



Messenger

MILWAUKEE BAR ASSOCIATION, INC.

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Winter 2010

Volume 4



**Report from
the Front:
Chief Judge Kremers
Discusses the
Budget Battle
at the
State of the Court
Luncheon**

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Please send your articles, editorials, or anecdotes to editor@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 on the *Messenger* Committee, we have seats available. Please contact James Temmer, jtemmer@milwbar.org.



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Letter From the Editor



Charles Barr, Editor

'Tis Budget Season in the County of Milwaukee—a season about as merry as a flying shard of glass. As I write, Milwaukee County Circuit Court employees are staring at the possibilities of up to 26 furlough days and an unknown number of layoffs in 2011, depending largely on whether, and the extent to which, the County can exact concessions from employee unions. The furloughs alone would translate to 50,000 hours of service, the equivalent of cutting 25 full-time employees. If you suspect that our courts under that scenario could not possibly deliver the same level of service that the bar and the public have come to expect, you are absolutely correct. As Chief Judge Jeffrey Kremers reminded the Finance Committee of the County Board of Supervisors in October, and as he recounted at the MBA's annual State of the Court Luncheon, the County's own auditor recently determined that the court system cannot sustain any further cuts and that it is currently meeting its mission with bare minimum staffing. Impose 26 furlough days, or anything close to that, and the effects on the system will be palpable on a variety of fronts, all of which, at bottom, threaten public safety.

By the time you read this, the furlough and layoff issues may have resolved—or perhaps not. Whether or not the courts and its employees dodge the flying glass this time, however, the fact is that the “budget crisis” has become somewhat of a macabre annual rite. Every October and November brings us a dizzying array of dollar figures and contingencies, failsafe plans and doomsday scenarios, departmental jockeying and creative accounting, vote projections and side deals, vetoes and overrides, and most of all: raw *politics*. The details differ from year to year, but it all comes down to this: our local courts are under attack. And it's not a skirmish; it's a war—a long one.

In this issue of the *Messenger*, Rob Henken of the Public Policy Forum follows up his recent MBA presentation (see our Fall 2010 edition) with an article on Milwaukee County's long-range financial outlook and what it bodes for the court system. The picture, while not quite

apocalyptic, is not pretty. But we need to know because, professionally and personally, we're all in the picture.

In the “hard law” category, we have short takes on the difficulties inherent in family farm bankruptcies, and a surprising wrinkle in the attorney-client privilege for in-house counsel. We profile noted Israeli jurist Aharon Barak, recent Hallows Lecturer at Marquette, whose judicial philosophy has made waves both in his country and ours. Judge Sankovitz unearths a few more of the endless nuances in the Milwaukee Circuit Court's local rules. We report on new Milwaukee Circuit Court Judge Pedro Colón, and new U.S. Magistrate Judge Nancy Joseph. Our resident legal historian, Hannah Dugan, explores how and why Wisconsin's “diploma privilege” is the only one in the nation that has stood the test of time. We have a day in the life of the Brief Legal Advice and Referral Clinic at the Milwaukee Justice Center, info on other *pro bono* initiatives, and recognition of those whose *pro bono* efforts go beyond the call of duty.

On the lighter side, former MBA Pres and cinema expert Fran Deisinger reviews another classic law-themed movie, and Doug Frazer takes a whimsical look at some of our local municipal courts.

We hope you enjoy this edition of the *Messenger*, which marks the completion of our third year in the “glossy era.” (Remember those old newspaper inserts?) I would like to thank our many authors who have generously contributed their time and journalistic talent to our humble publication. We fervently hope you keep it up and that others join the party. From everyone in the *Messenger's* tumultuous pressroom (you know, all two or three of us), best wishes for happy holidays and a healthy, prosperous New Year.

— C.B.

Irishman and a Rabbi Walk Into a Bar...
On page 12 of the Summer 2010 *Messenger*, a photograph of Mike Brennan incorrectly identified him as Rabbi David Cohen. We apologize for the error.

The Impact of Milwaukee County's Fiscal Problems on Its Circuit Courts

by Rob Henken, President, Public Policy Forum, a nonpartisan, independent think tank

The Public Policy Forum has released a series of reports in the past 18 months that analyze the scope, severity, and causes of the fiscal challenges facing Milwaukee County government. Using a fiscal monitoring methodology developed by the International City-County Management Association, we have painted a picture of a government facing deep structural problems and lacking the political consensus to recognize and manage its financial hardships. As we put it last January:

Milwaukee County government faces immediate and substantial fiscal and programmatic challenges. A combination of stagnant state and local revenues, skyrocketing pension and health care obligations, and several successive years of severe budgetary stress have left it weakened in virtually all areas. Meanwhile, as its fiscal pressures worsen and its service levels erode, it operates with no long-range plan for digging its way out.

In a recent presentation to the Milwaukee Bar Association, I suggested that from the perspective of Milwaukee County's Circuit Courts, the county's recent budget struggles have had only minor impacts. Political infighting has prevented consensus on potential major county-wide service cuts, leading instead to the gradual reduction of staff and resources in those departments that offer the least resistance. Because resistance from a state-appointed Chief Judge and an independently elected Clerk of Circuit Court can be fierce, the courts largely have been spared the substantial budget reductions experienced by many cabinet-level departments.

My presentation also noted, however, that as the county's fiscal situation worsens, the impact on courts and public safety functions could become more pronounced. In particular, the following future budget implications bear watching:

- **It will be increasingly difficult to balance budgets without hitting mandatory functions.** The bulk of the county's property tax levy now is consumed by state-mandated functions involving the sheriff, courts, and human services, after years of reductions to discretionary services (e.g., transit, parks, and culture) and administrative overhead.

Consequently, it will be more difficult to spare those mandated functions in the future as the county struggles to bridge the annual hole created by its structural imbalance. We may have seen a potential harbinger of this reality in the county's 2011 budget, which does not exempt the courts and public safety functions from potential layoffs.

- **Reduced crime rates may be cited to justify cuts in the judicial system.** It is not clear whether the unexpected but real reduction in crime rates is leading to similar reductions in judicial activity. Nonetheless, it is a safe bet that county budget officials will be monitoring that activity to ascertain whether cuts in staffing and dollars might be justified by lower usage.
- **Discretionary elements of the courts budget may be particularly vulnerable.** While few question the positive fiscal impacts of pre-trial services and other discretionary programming aimed at keeping people out of correctional facilities, such services often are the target of budget cuts that can produce short-term savings. In most cases, however, negative long-term impacts are not acknowledged. Those types of discretionary services are likely to appear on the county's budget chopping block more frequently if

structural problems worsen.

- **The county's administrative and infrastructure challenges will impact the courts.** As county budgets grow more difficult, reductions in "back office" functions such as human resources and accounting multiply, creating additional challenges for judicial officials seeking to address basic administrative needs (e.g., filling positions or accessing financial data). Similarly, growing infrastructure concerns within the county's parks, cultural institutions, and Mental Health Complex limit its ability to address physical, equipment, and information technology needs at the courthouse and safety building.

Fortunately, the news for the courts is not entirely bleak. The county recently resumed a formal long-range strategic planning process, which ostensibly should be focused on setting clear programmatic priorities and developing long-range strategies that can alleviate the county's annual budget pain. It would be logical to assume that as part of that process, the county would attempt to clearly define what services it *has* to provide—such as courts and jails—versus those services it *wants* to provide, and that it would attempt to ensure that its mandatory functions have the resources needed to perform at satisfactory levels.

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MBA

Message From the President

Attorney Rachel A. Schneider, Harley-Davidson



As I write this (but not as you read this), we are in that special zone between Halloween and Thanksgiving, when we savor beautiful fall days all the more because we know the first snowfall is just around the corner.

It's also the window between the start of the school year and the craziness of the holiday season, when you still feel you have half a chance of accomplishing all those to-do's for fall. For me, this is the annual season of change.

Having made a substantial career change this fall, I have been thinking quite a bit about change and transformation. They are not the same thing. I left the private practice of law to join Harley-Davidson in a business position—two substantial, simultaneous changes. After two months, I realize that this move is much more than two significant changes; it is personally and professionally transformative.

This realization has led me to ponder what the legal profession will look like after the dust has settled from the Great Recession. Economic circumstances have forced reactions and changes. The question is whether and how many lawyers and firms will successfully come through these difficult times transformed, and not just changed. My gut reaction (informed by leadership development and business transformation work that is now part of my day-to-day

work environment) is that much of the legal profession will remain reactive—changed but not transformed for future success.

Those lawyers and firms who are creative, willing to do business differently, and who successfully work on talent management and leadership development, are likely to come out on the other side in positions of strength and excitement. Whether you are a solo practitioner or part of a large organization, your biggest challenge may be opening yourself up to the notion that you aren't very good at leading and managing your own business. Great lawyers aren't automatically great internal business leaders (and may be more challenged than other professionals!). It doesn't help that law firms, whether big or small, are unique institutions with unique management challenges—herding cats doesn't begin to cover it!

Part of the role of the MBA is to provide you with opportunities to interact with your peers outside of your own practice and firm. When you attend MBA events, such as the State of the Court Luncheon or a CLE program, I hope you engage other attendees, seek out information and ideas about what others are doing, and take advantage of the professional network available to you. I also encourage you to contact Sabrina Nunley—the MBA's Director of Continuing Education—or me with topics of interest to you, and we will work hard to provide those through our programming outlets.

—Rachel

Member News

John C. Vitek has joined the Milwaukee office of Mallery & Zimmerman as a shareholder. Vitek practices with the office's tax, real estate, and corporate/business/healthcare groups.

Reinhart Boerner Van Deuren announced the addition of eight attorneys: **Beth A. Bulmer**, **Jessica P. Culotti**, and **Stacie M. Ringelstetter** have joined the Employee Benefits Practice; **Amy L. McCarty**, **Jessica L. Farley**, and **Brittany L. Lopez** the Litigation Practice; **Mark A. Hill** the Business Law Practice; and **Benjamin T. Kurten** the Labor and Employment Practice. Kurten will lead the firm's Immigration Law Group.

The firm also announced that **Kristina E. Somers** has been elected Treasurer of the Board of Directors for the State Bar of Wisconsin's Tax Section. Somers is a shareholder in Reinhart's Tax, Litigation, and Tax-Exempt Organizations Practices.

Daniel R. Peterson has joined The Schroeder Group as an associate in the business area. Apart from his practice, Peterson serves as a mentor in the Big Brothers program and also participates in the e-Buddies program.

Welcome New MBA Members!

Joseph Bichanich

Nathan J. Dineen, *Vanden Heuvel & Dineen*

David R. Haushalter

Amber Herda, *Carr, Kulkoski & Stuller*

Mark A. Hill, *Reinhart Boerner Van Deuren*

Jason R. Scoby, *O'Neill, Cannon, Hollman, DeJong & Laing*

William F. Sulton, *Peterson, Johnson & Murray*



MBA Seeks Nominations for Annual Awards and Leadership Positions

The Milwaukee Bar Association is looking for a few good men and women!

Do you know of a dedicated, innovative attorney or judge who deserves public recognition? The MBA honors individual or group achievements with our yearly awards at the Annual Meeting. We have four award categories: Lifetime Achievement, Lawyer of the Year, Distinguished Service, and the E. Michael McCann Public Service Award. The criteria for these awards give us the flexibility to honor any outstanding individuals or groups. If you are interested in finding out more about our awards, including a listing of past winners, or if you wish to nominate

someone (self-nominations are accepted), please contact Jim Temmer at 414-276-5934 or jtemmer@milwbar.org.

We are always looking for members interested in running for the MBA Board as a director or officer, as well as candidates for our Judicial Selection Committee. Candidates are selected during March and April and the election is held during the month of May. Again, please contact Jim Temmer for more information.

CLE Calendar

December 2010

December 2, 2010

Civil Litigation

Franchise Litigation

An introduction to franchise litigation and an overview of common issues and strategies

Speaker: Andrew P. Beilfuss, Quarles & Brady

12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 3, 2010

MBA Presents

Legal Ethics Forum

Three experts on the Wisconsin Supreme Court rules regulating the conduct of lawyers discuss current events, trust accounting basics, and any questions under the sun.

Speakers: Randal N. Arnold, Hinshaw & Culbertson; Richard J. Cayo, Halling & Cayo; Christopher Kolb, Halling & Cayo

8:30 - 9:00 a.m. (Continental Breakfast/Registration)

9:00 - 12:00 (Presentation)

3.0 CLE ethics credits

December 3, 2010

Bankruptcy

Wis. Stat. § 128.21: a Wisconsin Bankruptcy

This is a law unique to Wisconsin that provides debt relief similar to debt consolidation with protections similar to filing bankruptcy; however, it is neither. All included debts get paid in full (with the exception of interest and penalties). It's an interesting alternative for both debtors and their creditors. Attorneys who practice debtor-creditor law should be aware of how this law works.

Speaker: Jeffrey Lee Murrell, Law Office of Jeffrey Murrell

12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 7, 2010

Estate & Trust

Estate Plan Design vs. Plan Execution: Confessions of a Former Estate Planning Attorney

The presentation will include tips for avoiding drafting pitfalls, choosing the right fiduciaries, and sample illustrations for the estate planning process. Fiduciary Partners is an independent trust services provider based in Appleton.

Speakers: Richard H. Gamble, JD, and Alan R. Blake, CFP, Fiduciary Partners, Inc.

12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 8, 2010

Family Law

Professional Goodwill After McReath: Is It Divisible? Is It Double Counting?

Status of goodwill in Wisconsin

Speaker: Gregg M. Herman, Loeb & Herman

12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 10, 2010

MBA Presents

The Art of Representing Children

Effective Child Advocacy With an In-Depth Look at the Role, the Rules, and the Mind of a Child

Speakers: Margaret G. Zickuhr, Houseman & Feind; Michael J. Vruno, Jr., Legal Aid Society of Milwaukee, Guardian Ad Litem Division; Dr. Marc J. Ackerman, Psychologist, North Shore Psychotherapy Associates

8:30 - 9:00 a.m. (Continental Breakfast/Registration)

9:00 a.m. - 4:30 p.m. (Presentation)

12:00 - 12:45 p.m. (Lunch)

7.0 CLE credits including 1.0 ethics credit

December 13, 2010

Taxation

Now What Are They Up to? New Registration Requirements, Preparer Penalty Rules, and Revisiting the Circular 230 Liability Provisions

The presentation will include a discussion of the recent evolution of preparer registration requirements, the penalty schemes that exist under the Internal Revenue Code, and Circular 230.

For accountants, lawyers, clerks, and paralegals who prepare tax returns.

Speaker: Robert B. Teuber, Weiss Berzowski Brady

12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 14, 2010

Corporate Banking & Business

The Impact of the Patient Protection and Affordable Care Act (“PPACA”), and the Health Care and Education Reconciliation

Act of 2010 (“HCERA”) on Closely-Held Business

Corporate and business organization and governance, business transactions, tax planning for individuals and businesses, tax audits and appeals, and health law (including billing matters, privilege issues, and exclusivity rights)

Speaker: Adam J. Tutaj, Meissner Tierney Fisher & Nichols

12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 15, 2010

Elder Law

Practical, Ethical, and Procedural Advice on Handling Guardianships for Adults of Limited Means

This program is specifically for those who have enrolled in the Adult Guardianship Project through the Marquette Law School, but enrollment is open to anyone. The program will cover the procedure for obtaining guardianship of a disabled adult individual of limited means; some issues for GALs to consider in these cases, including basic public benefits that may be involved; and some ethical issues.

Speakers: Lindsey Grady, Milwaukee County Probate Division; Commissioner Patrice A. Baker, Milwaukee County Circuit Court; Carol J. Wessels, Nelson, Irving & Waeffler

12:00 - 12:30 p.m. (Lunch/Registration)

12:30 - 3:30 (Presentation)

3.0 CLE GAL credits including 1.0 ethics credit

December 16, 2010

MBA Presents

Planning and Presenting the Successful Eminent Domain Case

Eminent domain legal update; pleadings and discovery in the eminent domain case; experts: preparation, presentation, and cross-examination; effective use of ADR in the eminent domain case; evidentiary issues in eminent domain; and ethical considerations in accepting and planning the eminent domain case

Speakers: Charles P. Graupner, Michael Best & Friedrich; Brian C. Sajdak, Wesolowski, Reidenbach & Sajdak; Mark J. Steichen, Boardman Suhr Curry & Field, Madison, WI

8:30 - 9:00 a.m. (Continental Breakfast/Registration)

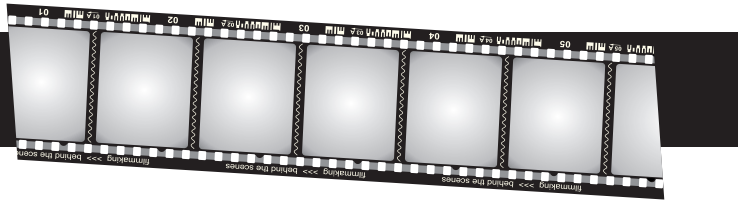
9:00 - 1:00 (Presentation)

4.0 CLE credits including 1.0 ethics credit

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The Reel Law

Attorney Fran Deisinger, Reinhart Boerner Van Deuren



Young Mr. Lincoln

1939; running time 100 minutes

After the recent election, I read that one subset of partisans had made an issue of the fact that “too many lawyers” populated the halls of the legislature. However you might feel about that proposition, there is no denying that lawyers have commonly been elected to office in America. Of these, one rises above all others as the greatest, and indeed arguably as the greatest American ever.

Reading only that, you already know I am talking about Abraham Lincoln. While there have been many films made about Lincoln, only one focuses on Lincoln the lawyer, and it is a very fine movie. Released in 1939, *Young Mr. Lincoln* was directed by the same renowned American director I introduced in my first review, John Ford. “Papa” Ford worked with the same actors repeatedly, such as John Wayne, Jimmy Stewart, and Henry Fonda. Fonda was his choice to play Lincoln, but it took some convincing. Fonda wasn’t sure he could play such an extraordinary man. Of course, Ford was right in his casting because he knew that the source of Lincoln’s greatness was not his profound intellect, but his unaffected quality as a common man. Henry Fonda was the quintessential American everyman, a quality he also brought to an even greater performance only a year later, as Tom Joad in Ford’s magnificent *Grapes of Wrath*.

Young Mr. Lincoln first traces—in a Hollywood idealized way—Lincoln’s years as a young man in Illinois, from his rail splitting and wrestling to the loss of his first love, Ann Rutledge. With those preliminaries out of the way, the third and most entertaining act of the movie is all about Lincoln the lawyer, and specifically about his defense of a murder case.

The story, loosely based on a real murder trial, has two country brothers visiting Springfield for the fair with their wives and mother. These simple boys somehow get into a fight late at night away from the fairgrounds with a boorish deputy who has been bothering one of the women. In the scum, the deputy threatens the brothers, one of whom pulls a knife. Moments later, the brothers are running and the deputy’s friend, played with smarmy bluster by one of Ford’s favorite character actors, Ward Bond,

comes on the scene and yells “Murder!” The brothers are apprehended and Lincoln—after deterring a lynch mob by convincing them that if they were to hang the boys they would be cheating a young lawyer out of his fee—Lincoln sets about defending them.

At the trial, the case turns on the testimony of J. Palmer Cass, the deputy’s friend. Lincoln crosses Cass twice. After Cass testifies how he found the deputy, Lincoln takes some of the wind out of his sails for the jury. “You say you are J. Palmer Cass? What’s the ‘J’ for? John? Well, if it’s all the same with you, I’ll just call you Jack Cass.” The already rowdy courtroom erupts with laughter. But after Cass is recalled by the prosecutor and testifies that he actually saw the murder, not just its aftermath—and didn’t say so earlier because he didn’t want to send men to the gallows—Lincoln faces a bigger problem.

The presiding judge, not impressed by Lincoln’s homespun style, visits Lincoln that night and suggests that he let Steve Douglas assist in the defense the next day. Lincoln declines. As the trial resumes, Lincoln calls Cass for cross, and in a clever bit of interrogatory misdirection, has him go through his story again. Cass agrees that he could see the murder only because it was “moon bright.” Lincoln pulls out a farmer’s almanac and shows the moon had already set, then leans into Cass until finally Cass admits he was the killer. The deputy hadn’t been dead until Cass, drunk and spiteful over an earlier argument, saw his opportunity and finished the deputy off with the brothers’ dropped knife.

The film’s last scene is noteworthy and haunting. Lincoln, having set things right, says goodbye to the brothers and their grateful women folk at their camp. But then he turns down a companion’s invitation to walk back to town. “No, I think I might go on a piece, maybe to the top of that hill.” As Lincoln reaches the hilltop, a storm erupts, with lightning, wind, and rain. It was no special effect—an actual thunderstorm hit Los Angeles as the scene was being shot, as though the American firmament itself recognized the need to show what both Lincoln and America would soon face—both in the 1860s and in the 1940s.



And a footnote. *Young Mr. Lincoln* was a movie I studied in college. Only a few years later I was on a different path. It was my first year as a lawyer, and my first trial. The allegations were much more prosaic. The plaintiff’s house had sustained fire damage. My client, the defendant, was a contractor who had been working on the house at the time. The workman dropped a cigarette, the plaintiff alleged. We countered that there was a defective space heater. In deposition, the plaintiff told me it was a mild day, and he was not using the heater. Not from law school, but from film school, I remembered Lincoln. At trial, I surprised the plaintiff by presenting the official weather report for Mitchell Field, which was only a few blocks from the house that burned. The high that day had been in the 40s, the sun shone only a few minutes, and the wind was blowing hard. Defense verdict!

Fiscal Problems continued from p. 5

Even if that is the case, however, it is important for all stakeholders in and around county government to recognize that the county’s current financial path is unsustainable and demands a strategic and balanced response. While proposed deep cuts to wages and benefits will help the county’s long-term financial prognosis (if they survive collective bargaining and legal challenges), its existing revenue streams still are projected to fall short of expenditure needs on an ongoing basis. Difficult decisions on cutting services, raising revenues, or both ultimately will be needed.

CLE Calendar continued from p. 7

December 17, 2010

MBA Presents

Wisconsin Supreme Court Lawyer Discipline Outside of Supreme Court Rules Chapter 20

Presentation will include, but is not necessarily limited to, avoiding unlawful and unethical conduct, other than the obvious.

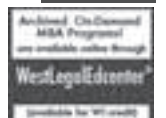
Speaker: Dan Shneidman, Shneidman Law
12:00 – 12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE ethics credit

Fee Schedule for 1.0 CLE Credit Seminars

	Lunch	w/o Lunch
MBA member	\$45	\$35
Non member	\$60	\$50
Support staff	\$45	\$35



Old Men's Exceptions

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court



There's a familiar quote attributed to Oliver Wendell Holmes, Jr.: "The young man knows the rules, but the old man knows the exceptions." In actuality, those words were penned by his father, the 19th Century doctor and poet whose

fame was eclipsed only by his son's. In 1891 Holmes, Sr. published a collection of medical essays including one entitled "The Young Practitioner." It contains the famous quote, followed by: "The young man knows his patient, but the old man also knows his patient's family, dead and alive, up and down for generations."

Our local rules contain a number of exceptional provisions, provisions that might seem unreasonable, odd even—unless you know the patient's family. Here's a little family history to help explain some of our more eccentric local rules:

Local Rules 1.14 and 1.15 **prohibit communication with the court by electronic mail.** That seems so last century, doesn't it? But before accusing the courts of Luddism, consider the fact that because e-mail is so immediate and e-mail habits tend to be so lax, e-mailers quite often forget to copy their opponents on messages sent to the court. To avoid the danger of *ex parte* contacts, many judges eschew litigant e-mail altogether.

For every exception, of course, there is an exception. Rule 1.15.A. authorizes e-mail communication with the court "when specifically invited by the court, on such terms as the court prescribes, and then only if all parties receive a copy of the transmission simultaneously with delivery of the transmission to the court." Some of us do regularly invite e-mail when it will help us manage the case better and when the litigants can be trusted to treat the privilege responsibly.

One other thing the court considers is the printing burden associated with e-mail. We need to keep a record of all those communications, but they can't be stored in the form in which they arrive because, unlike most professionals in this field, we do not yet have electronic files (and we aren't holding our breath waiting). Given current budget woes, judges may well insist on a hard copy if only to avoid the cost that printing entails.

Rule 1.14 also **prohibits filing documents or communication by facsimile.** I don't need to point out that the only thing that seems more out of step with 21st Century technology than our local rules is communicating by facsimile, but consider these two additional facts: (1) the printing burden, and (2) there are only two facsimile machines available to judges in the Courthouse Complex—one in the Chief Judge's office and one in the Safety Building. Although your document might arrive at our fax machine at light speed, the rest of the journey, from the fax machine to our desks, proceeds at the speed of inter-office mail, about one or two business days. And if what you send has a caption on it, the fax machine operators are instructed, pursuant to local rule, to discard it.

Rule 3.16.B. requires a party seeking a default judgment not only to provide proof that the complaint was served on the defendant, but also that the **affidavit of service be printed on a certain color paper** (green for individuals and corporations, blue for substitute service, yellow for service by publication). To make the rule thoroughly baffling, shouldn't we also require that the affidavit be bound in red tape, like the Civil War veteran records that spawned that epithet (at least the U.S. version of the epithet)?

Consider, however, that more than a thousand default judgment motions are filed every month. The affidavit of service usually arrives weeks before the motion. Hence, to decide the motion the judge has to find the affidavit in the file and review it. Some files are slim and the search is relatively painless, but not nearly all. Requiring the form to be printed on a different color paper not only streamlines the effort of finding the form, but instantly lets the judge know whether service was effected normally, by substitute service, or by publication, which will trigger varying levels of additional scrutiny.

As with other exceptions, there are exceptions here, too. If the original affidavit of service is on plain paper, a duplicate photocopied onto the appropriate color paper may be submitted. Also, affidavits issued by sheriff's departments and for service that takes place outside Wisconsin need not be printed on color paper.

Question about the local rules? Send your question by e-mail (richard.sankovitz@wicourts.gov) and I will answer it promptly.

Landing on a New Branch: Pedro Colón Sworn in as Milwaukee County Circuit Judge

Former Wisconsin State Assemblyman Pedro Colón formally took the oath as the new Circuit Judge in Branch 18 before a standing-room-only audience in the Ceremonial Courtroom at the Milwaukee County Courthouse on November 12. Among the dignitaries who spoke glowingly of Judge Colón's legislative and legal career on the occasion of his Investiture were Chief Justice Shirley S. Abrahamson and Justice David T. Prosser, Jr. of the Wisconsin Supreme Court, Judge Kitty K. Brennan of the Wisconsin Court of Appeals, and Milwaukee Mayor Tom Barrett.

Judge Colón, appointed by Governor Doyle, actually began hearing cases in September of this year at his request, so he could get right to work at Children's Court. For 11 years prior to taking the bench, Judge Colón represented the diverse neighborhoods of Milwaukee's south side in the State Assembly. As a member of the powerful Joint Finance Committee, he played crucial roles in funding for neighborhood patrol officers, Milwaukee's summer crime prevention program, and math and science education in the Milwaukee Public Schools.

Judge Colón graduated from Marquette University and the University of Wisconsin Law School. He received the Spirit of Marquette Award for Achievement before 40, and was named one of 40 rising leaders under 40 by the *Milwaukee Business Journal*.

Judge Colón grew up in Milwaukee and attended the Wisconsin Avenue School, where his mother, Elsa Monclova, spent more than two decades as a teacher. He also attended St. Matthew's School, now known as Prince of Peace, and graduated from St. Thomas More High School.

The Investiture featured a Color Guard and Honor Guard, courtesy of the Milwaukee County Sheriff's Department; and a rendition of the National Anthem by Catarina Colón, the judge's niece and member of the UW-Madison Concert Choir. Judge Colón's robe and gavel were presented to him by his mother, his wife Betty J. Ulmer, and his two young daughters Lily Rose and Julia Eva Colón.

Chapter 12: the Underused—and Hard to Use—Chapter of Bankruptcy

Attorney David P. Leibowitz, LakeLaw/Leibowitz Law Center, and Ryan Blay, LakeLaw

Chapter 12 of the Bankruptcy Code concerns family farming and fishing operations. As of October 27, 2010, 15 Chapter 12 bankruptcies had been filed in the Eastern District of Wisconsin since January 1, 2009, and 43 in the Western District during the same time period. Of those filings, four have been dismissed in the Eastern District (26.66%) and eight in the Western District (18.6%). Only ten of the 43 Chapter 12 plans in the Western District had been confirmed.

Qualifications to File

Section 109 of the Bankruptcy Code states: “Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.”¹ If the debtor is a married individual or a married couple, four requirements must be met:

1. The debtor must be engaged in a farming operation or a commercial fishing operation;
2. The total debts of the debtor’s operation must not exceed a set limit (\$3,237,000 for farming; \$1,500,000 for fishing);
3. At least 50% of the total fixed debts (exclusive of the debts for the debtor’s home) must be related to the operation (the figure rises to 80% for fishermen); and
4. More than 50% of the gross income of the individual or couple for the preceding tax year (or for the second and third prior tax years for family farmers) must have come from the farming or fishing operation.²

Similar requirements exist for corporations or partnerships to file under Chapter 12. There are further requirements that stock cannot be publicly traded, at least half of the outstanding stock or equity in the corporation or partnership must be owned by a family or its relatives, and 80% or more of the value of the entity must be related to the operation.³

Concerns That Cause Breakdowns During the Filing or Plan Confirmation Processes

Beyond the traditional requirements to file bankruptcy, such as credit counseling, preparation of bankruptcy schedules, and obtaining the necessary tax returns and proof of income, the specific qualifications for Chapter

12 bankruptcy frequently prevent those who could benefit from the chapter’s flexibility from availing themselves of those benefits.

Chapter 12 debtors have 90 days from the date of filing to submit a proposed plan.⁴ With exceptions, priority claims, such as child support, alimony, and taxes owed to the government, must be paid in full; debtors must cure arrears on secured debt; and they must pay unsecured creditors at least what they would have received in a Chapter 7 liquidation.⁵ The plan spans no less than three and no more than five years.⁶ This is roughly similar to a Chapter 13 filing.

But family farmers are in a unique position compared with the average wage earner. The typical Chapter 13 debtor might have a mortgage or two on a primary residence, a loan on a vehicle, some general unsecured credit card and medical debt, and other common debt to reorganize. Family farmers, however, may have a lien on their crops or livestock, expensive farm equipment with high equity, and severely fluctuating income, all of which may deter a plan’s confirmation.

If spouses file a petition under Chapter 12, they may opt to file a single plan and petition.⁷ Further issues could arise, however,

if one spouse is actively engaged in the family farming operations while the other is employed in a traditional job away from the farm. Even if the income of the non-farming spouse is modest, it is highly probable that the income is greater than the farming income of the couple, which makes them ineligible for Chapter 12. On the other hand, if the non-farming spouse’s income is low, and the farm income is also low or in flux, it becomes difficult to show feasibility of the plan and to fund enough to properly treat secured and priority creditors.

The economic realities of supporting a farming operation entail extraordinary strain and require both planning and good fortune. The operation also requires substantial investment in equipment. Even with generous federal or state equity exemptions, farmers are left in a situation in which they cannot have too much equipment paid off, or they will be required to pay their unsecured creditors more than they would have been required to pay from disposable income. Conversely, if the equipment is over-secured, the debtors will be forced to pay heavily over a five-year period to satisfy the lien, or may have to surrender the equipment necessary to the success of the farming operation.

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Marquette law student Rob Catey moderates a discussion with recent law school graduates about their experiences practicing in Milwaukee. The panelists at this MBA-sponsored event at the Law School were Rufino Gaytan, Elizabeth Miles, and Michael Ryan.

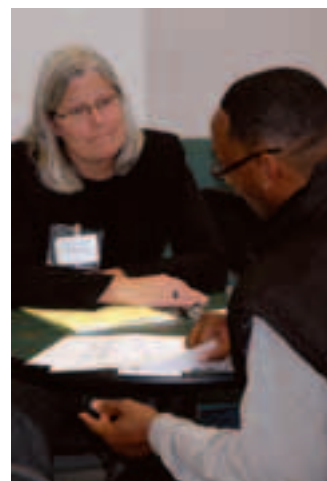
What Really Happens Inside the Milwaukee Justice Center?

Noah Gehling, Milwaukee Justice Center

Since its inception in 2009, the Milwaukee Justice Center (MJC) has served more than 13,000 self-represented litigants throughout Milwaukee County. Considering the current economic situation, along with Milwaukee's standing as the fourth poorest city in the country, it should come as no surprise that there is a significant need for self-help civil legal services in our community. In order to provide a better understanding of the MJC, we shared a day in the life of the MJC's Brief Legal Advice & Referral Clinic.

Every Thursday and Friday at 1:00 p.m. a transformation begins to take place in Room 106 of the Milwaukee County Courthouse. The tables and chairs in the jury management room are organized into five meeting stations, complete with legal pads and laptop computers fully loaded with legal software and resources. The "quiet waiting room" slowly converts into an attorney conference room adorned with statute books and a rolling cart of resources for volunteer attorneys and law students. By 1:30 the transformation is complete and a sign is placed in the hall directing those seeking legal help into the Brief Legal Advice & Referral Clinic.

Clients begin to arrive and are greeted by an undergraduate student volunteer who assists them with the intake procedure. Shortly before 2:00 the waiting area starts to fill, and volunteer attorneys and law students arrive. The students and attorneys pair off and head to the meeting stations to prepare for the next two hours. At 2:00 sharp the first five clients on the list are escorted from the waiting area and get a chance to discuss their civil legal issues with the volunteer attorneys and law students.



For these clients, this is truly a unique opportunity to meet with an attorney that they otherwise

Attorney Margaret Hickey, Becker, Hickey & Poster, assists a client.

would not be able to afford. One client that came into the clinic was being sued by a dental clinic for services that were never performed. As the attorney looked into the case further she found the client was one of many people who have been sued by the dental clinic. The client said of the visit, "They provided me with answers, resources, and confidence to stand up for myself, as I have no means to pay for a lawyer." The client left feeling hopeful and grateful that the attorney was "patient and spoke a language I could understand." As a result of the advice she received at the clinic, the client went on to win the case.

Attorney Cherice M. Hopkins, an associate at Foley & Lardner, was the volunteer attorney who assisted that client. She volunteers for the MJC because she finds it to be a very rewarding experience. Hopkins said volunteering "helps me get back to why I went to law school, to help those who are being taken advantage of." She found working with this particular client to be very rewarding, especially since the claims were so outrageous. For an attorney like Hopkins, who is a member of Foley & Lardner's Labor & Employment Practice, volunteering at the clinic provides an opportunity to work one-on-one with clients.



Intern Amy Wilson, Marquette University, Attorney Thomas Schrimpf, Hinshaw & Culbertson, and law student Kristin Lindemann, Marquette University, assisting a client in the Brief Legal Advice & Referral Clinic.

By 3:30 the sign is pulled from the hallway and the clinic begins to wind down its activity. On an average day, ten or more clients have already been assisted on a variety of issues ranging from divorce and small claims to foreclosure and probate. In the waiting area there is a client with a particularly sensitive case waiting to be seen. A mother patiently waits with a young child. She is dealing with a domestic violence situation and needs legal advice. Because she has no family in the area, and is afraid to use her home phone, the volunteer attorney offered her his cell phone so that she could make arrangements to get to a safe place. She left the clinic that afternoon with information about her legal rights and where she could get further help.

The volunteer attorney who assisted that client, Claude J. Krawczyk, is an attorney at O'Neil, Cannon, Hollman, DeJong & Laing. He got involved with the MJC when a

continued page 15

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MBA Marks National *Pro Bono* Week with Reception

Milwaukee County Circuit Judge Richard Sankovitz extolled the “professional, personal, and practical” benefits of *pro bono* work to lawyers attending a *Pro Bono* Reception hosted by the Milwaukee Bar Association, Quarles & Brady, and the *Wisconsin Law Journal* on October 18. Judge Sankovitz stressed the importance of getting involved in *pro bono* work early in one’s legal career, in the course of forming the organizational habits that will define that career. The free reception, held at the MBA in honor of National *Pro Bono* week, also featured remarks by Chris Russell, a Quarles associate who described the personal rewards of learning and positively influencing the life stories of *pro bono* clients. Russell also encouraged law firms to adopt more generous billing credit policies so as to enable their lawyers to perform that work.

In addition to the speakers, representatives of numerous public interest organizations were on hand to speak individually with

attendees about *pro bono* opportunities. Those organizations include Legal Action, the Legal Aid Society, Centro Legal, and the Milwaukee Justice Center.

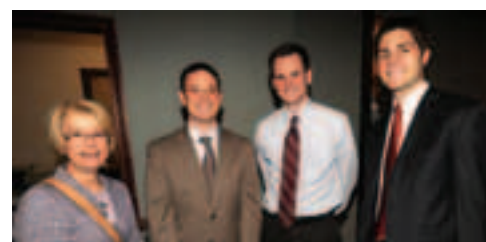
The MBA thanks Quarles & Brady and the *Wisconsin Law Journal* for their generous participation as sponsors of the *Pro Bono* Reception.



Attorneys Karen Dardy, Legal Aid Society of Milwaukee, and Ben Shryock, Shryock Law Firm, at MBA *Pro Bono* Week event on Monday, October 18 at the MBA



Milwaukee County Circuit Court Judge Richard J. Sankovitz networks with MU law students Carolyn Happel, Jason Roberts, and Michael Knoeller about the importance of *pro bono* work



Left to right: Patricia Risser of Legal Action of Wisconsin, and Michael Gosman, Erik Eisenmann, and Mike Bohn of Whyte Hirschboeck Dudek



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7th Annual State of the Court Luncheon



Milwaukee County Circuit Court Judges Carroll, Witkowiak, and Dugan arrive at the luncheon. ↑



The crowd gathers at the State of the Court Luncheon. Over 280 attorneys and judges were in attendance. ↑

The Milwaukee Bar Association congratulates the 2010 *Pro Bono Publico* Award winners:

Law Firm

Foley & Lardner LLP

Individual

James A. Gramling, Jr.

Law Student

Stacie Lamb

A special thank you to event sponsor:



The MBA staff is pleased to serve our membership. We would like to recognize the anniversary years of service each staff member observed in 2010:

Sabrina Nunley	14 years
Britt Bellinger Wegner	8 years
Pamela Hill	6 years
James Temmer	5 years
Katy Borowski	4 years

We would also like to recognize our Administrative Director of the Milwaukee Justice Center:

Dawn Caldart 1 year

The staff works well together in achieving our goal of serving the membership. We thank you for this opportunity to serve you.

Happy Holidays from the staff of the MBA.

girl scouts and the law



Ninety-five Girl Scouts participated in legal workshops throughout the day on November 6, 2010 to earn their legal badge.



Officer Kathy Schult helps Girl Scouts understand what it takes to become a police officer.

MBA Mentoring Program

We pair new and experienced attorneys. The match includes areas of practice, size of firm, interests, etc., and strives for insight and guidance on the legal profession.

MENTORS: 5+ years of legal experience, members of the MBA, and in good standing with the Office of Lawyer Regulation.

MENTEES: Less than 5 years of legal experience, members of the MBA, and in good standing with the Office of Lawyer Regulation.

For more information or for an application please contact Britt Wegner at bwegner@milwbar.org, or Amy Enger at aenger@milwbar.org.



THE OTHER MARQUETTE INTERCHANGE.

Marquette University Law School invites you to the new Ray and Kay Eckstein Hall, the best law school building in the country, gracing Wisconsin's most prominent highway intersection and promising to become one of the nation's most prominent intellectual intersections. The \$85 million building features a pathbreaking library without borders, seamlessly integrated with the rest of the building, and state-of-the-art broadcast capabilities.

Eckstein Hall will be its own intersection for the larger community. A place where students, scholars, practitioners, policymakers — all engaged citizens, really — can explore critical issues. A place that prepares individuals for a life in the law by encouraging them to become wise counselors, effective advocates, and engaged citizens. A place that embodies Marquette's mission of excellence, faith, leadership, and service.

marquette.edu/law



Volunteer Spotlight

Jacques Mann

Attorney Jacques Mann is a 1978 graduate of Milwaukee Tech High School, a 1982 Marquette University graduate, and a 1987 graduate of Villanova School of Law. For nearly 14 years he was an in-house insurance defense attorney in Philadelphia, handling personal injury, property damage, product liability, discrimination, and worker's compensation litigation. Six years ago, Jacques relocated to Wisconsin and started a solo practice involving numerous areas of law.

Since joining the MBA in 2005, Jacques has regularly volunteered to provide free legal services

in connection with Law Day observances, and has been a frequent volunteer for the MBA Lawyer Hotline. He has also presented at Waukesha County Career Day events and at high schools regarding the law. Through the MBA's Speaker's Bureau, he recently spoke to the National Kidney Foundation, as well as to the Milwaukee Girl Scouts as part of their Law Merit Badge program.

In addition to these presentations, Jacques regularly provides free telephone consultations to clients who are referred to

his office by the MBA Lawyer Information and Referral Service and the Modest Means Panel. He frequently provides reduced-fee services to those he formally represents and who cannot afford the full price of legal services. He recently completed a bench trial *pro bono* for a Modest Means panel client.

Jacques notes that attorneys are in a service profession, and he takes the obligation of serving the public at large very seriously. He points out that the judicial system works properly only if the system and its officers—the lawyers—are accessible to the general public and not just to those of means. Obviously, Jacques Mann practices what he preaches.

Marquette University Law School and the Milwaukee Bar Association Proudly Present: The 31st Annual Conference on Recent Developments in Criminal Law

On Saturday, December 4, 2010, the Marquette University Law School and the Milwaukee Bar Association will host the 31st Annual Conference on Recent Developments in Criminal Law. Join us at the Law School's new home in Eckstein Hall for this annual event, which over the course of three decades has provided continuing legal education to thousands of lawyers.

Once again, a faculty of the highest quality will address timely topics of interest to criminal law practitioners. Speakers include Professor Daniel Blinka and Attorneys Robert Donohoo, Craig Johnson, Stephen Kravit, Craig Mastantuono, Dennis Melowski, James Santelle, Deborah Vishny, and Gregory Weber. In this year's program you will be updated on the latest in:

- Criminal Procedure
- The Law of Arrest, Search, and Seizure
- Criminal Evidence
- The Substantive Law of Crimes
- Criminal Law Legislation

With a Special Focus on ...

- Significant Changes in Wisconsin's OWI Laws
- The U.S. Supreme Court's Interrogation Decisions
- Developments in Federal Criminal Practice

Conference Details

Schedule

The conference will be held on Saturday, December 4, 2010, from 8:30 a.m. to 4:30 p.m. Coffee and pastries will be available when the doors open at 8:00 a.m. Beverages

will also be served during session breaks. A complimentary lunch will be furnished to all attendees.

Location

The conference will be held in Eckstein Hall, the new home of the Marquette University Law School, 1215 West Michigan Street, Milwaukee, Wisconsin. Complimentary parking is available in the Law School's underground lots accessible from North 11th Street and from West Clybourn Street.

Registration

The registration fee for the all-day conference is \$165.00 for members of the Milwaukee Bar Association and the Milwaukee Young Lawyers Association, and \$190.00 for all others. Advance registration will guarantee a set of the specially prepared instructional materials on the date of the conference. Registrations will also be accepted at the door.

CLE CREDITS

It is anticipated that the program will be approved for 8.0 CLE credits. Approval has also been sought for 8.0 hours of criminal law credit by the Wisconsin State Public Defender Board.

Cancellation

In order to receive a registration fee refund, you must notify Professor Thomas Hammer at the Marquette University Law School by 4:00 p.m. on December 2, 2010. Substitutions may be made at any time.

Further Information

For further information about this conference, please contact Professor Hammer at 414-288-5359.

MJC continued from p. 11

member of his firm suggested that attorneys volunteer on rotation. This was Krawczyk's third time volunteering in the clinic, and he said, "I am happy we are here, I am happy we are doing this." The kinds of issues the volunteer attorneys see in the clinic are quite different than those Krawczyk deals with on a daily basis, primarily real estate and business transactions. "It is rewarding to do this, I think we are making a difference." Krawczyk feels that *pro bono* work is very important, and he has a long history of volunteer and community involvement.

By 4:00 the last of the clients have been seen and the clinic begins to shut down. The statute books are returned to the storage lockers and the laptops and work stations packed up until the next clinic. The resource cart is rolled out of the "quiet room," and the lights are turned off. Slowly, the Brief Legal Advice & Referral Clinic changes back into the jury management room, with no evidence that the clinic had even taken place, except for the list of clients that were seen that day, and the positive experiences of both the clients and the volunteers.

The Trials of a North Shore Village Judge

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

Every village has its types. The villages of the North Shore are no different. Each has its village board, village people, and—at least one—village idiot.

Over this crew presides the village municipal judge—the hearer of local cases and the dispenser of local justice. Before we take a peek behind the bench (a better visual than behind the robe), a bit of background.

For many, the municipal court is the sole point of contact with the legal system. Municipal courts hear cases arising from traffic or ordinance citations. These include first-time drunk driving offenses, truancy, underage drinking, certain drug offenses, and curfew violations.

About 250 municipal courts sit in Wisconsin. Municipalities may join together to make one court. Those municipalities may or may not be contiguous or in the same county. Any number may join and voters of the consortium elect the judge. Forty-five such consortiums now exist. Roughly half of the State's municipal judges are non-lawyers. As of January 1, 2011, (a) newly-elected municipal judges will serve four-year terms unless a shorter term is enacted through the charter amendment process, and (b) all municipal judges will be required to wear a robe.

Milwaukee County's lake-hugging North Shore communities—Shorewood, Whitefish Bay, Fox Point, and Bayside—each has its own municipal court. Each judge is a lawyer. Over breakfast (I usually order coffee and a Greek omelet, well under \$10, just in case you'd like me to interview you), I put it to each of the judges: is your court special or common?

In certain ways the experience is common. Like other municipal courts, these judges hear a lot of traffic citations and the occasional ordinance, zoning, building code, and public safety matter. Because of the large volume of traffic cases, about half of the defendants who appear in court are not village residents.

Each village has a part-time prosecutor. Defendants often represent themselves. Of the individuals cited for ordinance violations, most pay the forfeiture (fine), a much smaller number challenge the forfeiture (most of these settle), and roughly 25 percent or more default (i.e., don't respond or appear). Upon application, the judges may issue warrants against the defaulters. With governmental databases as advanced as they are, this means that many will eventually be compelled to return to face the judge.

In other ways the experience is somewhat unique. For instance, there was the crustacean caper as recounted by Whitefish Bay judge Paul Christensen. The formal charge was

retail theft. A woman entered a fish store, covered her hand and forearm with a plastic bag, and made off with six lobsters and 23 shrimp. She showed up to court in her Sunday best. The defense? Just trying to feed my family. The sentence? A fine—and banishment to Shorewood.

Charlie Barr in Bayside sometimes hears matters involving resident celebrities. One NBA player's fleet of vehicles was so large that he (or his agent) could not keep track of all the registration renewals. The police would issue citations. The player paid them. Barr also mentioned that a lot of Bayside speeders are repeat offenders. The courthouse crowd calls these folks "frequent fliers."

Fox Point's Scott Wales gets some interesting matters. Recently, for instance, Wales approved inspection warrants to compel non-cooperating property owners to admit village inspectors onto the property in order to investigate storm water infiltration and inflow into the sewer system. Wales worries that if the matter comes before the court the parties may ask him to get "up close and personal," or in other words participate in something akin to a "jury view."

Then there is Don Demet in Shorewood. Demet regularly gets asked to officiate at weddings. His first question: robe or no robe? It seems that in the North Shore there is just no escaping a bad visual.

It's Monday, the First Day of the Rest of Your Life.



Too bad last Friday was the last day to file the Bergstrom motion.

Did you know that missing deadlines continues to be one of the most common mistakes leading to malpractice claims? The failure to file a document is the second most common alleged error and the failure to calendar properly was the fifth most common mistake leading to a malpractice claim*. A dual calendaring system which includes a firm or team networked calendar should be used by every member of your firm.

At Minnesota Lawyers Mutual we don't just sell you a policy. We work hard to give you the tools and knowledge necessary to reduce your risk of a malpractice claim. We invite you to give us a call at 800-422-1370 or go online at www.mlmns.com and find out for yourself what we mean when we say, "Protecting your practice is our policy."

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* American Bar Association Standing Committee on Lawyers' Professional Liability, (2008).
Profile of Legal Malpractice Claims, 2004-2007. Chicago, IL: Hawkins, Paul and Ewins, Kathleen Marie.

Nancy Joseph Joins the Federal Bench

Nancy Joseph began her eight-year appointment as United States Magistrate Judge on November 15, 2010. She replaces Magistrate Judge Aaron E. Goodstein, who retired June 30, 2010. Magistrate Judge Joseph spent the past ten years in the Milwaukee office of the Federal Defender Services of Wisconsin. She has also been active in the Eastern District of Wisconsin Bar Association for the past five years, most recently serving as Vice President. An investiture will be held at a later date.

New *Pro Bono* Program Benefits the Deaf and Hard of Hearing

The Legal Aid Society of Milwaukee and the Milwaukee Bar Association have teamed up to provide legal services to a traditionally underserved, under-represented population—deaf and hard of hearing individuals. This project was started by Rachel Arfa and Paula Lorant, both attorneys at the Legal Aid Society of Milwaukee. Arfa is profoundly deaf and communicates by speaking, reading lips, and hearing through two cochlear implants. Lorant runs the elder law program at the Legal Aid Society of Milwaukee.

Arfa realized there was an unmet need when she presented to deaf and hard of hearing senior citizens at the Water Tower View deaf senior citizen housing located in Greenfield, Wisconsin. Nearly all of the senior citizens said that they did not have a will or any type of advance directives. The reasons given were that they could not afford an attorney, and also were unable to find an attorney willing to pay for accommodations to ensure communication access. Most of the residents communicate primarily in American Sign Language (ASL).

Arfa sought to improve access to attorneys by providing qualified ASL interpreters without cost to the client or attorney. Her project was fortunate to receive generous grants from the

State Bar of Wisconsin *Pro Bono* Initiative program. These grants paid for the cost of ASL interpreters qualified to interpret in legal settings. This is a cost that attorneys are often unwilling to pay to represent a deaf client, leaving many deaf clients unable to find an attorney to represent them in a wide variety of matters.

The MBA helped launch this initiative by recruiting attorneys to provide *pro bono* legal services and supporting a CLE program to train attorneys. At the CLE, held on June 3, 2010 at the MBA, Lorant and Arfa explained the project, how to communicate legal concepts, and legal issues related to wills and advance directives. University of Wisconsin Law School Professor Michele Lavigne presented on language and communication issues that occur in the deaf and hard of hearing community.

This project operated through the summer and fall of 2010. Attorney-client meetings took place with full communication access through interpreters provided by Professional Interpreting Enterprise (PIE) sign language interpreters.

Milwaukee Bar Association Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin
- Improve access to justice for those living and working in Milwaukee County
- Support the courts of Milwaukee County in the administration of justice **and**
- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

Sweet! Lowell Sweet Wins 2010 Solo & Small Firm Award



Attorney Lowell Sweet of Elkhorn was presented the 2010 John Lederer Solo & Small Firm Service Award at the Wisconsin

Solo & Small Firm Conference in Wisconsin Dells. The award, named in memory of Oregon, Wisconsin attorney John Lederer, is presented annually to an individual, group, or organization that exemplifies his leadership, spirit, and dedication. Lederer saw it as his mission to help solo and small firm lawyers master the skills and technology needed to build their practices.

The award selection committee was truly impressed by the caliber of this year's nominees. Each is a credit to the legal profession in general, and a role model for solo practitioners in particular. The committee selected Lowell Sweet to honor with the award because members were impressed by his continuing dedication and willingness to

serve fellow members of the bar.

Lowell, like the man for whom the award is named, has been dedicated to the advancement of solo and small firm lawyers throughout his more than 50 years as a Wisconsin attorney. His involvement in the bar is well documented, as is his willingness to mentor younger lawyers both personally and through teaching on various topics.

Congratulations to Lowell Sweet for an honor well deserved!

Staff and committee members at the 2010 WI Solo & Small Firm Conference: (L-R): Britt Wegner from the Milwaukee Bar Association, Rob Teuber from Weiss Berzowski Brady, and Angela Campion of Campion Law.




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Membership Still Has Its Diploma Privileges

Attorney Hannah C. Dugan, UW '87

For decades, state bar admission has forked, essentially, on three paths: by bar examination, by reciprocity, or by diploma privilege. While every other state has forgone the diploma privilege, Wisconsin maintains all three means of admission to practice.¹ Not that the privilege has been left unchallenged and unscrutinized. Since its statutory codification in 1870, Wisconsin's diploma privilege has faced numerous challenges—from minor “tweaking” to outright calls for its elimination. Within the past year alone, Wisconsin's diploma privilege has survived—intact and unaltered—both a federal lawsuit and state supreme court rule review.²

On November 4, 2010, the Wisconsin Supreme Court, by unanimous vote, ordered that the petition to amend or repeal SCR 40.03 (the diploma privilege) be denied. The unanimous vote by the court belies the tremendous controversy and emotion that swirl around the diploma privilege. This article takes a brief look at the history of Wisconsin's diploma privilege, in the hope

of understanding its merits and its staying power.

Diploma Privilege Bar Admission in Wisconsin

Not unique to America or to Wisconsin is the puzzle of determining who is sufficiently competent and trustworthy to be a lawyer. For years before Wisconsin was a territory or a state, bar admission standards were in place.³ The law of 1861 required some examination involving learning and practical skills in order for one to be granted a license to practice law. Lawyers were trained through “reading the law” and/or working under the tutelage or apprenticeship of bar member practitioners, prior to bar admission. Others were trained by law schools and institutes in the East, as well as those arising in Wisconsin after law institution incorporation statutes were enacted in 1858. The University of Wisconsin Law Department opened in 1868. As the incorporation of law schools and institutes became common throughout the United States, the profession's leaders deliberately moved the development of the

bar away from “reading the law” (and then proving qualification for admission through examination) to becoming learned in the law and seeking admission after completing a standard course of law study. To encourage legal study and practice in Wisconsin, a resident and graduate of the state's law department, exclusively, became entitled to bar admission upon presenting a certificate of graduation, henceforth known as the diploma privilege.⁴

Subsequent changes in bar admission standards include: requiring three years of legal study (legislative act, 1903); requiring a four-year high school diploma (supreme court rule, 1905); requiring a high school education, two years of college, and three years in a full-time law school⁵ (supreme court rule, 1926); extending the

diploma privilege to graduates from any law school in the state with the high standards of UW-Madison (Legislature, 1931); extending the diploma privilege to Marquette University Law School graduates (“Fons” bill, Legislature 1931)⁶; reaffirmation of the diploma privilege (supreme court, 1963); prescribed credit hours and mandatory courses to obtain the diploma privilege (supreme court, 1971); and elimination of the residency requirement for admission to practice (supreme court, 1980).

Failed attempts to change bar admission standards include efforts to: require pre-legal college study (supreme court rule, 1917); abolish the diploma privilege (“Schaefer Bill,” Legislature, 1921); require six-month pre-practice apprenticeship (State Bar, 1946); discontinue Wisconsin's diploma privilege (State Bar study committee; advanced by out-of-state law graduates and the American Bar Association, 1955); create an option to eliminate law school attendance and substitute three years of apprenticeship and passing the bar exam (Legislature, 1977); pass a constitutional amendment authorizing the Legislature to regulate and license lawyers (Legislature, 1977).

Pressures to Eliminate the Privilege

Other factors served as a backdrop in the arguments for and against continuing the diploma privilege. Chief among them were the tensions in the legal profession's development: meeting the membership requirements of the prestigious Association of American Law Schools (AALS) and satisfying the American Bar Association's emerging accreditation process during the 1920s. Each entity historically has disfavored the diploma privilege.⁷

Within the state, tensions existed between the law schools and between factions within the bar. Legislation introduced in 1913 by some Marquette faculty included abolishing the diploma privilege—a bar membership advantage only available at the time to graduates of UW-Madison Law School. The arguments lodged were that professionalism and law study standards were compromised by the diploma privilege, that limitation of the privilege to University of Wisconsin graduates gave the school an unfair advantage in student recruitment, and that

continued page 22

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“Israeli John Marshall and Earl Warren Wrapped Into One” Delivers Hallows Lecture

Attorney Mariya Basin, Croen & Barr



Aharon Barak

Aharon Barak, a prominent Israeli legal scholar who served as President of the Israeli Supreme Court for 11 years, gave the First Hallows Lecture at Marquette University Law School’s new Eckstein Hall on November 1. Barak spoke in the expansive, wood-paneled Appellate Courtroom before an audience of students, faculty, and members of the bar and bench. The annual Hallows Lecture is named in honor of the late E. Harold Hallows, who was, for many years, a Marquette Law School Professor and, later, Chief Justice of the Wisconsin Supreme Court.

The soft-spoken, grey-haired, and bespectacled Barak, speaking with a distinct Hebrew accent, looked and sounded every bit the part of the distinguished jurist that he is. His career has included positions as Dean of Faculty of Law at Hebrew University, legal adviser to the Israeli delegation during the Camp David Accords, Attorney General of Israel, Justice of the Supreme Court of Israel, and, most recently, President of the Supreme Court of Israel. Since taking mandatory retirement from that court in 2006, Barak has returned to academia, and currently holds several teaching positions in Israel, Canada, and the United States.

Barak is widely credited with reshaping the role of Israel’s highest court, and Israeli courts in general, through what he calls the “Constitutional Revolution.” One of his major contributions to Israeli law has been the emergence of the view that Israel’s Basic Laws, which guarantee basic human rights, amount to a constitution. In the absence of a formal constitutional document, Barak sees the Basic Laws as a basis for challenging, and potentially striking down, laws passed by the Knesset (Israel’s parliament) if such laws contravene the tenets of the Basic Laws. Through this ascendancy of the Basic Laws to constitutional status, Barak sees Israel as having been transformed from a parliamentary democracy to a constitutional parliamentary democracy.

The topic of Barak’s Hallows Lecture was

“Society, Law, and Judging,” and he used the opportunity to explain his philosophy of judging, as well as his views on the role of judges in society and law. Throughout his 28-year tenure on the Israeli Supreme Court, Barak espoused a “purposive” (as opposed to a “textual”) interpretation of the law, which holds that judges, in interpreting legislation, should consider the purpose for which that legislation was written. As part of that approach, Barak has championed a proactive judiciary, a position for which he has earned both praise and criticism in Israel and abroad. In his Hallows Lecture, Barak argued that while the vast majority of cases requires that a judge merely declare the current law and apply it to the facts of a given case (with the law thus being the same after the decision as before it), a small minority of cases calls for what he termed “judicial creativity,” his name for judicial lawmaking, in which the law before the decision differs from the law after the decision. Barak also asserted that “judicial interpretation without judicial discretion is a myth.” He argued that such discretion is necessary to resolve ambiguities inherent in the natural language used to draft legislation, and to determine how the drafters of the law would have wanted it to be applied in situations they could not have anticipated when drafting the law.

The question of the proper role of judges is, of course, much debated in this country, as well. Barak’s views on the role of the judiciary have recently engendered controversy during the public hearings following the nomination of now-Justice Elena Kagan to the U. S. Supreme Court. As readers might recall, Kagan named Barak as her “judicial hero” during her confirmation hearings before the Senate, which generated much heated discussion in both the political and legal worlds. The “judicial hero” characterization, however, appears well in keeping with the words Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson used to describe Barak during his visit to Milwaukee: “an Israeli John Marshall and Earl Warren wrapped into one.” Marquette Law School Dean Joseph D. Kearney concurred in that description as he introduced Barak to the Hallows Lecture audience.

In his private life, Barak is husband to his high-school sweetheart Elisheva Ososkin—

herself an attorney and former Deputy President of the National Labor Court in Israel—and father to their four children, all of whom are attorneys. The children followed not only their parents, but also their grandfather, Barak’s father, into the legal profession: Zvi Brick was an attorney in Kaunas, Lithuania, where Aharon was born in 1936. Barak survived three years in the Kovno ghetto during World War II, before his mother, Leah Brick, and his father were able to smuggle him out in a sack. In 1947, after wandering through post-war Europe for several years, the Brick family immigrated to what would become Israel.

Milwaukeeans will be gratified to know that at the conclusion of his Hallows Lecture, Mr. Barak noted that Milwaukee is well known in Israel as the former home of Golda Meir, the fourth Prime Minister of Israel.

Chapter 12 continued from p. 10

Conclusions

If a petitioning client strikes the right balance between debt and income, reorganization under Chapter 12 can be a success and revitalize the operation. The creditors will cooperate and get paid, and the debtor will be able to emerge with significantly less debt after plan completion. Practical considerations affecting farmers and farming operations in Wisconsin, however, have resulted in very few successful filings and an underutilization of Chapter 12. If family farmers in other states are experiencing the same handicaps in qualifying for and successfully completing Chapter 12 plans, Congress should explore ways to make that chapter more debtor-friendly.

¹¹ U.S.C. § 109(f)

¹¹ U.S.C. § 1222, 1225(a)(4)

¹¹ U.S.C. § 101(18)(A)

¹¹ U.S.C. § 1222(a)(2)

¹¹ U.S.C. § 101(18)(B)

¹¹ U.S.C. § 302(a)

¹¹ U.S.C. § 1221

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In-House Counsel Must Maintain Active Bar Membership to Preserve Attorney-Client Privilege

Attorneys S. Edward Sarskas and Adam E. Witkov, Michael, Best & Friedrich

Recently, the U.S. District Court for the Southern District of New York held in a discovery order that the attorney-client privilege does not apply to communications between a corporation and its in-house attorney when the in-house attorney was an inactive member of his state bar. In that case, *Gucci America, Inc. v. Guess?, Inc., et al.*, 2010 U.S. Dist. LEXIS 65871, Case No. 09-CV-04373 (S.D.N.Y. June 29, 2010), United States Magistrate Judge James L. Cott held that an inactive attorney is not an “attorney” for purposes of attorney-client privilege, and therefore the privilege did not apply to communications between that attorney and his client-company. The court held that the attorney-client privilege could still apply if the client reasonably believed that the attorney was authorized to practice law;

however, the court held that the privilege did not apply here because the client-company did not make a reasonable effort to ascertain the attorney’s qualifications and status.

This case is significant for companies that employ in-house counsel. In order to maximize the protection afforded by the attorney-client privilege, in-house counsel must maintain their active bar status to avoid any argument that the privilege should not apply to internal communications with the in-house counsel. Prior to hiring an attorney as in-house counsel, a company should conduct a background check into the attorney’s qualifications to practice and state bar membership status. A company that already employs in-house counsel should establish a procedure to verify annually that its in-house attorneys’ bar status is active. The company

should also require an in-house attorney to immediately disclose to the company if his or her state bar membership expires.

Most state bar websites provide a way to quickly verify whether an attorney is an active member of the state bar. For example, a Wisconsin attorney’s license status can be verified at http://www.wisbar.org/AM/Template.cfm?Section=Lawyer_Directory. An Illinois attorney’s license can be verified at <https://www.iardc.org/lawyersearch.asp>.

Foley & Lardner and Hunger Task Force Team Up to Strike Out Hunger in Milwaukee

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NALS ... the association for legal professionals

On September 25, Foley & Lardner presented a check to the Hunger Task Force as part of the firm’s 2010 “K’s for a Cause” program.

This is the third year the Hunger Task Force has been the beneficiary of the program. Throughout the season, Foley partners, associates, and staff donate a set amount to the program for every strikeout recorded by a Brewer’s pitcher at Miller Park. Strikeouts are highlighted on the “K Board” strikeout meter in right field throughout the season. Brewers closer Trevor Hoffman joined the cause by pledging, as well. The \$126,000 raised through the “K’s for a Cause” program would provide two meals for every Brewer fan at a sold-out game at Miller Park!

“This generous donation will feed a lot of hungry people in Milwaukee. Foley & Lardner and the Brewers Community Foundation are local leaders when it comes to getting involved with our community and we thank them for partnering with us,” said Sherrie Tussler, Executive Director of the Hunger Task Force. “We would like to give a big, special thank you to all the Foley & Lardner employees who pledged both time and money to ‘K’s for a Cause.’”

“At Foley, we do our best to support our community and local non-profit organizations and we realize hunger relief is a top concern for many Milwaukee residents,” said Andy Wronski, partner at Foley & Lardner. “‘K’s for a Cause’ allows our staff to cheer on our Milwaukee Brewers while also providing meals for those who need them.”

“K’s for a Cause” is a partnership between Foley & Lardner and the Milwaukee Brewers that began in March 2008. To date, the program has raised more than \$400,000 to feed Milwaukee’s hungry.

Pro Bono Corner: Immigration Legal Services Project

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.

Immigration Legal Services Project (Catholic Charities of the Archdiocese of Milwaukee)

Contact: Barbara Graham
Office: Catholic Charities
St. Patrick Parish
731 West Washington Street
Milwaukee, WI 53204
Phone: (414) 643-8570, ext. 14
Fax: (414) 643-6726
E-mail: bgraham@ccmke.org

Catholic Charities' Immigration Legal Services Project assists newcomers to the United States throughout the ten-county Archdiocese of Milwaukee, which includes eastern Wisconsin counties from Kenosha to Fond du Lac. These newcomers include individuals trying to secure asylum or temporary protection in the United States, immigrants petitioning for U.S. residency, and victims of domestic violence and other

crimes. Fees are on a sliding scale, depending on the individual's ability to pay.

Demand for these services is great, and the Immigration Legal Services Project seeks *pro bono* attorneys to help in a number of areas. The representation largely involves residency petitions under the Violence Against Women Act ("VAWA") for victims of domestic violence who are married to U.S. citizens, according to Barbara Graham, who heads the Immigration Legal Services Project. Some *pro bono* attorneys also assist with "U" visa petitions for certain victims of serious crimes, as well as with asylum applications.

VAWA petition work through Catholic Charities provides the ultimate "feel good moment," says Graham. "Victims who have no idea what their rights and options are suddenly find themselves secure in the United States with their children, and able to leave their abusers."

Most cases do not require court appearances, although some may involve attending Adjustment of Status interviews with clients. Catholic Charities can provide interpreters

and necessary software. Malpractice insurance is available through the State Bar for those who do not have it.

Chris Russell, an associate in the Corporate Services Group at Quarles & Brady, worked on several matters during an externship, and continues to do *pro bono* work with the Project. He has enjoyed working with the legal staff at Catholic Charities. "The people are fantastic over there," he said, and noted that the organization provides useful packets of information regarding how to complete VAWA and "U" visa petitions.

Russell found the opportunity to work with Catholic Charities' clients particularly important. "It is an incredible experience," said Russell, "for younger attorneys, especially at larger firms, to have face-to-face contact with clients and responsibility for the whole case." But the opportunity to learn extends beyond professional development. "You see some humbling circumstances in terms of what people go through."

"The ups are really up and the downs are really down," Russell explained. "But the ups are really worth it."



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Privileges continued from p. 18

the privilege for state-supported Wisconsin students prevented them from “proving” law study proficiency and legal acumen.

Legislation proposed by Marquette in 1921 to abolish the diploma privilege passed the Legislature. The bill was reconsidered within six days, however, and the reconsideration vote to abolish the privilege failed, based on the following rationale:

The state institutions should continue to receive the recognition extended to them by the legislature fifty years ago and that their students should not be required to meet the bar test simply because students of a private institution were required to meet it. The University course was said to be more thorough and its tests more representative than those of other colleges.

Marquette’s dean approached the defeat with a fighting attitude, and with the consideration that “[w]e may attack the constitutionality of the law which favors one institution over another.” As late as 1932, Marquette’s dean continued to write the Legislature regarding the school’s opposition to the diploma privilege.

The Cheese Stands Alone

In the United States, 32 states have admitted bar members via diploma privilege. Two reasons that 31 states no longer offer the privilege option are (1) ABA pressure, and (2) the “geo-politics” of barring diploma-privilege bar applicants between contiguous states.

Wisconsin alone still has the diploma privilege.⁸ While other states have eliminated the admission option, “[t]he fact that ‘everyone else is doing it’ is not a reason for Wisconsin to abandon the diploma privilege.”⁹ The merits of continuing the diploma privilege include these facts: (1) the state has only two law schools, both of which have bold and justified confidence in their ability to educate and graduate practitioners who are learned in the law and ready to practice in Wisconsin; (2) the supreme court closely monitors bar admissions, the law schools, and the Board of Bar Examiners; (3) student applicant pools have strong LSAT scores and academic credentials; (4) Wisconsin law schools have a set of curriculum requirements that provides a solid foundation of substantive law courses with prescribed breadth and depth not found in course selections of law students without

diploma privilege standards to meet; (5) the privilege is a law school recruitment tool to attract and create a diverse student body and subsequently a diverse bar; (6) the privilege also serves as an attorney retention tool to avoid the legal “brain drain” of lawyers from this state; and (7) the privilege promotes immediate availability of client access to attorneys in a state that does not have enough attorneys (relative to population and relative to other states).

At the end of her concurring opinion addressing the 2009 diploma privilege rules petition, Chief Justice Abrahamson urged the Board of Bar Examiners to explore ways to improve the bar admission system. At the beginning of the opinion, however, her remarks gently remind us of the purpose of the bar admission process altogether:

Neither graduating from law school nor passing a bar examination guarantees that a person will be a competent or trustworthy lawyer. These two methods, although not perfect, are the only ones that have been developed that give some protection to the public, which is a fundamental purpose of educating and licensing lawyers.¹⁰

Standing in stark contrast to these remarks is the blunt conclusion of the 1955 bar report on admissions: “We reaffirm our contention that the bar examination is an unnecessary and undesirable process.”

It is a process that Wisconsin law school grads for the immediate future, as during the past 140 years, will not have to undertake.¹¹

¹The sources for this article include: Berryman, John, ed., *History of the Bench and Bar of Wisconsin*, Vol. I (H.C. Cooper, Jr. & Co. Chicago 1898); Abbott, Austin, *The Making of Modern Law* (Gale 2010); *The Bench and the Bar of Wisconsin: History and Biography, with Portrait Illustrations* (Milwaukee, 1882); Habermann, Philip S., *A History of the Organized Bar in Wisconsin* (Madison 1986); Boden, Robert, *The Marquette Law School: 1892-1928* (Milwaukee 2006); Boden, Robert, *Brief History of the Marquette University Law School* (Milwaukee 2005); Boden, Robert, *1916 Proceedings Against Marquette Law School by the Association of American Law Schools: Part 2 of a Series of Articles on the Early History of the Marquette University Law School* (Milwaukee 2006); *The Story of Evening Legal Education at Marquette University: Part Four of a Series of Articles on the Early History of the Marquette University Law School* (Milwaukee 2007); George Neff Sevens, *Diploma Privilege, Bar Examination or Open Admission*, *46 Bar Examiner* 15, 17 (1977); *2009 Statistics, The Bar Examiner* (February 2010), pp.6-29; *Petition to Amend or Repeal Supreme Court Rule 40.03, Diploma Privilege*, Wis. Sup. Ct. R. 40, 2010 WI 126.

²*Wiesmueller v. Kosobucki*, Case No. 07-cv-00211-bbc (W.D. Wis.); *Petition to Amend or Repeal Supreme Court Rule 40.03, Diploma Privilege*, Wis. Sup. Ct. R. 40, 2010 WI 126.

³Prior to 1861, various statutes regulating admission to the bar ranged from those with multiple requirements (i.e., U.S. citizenship, one-year territory residence, examination by the court, certification by an attorney that one was of good moral

character, and study under a lawyer for at least three years) to those with the stripped-down requirement that a resident establish for a court that he was of decent personal character.

⁴Chapter 79, Laws of 1890. The Legislature passed Chapter 63 of the Laws of 1885 establishing the Board of Bar Examiners.

⁵An option was four years in a part-time or evening school. In addition, the law school had to have an adequate library and a full-time faculty. Persons who studied instead in a law office had to register at the beginning of their studies and study four years in addition to the high school and college requirements.

⁶This legislation was not effectuated until 1935, when Marquette required three years of pre-legal college study.

⁷The night school provided Marquette a competitive edge over the state school, and an academic option for students that MU wished to maintain. Hanging in the balance was the school’s membership in the American Association of Law Schools (AALS), and therefore its standing, prestige, and academic credibility among its peer institutions. Retaining membership in the fledging AALS meant that Marquette had to eliminate the night school, meet emerging curriculum standards, and meet the parallel professional requirements for library collection size and faculty credentials. AALS served as the *de facto* “accrediting” entity in the first decade of the 20th Century. “Accreditation” as a Class A school in 1925 by the American Bar Association processes was awarded only after Marquette agreed to close the night school.

⁸In 2005, New Hampshire introduced its Daniel Webster Scholar Honors Program. Completion of this two-year bar practicum certifies students as having passed the New Hampshire bar examination. Twenty-seven law graduates have completed the program.

⁹*Petition to Amend or Repeal Supreme Court Rule 40.03, Diploma Privilege*, Wis. Sup. Ct. R. 40, 2010 WI 126 at 2.

¹⁰*Id.* at 1.

¹¹In 2008 and 2009, 455 and 472 persons, respectively, were admitted to the Wisconsin bar by diploma privilege. In both 2008 and 2009, 248 applicants were admitted to the Wisconsin bar via examination. It should be noted that every year a handful of MU and UW law school graduates take the bar exam for admission because they have not met the diploma privilege course requirements.

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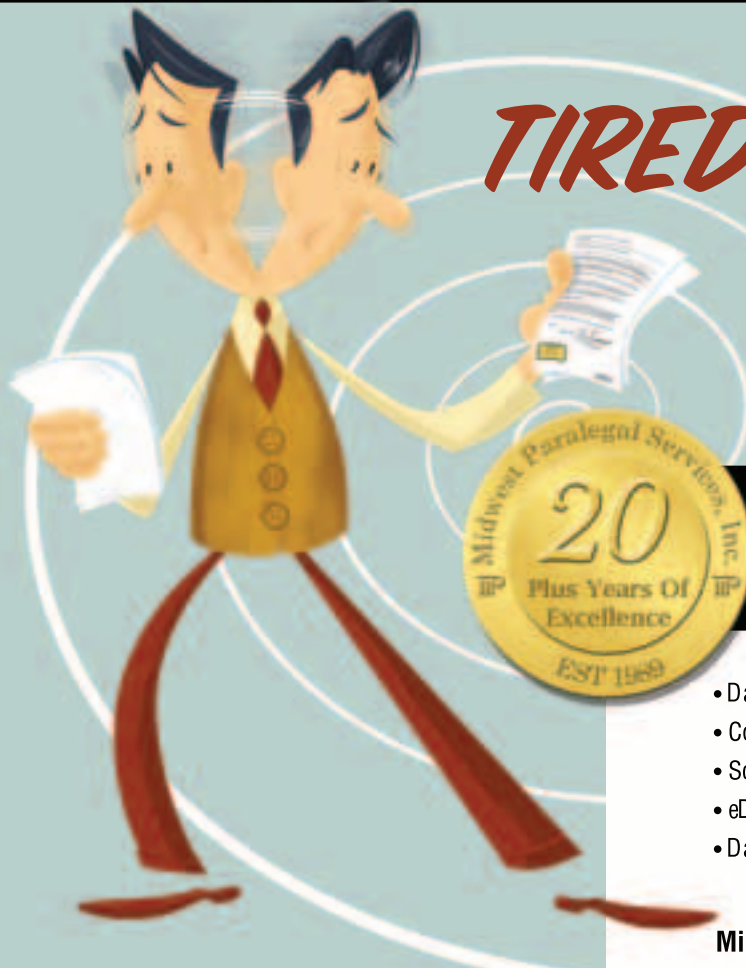
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A close-up portrait of Ben Skjold, a man with short brown hair, wearing a dark pinstriped suit jacket, a light blue dress shirt, and a purple patterned tie. He is smiling slightly and looking towards the camera. The background is a blurred office setting with warm lighting.

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