



# Messenger

MILWAUKEE BAR ASSOCIATION, INC.

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Volume 2

## Milwaukee Bar Association's 154th Annual Meeting.



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### Be Part of the *Messenger*

Please send your articles, editorials, or anecdotes to [editor@milwbar.org](mailto: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](mailto:jtemmer@milwbar.org).



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### 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.



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# Letter From the Editor



*Charles Barr, Editor*

Fiefdom indeed. He thinks he's so smart, let him edit the magazine.

Be that as it may, we have a jam-packed summer issue of the *Messenger* for you. This really is a happenin' bar association! So filled

Not entirely sure I trust this new President character. His derriere has hardly touched the throne, and he's already, like, all with the snide comments. What is his term, a year? Meh! I'll be around long after he's gone and forgotten.

to the rafters is this issue that we don't really have room for a full-length Letter from the Editor. Plus, I'm told I have to defer to this new President fellow. I remain skeptical, but I suppose we should let him say something. Thus, I respectfully refer you to the Table of Contents (p.3).

We hope you enjoy this issue of the *Messenger*, as well as Wisconsin's glorious summer. And remember, somewhere out there is the future winner of the second annual *Messenger* award for the best article in this and the next three issues. Might it be you?

— C.B.

## Volunteer Spotlight



**Anne Wal**

Attorney Anne Wal is an associate at von Briesen & Roper, and practices in the real estate, banking, and construction areas. Anne works with buyers/sellers and

landlords/tenants in commercial real estate transactions.

Anne has participated in MBA Law Day activities to address landlord/tenant issues. Since September 2011, she has been the co-chair of the MBA's Real Property Section.

To Anne, the most important aspect of the MBA volunteer programs is the chance to work with people in the community who would otherwise not receive any type of legal assistance. At Law Day events, people line up to talk with lawyers about problems that weigh heavily on their minds, and which they may believe to be insurmountable. In most instances, the volunteer lawyers are able to come up with a game plan to deal with the issue. Anne recalls one woman at a Law Day event who was so relieved to learn she was "judgment proof" that she burst into tears and gave her a huge bear hug.

Anne feels that the ability to retain a lawyer is out of reach for many in our community. Participation in Law Day and other MBA volunteer programs gives her the chance to help those people

Anne has a background in bankruptcy, which she uses at the Volunteer Lawyers Project Bankruptcy Clinic sponsored by Legal Action of Wisconsin. She also does volunteer work unrelated to law. In honor of her Polish heritage, Anne works at Polish Fest every year running a little general store ("Maly Sklep" in Polish), the profits of which benefit Polish Heritage Alliance, Inc.

**Save the Date!**

**July 25**

**Milwaukee Justice Center  
5K Run for Justice**

**August 1**

**24th Annual Milwaukee  
Bar Association  
Foundation Golf Outing**

**October 24**

**9th Annual State of the  
Court Luncheon**



# Message From the President

Attorney Charles H. Barr



Charles Barr

Not entirely sure I trust this Editor character. You tell me he has been Editor of this rag “since the mind of man runneth not to the contrary”? Well, maybe, just maybe, that’s a little too long. Holy Christ Seraphim, what fiefdom be this? Time for a shake-up, I say.

Be that as it may, I’d like to touch upon a subject of fundamental importance to the Milwaukee Bar Association: membership. The Great Recession has taken a toll on the MBA’s membership. As of this writing, we have 2,034 members. At its pre-recession peak, our membership approached 2,400. It is time to replenish our numbers. How? By making the case to prospective MBA members, one by one.

Member savings on CLE alone can largely

and, in many cases, entirely subsidize the annual dues. Members save \$15 over the non-member rate for each lunch-hour (1.0 credit) offering, and \$24 on each half-day (3.0 credit) and whole-day (6.0 credit) program. You can do the math. The MBA sponsors high-quality CLE programs on a wide variety of topics, and most of which are accessible online. So you don’t have to be within walking distance of 424 East Wells Street to get the deal.

The MBA offers a host of other benefits and activities for lawyers of all stripes, on which you just can’t put a price tag. In the Milwaukee legal community, no organization can come close to the MBA in opportunities to work and network with lawyers and judges on an entirely different and more satisfying level than possible in the daily grind of the adversary system. Check out the Member Benefits page of the MBA website ([www.milwbar.org](http://www.milwbar.org)) for the particulars—some of which I’ll bet you had forgotten.

Increasing our membership matters because the more lawyers in who belong to the MBA, the more representative the MBA can be of our legal community, which in turn solidifies our organization’s public profile. More members also mean more participation, diversity, fresh ideas, talent, and contributions for the Milwaukee Justice Center and our other public service projects. We have ample room under our tent for all that.

So as you run across your colleagues in day-to-day practice, please take the opportunity to make the case to those who aren’t MBA members. The dividend will be a stronger, more vibrant MBA.

— C.B.

## MBA Dedicates Principal Conference Room as Nathan Fishbach Room

On March 15, the Milwaukee Bar Association renamed the Marshall Room—the large, central conference room at the MBA offices—as the Nathan Fishbach Room. Nathan, whose career and commitment to public service benefited so many in and beyond the legal community, died September 17, 2011 at the age of 58.

In a dedication ceremony attended by many of the judges and lawyers who knew Nathan, his wife Susan Fishbach, his long-time law partner Charles Bohl, and MBA President-Elect Charles Barr shared their professional and personal memories of him. A plaque, which bears a wonderful photograph of Nathan, courtesy of Susan, is on permanent display at the entrance to the room.

Not many are qualified to supplant John Marshall, who is perhaps the most famous figure in American jurisprudence. Nathan Fishbach is. Long after those of us who knew him are gone, the Nathan Fishbach Room will serve as a tribute to a truly remarkable lawyer, public servant, and friend.



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- Previous experience handling jury trials in various state circuit courts and federal district courts
- Previous experience in litigating personal injury, products liability, commercial law, insurance defense, employment and other types of civil cases

# CLE Calendar

## Upcoming Fall 2012

You know how the Justices of the U.S. Supreme Court take a nice, long summer recess? Well, if they get one, we get one. Dust off the lawn furniture and fire up the grill. Meanwhile, here are a few CLE opportunities already booked for this autumn.

### September 26, 2012

#### Labor & Employment Law

##### Top Ten L&E Law Updates

Presenter: Lisa A. Baiocchi, Arnstein & Lehr

Noon - 12:30 (Lunch/Registration)

12:30 - 1:30 (Presentation)

1.0 CLE credit

### November 2012 (date TBD)

#### MBA Bench Bar Civil Committee

##### What Civil Court Judges Want You to Know

Presenter(s): civil court judges and attorneys (TBA)

12:30 - 1:00 p.m. (Registration)

1:00 - 4:00 (Presentation)

4:00 - 5:00 (Reception—hors d'oeuvres & wine)

3.0 CLE credits

### 2012 Wisconsin Law & Technology Conference

**Save the date!** Mark down Friday, December 7, 2012 for the return of the MBA's annual Wisconsin Law & Technology Conference. Many of you have fond memories of the previous conference that was the predecessor of the Wisconsin Solo & Small Firm Conference. We've been overwhelmed with requests to return to the original format, consisting primarily of legal technology and practice management CLE. So we listened and responded!

The conference will include three tracks of day-long CLE covering a broad range of tech, ethics, and practical topics. The theme for the 2012 conference is **"How to \_\_\_\_\_ (Do Everything)."** From practice management to everything about the cloud, iPads, smartphones, Macs, marketing with technology, avoiding malpractice and ethical traps, and more. All your favorite speakers will be there to educate and entertain.

There is a plan to stream the entire event—all three programming tracks—live over the

web, but there's still nothing like rubbing shoulders with your fellow technology-interested colleagues at the live event. With an exhibit hall, iPad and Android apps to guide you through the event, and an end-of-conference drawing for a variety of technology-related gifts and gadgets, the education-packed, rollicking spirit of the original event will be back in full force.

Earn up to 7 CLE credits, including all your ethics credits for the reporting period, for as little as \$129 for lawyers and \$49 for staff.

The planning committee is a veteran team including Ross Kodner, Jeff Krause, and Jim Shilobrit, shepherded by MBA CLE Director Sabrina Nunley. Watch the MBA website ([www.milwbar.org](http://www.milwbar.org)) and e-mails for more details as the conference schedule, list of supporters and sponsors, and faculty are posted soon.



## Thank You, MJC Donors!

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# Justice Delayed Is Justice Denied:

## the Enduring Lessons of *Bleak House*

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

From time to time, most trial attorneys are involved in civil litigation that never seems to end. As bad as it is for the lawyers, for private parties the delay is often much worse. Private parties often pin a great deal of hope for “vindication,” “justice,” or financial recompense on a lawsuit. This, together with delay, can lead to a condition known as “litigation fever.” As Professor R.B. Bernstein tells it, “Litigation fever besets anyone enmeshed in a protracted litigation of any kind; it causes the past and future to drop away, leaving only the case as the total of the sufferer’s moral, mental, and psychological universe.”

Delays, and the costs associated with the delays, can be hard for lawyers to explain, and often difficult for parties to understand. Procedural rules may contribute to the problem. Slow-acting judges and the opaque nature of the courts may be involved. Parties can be unreasonable, and disparities between litigation resources may come into play. Lawyers who lack diligence do the system no honor.

All cases can have unhappy outcomes. Disappointment can be particularly acute in a

long-running case. The parties have become consumed. The forces at work seem beyond understanding or control.

The modern critique of lawyers and the legal system in the context of this dynamic finds its earliest and fullest expression in Charles Dickens’ *Bleak House* (1852). In the book, justice is both delayed and denied. Professor Arthur Miller thought it the one indispensable book for lawyers. Vladimir Nabokov, who lectured on it at Cornell University concerning, in part, its commentary on the law, considered the book Dickens’ best. In *Bleak House* Dickens succeeds in capturing an outsider’s view of the “priesthood” of lawyers and the “rituals” of the legal process.

The story is set in London in about 1827. At the story’s core is a long-running case in England’s Court of Chancery, *Jarndyce and Jarndyce*. For the principal characters of the book, the case—concerning the disposition of a “great Will”—has far-reaching consequences. By the opening of the story, the case has been pending for many years,<sup>1</sup> so long in fact that it is hard for anyone, including the lawyers and the judges, to remember what has come before and what remains:

“*Jarndyce and Jarndyce* drones on. This scarecrow of a suit has, in course of time,

become so complicated that no man alive knows what it means. The parties to it understand it least, but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming into a total disagreement as to all the premises. Enumerable children have been born into the cause; enumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in *Jarndyce and Jarndyce* without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant who was promised a new rocking-horse when *Jarndyce and Jarndyce* should be settled has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of chancellors have come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the Earth perhaps since old Tom Jarndyce, in despair, blew his brains out at a coffee-house in Chancery Lane; but *Jarndyce and Jarndyce* still drags its dreary length before the court, perennially hopeless.”

In this backdrop, Dickens creates a cast of  
*continued page 16*

## 24th Annual MBA Foundation Golf Outing:

### Benefiting the Milwaukee Justice Center

Each year you hear the stories about all the fun had at the MBA Foundation Golf Outing. They are all true. Who wouldn’t enjoy a day out of the office with friends and colleagues? Aside from playing 18 holes of golf, there are prizes to win, stories to share, and bragging rights to earn.

But above all that, there is money to raise. Each year, money raised at the golf outing benefits the Milwaukee Justice Center. Last year, over \$20,000 was raised. The Golf Outing Committee would like to top that this year and needs your help.

There are many ways to support the golf outing. Gathering a foursome and playing

is one simple way. You or your office could sponsor a hole. Or, consider an event sponsorship. Some of the money raised at the outing comes from events such as the silent auction and raffle. Prize donations are always welcome.

Details regarding the golf outing are in the next column.

For more information about participating as a golfer, being a sponsor, or donating an item for the silent auction, please contact Katy Borowski at 414-276-5933 or [kborowski@milwbar.org](mailto:kborowski@milwbar.org).

#### Wednesday August 1, 2012

#### Fire Ridge Golf Club, Grafton

Lunch/Practice Range	11:30 a.m.
Shotgun Start	12:30 p.m.
Silent Auction/Reception	5:30 p.m.
Dinner/Program	6:30 p.m.

#### Costs and Deadlines

##### Attorneys:

MBA Members	Golf w/dinner	\$150
	Dinner only	\$50
Non-Members	Golf w/dinner	\$170
	Dinner only	\$60

##### Judges:

MBA Members	Golf w/dinner	\$135
	Dinner only	\$50
Non-Members	Golf w/dinner	\$145
	Dinner only	\$60

*RSVP by July 20th. Reservations will be taken on a first-come, first-served basis.*



# A Wired Thing Happened in Court:

## Electronic Filing Arrives in Milwaukee County

Attorney John W. Barrett, Milwaukee County Clerk of Circuit Court

As Milwaukee County Clerk of Circuit Court, I am pleased to announce that electronic filing capability has been available in Milwaukee County since April of this year for civil, small claims, and family cases. eFiling is the wave of the future for court systems in Wisconsin. It offers increased accessibility, convenience, and security to litigants, clerks, and judges. I encourage everyone to consider eFiling as a more convenient, time-saving way to get documents safely and securely to the courthouse.

Currently, Milwaukee County files are kept in multiple locations in the Criminal Justice Facility, Courthouse, Safety Building, Children's Court Center, individual courtrooms, and an off-site storage facility. Filings are processed by different clerks and other court personnel, and at times are reviewed by court commissioners and judges. If documents are not confidential, they may also be reviewed by reporters, investigators, and the public. Unlike eFiling documents, a paper file can only be in one place at a time and documents can be misplaced. eFiling therefore improves recordkeeping, record retention, and accessibility.

Wisconsin's eFiling system was developed by the Consolidated Court Automation Programs (CCAP) after the Wisconsin Supreme Court approved statutory guidelines under Wis. Stat. § 801.17 in July of 2008. Because eFiling of briefs in appellate cases is already required, many legal professionals are familiar with the electronic filing system. Electronic briefs are available for viewing on the Wisconsin Supreme Court and Court of Appeals Case Access (WSCCA) websites, and can be searched using key words, filing dates, and case numbers.

The Wisconsin court system's eFiling program is an extension of one of the country's most advanced and dependable court case management systems. The integration with the circuit court's CCAP case management system allows eFilers to directly exchange data and to verify that it has been received. It also ensures the security and integrity of the system and the court files. Files are backed up in three locations. The system can also accommodate the filing of confidential (sealed) documents.

To use the system, you must register with

CCAP at the eFiling website: <http://www.wicourts.gov/ecourts/efilecircuit.htm>. Many lawyers already have an eAccount for filing and tracking continuing legal education credits online. Anyone can register to participate as an eFiler. There is an easy-to-understand, step-by-step tutorial available at the website to help with the registration process and filing of documents. eFiling requires a user name, password, and PIN.

The eFiling website is available 24 hours per day, 7 days per week for filing and accessing electronic case documents. After registering, the users submit documents using the eFiling system by attaching pleadings in pdf format, filling out a cover sheet, and making a payment, if required. Participants receive immediate confirmation of filings, as well as instant electronic notice and access whenever new documents are filed in their cases. The last-minute race to the courthouse to meet a deadline is eliminated. The system benefits the users and the court in that it saves money on paper, postage, and courier services, and reduces the need for storage space. There is a one-time \$5.00 convenience fee per case per party. There is also a \$2.50 electronic check charge or a 2.75 percent fee if you use a credit card.

Initiating documents are served by traditional methods. See Wis. Stat. § 801.17(5)(b). They must also include notice that the case has been

electronically filed. If personal service of any other document is required, it must be in the traditional manner unless waived in writing. Sec. 801.17(6)(c). Filing of documents other than initiating documents causes a notice of activity to be sent. Sec. 801.17(6). This notice is valid for service other than personal service. Sec. 801.17(6)(b).

For a law office, the system allows paralegals or legal assistants to complete electronic filing case information and prepare the related documents. This information is saved in a "filing cart." The attorney then retrieves the filing from the filing cart, reviews the information and documents, and electronically signs and submits the filing to the court by entering his or her username, password, and PIN. The filing cart is just one of the options in the eFiling menu. Users can also look at their cases and manage an existing case.

When a document is submitted through the website, the clerk's office reviews the filing in a queue and, if all is in order, accepts the document for filing. A new case will get a case number, an assigned judge, and an electronic file stamp. Electronic confirmation of filing is transmitted and the filing party can print the document for service, if necessary.

The eFiling system can even handle  
*continued page 18*

### 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.mlmins.com](http://www.mlmins.com) or [www.mylawyersmutual.com](http://www.mylawyersmutual.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: Haskins, Paul and Ewins, Kathleen Marie.

# Milwaukee County Circuit Court Welcomes Three New Judges

Three new circuit judges will don robes in Milwaukee come August 1, 2012. They include:

**Lindsey Grady, Branch 23** – Lindsey has served as a Deputy Register in Probate for Milwaukee County, where she makes judicial decisions in contested and uncontested hearings involving guardianships, probate, protective placements, adult adoptions, and civil mental health commitments. She also assists self-represented individuals and attorneys in navigating complex legal proceedings.

Prior to her appointment as Deputy Register in Probate, Lindsey's practice involved criminal and civil matters, including family law, estate planning and probate, children's law, and business and tax planning. She was a partner at Drinka, Levine & Masson; a sole practitioner; and a staff attorney at Legal Aid Society of Milwaukee.

Lindsey will begin her time on the bench in

the Misdemeanor division.

**Mark Sanders, Branch 28** – Mark has served as an Assistant District Attorney in Milwaukee County for 14 years. He works as a community prosecutor, moving outside the courthouse and into neighborhoods to solve problems. He worked in the Milwaukee Metropolitan Drug Enforcement Unit, where he prosecuted drug offenses, oversaw complex criminal investigations, and helped make communities safer by ridding neighborhoods of drug dealers and violent offenders.

Mark has been assigned to Children's Court.

**Carolina Stark, Branch 17** – Carolina has served as an administrative law judge in the Wisconsin Unemployment Insurance Division for over five years, where she conducts evidentiary hearings. Previously, she worked as a criminal defense attorney in Milwaukee County, first for Centro Legal por Derechos Humanos and then in her own

practice, Stark Law Office.

In 2008, Carolina was appointed to the Milwaukee Fire and Police Commission. She serves as the Commission's Vice-Chair.

Carolina will start with a Misdemeanor calendar.

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## Second Annual MJC 5K Run for Justice Set for July 25

*Joseph Riggensch, Milwaukee Justice Center*

The Milwaukee Justice Center's Second Annual 5K Run & 1 Mile Walk for Justice is fast approaching! The MJC Run for Justice will be held **July 25, 7:00 p.m.**, at Veterans Park, 1010 North Lincoln Memorial Drive, Milwaukee. Come join us to help support the work of the Milwaukee Justice Center, and let's make 2012 a year to remember!

The cost to register is \$20.00 for students and \$25.00 for non-students. To register, visit the MJC website at [www.MilwaukeeJusticeCenter.com](http://www.MilwaukeeJusticeCenter.com).

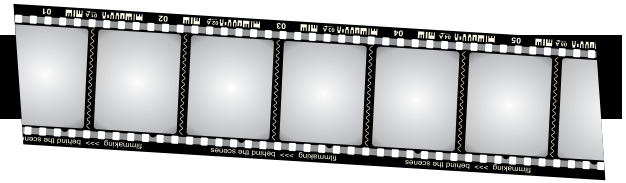
A big thank you goes out to our sponsors: the Milwaukee Bar Association, Milwaukee County Parks, Foley & Lardner, Quarles & Brady, InStep Physical Therapy and Running Center, Quantum LS, and Hinshaw & Culberston. Riverwest Aces will provide post-race entertainment and the Big Bay Brewing Company will provide the refreshments for the thirsty runners and walkers.

If you would like to sponsor the run/walk this year, please contact our chairperson, Laura Now, at 414-276-5000. Thank you for your support and we look forward to seeing you all at the Milwaukee Justice Center's Second Annual 5K Run & 1 Mile Walk for Justice!



# The Reel Law

Attorney Fran Deisinger; Reinhart Boerner Van Deuren



## The Descendants

Directed by Alexander Payne  
2011; 115 minutes

A few months ago my wife and I attended a movie at a local multiplex. There were 15 minutes of previews before the feature. The previews were an all-out assault on the senses. Each was louder than the last, with bigger explosions, more outrageous special effects and, frankly, ever more inane storylines. The movie we saw was also a big-budget, special-effects-laden film. Now, don't get me wrong, there's nothing inherently wrong with the sci-fi and fantasy blockbuster movies in vogue; they are a natural progression from the action movies of yesteryear—mostly westerns and war movies. Those old films didn't have CGI or Dolby Digital, but they had really good stuntmen and reasonably good model builders. The movies always embrace whatever technology is available.

But as some enormous recent flops show (*John Carter of Mars!* comes to mind), no film will succeed without good writing and an engaging story, no matter how loud or visually spectacular. This got me to thinking that the movies I review for the *Messenger* are pretty much bereft of special effects. Lawyers don't make likely action heroes. Instead, when lawyers or lawyering are featured in a film, it's a good bet that the movie is either a drama or a comedy, that it is human-scaled, that nothing will blow up, and that no aliens will be harmed in the filming. In other words, exactly the kind of movie I find most compelling.

For this issue I had planned to write a review about a film I watched recently by the Coen brothers, those fascinating modern-day auteurs who have given us such diverse but compelling films as *Fargo*, *The Big Lebowski*, and *No Country for Old Men*. The film is *Intolerable Cruelty*, starring George Clooney as a divorce lawyer. It's a fine comedy trifle, and I recommend it. The next uninteresting (or at least unentertaining) Coen brothers movie I see will be the first. I would confidently rent or attend any Coen brothers film without knowing the first thing about it.

Apart from the Coen brothers, the only current director whose films I know I want to see, no matter the theme, is Alexander Payne. Payne

does not make films often (unlike the Coens, who seem to release a film every year), but when he does it is an event to celebrate. His two best known previous films, *Election* and *Sideways*, are masterpieces of black comedy and dramatic comedy, respectively. Payne observes the human condition as well as any film director working today. This weekend I finally got around to watching his latest film, *The Descendants*. And having done so, I jettisoned my plan to write about *Intolerable Cruelty*—yet I am still writing about a film in which George Clooney plays a lawyer.

In *The Descendants*, Clooney is Hawaiian lawyer Matt King. Unlike most films with lawyer characters, however, King is not a trial lawyer, but a real estate lawyer. He is also the trustee of a family trust involving massive Hawaiian land-holdings passed down for generations from his great-great-grandparents—an outlander lawyer and a Hawaiian princess—to King and his many cousins. This film actually has the words “rule against perpetuities” in the screenplay. How could I resist making it the subject of my next column?

*The Descendants* is not about lawyering *per se*, though. While the story of the trust, its planned demise, the fortune that selling the land will bestow on King and his cousins, and the rightness (or not) of opening this huge, unspoiled part of “paradise” to development is an important plot line, it is not the primary narrative engine. Instead, the story orbits a character who never says a word. The opening shot of the film shows King's smiling wife Elizabeth, her hair in the wind, racing in a power boat off the Hawaiian coast. We do not see the accident that leaves her, for the rest of the movie, comatose in a hospital bed. And dying. Her legal directive—there in black and white like a silent character—is that she not be sustained artificially.

What unfolds is a family

drama in which King must come to terms with his wife's impending death; how to relate to his 11 and 17 year-old daughters, Scottie and Alex (“I was always the backup parent,” he says in the narration); and the stunning revelation of Elizabeth's infidelity—delivered by Alex. This revelation populates the film with two more characters: Elizabeth's paramour Brian, a local realtor; and his betrayed wife Julie. King sets out to confront his wife's lover, with Scottie, Alex, and Alex's boyfriend Sid in tow.

Payne's characters have a genuine humanness about them. Initially stupid and comical, Sid turns out to be loyal and supportive. Elizabeth's father is bitter and resentful of Matt, but it's because the loss of his daughter has amplified his worst traits. King himself, after confronting Elizabeth's lover Brian, nevertheless invites him to visit her in the hospital before she dies, and when he doesn't, his wife Julie does, telling the unresponsive Elizabeth that she forgives her—before screaming at her for trying to

*continued page 19*



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# Memorial Service

## 2012

Chief Judge Jeffrey A. Kremers welcomes friends and family members to the Memorial Service. →



← Former Wisconsin Supreme Court Justice Janine Geske delivers the memorial address.



↑ Chief Judge Kremers and MBA President Mike Cohen read the names of those being honored at the service.



↑ Rabbi Ronald Shapiro of Congregation Shalom offers a prayer.

MBA President Mike Cohen makes introductory remarks. →



↑ The Milwaukee County Circuit Court judges lead the processional into the courtroom.

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# Keep Your “Friends” Close: Protecting Employers’ Ownership Interests in Their Corporate Social Media

Attorneys Amy Hartwig and Steven Nigh, Michael Best & Friedrich

What would happen if someone stole your Twitter password?

Individuals might fear that a hacker will post something embarrassing under their names that they’d have to explain later. Employers with corporate Twitter accounts might worry about a disparaging tweet’s effect on brand image or their relationships with their customers.

Employers who use social media see their online “friends” or “followers” as current or future business opportunities, and realize that losing those online connections could harm their business. But does an employer have any ownership interest in its social media-based relationships? This article discusses a recent federal case raising that question, and also suggests steps employers can take to establish ownership of their corporate social media accounts and the economic benefits that come with them.

## Social Media Use by Today’s Businesses

The growing popularity of social media among consumers has been followed by a growth in social media use among businesses. A recent University of Maryland study found that social media adoption among small businesses doubled from 2009 to 2010.<sup>1</sup> Those businesses use their social media presence for low-cost marketing, more visibility in search engine results, and increased website traffic. Larger businesses have taken advantage of social media as an advertising outlet, as well, offering sweepstakes and product giveaways in order to attract consumers to their brands.

But who spends the time posting, tweeting, blogging, and updating these corporate accounts? The answer is probably “an employee.” A pending federal case, however, highlights the dangers of having employees run their employers’ social media operations.

## The PhoneDog Case

In *PhoneDog, LLC v. Kravitz*, Case No. C11-03474 MEJ (N.D. Cal.), an employer sued a former employee who allegedly swiped a corporate Twitter account—and its roughly 17,000 followers—on his way out the door. PhoneDog, the employer, reviews mobile phone-related products and services, and it posts articles and video reviews on its website. According to the complaint filed in the case, about 1.5 million people visit PhoneDog’s website and an average of 3 million people view its videos each month. PhoneDog maintains an extensive online presence: along with its website, it also uses YouTube, Facebook, and Twitter.

PhoneDog uses social media to “market and promote its services” and to drive consumers to its website. The increased pageviews on its website, in turn, result in higher advertising revenue. PhoneDog, therefore, requested that all of its employees open Twitter accounts and tweet about PhoneDog and its services. The employee accounts had a common format for their names: @PhoneDog\_Name.

Noah Kravitz, a former employee, used the Twitter handle “@PhoneDog\_Noah” while he worked as a product reviewer and

video blogger for PhoneDog. After roughly four years of employment, Kravitz had amassed about 17,000 Twitter followers.

Kravitz left PhoneDog and, allegedly, changed his PhoneDog Twitter handle to @noahkravitz, but kept the 17,000 followers of the @PhoneDog\_Noah account. Kravitz then performed freelance work before ultimately landing a job with one of PhoneDog’s competitors, TechnoBuffalo. PhoneDog claimed that Kravitz kept on communicating with PhoneDog’s followers via the Twitter account.

PhoneDog sued Kravitz for \$340,000, alleging that the passwords to its Twitter accounts were trade secrets that Kravitz stole. As a result of that theft, PhoneDog said, it lost advertising revenue and current

*continued page 22*

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## Bleak House continued from p. 8

characters recognizable to any practicing lawyer. There is John Jarndyce, the only Jarndyce left as party to the suit, who views the case, correctly, as a curse and will have as little to do with it as possible. Richard Carstone, Jarndyce's impressionable young cousin, is both a party to the suit and a ward of the court, an ill-disciplined but good-natured sort whose litigation fever leads him to ruin. Harold Skimpole is a well-educated but selfish hanger-on, egger-on, and sponge, who targets those who stand to gain from the case. Skimpole is a predator but gets his way because his come-on is so engagingly twisted and manipulative that he persuades people to feel sorry for him.

There are unforgettable litigants on the periphery: Mr. Gridley and Miss Flite. Gridley is an involuntary party to an unrelated suit in Chancery, as to the merits of which there is no dispute. The suit is mired in metaphorical mud; Gridley may be losing his mind—he repeatedly seeks the court's attention but can't get it. Flite is a half-crazed, elderly eccentric, a recreational public gallery court watcher, whose family has been destroyed by a long-running case similar to *Jarndyce and Jarndyce*. She keeps a large number of

little birds she promises will be released "on the day of judgment."

Then there are the lawyers. "Conversation Kenge," John Jarndyce's attorney, is the king of empty rhetoric. Tulkinghorn, the lawyer to another wealthy claimant (and other great families), is circumspect, scheming, and manipulative; he relishes controlling and squashing those who might stand in the way. Vholes, Richard Carstone's lawyer, extracts litigation fees that his client obviously can't afford. William Guppy, a law clerk in Kenge's office, shows preternatural ability, often to comic effect, at using lawyer-speak for both professional gain and social advancement.<sup>2</sup>

These characters act within the Court of Chancery—whose adroitness at obscurity and delay Dickens likens to evil. "Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this High Court of Chancery, most pestilent of hoary sinners, holds, this day, in the sight of heaven and earth." This view of the court and legal system in some ways persists.

Toward the end of the story, a new will, apparently authentic, is discovered that strengthens Richard Carstone's claim. The case, however, does not come to a happy ending for Carstone or, for that matter, any other party to the suit.

"We asked a gentleman by us if he knew what cause was on. He told us *Jarndyce and Jarndyce*. We asked him if he knew what was doing in it. He said, really, no he did not; nobody ever did, but as well as he could make out, it was over. Over for the day? we asked him. No, he said, over for good. Over for good! When we heard this unaccountable answer, we looked at one another quite lost in amazement. Could it be possible that the Will had set things right at last and that Richard and Ada were going to be rich? It seemed too good to be true. Alas it was! Our suspense was short, for a break-up soon took place in the crowd, and the people came

streaming out looking flushed and hot and bringing a quantity of bad air with them. Still, they were all exceedingly amused and we were more like people coming out from a farce or a juggler than from a court of justice. We stood aside, watching for any countenance we knew, and presently great bundles of paper began to be carried out—bundles and bags, bundles too large to be gotten into any bags, immense masses of papers of all shapes and no shapes, which the bearers staggered under and threw down for the time being, anyhow, on the Hall pavement, while they went back to bring out more. Even these clerks were laughing. We glance at the papers, and seeing Jarndyce and Jarndyce everywhere, asked an official-looking person that was standing in the midst of them whether the cause was over. Yes, he said, it was all up with it at least, and burst out laughing too.

"Mr. Kenge," said Allan, appearing enlightened all in a moment. "Excuse me, our time presses. Do I understand that the whole estate is thought to have been absorbed in costs?" "Hem! I believe so," returned Mr. Kenge. "Mr. Vholes, What do YOU say?" "I believe so," said Mr. Vholes. "And thus the suit lapses and melts away?" "Probably," returned Mr. Kenge. "Mr. Vholes?" "Probably," said Mr. Vholes."

Richard Carstone is diagnosed with, and dies from, consumption. He leaves a young widow and an unborn son.

<sup>1</sup>Some commentators have theorized that *Jarndyce and Jarndyce* was inspired by the dispute over the will of the father-in-law of Eighteenth Century writer Charlotte Smith. The case took 36 years to get through the Chancery Court.

<sup>2</sup>Guppy proposing marriage: "Would you be so kind to allow me (as I might say) to file a declaration—to make an offer?" And, to the object of his affection, after being told no: "This has been without prejudice?"

**Editor's Note:** *Bleak House* is quoted by the American Constitution Society in its fascinating discussion of the longest case in U.S. history, filed in 1834 and resolved, finally, in 1892. It included 16 hearings before the U.S. Supreme Court and eight before the Louisiana Supreme Court. See [columbiaaacs.blogspot.com/2006/11/longest-case-in-us-history-myra-clark.html](http://columbiaaacs.blogspot.com/2006/11/longest-case-in-us-history-myra-clark.html) (viewed April 24, 2012). It sounds much like a real-life (and in part contemporaneous) reenactment of the Dickens novel.

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# Search Engine Optimization for the Sole Practitioner and Small Law Firms

Ken Matejka, President, LegalPPC, Inc.

## The Importance of Google

Google's U.S. market share for law-related searches has grown to a near-monopoly in recent years. When people search online for legal help and contact you, it is highly likely that they found your contact information through a Google search. For sole practitioners and small law firms, being visible on the web and being visible in Google are substantially the same thing.

There are two ways to become more visible in Google: through Google's Sponsored Listings, and through search engine optimization (SEO). The Sponsored Listings are the ads you see in the yellow box at the top of the search results and in the right-hand margin, usually under the map. SEO targets the "natural" listings (or the "organic results") in the left part of Google's search results page under the yellow ads.

Lawyers should be in both the Sponsored Listings and in the natural results through SEO; this article focuses on SEO.

## What is Search Engine Optimization (SEO)?

SEO refers to things you do to your website and elsewhere on the Internet to make your website appear more relevant for certain search phrases to Google and the other search engines. The long-term goal is to get placement on the first page of Google's search results—ideally, in the top four places of the natural listings (where 69% of Google searchers click)—and to stay there for as long as you can.

The SEO process can take months but should be started as soon as possible. What follows is a broad step-by-step description of the SEO process, with more detailed descriptions of the different steps to be covered in future articles. The three main steps in SEO are (1) selecting your target phrases, (2) working your target phrases into your website, and (3) building links.

### I. Selecting your target phrases

The first step in SEO is to identify the phrases you want to target. A "target phrase" is keyed to a search in your community that is very specific to your law practice—for example, "Milwaukee personal injury lawyer" or "Milwaukee family law attorneys."

When deciding what phrases you want to target for your SEO effort, you should naturally select phrases that are important to your practice, have enough search volume to make the effort worth your trouble, and for which the competition isn't too high. For example, instead of trying to optimize your site for "lawyers" (high volume, but extremely high competition), you may instead optimize your site for "Milwaukee child custody lawyers" (high volume, medium competition). Google makes competition and search volume reports available to Google advertisers, but third-party SEO companies can run these reports for you, as well—sometimes free of charge.

Don't select too many. Limit yourself to perhaps five or six target phrases.

### II. Working your target phrases into your website

Working on your website to make clear to Google what you should be relevant for is called "on-page SEO." On-page SEO is a process whereby you work your target phrases into the content and meta tags of your site so that the next time Google passes through, it sees you as "relevant" to users searching for those terms. By appearing to Google as relevant for your target search terms, your website will rank higher in Google's search results.

The process of integrating your phrases into your website needs to be subtle because you are first and foremost writing for clients, not Google. Spammy content can drive people away.

For example, if you're a Milwaukee family

lawyer and you've selected two or three phrases for which you'd like to be relevant in Google's results (e.g., "Milwaukee divorce lawyer" or "Milwaukee divorce attorneys"), then you should emphasize these phrases as often as possible on your divorce practice area page without damaging the professionalism of the content.

Google reportedly considers over 200 factors when determining the relevance of a website for a specific search query. One of Google's most important ranking factors, however, is a page's "title tag." The title tag goes into the source code of your website between the <title> and </title> tags. Put your most important target phrases first and try to limit your title to 70 characters.

Also, hyperlinks between the pages on your website will help Google "crawl" it. By having good keyword phrases within the text of the links, Google will better understand

*continued page 20*

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# Hannah Dugan Captures First Annual *Messenger* Award

Hannah C. Dugan has received the First Annual *Messenger* Award for the best article in this publication over the past year. Hannah's winning entry was her Fall 2011 article, "No Delay for Lucre or Malice: the Pledge of Legal Aid in Milwaukee." The award was presented at the MBA's Annual Meeting on June 12, 2012.

The criteria for the *Messenger* Award are originality of topic; informational or entertainment value; effectiveness of writing style, with emphasis on concise and precise expression; adherence to journalistic standards of research, accuracy, and fairness; and overall quality of impact on the reader. All published articles over the past twelve months, other than those by MBA staff, were eligible.

A panel of three distinguished judges graciously agreed to review the past four editions of the *Messenger* and apply these criteria to select a winner: the Honorable Margaret Dee McGarity, who actually is a judge; Kelly Centofanti, who has a professional background in journalism; and new President-Elect Beth Hanan.

The panel of judges, in announcing the award, released the following statement:

"Ms. Dugan's article provides an authoritative, yet easy-to-digest history of the founding of the Legal Aid Society in Milwaukee and its almost-century-old commitment to providing legal assistance to indigent persons. The article is thoroughly researched and copiously footnoted, yet the writing style flows well and synthesizes a tremendous amount of information. The panel also recognized that Ms. Dugan's article does more than trace the historical roots and evolution of the Legal Aid Society. Her article is an inspiration to present-day lawyers who wish to take up the tradition of *pro bono publico* service and help fill the gaps in unmet legal needs. This call to service fits well with a key part of the mission of the Milwaukee Bar Association: to encourage public service and improve access to justice. Ms. Dugan also has written other scholarly articles on the history of law and lawyers in Milwaukee, many of them published in the *Messenger*.

"The panel also asks that all of the regular contributors to the *Messenger* be recognized. Their contributions consistently are well-written, timely, and provide a meaningful array of information (and sometimes humor) for MBA members."

# Fox 6 Law Day Phone Bank



MBA members take calls from Fox 6 viewers to honor Law Day.



MBA members dispense legal guidance to Fox 6 viewers via "live chat."

*See page 21 for a list of our dedicated volunteers for 2012*

## Wired continued from p. 9

documents that must be notarized, acknowledged, verified, or otherwise signed under oath. (For example, in Milwaukee County, the small claims summons and complaint must be verified.) Notaries public can register for an eAccount, which will provide them with user names, passwords, and PINs for electronic notarization. The system also assigns a notary seal. The notary can view the document after the attorney or other filing party signs and while it is still in the filing cart; and then enter the confidential user name, password, and PIN that authorizes the electronic signature and seal on the electronic document. At this time, notarial acts are limited to a few specific documents. In the alternative, a paper document can be prepared, signed, and notarized, then scanned and submitted electronically. This is probably how many affidavits of service will be electronically filed.

Because the system is optional, a defendant in an eFiled case may still file paper documents.

The clerk's office will scan paper documents to integrate them into the electronic file. The entire case file should always be available in electronic form. Our plan is to have WiFi in the civil, small claims, and family courtrooms so the electronic file can be accessed in the courtroom through a laptop or tablet. Lawyers and litigants will need a password to access WiFi.

Case documents on the WCCA website will be available only to the registered parties in the case. Unlike federal e-Filing, documents will not display on the WCCA website. Non-confidential documents from the electronic file will be made available to the general public at public access terminals in the clerk's office.

CCAP is continually working to improve and expand the eFiling system. A feature recently added to the eFiling system allows filers to submit draft orders to the court in Microsoft Word format. This enhancement ensures the document can be edited and electronically signed by the court without having to be

re-typed and scanned into the CCAP case management system. CCAP is also refining the process by which clerks authenticate summonses and complaints to more clearly meet statutory and case law requirements. Additional case types will also be enabled and eventually eFiling will be available for all case types in all counties. I welcome your input for improving the system. If you have ideas for improvement, please e-mail me at [ctimail@wicourts.gov](mailto:ctimail@wicourts.gov).

There is no better time than now to start participating in the eFiling process and to take advantage of the fast, secure filing; the ease of use and cost efficiency; and the reliable access to case files and documents.

I would like to acknowledge and thank the following individuals from the Director of State Courts office for their expert input on this article: Marcia Vandercook, Tom Sheehan, and Jean Bousquet. My Chief Deputy, Jim Smith, was instrumental in writing this article.

# Michael Hupy: a Portrait in Generosity

Attorney Michael J. Cohen, Meissner, Tierney, Fisher & Nichols

The award-winning author, journalist, and philanthropist Mitch Albom once said: “The way you get meaning into your life is to devote yourself to loving others, devote yourself to your community around you, and devote yourself to creating something that gives you purpose and meaning.”

These poignant words well describe the credo by which Michael Hupy of Hupy & Abraham lives his life.

As many of you know, the Milwaukee Justice Center (“MJC”) has been a centerpiece of the MBA’s work for the past several years. The MJC has been very successful, serving over 8,000 clients per year by helping to guide them through our complex legal system. The problem, however, is that the MJC has the funds to operate only for a few more years, and needs a higher level financial support in order to be sustainable in the long term. In March, we launched our first annual fundraising campaign for the MJC, employing the “United Way Model” of calling upon a leader in each firm to solicit donations from others in his firm. Thanks to the generous efforts of many of you, our first annual campaign was a success by any measure, raising \$40,235 from 246 individuals. A special thanks to all of you who contributed to this great cause.

Prior to launching the annual campaign, Judge Michael Skwierawski and I met with Mike Hupy and explained the MJC, its purpose, its successes, and its dire need for funding. Although he had never visited the MJC and did not know much about it, Mike

was very receptive to our presentation, asked excellent questions, requested literature on the MJC, and stressed that he strongly believes in giving back to the community. Mike ended the meeting by indicating that he would think about our request for a donation and would get back to us. The very next morning, Mike showed up at my office and told me that he really believes in the MJC and wanted to show his commitment by donating a total of \$100,000 to the project over the next three years! It was difficult for me to restrain my excitement over this news and my gratitude to Mike for his kindness and exceptional generosity. I got an inkling of how Dean Joseph Kearney must have felt after first hearing of the significant donations the Ecksteins and Joseph Zilber committed to make to the new Marquette University Law School. That is how significant Mike Hupy’s gift is to the future of the MJC.

This substantial act of generosity by no means represents the first time Mike Hupy has given back to our community. Mike and his firm have earned a reputation for innovation, giving, and community-mindedness. At a time when lawyers often get a bad rap, Hupy & Abraham has sponsored initiatives such as PEARLS for Teen Girls, breast cancer fundraisers, the Milwaukee Center for Leadership Development Minority Achievers Awards Dinner, and the “Watch for Motorcycles” public awareness program. Mike’s firm also donates meals to more than 100 families each Thanksgiving, raises money to fight domestic violence, and sponsors scholarships for the Willie D. Davis Scholarship Fund. In addition, Mike

an addition to the school, and supporting child safety fingerprint programs. In December 2008, then Governor Jim Doyle presented Mike with a Certificate of Commendation for his years of leadership in making “the community a better place to live.”

Mike truly believes that the legal profession exists for the benefit of the public, and feels a strong obligation to think of the public first and thus, to give back to the community. Mike told me that he saw a real need for the MJC, appreciated the significant value of the program in improving access to our justice system, and “stepped up to the plate.”

The Milwaukee legal community has indeed been blessed by the tremendous generosity of Mike Hupy, not only with respect to his significant contribution to the MJC, which helps the program immensely in a time of critical need, but also in numerous other ways. Thank you, Mike Hupy, for being the man that you are.

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## Reel Law continued from p. 11

destroy her family. King gently ushers her out of the room telling her “that’s enough,” but in the previous scene, alone in the room with his wife, he had done the same thing.

I suppose I should round back to the story of the trust. As Elizabeth is dying, the plug pulled, the King cousins have their final meeting to decide to whom they want to sell the family trust’s land. When they select a local developer, Matt knows that his wife’s lover will make a fortune on the deal. Will he, as trustee, sign off?

No, *The Descendants* is not, strictly speaking, a “legal” movie. But in its story, it naturally integrates lawyering and the operation of law into the dramatic events that unfold—not unlike how it happens in real life. The performances are natural and superb, the writing is exceptional, the scenery is beautiful, the soundtrack of Hawaiian guitar music is wonderful, and the direction is fully assured. And there are no explosions, except in the hearts and lives of the characters.



(L-R) Person 1; Michael Hupy; Person 3; Person 4, NAACP Scholarship winner.

personally has taken a lead role in giving back to the community, supporting America’s Second Harvest, scholarship programs such as the NAACP Scholarship (to which he donated \$150,000) and the Freedom Fund Dinner, \$50,000 to the University School of Milwaukee for

# Foreclosure Filings in Milwaukee County Continued to Decline in 2011

Attorney Jeremy P. Shapiro-Barr

For the second consecutive year, mortgage foreclosure filings in the Milwaukee County Circuit Court continued on a downward trend in 2011. There were 813 fewer foreclosure actions filed in 2011 than in 2010. From a five-year perspective, foreclosure cases increased drastically from 2007 until reaching their peak in 2009 at 7,175, and have fallen off considerably since then, to 5,610 in 2011.

The 2011 Annual Report, prepared by the Administrative Services Division of the Clerk's office and transmitted to Chief Judge Jeffrey Kremers on April 17, 2012, contains a detailed breakdown of cases filed, disposed of, tried to juries, and appealed, among other statistics. While the report reveals that most categories of case filings have remained at relatively consistent levels over the past five calendar years, there are a few noteworthy statistics in addition to the foreclosure trend.

Small claims contract actions decreased by 18%, from 30,067 in 2010 to 24,639 in 2011, despite the fact that the jurisdictional limit for small claims actions increased from \$5,000 to \$10,000 effective July 1, 2011. The number of other small claims actions—replevins, evictions, garnishments, and those related to arbitrations—have not substantially changed since 2010. A total of 5,037 fewer small claims actions were filed in 2011 than in 2010, which constitutes an 11.4% decrease in only a one-year time frame.

The second statistic of interest in the

civil division is the drastic rise of what is categorized as “Garnishment & Other” filings. There were 5,231 filings of this type in 2011—up from 1,398 in 2010. In addition to the earnings and non-earnings garnishments, Chapter 128 wage earner debt amortization actions were included, and made up the bulk of the filings in this category. The surge in Chapter 128 actions is perhaps in response to the problems of stagnating wages and underemployment that Wisconsin has experienced along with most of the nation.

In the family division, new case filings remained fairly stable across the board. Divorce and other family cases increased by only 2.3% since 2010, and paternity cases increased by only 0.2%.

Likewise, criminal case filings did not change in significant numbers in 2011 from the previous year, with the exception of narcotics cases. Felony narcotics cases decreased to 1,790 in 2011, down from 2,124 in 2010—a 15.7% decrease.

The children's division saw a modest increase of 2.1% in total cases filed in 2011 compared with 2010. Probate cases decreased by 3% over the same time period.

The Milwaukee County Circuit Court disposed of approximately 2,500 more cases than were filed in 2011. Overall, the Circuit Court's caseload was not quite as heavy as

in 2010, having decreased by 4%. The most significant productivity gains in terms of disposing of cases were in the civil division, particularly in garnishment and Chapter 128 cases. Large claims civil cases disposed of in 2011 increased by 10% compared with 2010. Conversely, the circuit court disposed of 10.4% fewer paternity cases, even though 2011 paternity filings did not increase significantly from the previous year.

Juries tried 445 cases in 2011, only five more than in 2010. Felony cases accounted for 60% of those cases tried by jury, while civil cases accounted for approximately 12%. A verdict was reached in 87% of jury trials, and about 8% of jury trials resulted in either a mistrial or hung jury. Approximately 4% of all felony cases disposed of were tried by a jury. In the civil arena, only about a tenth of one percent of cases disposed of reached a jury trial.

Appeals have been on a slow, steady decline since 2009, dropping from 878 in that year to 782 in 2011. Criminal cases made up the great majority of appeals, comprising 68% of total appeals from Milwaukee County Circuit Court decisions. Civil cases comprised approximately 19% of appeals.

Copies of the 2011 Annual Report are available from the Administrative Services Division of the Clerk of Circuit Court (phone 414-278-5357).

**Search Engine continued from p. 17**  
the subject matter of the pages to which the links connect. For example, imagine there is a hyperlink on your website that reads: “Click Here To Learn More About Our Experienced Family Lawyers,” and which links to your “About Us” page. If you have the hyperlink on the whole sentence or just the “click here” portion, that doesn't tell Google exactly what is being linked to and is a wasted opportunity to emphasize to Google some keyword phrases. Better to have the hyperlink on the words “Experienced Family Lawyers,” so that Google knows what the page you're linking to is about.

### III. Building links

The third part of SEO is referred to as “off-page SEO” because it involves things that

you do elsewhere on the web to convince Google that you're relevant for certain searches. This is primarily the deliberate process of gathering links gradually, over a long period of time, from other websites to your own.

Fundamental to Google's ranking algorithm is the notion that the more websites that link to your website, the more important your website is as an information resource on the web. When Google perceives you as important for a particular phrase, it will typically place you higher in its index.

### So how do you get other sites to link to your website?

Links to your website can be obtained in a variety of ways. You can list your website on

directories, exchange links with colleagues who are not in direct competition, post to blogs, set up accounts in social media sites such as Twitter and Facebook, participate in networking sites such as Linked-In, and publish content to press release and article sites. The more sites that link to yours, the more Google will assume that your site is growing in popularity and importance, and consequently, more relevant.

### A Few Final Notes

In closing, a few things should be noted. First, SEO can be very labor-intensive and time-consuming, and if you'd rather practice law than spend hours modifying your pages and bargaining for in-bound links, you should strongly consider outsourcing the

*continued page 22*

# Pro Bono Corner: Legal Action of Wisconsin's Volunteer Lawyers 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](http://www.milwbar.org).

## Legal Action of Wisconsin's Volunteer Lawyers Project

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230 West Wells Street, Room 800  
Milwaukee, WI 53203

**Phone:** 414-278-7722

**Fax:** 414-274-3096

**E-mail:** [pzr@legalaction.org](mailto:pzr@legalaction.org)

**Web:** [www.legalaction.org](http://www.legalaction.org)

Legal Action of Wisconsin lost a quarter of its staff last year due to significant state and federal funding cuts. As a result, Legal Action's Volunteer Lawyers Project needs the assistance of *pro bono* attorneys more than ever.

Legal Action is Wisconsin's largest provider of no-fee legal services, serving low-income people in the 39 southernmost counties in Wisconsin. Before the most recent round of budget cuts, Legal Action served 12,000 clients each year. The Milwaukee office serves Milwaukee and Waukesha Counties

with 21 lawyers.

During 2011, Legal Action lost a total of \$2.8 million in funding, which comprised approximately 30% of its resources. This included \$1.36 million in funding from the State of Wisconsin. Wisconsin was the last Midwestern state to initiate state funding for legal services and, with the recent cut, Wisconsin is now one of only four states nationwide that do not budget any funds for civil legal services. In addition, Congress has cut funding for civil legal services programs by 15% for 2012, resulting in a \$540,000 loss to Legal Action. A third funding source, interest on lawyer trust accounts (IOLTA), has dropped precipitously.

To round out the \$2.8 million loss, limited-term federal funding is ending. This includes \$550,000 in HUD stimulus funding that targeted homelessness, \$235,000 from a Department of Justice Violence Against Women Act grant to serve vulnerable victims of abuse, and \$170,000 to help people overcome legal barriers to employment. The only funding source to remain steady this year is the annual \$50 attorney assessment, but the \$800,000 this yields annually is shared among a number of agencies throughout the state.

In addition to these known losses, there is uncertainty about future budget reductions that Congress may make when it tackles

long-term budget deficit reduction. Legal Action anticipates that Congress will make substantial cuts in domestic spending affecting the Legal Services Corporation and other federal funding resources, such as HUD and the Victims of Crime Act.

Due to these funding cuts, Legal Action had to lay off 13 staff members firmwide during 2011. Together with attrition and termination of temporary positions, last year Legal Action lost 24 positions, or 25% of its staff. By the beginning of 2013, Legal Action will lose 14 more staff members, making the total reduction in staff 33%. Without additional resources, this means a third fewer clients will be able to access Legal Action for help.

That is where the Volunteer Lawyer Program (VLP) comes in, helping to match volunteer attorneys with low-income clients in need of help in consumer, family, housing, elder, and benefits law cases. The VLP screens clients for eligibility and their cases for legal merit, and provides volunteers with reimbursement for litigation expenses, malpractice coverage, a free CLE series, practice manuals, meeting rooms, mentoring, and other support. While *pro bono* attorneys cannot completely nullify the loss of 33% of Legal Action's paid staff, they can help provide representation for some clients who otherwise will go unrepresented.

## Congratulations to the VLP Award Winners:

**Gwen Connolly**  
(Outstanding *Pro Bono* Participation)

**Valerie Vidal**  
(Outstanding *Pro Bono* Participation)

**Mitchell Moser**  
(Exceptional *Pro Bono* Participation)

**Deborah Scheid**  
(Exceptional *Pro Bono* Advocacy)

**Peggy Falsetti**  
(Outstanding Legal Services Advocate)

## Thank You, Law Day Volunteers!

Ann Jacobs

Kashoua Yang

Rick D. Steinberg

Jeremy Shapiro-Barr

Valerie Vidal

Robert Welcenbach

Jeanne Welcenbach

Jill Kastner

Evan Knupp

Andrew Beilfuss

Andrew Sapinski

Jonathan Hackbarth

Brian Romans

Eric Knobloch

Raza Mahmood

Yvonne Vegas

Michael Knoeller

Josh Roever

Lindsay Grady

Kari Race

David Saucedo

Josh Maggard

Jacques Mann

Adam York

Ryan Blay

## Social Media continued from p. 15

and prospective consumers of its services. It also alleged that Kravitz unjustly enriched himself by stealing the 17,000 followers of the @PhoneDog\_Noah Twitter account. PhoneDog alleged that each Twitter follower was worth \$2.50 per month according to “industry standards.” That figure, multiplied by 17,000 followers, yields an account value of \$42,500 per month. PhoneDog reasoned that because Kravitz had been misusing the account for eight months, he had pilfered a Twitter account worth more than \$300,000.

Kravitz, however, fired back with allegations of his own. His counterclaims describe a long-running dispute between him and PhoneDog: after he resigned, PhoneDog cut him a check for over \$8,000 in commission payments but cancelled the check before Kravitz received it. When the parties could not resolve their dispute over the commissions, Kravitz sued PhoneDog in California state court to recover them. Moreover, according to Kravitz, PhoneDog told him that he could use the Twitter account after he resigned, and the company sued him over the account only to intimidate him into dropping his state court claims relating to the commissions.

Interestingly, Kravitz asserted that neither PhoneDog nor he owns the account. According to Kravitz, Twitter owns the account, and Kravitz has the right to use it and hold the password to it. As of the date of this article, Twitter has not yet joined the suit, nor have the parties attempted to join it.

The *PhoneDog* case is in its early stages, but there are some takeaways for employers who use social media as part of their business strategy. PhoneDog’s claims survived a motion to dismiss, which means that the court believes there may be a legal basis for PhoneDog’s claims that it owns the Twitter accounts and that the passwords to those accounts are trade secrets. The court’s ruling also signals that it believes PhoneDog’s claim that Kravitz interfered with its current and prospective economic relationships with the Twitter followers of the @PhoneDog\_Noah account and with advertisers may have merit, as well.

On the other hand, the court has not yet ruled on any of Kravitz’s claims. It also has not resolved any of the factual disputes between the parties, including the parties’ conflicting views as to whether or not PhoneDog let Kravitz continue to use the Twitter account after he resigned. Finally, Twitter has not tried to join the case to assert its alleged

ownership rights over the account. If Twitter becomes involved, the case may take an entirely different course.

If the case continues without settling, it will probably be some time before the court or a jury decides these issues. In the meantime, it appears the stakes will keep growing: Kravitz alleged that his Twitter following has now rocketed to over 24,000.

### What Should Employers Do?

Because the law surrounding social media use in the workplace is still developing, employers should be careful about using social media as part of their business strategy. To protect any rights that might stem from social media use, employers should consider taking steps to strengthen their claim that they—not their employees—own all aspects of their social media presence. These steps might include the following:

- allowing company social media accounts to be opened *only* at the company’s direction and *only* with a company-issued password;
- controlling access to social media account passwords;
- changing account passwords and usernames, or deactivating accounts, when the employment relationship ends;
- requiring that the company be identified in any account name or handle, or prescribing a common name format (e.g., @CompanyName\_UserName);
- explicitly stating in employee handbooks, employment contracts (such as confidentiality agreements), and independent contractor agreements that the employer owns its company accounts (and any legal rights that might come with those accounts), even when employees or contractors operate those accounts; and
- requiring employees to disclose their affiliation with the company in every post or tweet.

Taking these steps may help establish company ownership of the employer’s social media presence and the fruits of that presence. That said, until the law has developed further, it is uncertain how much is enough to establish company ownership of social media, or whether company ownership is even possible under social media sites’ terms of service.

The law on social media has not developed as quickly as social media use has, but new cases are frequently making their way to courts and administrative agencies. Employers who have questions about implementing social media in their business should contact their counsel to obtain timely guidance on the legal issues that accompany social media use.

<sup>1</sup>See University of Maryland, *Social Media Adoption by U.S. Small Businesses Double Since 2009: Small Businesses Mainly Use Social Media to Identify and Attract New Customers*, available at <http://www.rhsmith.umd.edu/news/releases/2010/021610.aspx/> (last visited June 4, 2012).

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## Search Engine continued from p. 20

project to a company that specializes in SEO for lawyers.

Second, these SEO efforts don’t help your website overnight. It may be three, six, or nine months before you start noticing any real gains in terms of ranking on Google’s organic search results.

Third, this is an ongoing process—especially the link-building—and you’ll need to keep at it for as long as you want to stay high up in Google’s search results.

Contact the author at [ken@legalppc.com](mailto:ken@legalppc.com) or (415) 742-2150.

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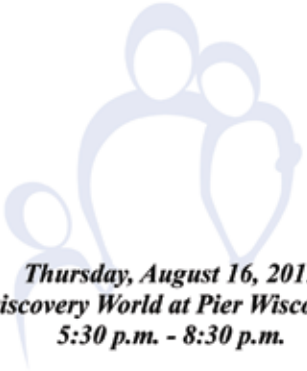
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