of Milwaukee*
Michael T. Piery, *Quarles & Brady*
Travis W. Romero-Boeck, *Quarles & Brady*
Stacie Rosenzweig, *Halling & Cayo*
Jacqueline R. Roush, *Godfrey & Kahn*
Grant Scaife, *University of Wisconsin Law School*
Emily Shircel, *Quarles & Brady*
Alexandra W. Shortridge, *Quarles & Brady*
Ellen Sinclair, SDS, *Sisters of the Divine Savior*
Adam J. Spector, *Reinhart Boerner Van Deuren*
Deborah A. Stencel, *Law Offices of Deborah A. Stencel*
Max T. Stephenson, *Gimbel, Reilly, Guerin & Brown*
Heather S. Stutz, *Quarles & Brady*
James O. Sullivan, *Milwaukee County Child Support Services*
Gary W. Thompson, *Thompson Law Offices*
Madeleine Tick, *Marquette University Law School*
Bryan Ward, *Law Offices of Martin J. Greenberg*
Y. Douglas Yang, *Michael Best & Friedrich*
Michael S. Yellin, *Gass Weber Mullins*
Michael Zientara, *Notre Dame Law School*

Charlotte Bleistein: A Career Full of Firsts and Built to Last

The Milwaukee Bar Association salutes Attorney Charlotte A. Bleistein on the occasion of her 100th birthday (January 4, 2015).

Attorney Bleistein, a resident of Greendale, was featured in an article by Hannah Dugan two years ago in the *Messenger.* She has been a lawyer since 1939, when she graduated from Washington University Law School and was admitted to the Missouri bar. Ten years later, after attending Marquette University Law School, she gained admission to the Wisconsin bar. Incidentally, she served on the law review at both of her law schools.

Attorney Bleistein has a penchant for "firsts." She was the first female field examiner for the National Labor Relations Board in her first position after becoming a lawyer. She was the first female attorney to serve in the Volunteer Defenders Program, a 1957 pilot project that provided free in-court representation to indigent criminal and juvenile defendants in Milwaukee County. This program, a historical forerunner of the Milwaukee Justice Center, was the first of its kind in the nation.

In addition to maintaining a law practice and insurance agency, Attorney Bleistein was elected to two terms as a Greendale trustee, in 1953 and 1956. She has been active in state and local bar associations, Turners International, United World Federalists, Girl Scouts, and Greendale community organizations. By the way, she initially operated her law practice and insurance agency from her home—which she built herself.

Perhaps most remarkably, Attorney Bleistein continuously engaged in the practice of law until about three years ago. Think about the commitment that requires. If you know anyone else who has practiced law at age 97, we'd like to hear about it.

Reaching 100 itself is noteworthy. Reaching it with the vitality of Charlotte Bleistein is remarkable. Her pioneering achievements, practice of law into her late 90's, and 75 years of service to her community are downright inspirational.

Happy Birthday—and hats off—to Charlotte Bleistein, truly a lawyer's lawyer.

***CLE* continued from p. 8**

A View from the Bench: A Roundtable Discussion
This presentation, featuring Milwaukee County Circuit Court Family Division judges and court commissioners, discusses various areas of family law practice.
Moderator: Atty. Karen G. Zimmermann, Zimmermann Law Offices
Panelists: Honorable Maxine White (Presiding Judge, Family Division); Honorable Carl Ashley; Honorable Frederick Rosa; Honorable Marshall Murray; Sandy Grady, Family Court Commissioner; Ana Berrios-Schroeder, Deputy Family Court Commissioner
12:30 - 1:00 (Registration—no lunch)
1:00 - 4:00 (Presentation)
4:00 - 5:00 (Reception – hors d'oeuvres & wine)
3.0 CLE credits

March 30, 2015
Real Property Section
Development in the City of Milwaukee
Discussion of the development process in the City of Milwaukee and some of the exciting projects on the horizon
Presenter: Rocky Marcoux, Commissioner, City of Milwaukee Department of City Development
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

April 17, 2015
MBA Presents
A View from the Bench: A Roundtable Discussion
This presentation featuring Milwaukee County Children's Court judges, discussing various areas of practice in Children's Court.
Moderator: Atty. Mark A. Sanders, Vel Phillips Juvenile Justice Center
Panelists: Honorable Laura Gramling Perez; Honorable Michael J. Dwyer; Honorable Jane Carroll; Attorney Mark A. Sanders
12:30 - 1:00 (Registration—no lunch)
1:00 - 4:00 (Presentation)
4:00 - 5:00 (Reception – hors d'oeuvres & wine)
3.0 CLE Credits

May 8, 2015
Bench/Bar Family Court Committee and Family Law Section, co-sponsors
14th Annual Family Court GAL Training Seminar
Panelists: judges and attorney TBA
Location: Marquette University Law School, room TBA
Noon - 12:30 (Lunch/Registration)
12:30 - 4:00 (Presentation)
3.5 CLE GAL credits

May 18, 2015
Real Property Section
Commercial Leases—Version 2015
Discussion of the top ten things a landlord and tenant should know about commercial leases
Presenter: Timothy M. Van de Kamp, O'Neil, Cannon, Hollman, DeJong & Laing
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

June 11, 2015
Taxation Section
Hot Buttons in Tax Valuation
Discussion of the following key issues in terms of how the valuation community treats them, and how the IRS attacks them:
- S corporations—tax impacting
- Built-in gains tax for C corporations
- Discount for lack of marketability
- Key value drivers (earnings, method utilized, multiple/discount rate)

Presenter: Timothy P. Muehler, JD, CPA/ABV/CFF, principal, CliftonLarsonAllen LLP
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

June 22, 2015
Real Property Section
Sale or Lease of Real Estate Pursuant to a Sale of Owner-Occupied Business
Presenter: Sandy Swartzberg, Weiss Berzowski Brady
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

September 17, 2015
Taxation Section
Topic: TBA
Presenter: Joseph E. Tierney, Meissner Tierney Fisher & Nichols
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

Important CLE Update

The MBA CLE Department is "going green"! After March, look for monthly CLE calendars in your e-mail inbox, not your snail mailbox.

Unjust Enrichment: Recovery Against Landlord for Services to Tenant and Against Owner for Services to General Contractor

Attorney Willis J. Zick

Introduction

A tenant hires a contractor to work on property owned by the landlord. The landlord has no contact with the contractor but is aware that the work is being done and has given approval to the tenant. The tenant fails to pay the contractor, who then sues the landlord for unjust enrichment.

An owner hires a general contractor to build or improve a house. The general hires various subcontractors. The work is completed and the general is paid in full but fails to pay a subcontractor, who brings an unjust enrichment action against the owner.

A. Unjust Enrichment

Unjust enrichment has long been recognized in Wisconsin as a basis for liability if the plaintiff can establish that: (1) the plaintiff conferred a benefit, (2) the defendant had knowledge of the benefit, and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff. The measure of damages is the value of the benefit received by the defendant.

B. Distinction from *Quantum Meruit*

Unjust enrichment and *quantum meruit* are often confused and used interchangeably.

Unjust enrichment requires no contractual relationship and is often referred to as an "implied-in-law contract" or a "quasi-contract." *Quantum meruit* is a basis for liability if the plaintiff can establish that the defendant requested the plaintiff's services and that the plaintiff reasonably expected compensation for the services. This is sometimes referred to as an "implied-in-fact contract." (*But see Lindquist Ford, Inc. v. Middleton Motors, Inc.,* 557 F.3d 469, 480-81 (7th Cir. 2009) (noting terminological confusion in Wisconsin case law and explaining that a *quantum meruit* claim involves a contract implied in law—i.e., in the absence of a contract—whereas a contract implied in fact is simply a contract where the agreement has not been expressed in words)). The measure of damages is the reasonable value of the services rendered by the plaintiff. This entire area is discussed in an article by Mark R. Hinkston, which is recommended to the reader. ("Written Contract Alternatives," 73 *Wisconsin Lawyer* 14 (Feb. 2000); *see also Lindquist Ford,* 557 F.3d at 476-78.)

C. Wisconsin Decisions

The application of unjust enrichment to the situations posited above has been considered in various Wisconsin Supreme Court and Court of Appeals decisions. These decisions are analyzed in detail, and followed by the author's opinion on the present state of the law. For clarity, the parties are referred to by status rather than by name.

(1) *Fullerton Lumber Co. v. Korth*

In *Fullerton Lumber Co. v. Korth,* 37 Wis. 2d 531, 153 N.W.2d 662 (1968), the owner of a farm rented it to his daughter and son-in-law, who hired a general contractor to construct a porch on the residence. The general contractor was paid in full by the tenants but did not pay the plaintiff from whom he had purchased materials. The trial court rejected the plaintiff's effort to establish that the son-in-law was acting as agent of the owner in hiring the general contractor, and thereby to enforce a construction lien against the owner. The supreme court affirmed this finding of no agency.

The plaintiff also asserted unjust enrichment. The trial court found that the owner had made it clear to his son-in-law that he would agree to construction of a porch only on the condition that " . . . if you build it, you pay for it, I have nothing to do with it." The supreme court affirmed the dismissal of the unjust enrichment claim. It found no dispute that the son-in-law had paid his general contractor in full. The court relied on the recent decision of *Gebhardt Bros. Inc. v. Brimmel,* 31 Wis. 2d 581, 143 N.W.2d 479 (1966), which held that an owner who has paid his general contractor in full has no liability for unjust enrichment to an unpaid subcontractor. The court pointed out that even though it was the tenant rather than the owner who paid the general, the tenant would be liable to reimburse the owner for any recovery against him, so that the tenant would end up paying twice for the same materials. As a result, the *Brimmel* rationale applied. Additionally, the court pointed out that it was not inequitable to deny recovery to the plaintiff " . . . from the owner who did not employ it for a benefit he did not want and for which he expressly stated he would not pay." 37 Wis. 2d at 539.

The court also indicated that it probably would have dismissed on grounds of failure to prove benefit to the owner had it not dismissed due to lack of inequity. It stated: " . . . it is true that the [owner] has a new porch on an old house. However, it is the exact porch that [he] did not want . . . . It is an improvement, but one which did not increase the rental income . . . ." *Id.* at 538.

On a personal note, the author was hit by a wave of nostalgia upon encountering *Gebhardt Bros. Inc. v. Brimmel.* This decision lists the author as counsel for the successful appellant owner. The author vividly recalls feeling so strongly about the error in the trial court's decision that he handled the appeal *pro bono.*

(2) *S&M Rotogravure Service v. Baer*

The *S&M Rotogravure Service* decision, 77 Wis. 2d 454, 252 N.W.2d 913 (1977), involves a complicated fact situation. The tenant and contractor entered into a contract to remodel the interior of a building owned by the landlord. After work was completed, the tenant decided it had paid more than the original contract price and sued for a refund. The contractor counterclaimed for unpaid extras and also filed a third-party complaint against the landlord for payment of the extras. The third-party complaint alleged that the landlord had asked the contractor to do the work, and that the landlord had knowledge of the contract between the tenant and contractor and had approved of the plans and payments.

The landlord filed a demurrer to the third-party complaint. He argued that the undisputed fact that the contractor had failed to avail itself of its statutory lien rights prevented it from asserting a claim for unjust enrichment. The supreme court concluded that the line of cases asserted by the landlord hold only that an unjust enrichment claim by a subcontractor fails when the owner has paid the full contract price to the general contractor. It rejected the landlord's claim, based on those cases, that a failure to assert lien rights bars unjust enrichment recovery. Once this issue was resolved, the court overruled the demurrer as a matter of course since the third-party complaint alleged that the work had been done at the request of the landlord.

(3) *Puttkammer v. Minth*

In *Puttkammer,* 83 Wis. 2d 686, 266 N.W.2d 361 (1978), a tenant contracted with a contractor to resurface the blacktop areas of a supper club owned by the landlord. The tenant defaulted in payment. The

continued page 20

Another Successful Year for MBA's Law & Technology Conference

▲ Sponsors take advantage of mingling time at the conference.

The Milwaukee Bar Association Law & Technology Conference was held December 3 at the Italian Conference Center. It marked another successful year of growth for the conference, while providing legal education and a little bit of fun for the attendees.

The conference featured two plenary sessions and eight breakout sessions. The opening plenary featured Mark Goldstein and Tim Pierce, who presented "Social Media and the Ethics of Marketing." The session offered an interesting series of hypotheticals involving new ways of marketing via social media and how not to run afoul of the ethics rules.

Other morning sessions included "Mandatory eFiling: Are You Ready?" with John Barrett, offering a review of the CCAP eFiling procedures and statutes. In "A Judge's Perspective: Tips on Electronic Discovery and Recent Changes to the Privilege and Work Product Statutes," Judge Michael R. Fitzpatrick reviewed recent changes in the law regarding discovery of electronically stored information, as well as privilege and work product.

"Technology at the Deposition and Beyond and How HIPAA'S Effect on Court Reporters Can Impact Attorneys," with Robert Gramann and Scott Marcus, reviewed the latest developments in court reporting technology and how court reporting forms must comply with recent HIPAA regulations. In "Why Re-Invent the Wheel? The Creation, Maintenance and Use of Standardized State and Local Court Forms," Judge Kevin Martens explained the statutory directive for standardized forms and the creation, revision, and maintenance of those forms.

Lunch was provided to attendees, and the program also featured breaks during which they could visit with eight vendors who provide various services to law firms.

Afternoon sessions included "Billing and Collections: The Art of Getting Paid," in which Lori Kannenberg Dorn covered techniques to help attorneys bill more effectively and get paid sooner. "Cloud Storage, Collaboration and Synchronization," with Jeff Krause and Jeremy Cherny, discussed the many flavors of cloud technology, how they are changing the way we work, and how they impact law firms.

In "iPad at Trial: If We Can Do It …," Matthew McClean discussed the use of iPads at trial and specifically how to use apps such as Trialpad, TranscriptPad, iAnnotate, DepoView, and KeyNote. "How I Chose a Practice Management System," with Nate Cade, offered tips on how to find the perfect practice management system for your firm.

The sessions concluded with the always popular "50 Tips, Tricks, Tools, Sites and Gadgets," featuring Jeff Krause and Jeremy Cherny. This rapid-fire session featured one tip per minute on a broad range of technology topics, including everything from office productivity to travel apps.

The all-day event wrapped up with a reception and prize drawing, including the grand prize—a one-week stay in the Bahamas.

This year's Law & Technology Conference is already scheduled for Friday, November 20. We'll be back at the Italian Conference Center with even more great legal technology CLE. We hope to see you there.

Great events like this don't happen without the help of great sponsors and great volunteers. If you are interested in either sponsoring or helping out on the planning committee for this year's conference, please contact Sabrina Nunley at the MBA.

▶ Attendees of the 2014 Law & Technology Conference mingle during the reception.

Judge Charles Kahn learns about technology while using his technology.

Thank You!

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Eric Lowenberg,
Laurna Jozwiak

A Foodie Goes to Judges Night

Michael Shapiro-Barr, Drinker Biddle & Reath

While the old man was off tending to municipal court—poor sap—I had the pleasure of attending Judges Night on his ticket. My mission: to review the culinary offerings provided by The Bartolotta Restaurants. My qualification: I'm the family foodie. My resume of cooking classes is probably longer than most of the traffic records the old man eyeballed that night. Even have my own apron.

As a prelude, I must note that I enjoyed the camaraderie of the enthusiastic crowd even though I was presumably one of the few in the room, apart from MBA staff and sponsors, without a law degree. It may have helped that I'm no stranger to lawyers: my day job is in the marketing department of a law firm.

I didn't expect Bartolotta to disappoint, and it didn't. Upon entering the elegant Grain Exchange ballroom, I was delighted to see the strategic placement of the food stations, with separate staging areas for appetizers, main course, and desserts. This allowed fluid lines and no waiting. Two long tables housed a selection of fine cheeses, Italian cold cuts, and pâté, all rounded off nicely with a salmon appetizer platter. The latter was served on the casing of the fish itself, perhaps a subtle reminder of the law of nature where, as in the courtroom, survival is reserved for the fittest.

On a frigid winter night, the wide selection of warm dishes for the main course was a welcome sight. Guests had their pick of two types of pasta (refreshed regularly), seasoned chicken, and fresh cut steak. Having sampled all, my personal favorite was the succulent steak, topped with a delicious cognac reduction sauce.

Moving on to my favorite—the dessert table—resulted in a strong finish to the evening. In true Bartolotta style, the dessert choices were plentiful. With crème brûlée, lemon bars, red velvet cupcakes, chocolate raspberry tartlets, mint chocolate cupcakes, and whipped peanut butter cups, there was no shortage of sweet selections to keep overworked judges and lawyers awake for the drive home. The mint cupcakes were even topped with glitter frosting—a hint of glamor for a profession and community where glitter typically takes a back seat to hard-headed realities.

Upcoming Events

March 19
Judicial Forum
Featuring candidates for the Wisconsin Supreme Court

May 9
Law Day Legal Clinics

May 29
Memorial Service

June 18
Annual Meeting

August 5
MBA Foundation Golf Outing

Revisiting Judicial Compensation

Honorable Mary M. Kuhnmuench, Milwaukee County Circuit Judge

Lawyers who routinely appear in my court know of my affection for sports analogies, particularly from our national pastime. So please indulge my use of a few sporting references when comparing Wisconsin's judicial salaries with those of six other Midwestern states: Minnesota, Michigan, Illinois, Indiana, Iowa, and Ohio. In baseball parlance, Wisconsin's judicial salaries would be considered "cellar dwellers." If professional football is more your cup of tea, Wisconsin judicial salaries would be, heaven forbid, the Minnesota Vikings, or worse yet, the Chicago Bears, both of whom have finished at the bottom of the NFC North over the past few years, while our beloved Packers have consistently stood atop the rankings. And if we were to look at the most recent Big Ten football standings, where our Badgers finished the 2014 season atop the Western Division, our judicial salaries would fit right in with the likes of Purdue, Illinois, and Indiana, who finished the season at the bottom.

As of July 1, 2014, the National Center for State Courts (NCSC) ranked Wisconsin's circuit court judicial salaries 39th among the 50 states. In that same survey, the court of appeals salaries were ranked 30th among the 39 state appellate courts throughout the country, and the supreme court salaries were ranked 36th out of 50 courts.

If our poor showing in the national rankings doesn't paint a stark enough picture, look no further than our six Midwestern counterparts to bring the point closer to home. The current salary of a Wisconsin circuit court judge is $131,187, compared to $187,018 for his or her counterpart in Illinois, $143,897 in Iowa, $139,919 in Michigan, $138,818 in Minnesota, $134,112 in Indiana, and $121,350 in Ohio. Over the past decade, Wisconsin has ranked no better than fifth among these seven Midwestern states in judicial salaries; and for the past three years, Wisconsin has ranked sixth out of seven, with Ohio being the only state ranked below us.

The judges and justices of the Wisconsin court system have long enjoyed a well-earned reputation as some of the most dedicated and hard-working public servants you will ever meet. Yet over the past 35 years, judges' salaries have declined in value while the salaries of average American workers have increased. The current salaries of Wisconsin judges and justices have declined by over 18.75% from their salaries at the time of court reorganization in 1978, when adjusted by the Consumer Price Index. This decline has been exacerbated by the combined effects of inflation and minimal to no pay increases over the past several years. In 2008, for example, judges received a one percent increase; in 2009, a 2.07% increase; and from 2010 through 2013, judges received no increase at all. Judges received a one percent increase in 2014.

Wisconsin's judicial salaries are also inappropriately low in comparison with similar positions in higher education, the private bar, and state and local governments. For example, the average salary paid by the University of Wisconsin Law School for its top twenty law school professors is $153,614 per year, over 4% higher than the current annual salary of a Wisconsin Supreme Court justice and 17% more than the salary of Wisconsin's circuit court judges. Some lawyers, fresh out of school and employed by large law firms in our largest cities, will earn more in their first year than the most experienced trial court judges before whom they practice. Ideally, judges should be compensated at levels equal to or greater than the government lawyers and officials who may appear before them. Yet numerous local officials, primarily in Milwaukee and Dane counties, earn higher salaries than much of the judiciary.

It should come as no surprise to anyone, then, that the Wisconsin Supreme Court has once again made judicial compensation a priority in its 2015-2017 biennium budget request. Chief Justice Shirley A. Abrahamson made the case for increased judicial compensation in her October 3, 2014 letter to Secretary of Administration Mike Huebsch and Director of Employment Relations Greg Gracz by emphasizing the importance of attracting high-caliber attorneys from diverse backgrounds for judicial openings, as well as retaining high-quality jurists who might consider more lucrative career opportunities. The chief justice concluded her letter by asserting that the cost of ignoring judicial salaries will be to impair the State of Wisconsin's ability to maintain an independent, competent, experienced, and effective judiciary.

Lest anyone think our chief justice is overstating the case, simply reflect on the words of John Roberts, chief justice of the United States Supreme Court, almost a decade ago. In his 2006 annual State of the Federal Judiciary Report, Chief Justice Roberts claimed that inadequate judicial salaries were precipitating a "constitutional crisis." According to the chief justice, the pay gap between federal judges and their counterparts in the private sector was becoming so large that serving on the judiciary was no longer a reasonable option for many highly qualified lawyers. He has repeated that theme in many of his State of the Federal Judiciary Reports from 2005 to the present, as did Chief Justice Rehnquist before him.

Make no mistake: these are strong indictments of the current state of both federal and state judicial salaries. Yet all across the State of Wisconsin, dedicated judges will continue to get up every day and drive to courthouses with a singular purpose of serving the people of this great state with honesty, integrity, and a commitment to the cause of justice.

The Honorable Mary M. Kuhnmuench has served as a Milwaukee County Circuit Court judge for the past 17 years. She is also the president of the Wisconsin Trial Judges Association.

Prohibiting Protestors From Entering Courthouse Raises Constitutional Concerns

Attorney Ray Dall'Osto, Gimbel, Reilly, Guerin & Brown

Citizen protest against government actions and decisions has a long-standing history in the United States, even before there was a United States. The founders of this country recognized this fundamental precept of democracy when they drafted and the states later adopted the First Amendment in our Bill of Rights. The First Amendment comes first for a reason: it protects our freedom of speech and expression, freedom of association, and right to petition government for the redress of grievances.

In the past few years, protestors objecting to the abrupt elimination of established collective bargaining rights for public employees in Wisconsin exercised their First Amendment rights by protesting and holding vigil at the State Capitol building in Madison. State officials sharply limited access to the building for protestors (and every other citizen) in an attempt to quell the protests, and numerous arrests of nonviolent protestors occurred. These actions were challenged in court and found to be unconstitutional encroachments on the First Amendment rights of the protestors. *See Kissick v. Huebsch,* 956 F. Supp.2d 981 (W.D. Wis. 2013) (enjoining newly promulgated restrictive permit requirements that were content-based and applied to even small groups), and *State v. Crute,* 2014AP659 (Wis. Ct. App. Jan. 29, 2015), http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=133996 (affirming dismissal of charges brought against sing-along protestors under emergency regulations promulgated to limit Act 10 protestors) (viewed Feb. 12, 2015).

In the past few months, protestors objecting to the Milwaukee County district attorney's decision not to criminally prosecute a police officer for shooting a mentally ill African-American have focused on the Milwaukee County Courthouse and Safety Building. In December 2014, the Milwaukee County Sheriff's Office took action to block protestors from entering the courthouse, even though it was open for business and cases were ongoing in the various civil and criminal courts.

The sheriff's department said that it had reliable intelligence indicating that the protestors might create a disruption once inside. Deputies were assigned to block the protesters' access to the entrance, although deputies also directed other members of the public to other entrances that remained open. As the protestors moved to another door, deputies blocked that door in a similar fashion and reopened the first door. The process was repeated again as protestors moved to yet another door to try to gain access, and the protesters were never allowed to enter the building. They carried out a "die in" demonstration outside the courthouse for a few minutes and the protest concluded.

Anticipating the possibility of similar protests in the future, county government officials asked the corporation counsel's office to research and provide a memorandum on the legal framework regarding public access to the courthouse. Corporation Counsel Paul Bargren issued a letter opinion Dec. 11, 2014, which cogently and correctly sets forth the appropriate standards under the First Amendment, as well as noting Sixth Amendment concerns about the right to a public trial. Corporation counsel concluded that closing the courthouse to members of the public while courts are in session and criminal proceedings are underway, even the "rolling" closure that the sheriff's department implemented, risks mistrials. When criminal trials are in session (which is every day in Milwaukee County), "the public must be allowed access to the Courthouse."

Corporation counsel's opinion cites language from the United States Supreme Court decision in *Perry Educ. Ass'n v. Perry Local Educators Ass'n,* 460 U.S. 37, 45 (1983), that "in places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed . . . as the Constitution forbids a state to enforce certain exclusions from a forum generally open to the public."

Corporation counsel's opinion also states that while those in authority over public buildings have discretion to regulate them, such regulation must not deprive anyone of his or her constitutional or other legal rights. *State v. Givens,* 28 Wis. 2d 109, 121, 135 N.W.2d 780, 786 (1965). County authorities and law enforcement can deal with protestors who actually violate the law by damaging property, posting signs, engaging in physical attacks, or refusing to follow reasonable and lawful orders of law enforcement officers. *Id.* at 122.

The First Amendment requires that any restriction of these fundamental rights must pass strict scrutiny: it must be narrowly drawn, must be reasonable, and must provide definite guidance, which constrains the discretion of law enforcement and other authorities in granting or denying a permit or completely prohibiting protestors from entering a public building such as the State Capitol or a county courthouse. *Kissick,* 956 F.Supp.2d at 993 (citing *Niemotko v. State of Maryland,* 340 U.S. 268, 271 (1951)). Where virtually unfettered discretion exists, "the possibility is too great that it will be exercised in order to suppress disfavored speech." *MacDonald v. City of Chicago,* 243 F.3d 1021, 1026 (7th Cir. 2001).

As the Wisconsin Court of Appeals noted in the recent *Crute* decision, the United States Supreme Court has long recognized that the First Amendment's protection "does not end at the spoken or written word" and "has acknowledged that conduct may be sufficiently imbued with elements of communication" to fall within the scope of the First Amendment. *Texas v. Johnson,* 491 U.S. 397, 404 (1989). In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, courts have asked whether "an intent to convey a particularized message was present, and whether the likelihood was great that the message would be understood by those who viewed it." *Id.* (quoting *Spence v. Washington,* 418 U.S. 405, 410-11 (1974)). Under this standard, the conduct of the protestors at the State Capitol objecting to the elimination of collective bargaining rights, and at the Milwaukee County Courthouse regarding a police shooting and decision not to prosecute the shooter, constitute expressive conduct protected by the First Amendment. *See City of Lakewood v. Plain Dealer Pub. Co.,* 486 U.S. 750, 769 (1988).

Ray Dall'Osto is a trial attorney in private practice in Milwaukee. He previously served as a public defender and as legal director of the Wisconsin affiliate of the American Civil Liberties Union.

Judge Ralph Adam Fine: A Remembrance

Attorney Shelley A. Grogan, Wisconsin Court of Appeals, District I

Wisconsin lost a brilliant jurist in December when Judge Ralph Adam Fine died unexpectedly at the age of 73. I had the honor of working at the court of appeals alongside Ralph for the past 20 years. For the last five, I worked in his chambers as his judicial law clerk.

Ralph had a reputation as a tough judge. He told me that he was elected because of his firm stance on plea bargains. As a circuit court judge, he was known for rejecting plea bargains and forcing the defendant to trial. He thought the plea bargains allowed criminals to escape responsibility for their crimes. As a result, he always referred to them as "bargains," not "plea agreements."

Ralph asked difficult and challenging questions of lawyers during oral argument. He made lawyers think and he made them sweat. He enjoyed the back-and-forth exchange, and had a knack for getting lawyers to concede key points that often showed up later in the written opinion. What most lawyers arguing in front of Ralph did not know is that he was extremely congenial behind the courtroom door. Under his robe, he rarely wore a tie, much less a suit. Most of the time he wore his favorite pair of blue jeans.

To some, Ralph came across as quirky—he had his own way of doing things, such as insisting on full parallel cites long after that practice was not required, and his continued use of *ibid.* after the *Blue Book* eliminated the word in favor of *id.* Most new lawyers today have never even seen the word *ibid.,* but it was a short citation form of which Ralph was reluctant to let go. I prefer to believe that Ralph's particularities made him unique and were clues to a truly talented and special man.

Although he kept to himself a lot of the time, he always had a smile, a joke, a compliment, or an interesting anecdote to share when he interacted in person. He took the time to ask who you were and learn what important things were going on in your life. When you asked him how he was, he loved to answer, "Fine. Just Fine. I will always be *Fine.*" Ralph made an effort to befriend everyone on the staff of the court of appeals, regardless of status or position. He did this in spite of the fact that his intelligence far exceeded that of the average person. He was blessed with an incredible memory. The speed with which he could review a record and draft an opinion was nothing less than amazing. He was a perfectionist and it showed in the quality of his work. For Ralph, decisions were easy—always black or white, never any gray.

He was confident in his positions and strong in his opinions. He liked to be right, but was also humble in the rare event you convinced him he was wrong. Ralph had a very particular writing style that he referred to as "linear" writing. He avoided legalese and detested passive voice. He insisted on using descriptive words—he never used "vehicle" but instead used "car" or "truck" or "van" because it gave the reader more accurate information. His work habits included late nights and early mornings. He often sent messages to me at 2:00, 3:00 or 4:00 a.m. with opinions to review. Middle-of-the-night e-mails were the norm.

But Ralph was not a workaholic, either. He ran five miles a day, preferably on the beach; he read novels and historical non-fiction for pleasure; and he listened to books on tape. Although he hated to fly, he loved to travel. Just last year, he took his first-ever cruise vacation. His wife insisted on it and he resisted the idea of a cruise ship. When he returned from that trip, however, he wanted to plan another because he enjoyed it so much.

And, of course, he was the author of *Fine's Wisconsin Evidence* and several other law-related books. His Christmas gift to me every year was the pocket part update of his respected treatise on Wisconsin evidence. Most people do not know that he was also trying his hand at writing crime novels. He had written several chapters of a crime mystery. He wanted to be the next Scott Turow. His linear style, however, often blocked creativity and, of course, he was busy writing thousands of appellate opinions.

Ralph's opinions will continue to guide us for many years to come. He also spent many days lecturing at conferences and CLE presentations across the country. He never stopped trying to share his knowledge with others. He was always trying to teach lawyers to be better advocates.

Ralph has touched many as he traveled along this path we call life—both personally and professionally. He offered wisdom, guidance, kindness, and respect to all the lives he touched. Although his passing took us all by surprise—we expected him to live to be 100—his influence on the law in Wisconsin, on the legal community, and on those who were fortunate to call him a friend will continue indefinitely. We will miss the "Ralphisms" that set him apart, the silly stories he loved to tell, and the middle-of-the-night e-mails. But most of all, we will miss this incredible man with the brilliant mind who devoted his entire career to the State of Wisconsin. We applaud you, Ralph Adam Fine. Rest in peace.

MBA Memorial Service Set for May 29

The MBA will host its annual Memorial Service on Friday, May 29 at noon in Room 500 of the Milwaukee County Courthouse. Here is a list of attorneys and judges who will be honored at the service. If you know of others who should be included on the list, please contact Katy Borowski at 414-276-5933 or kborowski@milwbar.org.

Jules Allen
Gene G. Babler
Peter Joseph Bausch
Ralph J. Chmurski
Richard W. Cutler
Thomas Patrick Doherty
Edward Estkowski
Robert B. "Bob" Fennig
William Howard Fernholz
Kurt Herman Frauen
William D. "Bill" Gardner III
Carol Marie Happel
Robert R. Heider
John Robert Hoaglund
John F. Hovel
Richard Warner "Dick" Hoy
John Quarles Kamps
George A. Kapke
John J. Koenig
Nikola "Nik" Kostich
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David John Vergeront

"Presumptively Void" Bequests to Caregivers:

Should Illinois' Recent Law Be Replicated Here?

Attorney Carol J. Wessels, Wessels Law Office

The Illinois Legislature recently enacted a law regulating bequests to caregivers. Under the new law (755 ILCS 5/4a), a bequest to a caregiver who is not a family member is presumptively void if it exceeds $20,000. The statute applies to both volunteer and paid caregivers. If the bequest is challenged, the caregiver must prove by clear and convincing evidence that the transfer is not a product of fraud, duress, or undue influence. The law is intended to curb financial abuse of vulnerable adults.

Should a law like this be enacted in Wisconsin? Probably not.

My answer is despite the memory of Aunt Tillie, a cousin once or twice removed and a spinster living (coincidentally) in Illinois. She was financially comfortable, and in the waning years of her life she was befriended by the local banker, who was certainly in a position to know exactly how financially comfortable she was. He bought her groceries, ran errands, and kept her company during her last years. And in return for his kindnesses she left him half of her estate. The rest went to her heirs at law, of which my dad was one. I remember him speaking about that banker in a way I was not used to hearing him speak.

In light of this painful memory, I can see some reasons a law like Illinois' would be beneficial. First, it would protect an estate from being diverted from the "rightful" heirs. Second, it would ensure that caregivers are not providing care for the "wrong" reason.

At the same time, those benefits are questionable. Nobody, not even next of kin, should feel entitled to be a "rightful" heir. And most caregivers with ulterior financial motives still provide good care; it is part of the plan, after all, since it keeps them in good standing with the intended benefactor.

Statistically, the truth of the matter is that the individuals who engage in elder abuse are more likely than not to be *family members,*[1] who are specifically excluded from the provisions of the Illinois statute. My experience in elder abuse cases for more than 20 years is the same: family members acting as agents are considerably more involved in financial abuse than non-related caregivers. A law that is intended to reduce elder financial abuse should target family members. The abuse perpetrated by family members during an individual's life has a real effect on how that individual's final years are spent. The Illinois law only protects heirs, not the elderly individuals themselves.

This is not to say that caregiver abuse is not a concern. Abuse of the elderly in substitute care settings such as nursing homes is a significant issue. According to a congressional report[2] released in 2002, one in three nursing homes is cited for violation of federal regulations regarding resident safety and well-being. This kind of abuse places the senior at risk of physical harm, pain, emotional distress, and neglect. Much more needs to be done to address this concern. In nursing homes, financial abuse takes a back seat to pain and suffering.

Wisconsin's enactment of a law like the Illinois law would create another problem: chances are it would be unconstitutional. Wisconsin recognizes the right to make a will and have it carried out as a right that falls within the protection of the Wisconsin Constitution. *See,* e.g., *Estate of Ogg,* 262 Wis. 181, 187, 54 N.W.2d 175, 178 (1952). The legislature can regulate succession by will or intestacy within reasonable limits, but it cannot impair such rights substantially or take them away entirely. *Id.* at 191. A law presumptively invalidating a bequest would contravene this principle.

While the Illinois law might seem attractive at first glance, and may in fact result in fewer cases of undue influence, there are better ways to confront elder abuse. Laws related to the care and treatment of the living would more directly reduce the worst kinds of abuse.

[1]National Center for Elder Abuse, http://www.ncea.aoa.gov/Library/Data/#abuser (viewed February 2, 2015). According to the Wisconsin Department of Health Services' most recent elder abuse incidence report, published in 2010, the most frequent abusers were sons, daughters, and spouses, in that order.

[2]GAO report to congressional requesters, "More Can Be Done to Protect Residents from Abuse," reference number GAO-02-312 (March 2002).

The Milwaukee County Drug Court:

An Overview of Its Programs and Goals

Lucy Kelly, Library Associate, Milwaukee County Legal Resource Center

The Milwaukee County Drug Court operates two programs: the Adult Drug Treatment Court and the Veterans Treatment Court. These specialty courts provide comprehensive services to defendants, such as access to job-finding resources and substance abuse and mental health treatment. Defendants meet with judicial officials, treatment providers, and attorneys to develop recovery plans, fulfilling legal and treatment obligations while receiving support in achieving sobriety and making positive changes in their lives.

To be eligible for drug court, a defendant must be an adult resident of Milwaukee County, have alcohol or drug dependency issues, be charged with a felony or be a chronic misdemeanant, score a minimum of 24 and maximum of 40 on the Level of Service Inventory Raised rapid assessment test given during admission to a correctional facility, and have expressed interest in being admitted to the drug court treatment program. The LSIR test is designed to measure a person's behavioral and biographical history in order to make decisions about treatment, placement, and supervision. Persons facing or with a history of violent offenses, however, are ineligible. A defense attorney must refer his or her client to JusticePoint for drug court eligibility screening.

A defendant accepted into drug court signs a deferred prosecution agreement, under which he or she receives specialized support in achieving sobriety and the case is dismissed upon completion of the 12-to-18-month program. A defendant who is not successful in drug treatment court faces the original charges and receives a sentence and related consequences.

Drug court participants meet with case managers, complete random drug tests two to three times per week, attend court hearings, take part in support groups, keep journals with daily schedule logs, and act on ideas for making positive life improvements. They do so with the support of the court, their attorneys, their case managers, treatment providers, and peers who are also on the path to a life of continued sobriety.

The United States has more than 2,800 drug treatment courts. The National Drug Court Institute and the National Association of Drug Court Treatment Professionals provide guidance and training for drug court programs. In October 2014, eight people graduated from the Milwaukee County Adult Drug Treatment Court. Since 2009, 109 people have graduated from that program.

National research by Douglas Marlowe, a lawyer and clinical psychologist who studies program completion and success rates in drug courts, shows that defendants who participate in drug court are much less likely to be re-arrested than are individuals with alcohol or drug issues in conventional criminal courts. The 2013 annual evaluation by the University of Wisconsin-Milwaukee found that the recidivism rate (defined as a new criminal conviction) for drug court graduates in Milwaukee was approximately 16.5%—significantly lower than the statewide average recidivism rate of 40 to 60%. Drug court graduates are also much more likely to maintain long-term sobriety. In addition, the cost of drug court participation is much less than the cost of jail or prison.

Drug court programs also decrease unemployment rates and increase school enrollment rates. Drug court participants who did not graduate from high school have been connected to GED programs, and those who did not attend college have been connected to college and vocational program admission and enrollment planning services. Defendants who are struggling to find employment have been connected to job-attainment services specifically for individuals with prior records.

As the drug court works to expand its programs, it has several goals. One is random drug testing six days a week. At present, testing only occurs five days a week; a six-day window would allow testing on weekends and some holidays, which are times when defendants may be

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Tosa West Students Win Eighth Straight State "We the People" Competition

A team of students at Wauwatosa West High School is heading to Washington, D.C., to represent Wisconsin in the national "We the People" competition after winning the state competition for the eighth consecutive year.

The Center for Civic Education, a nonprofit, nonpartisan organization affiliated with the State Bar of California, created the "We the People: the Citizen and the Constitution" program in 1987. Over 28 million students and 75,000 teachers throughout the country have participated. Students study the Constitution, including its philosophical underpinnings and creation, amendments, seminal case law, and modern-day applications. They then divide into units specializing in particular constitutional areas. Each unit delivers an "opening statement" to a panel of judges who work in law, history, education, or government. As in oral arguments, the students then must answer questions from the panel on subjects ranging from historic and philosophical interpretations to current events.

The state competition, held January 10, 2015 at Marquette University Law School, simulated a congressional hearing. Students testified before panels of judges, answering questions and demonstrating their understanding of the constitutional principles of our democratic government.

"In a day and age when civic understanding is at all-time low in our country, the 'We the People' competition is all about promoting civic competence and responsibility among high school students," said Chad Mateske, the Tosa West history teacher who oversees the winning group. "It provides students with a huge opportunity to gain a deeper understanding of the U.S. Constitution and the Bill of Rights."

Attorneys Mark Young of Trapp & Harman in Brookfield and Tom Schneck of Andrew C. Ladd, LLC in Waukesha serve as group mentors. There is plenty of opportunity for other Wisconsin lawyers to volunteer in the program, which has motivated many students to pursue legal careers.

The national "We the People" competition in Washington will take place April 24 to 29. For further information about "We the People" at Tosa West, contact Heidi Fendos at 414-778-0766 or heidi@fendospr.com.

Unjust Enrichment continued from p. 10

contractor sued the landlord for unjust enrichment. The trial court sustained the defendant's demurrer to the complaint.

The supreme court affirmed, stating:

> [T]his case is representative of the usual case in which the owner has no part in initiating the work and is merely a passive beneficiary of the work performed at the instance of another. The unjust enrichment or restitution claim is asserted by one who did the work, and produced an incidental gain to the owner, by merely performing his contract with another and is now dissatisfied because the return promised under the contract is not forthcoming. In a sense it can be said that the contractor, at least to the extent of the gain, seeks to make the owner an insurer of the contract entered into by the defaulting procurer. The fact that the owner knew of the work, acquiesced in its performance and voiced no disapproval of the work, does not make the owner liable . . . .

Id. at 693. The court continued:

> [T]he complaint does not allege or reasonably imply that the work was ordered or ratified by the defendant; that the plaintiff performed the work expecting to be paid by the defendant; that the plaintiff was prejudiced by any misconduct or fault on the part of the defendant; or that the interests of [the tenant] and the defendant were so related or intermingled that it can be said that the contract was executed for the defendant's benefit. The most that can be said from the complaint is that the defendant knowingly acquiesced in the performance of the work. This is insufficient basis to impose liability on one who did not request the work and may not have desired it.

Id. at 694.

After sustaining the demurrer, the court reversed the trial court's denial of the plaintiff's request to amend the complaint, concluding that the trial court's rationale—that unjust enrichment requires proof of privity between plaintiff and defendant—was in error: "[T]his court's decisions establish that privity is not necessary for recovery on a theory of unjust enrichment." *Id.* at 695. The court concluded that the plaintiff should have an opportunity to amend if he "is able to allege facts and circumstances sufficient to show that retention of the benefit by the defendant would be unjust." *Id.* at 695-96.

(4) *Halverson v. River Falls Youth Hockey Association*
In *Halvorson,* 226 Wis. 2d 105, 593 N.W. 2d 895 (Ct. App. 1999), the tenant was looking for a building in which to grow mushrooms commercially. The landlord owned a building that would suit this purpose, even though it had a leaky roof and was in generally poor repair. The parties agreed in February 1994 to enter into a lease and the tenant moved in shortly thereafter. The tenant improved and repaired the building, expending more than $20,000.00 for heating, electrical, and plumbing repairs, as well as installation of a new septic system.

Proposed leases were prepared in May and June 1994. The tenant signed the second; the landlord signed neither. The tenant constantly expressed concern about the roof and claimed that the landlord had agreed to repair it "whatever it took . . . ." The landlord claimed that it had no money and had agreed only to repair the roof if it could be done at minimal expense with volunteer labor. The parties finally inspected the roof in July 1994 and agreed that it had to be replaced, which the landlord refused to do. The tenant vacated in January 1995.

The tenant sued for breach of contract. The trial court granted partial summary judgment, limiting recovery under the contract theory to rent abatement. It allowed the plaintiff to plead non-contract remedies and the plaintiff then asserted unjust enrichment. This claim was rejected after a court trial on the ground that the plaintiff had failed to prove benefit to the defendant.

It was undisputed that the landlord had paid $41,000.00 for the building. After the tenant vacated he offered to buy it for $35,000.00 and the landlord offered to sell it for $80,000.00. The plaintiff argued at trial that he had spent $20,000.00 on improvements and also that the defendant's offer to sell to him for $80,000.00 was an admission that the landlord had enjoyed a substantial increase in value over the $41,000.00 purchase price.

The appellate court sustained the trial court in all respects, stating:

> The trial court concluded that there was insufficient evidence . . . that the [landlord] benefited from [the] improvements or the amount of the purported benefit. The only evidence concerning the improved building's value was the offer to sell, and the court found that to be of insufficient weight to base a finding that the improvements increased the value of the premises several fold. This was especially so given that the building was vacant and still in need of substantial repairs, including replacement of the roof at a cost of at least $10,000.00. The trial court declined to guess the value of the benefit, if any, that [the tenant's] improvements conferred upon the [landlord].
> ****
> The record discloses that the [landlord] has done nothing with the building since [the tenant] left; it remains vacant and in need of considerable repair. There was testimony that the septic system was the only improvement of value, but that it was unnecessary, too small for the square footage, and would have to be replaced if someone else used the entire building. There was some tentative testimony that the well repair might have been of value, but the [landlord] was not aware of it being a problem before [the tenant] took possession. There was no evidence that the [landlord] used the improvements. We defer to a trial court's assessment of the weight and credibility of evidence . . . . We cannot conclude that the trial court's findings were clearly erroneous. Making improvements alone does not prove the [landlord] received any benefit from them.

Id. at 116.

The *Halverson* opinion assumes that the element of inequity had been proven by the tenant. Apparently this issue was not raised by the landlord's counsel. This is hard to comprehend, in light of the rigorous burden of proof on this element enunciated in *Puttkammer.*

(5) *W. H. Fuller Company v. Seater*
In *W.H. Fuller,* 226 Wis. 2d 381, 595 N.W. 2d 96 (Ct. App. 1999), the landlord purchased a residence at foreclosure sale. It was agreed that the foreclosed owners would remain in possession under a rental agreement with the landlord. The plaintiff contractor was excavating on a neighbor's property. The neighbor agreed that the excavated dirt could be used to fill and level the tenant's lot. The tenants then hired the contractor to do this work. The landlord authorized this work and executed a written agreement relieving the neighbor and the contractor from any liability for damage to him as owner of the property. Shortly before the work was completed, the landlord evicted the tenants for non-payment of rent. The contractor issued an invoice for $17,150.00 to the landlord, who declined to pay on the basis that the work had been

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Pro Bono Corner

The Pro Bono *Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need* pro bono *attorneys. More organizations looking for attorney volunteers are listed in the MBA's* Pro Bono *Opportunities Guide, at www.milwbar.org.*

The Legal Services to the Indigent Committee (LSIC) has been planning programs for 2015 and contemplating a name change. For many years, the committee has promoted *pro bono* service in the Milwaukee area through programs such as the *Pro Bono* Road Show, featuring committee members who travel to firms and in-house legal departments to highlight *pro bono* opportunities; and the *Pro Bono* Cocktail Reception, which provides networking as well as recognition for those attorneys providing *pro bono* service. While the committee will continue to support these programs, it is considering additional projects to address its core mission.

The group has identified three main components of its mission:
- expanding the *pro bono* culture in the Milwaukee legal community;
- providing support to attorneys and organizations engaged in assisting low-income members of our community with legal matters; and
- increasing direct *pro bono* representation.

The committee has discussed a number of new projects to support those core mission components. One is to expand the local *pro bono* culture by creating a recognition program for *pro bono* service. While the committee has recognized *pro bono* service recorded by other groups through other programs, it wishes to create a Milwaukee Bar Association program tailored specifically to Milwaukee area service.

The committee is contemplating an incubator project for new attorneys as a means to increase direct *pro bono* representation in Milwaukee. Incubator projects have been popping up all over the country as a way to support new attorneys and increase *pro bono* and "low *bono*" (reduced-fee) service at the same time. All active incubators include mentorship support to new attorneys on subjects ranging from substantive law to business, marketing, and financial issues. In return, most incubators require the participants to provide a certain amount (in terms of hours or cases) of *pro bono* or "low *bono*" work for low-income individuals.

Both of these projects are in the early planning stage. The committee is also working on service projects that would allow for both networking and legal service on a one-time or short-term basis. The committee is following projects by other organizations that support attorneys engaged in *pro bono* service. New project ideas are always appreciated.

As mentioned, the committee is considering a name change to better reflect its mission, as well as a more memorable identification and acronym. It hopes to reveal its new name in the next issue of the *Messenger.*

New members of the committee are always welcome. It generally meets at 12:15 on the fourth Thursday of the month at the Milwaukee Bar Association. To get on the e-mail notification list, please contact Amy Wochos at amy.wochos@wicourts.gov.

Pamela Pepper Appointed as Eastern District's First Woman District Judge

Honorable Margaret D. McGarity, U.S. Bankruptcy Judge, Eastern District of Wisconsin

On December 8, 2014, Pamela Pepper was appointed as a district court judge for the Eastern District of Wisconsin. She succeeds Judge Charles N. Clevert, Jr., who took senior status in October 2012. While being the first woman on the federal bench in this district may be a milestone for the court, it is only the latest in a long line of accomplishments for Judge Pepper.

Pam was born in New Orleans in 1964, and shortly thereafter her adoptive parents took her home to Leland, Mississippi, a small town on the Mississippi delta. Her Southern upbringing by no means limited her horizons, and she attended undergraduate school at Northwestern University. No one who knows her would be surprised she was a theater major. She then attended Cornell Law School, where she was note editor for the Cornell Law Review and a co-winner of the moot court competition. To the theater major, add brains. She graduated in 1989.

Not to be tied down, she went south again and became a law clerk for the Honorable Frank M. Johnson, Jr., of the Eleventh Circuit, a renowned and courageous jurist during a volatile era of civil rights litigation. Then it was back to Chicago to work as an Assistant U.S. Attorney for the Northern District of Illinois, followed by a similar position for the Eastern District in Milwaukee. In 1998 she switched sides to become a criminal defense attorney in private practice until 2005, conducting trials and appeals in state and federal courts, including the Seventh Circuit. While in practice, Pam was on the board of the Wisconsin State Public Defenders and a founding member and board member of Federal Defender Services, Inc. Still, there was time for her to be president of the Milwaukee Bar Association in 2005 and 2006. She did a lot more to serve the legal community, but to list everything would risk tedium.

From 2005 until her most recent appointment, Pam served as a U.S. Bankruptcy Judge, and was Chief Bankruptcy Judge from 2010 until she joined the district court. This brought her into the civil arena, dealing with everything from destitute *pro se* debtors to complex commercial litigation. She was thoughtful, respectful, and fair in applying a highly technical body of law, often a delicate balancing exercise. During this nine-year period, she truly made her mark on the bankruptcy system, serving as an officer and board member of the National Conference of Bankruptcy Judges as well as on the board of the American Bankruptcy Institute and too many committees to mention. Never one to waste skills, she was editor of the *American Bankruptcy Law Journal* from 2010 to 2013. Education is one of Pam's abiding interests, and she was the program chair for the NCBJ annual meeting in 2014—a monumental task. She taught, too, and her entertaining programs on evidence, no doubt derived from her experience in the criminal law arena, were always a hit. Her quick wit caused some wag to call her "Queen of the One-Liners."

What else? Pam is committed to service to the community. She loves to read, anything and everything. She is certain *her* kid hung the moon. She'll never stop trying to make the legal system, schools, and society in general work better for everyone. And the bankruptcy world's loss is the district court's gain.

Unjust Enrichment continued from p. 20

ordered by the tenants. The contractor sued the landlord.

At a court trial, the landlord conceded liability under unjust enrichment. The trial court awarded damages for the full $17,150.00 invoice under a *quantum meruit* theory. The court of appeals reversed the damage award. It noted that *quantum meruit* is the proper cause of action only when the court finds a contract implied in fact, not where, as here, the finding is of a contract implied in law. The court stated: "The [trial] court made clear that its ruling on damages contemplated the value of the services under . . . quantum meruit. However . . . a contract implied in law involves the value of the benefit under the theory of unjust enrichment . . . ." *Id.* at 387. The court concluded:

> [T]he value of the benefit received by the defendant may include services rendered for the defendant, goods or merchandise received by the defendant, or improvements made to defendant's real estate . . . . The benefit does not encompass the plaintiff's loss of profit . . . . Additionally, damages must be proven with reasonable certainty . . . . However, this does not mean that a plaintiff must prove damages with mathematical precision; rather, evidence of damages is sufficient if it enables the jury to make a fair and reasonable approximation.

Id.

The court remanded to the trial court to determine: "which, if any, of [the contractor's] services benefited [the landlord] and . . . ascertain the value of that benefit . . . ." *Id.* at 388. In a footnote, the court added: "[The landlord] testified that he spent $8,500.00 to drain and fill a pond created by [the contractor] . . . . While a defendant may seek recovery for any detriment . . . , such an action must be pled in a counterclaim . . . ." *Id.* at 388 n.3.

D. Present State of the Law

(1) Liability of Landlord to Contractor Hired by Tenant

Puttkammer is the only decision to discuss substantively what must be shown to establish inequity. It holds that it is not sufficient to show that "the owner knew of the work, acquiesced in its performance and voiced no disapproval . . . ." 86 Wis. 2d at 693. In dictum, the court enumerated facts that might suffice, as follows:

> that the work was ordered or ratified by the defendant; that the plaintiff performed the work expecting to be paid by the defendant; that the plaintiff was prejudiced by any misconduct or fault on the part of the defendant; or that the interests of [the tenant] and the defendant were so related or intermingled that it can be said that the contract was executed for the defendant's benefit.

Id. at 694.

It is difficult to predict what additional facts, beyond those found insufficient in *Puttkammer,* will suffice to establish inequity. *Fullerton Lumber Co.* indicates that the plaintiff's burden will be more difficult when the owner has made it clear that he will allow the work only if the tenant agrees that the owner will have no responsibility for payment.

In *Halverson,* the owner's conduct was within the bounds held in *Puttkammer* to be insufficient to establish inequity. Inexplicably, the landlord's counsel failed to raise the issue of inequity. The court did not address the issue. Therefore, it cannot legitimately be argued that *Halverson* has relaxed the liability standards of *Puttkammer*.

(2) Liability of Owner to Subcontractor

An owner is not liable to pay a subcontractor who has not been paid by the general contractor when the owner has paid the general in full, since it is inequitable to require the owner to pay twice. A subcontractor is not barred from pursuing the owner in situations where the owner has not paid the general contractor in full. Presumably, the subcontractor can recover to the point at which the owner's total payments would equal the amount he was obligated to pay the general. Also, under *Rotogravure Service,* an unpaid subcontractor is not barred from recovery against the owner simply because the subcontractor failed to pursue its lien rights.

(3) Damages

The measure of damages is the benefit received by the landlord or owner rather than the value of the services rendered by the plaintiff. *Fuller* reversed an award based on the value of the services performed and remanded for a determination of "which, if any, of [the] services benefited defendant . . . ." *Fuller* notes that an owner may recover any detriment suffered from plaintiff's actions, which must be asserted by counterclaim.

Each case, of course, is fact-specific. The trial court's assessment of the weight and credibility of the evidence will be given the same deference as findings of fact on any other issue. The *Halverson* opinion reflects a very detailed analysis of the evidence by the appellate court in affirming the trial court's finding that the plaintiff had failed to meet his burden of establishing benefit. *Fullerton Lumber* also illustrates the painstaking analysis of the facts required in resolution of the issue of benefit.

Drug Court continued from p. 19

at greater risk for relapse. An additional goal is to expand the peer mentor program so that more defendants can be matched with trained peer mentors who are also program graduates. Peer mentoring provides defendants with support, empathy, understanding, and life-coaching as they make the difficult transition to a sober life path. In addition, peer mentor training can provide a gateway to employment in the fields of substance abuse counseling and career and educational planning services. A related goal is to expand alumni programs so that defendants can receive more aftercare services, potentially sign up for peer mentor training, and receive support as they work to find jobs, enroll in educational programs, and secure stable housing.

Drug courts provide structure, support, and stability, three principles that are arguably necessary to achieve sobriety. Supportive programs include Thinking 4 A Change, a support group that helps individuals learn new problem-solving skills so that they are less likely to return to substance use. As a result, defendants who participate in drug court programs are more likely to achieve successful re-entry into communities, come closer to achieving their fullest potential, and develop and use motivation to transform their lives.

Classified

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Fran Deisinger

candidate for

STATE BAR PRESIDENT-ELECT

There are nearly 25,000 members of the State Bar of Wisconsin. Being asked to run for President of this organization is both humbling and daunting. So is asking for your vote. But I'm ready for the job.

In a decade of leadership with the Milwaukee Bar Association as a director and as President, I learned the importance of serving Bar members with great programs, events and resources.

I'm equally proud that I used that leadership opportunity to work with the Bar, the Judiciary, Marquette Law School and Milwaukee County to create and fund the Milwaukee Justice Center, a legal services office at our courthouse where scores of volunteer lawyers and law students serve almost 10,000 pro se litigants a year, advancing the best ideals of our profession.

As President of your State Bar Association, I pledge that I will measure every decision by two guiding principles:

- Value and Service to the Membership
- Service in the Cause of Justice

I would greatly appreciate your vote in April.

Thanks, Fran

> "Fran's leadership style is the precise opposite of egotistic and ostentatious. He is without fail calm, deliberate, respectful, thoughtful, insightful, and decisive. He is, in short, exactly what the leader of a bar association (or any association) should be."
>
> **Charlie Barr,** MBA President, 2012-2013

> "Fran's leadership was directly responsible for the successful launch of the Milwaukee Justice Center. He struck the right balance between methodically building consensus and moving the project forward – actually getting it done. He backed up that leadership, serving as a volunteer lawyer himself."
>
> **Dawn Caldart,** Director, Pro Bono, Quarles & Brady; former Executive Director, Milwaukee Justice Center

> "I watched Fran when he served as MBA President and tried to emulate him when I served in that role myself. He is an inclusive leader; he wants to hear from other people. At the same time, he motivates others to contribute, combining his thoughtful, contemplative manner with his strong analytical mind. Even in difficult situations, he remains calm and rational. He's the ultimate 'reasonable man.'"
>
> **Michael Cohen,** Partner, Meissner Tierney Fischer & Nichols; MBA President, 2011-2012; Member, State Bar of Wisconsin Board of Governors

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