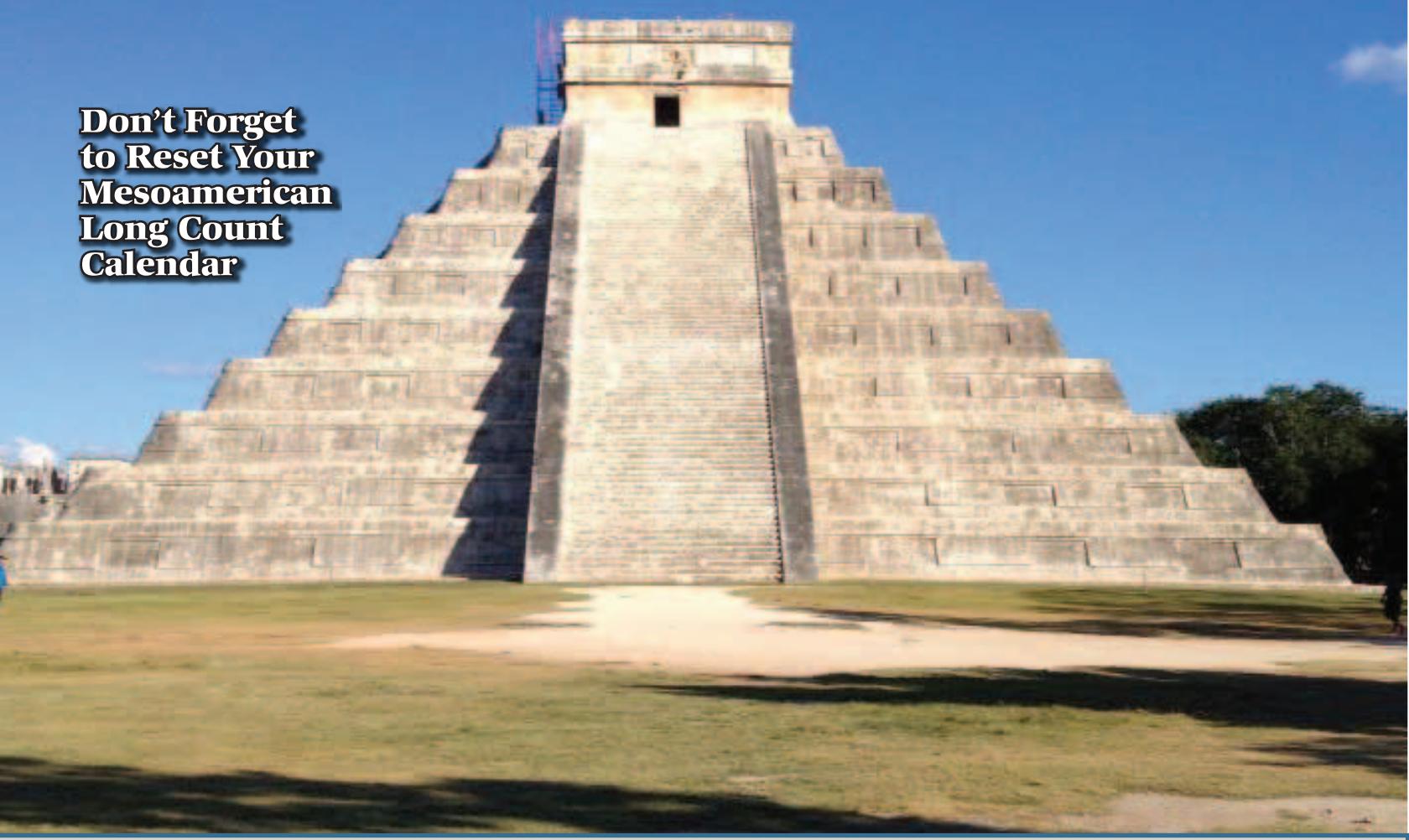




Messenger

MILWAUKEE BAR ASSOCIATION, INC. Est. 1858
Winter 2012 Volume 4

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Mesoamerican
Long Count
Calendar**



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Be Part of the *Messenger*

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, we have seats available on the *Messenger* Committee. Please contact James Temmer, jtemmer@milwbar.org.



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Letter From the Editor



Charles Barr, Editor

Why did we put the Mayan pyramid at Chichen Itza on the cover? Frankly, because the *Messenger* staff decided it is way cooler than, for instance, a panorama of the tables at October's State of the Court Luncheon. (Which, don't get me wrong, was a great event, just not visually stunning.) This photo is courtesy of the *Messenger*'s own globetrotting Britt Wegner, who recently visited the site.

But what does the Kukulkan Pyramid in the State of Yucatan, Mexico—one of the new Seven Wonders of the World, by the way—have to do with the Milwaukee Bar Association? Well, hmnnn . . . nothing. But maybe that is the point.

The practice of law tends to be intense, engrossing, and, all too often, all-consuming. It is easy to get so wrapped up in the day-to-day trappings of our profession that, without realizing it, we narrow our field of vision and shut the rest of the world out. There is value, I think, in stepping outside of that insular existence now and again to allow ourselves to be awestruck by something *totally different*—for example, the nighttime sky, particle physics, or the Mayan pyramid at Chichen Itza. The point is not that this makes us better lawyers—maybe it does, maybe it doesn't. But I'm confident there is some intrinsic, if unspecific, benefit in getting outside of ourselves. Hence, a Mayan pyramid on your bar association magazine cover.

There is perhaps another connection. The pyramid evokes the 12/21/12 mania: the popular conceit that the mysterious Maya foresaw the end of civilization on that date, which is a scant week or so after this rag hits the street. Hollywood, among others, has already cashed in on this hysteria.

One of our more important functions as lawyers is to probe beyond the popular, the shallow, and the sensational, to discover and expound the unvarnished truth. Serious scholars of the Mayan era universally debunk the eschatological connection with December 21, 2012. That date (or thereabouts) marks the end of the 13th *b'ak'tun* in the Mesoamerican Long Count calendar used in Central America before the arrival of

Europeans. A *b'ak'tun* measures about 5,125 years. After completing 13 *b'ak'tuns* (about 66,625 years), the calendar returns to zero. While the Maya almost certainly attached great spiritual significance to that date, in their minds it almost certainly had nothing to do with Armageddon.

Thus, the pyramid at Chichen Itza symbolizes the value of patient, level-headed, and scholarly factual investigation—the hallmark of a good lawyer. On the other hand, if the planet does catch the last train for the coast on December 21, the *Messenger* will truly have nailed its last-ever cover, hey? Not that anyone will appreciate the fact, except for those few souls who have chanced to pick up our humble publication, and then only in those last few seconds

And in case that doesn't happen, here is what the *Messenger* has to offer in this holiday issue. Chief Judge Jeffrey Kremers gives us the Milwaukee County Circuit Court's 2013 budget by the numbers. We reveal the plan for the Milwaukee Justice Center's permanent home in Room G-9 of the Courthouse. Our "hard law" entries note significant court decisions on immigration and public records, and revisit the Affordable Care Act in light of the Obama reelection.

A pair of articles on the MBA's Lawyer Referral and Information Service highlight recent software and website upgrades in the service, and offer a top-ten list of mistakes to avoid in serving LRIS-referred clients. We examine the role of social media in law firm marketing, and how to deal with everyday cyber-security risks. We profile the winners of the MBA's 2012 *Pro Bono Publico* Awards, and pay tribute to a renowned trial attorney, the late Ted Warshafsky.

Movie critic Fran Deisinger unearths a lesser-known cinematic portrait of a lawyer that may be more true to life than the typical Hollywood fare. And regular contributor Doug Frazer is back (was he ever really gone?) with a lawyerly reminiscence of his visit to the Blarney Stone.

We hope you enjoy this edition of the *Messenger*, and from everyone in our vast, frenetic pressroom, please accept our warm wishes for a happy holiday season and a healthy, prosperous 2013. Or, for us Mesoamerican Long Count calendar denizens: Year One.

—C.B.

Volunteer Spotlight



Laura Now

Laura Now is a 2010 graduate of Marquette University Law School. She is a litigation associate in the Milwaukee office of O'Neil, Cannon, Hollman, DeJong & Laing. Her practice consists of representing individuals and businesses in the prosecution and defense of civil litigation, primarily in commercial and business matters.

Laura was a member of Marquette's *Pro Bono* Society while a student in law school, and volunteered at the Marquette Volunteer Legal Clinic and the Family Law Self-Help Clinic. As an attorney, she volunteers at the Milwaukee Justice Center's Brief Legal Advice & Referral Clinic.

Laura observes that the Milwaukee Justice Center "fills an important need in Milwaukee County by utilizing volunteer attorneys to assist unrepresented litigants in navigating the legal system and providing legal services to those for whom such services would be otherwise unavailable." What she has found

most rewarding during her time volunteering at the MJC has been the appreciation and gratefulness expressed by the people helped. While such efforts may seem small in comparison to the complexities that often fill work days, they may make a huge difference to someone unfamiliar with, and overwhelmed by, the legal world.

In addition to volunteering at the Milwaukee Justice Center, Laura helped establish and organize the MJC 5K Run for Justice to support the Milwaukee Justice Center and build camaraderie in the Milwaukee legal community. She still serves as the Chair of the Race Committee for the 5K Run for Justice.

Welcome New MBA Members!

Amanda Anderson, *Clair Law Offices*

Wesley Anderson, *Reinhart Boerner Van Deuren*

Robert McMillan Arthur, *Arthur & Hoffman*

Karen Bauer, *The Legal Aid Society of Milwaukee*

Nina Beck, *Godfrey & Kahn*

Julie Bernard, *von Briesen & Roper*

Comm. Ana Berrios-Schroeder, *Milwaukee County Family Court*

Patrick Bodden, *von Briesen & Roper*

Kristela Cervera, *Milwaukee County Child Support Services*

Carolina Maria Dutriz, *Cervera Garcia Law Offices*

Benjamin Dyer, *Whyte Hirschboeck Dudek*

Kristi Fry, *Fry Law Office*

Derek Goodman, *Gamino Law Offices*

Sara Grill, *The Legal Aid Society of Milwaukee*

Christopher Hanson, *Foley & Lardner*

Peter Helf, *Peckerman, Klein & Van Kirk*

Heidi Henkel

Gary Hoffman, *Arthur & Hoffman*

Dieter Juedes, *Borgelt, Powell, Peterson & Frauen*

Janet Keleher, *Janet Keleher Law Offices*

Maxwell Livingston, *Law Offices of Maxwell Charles Livingston*

Parker Mathers, *Mathers Law Office*

Matthew Meyer, *Birdsall Law Offices*

Brian Michel

Christine Mochel

Robert Mochel, *Wisconsin State Public Defenders Office*

Cristina Mondragon, *Law Office of Cristina R. Mondragon*

Victoria Montano, *Montano Law Office*

Brandie Morgenroth, *Simpson & Deardorff*

Kristen Nelson

Anton Nickolai, *Nickolai & Poletti*

Richard Orton, *Crivello Carlson*

David Patton, *Law Student*

Joshua Roling, *Foley & Lardner*

Joel Rosenthal, *Law Office of Joel H. Rosenthal*

Renee Ruffin, *Diane S. Diel*

Leila Sahar, *Quarles & Brady*

Matthew Shin, *Foley & Lardner*

Jessica Sippel, *Angermeier & Rogers*

Benjamin Tecmire, *Law Student*

Rebekah Thigpen

Ron Troy, *Ron Troy, LLC*

Louis Wahl, IV, *von Briesen & Roper*

Member News

Reinhart Boerner Van Deuren announced the addition of ten new associates, nine in the firm's Milwaukee office and one in its Madison office. They are:

Wesley D. Anderson – Health Care practice

Leah R. Harrand – Real Estate practice

Karla N. Hutton – Health Care practice

Kate E. Maternowski – Litigation practice

Allison A. Miller – Litigation practice

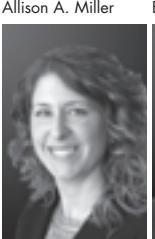
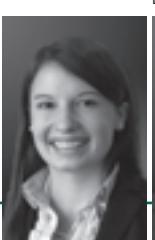
Emily L. Mitchell – Banking and Finance practice

Nathan J. Neuberger – Business Law practice

Steven B. Oyler – Employee Benefits practice

Amy Rogan-Mehta – Business Law practice

Joshua D. Taggatz – Litigation practice



Message From the President

Attorney Charles H. Barr



Around these parts lately, the big buzz is budgetary. First, the Milwaukee County Circuit Court will enter 2013 without the ugly prospects of layoffs, furlough days, reduction in services, or courthouse shutdowns.

All of these demons have haunted our local court system in the recent past. But for 2013, as in 2012, the Chief Judge and Clerk of Circuit Court proposed, the County Executive largely adopted, and the County Board obligingly passed what is essentially a cost-to-continue budget. While this may sound like the very antithesis of drama, the outbreak of budgetary peace among the courts, the County Executive, and the County Board, despite continuing economic woes and budget tussles in the County as a whole, is news—and refreshing news, at that, for anyone who works in or is committed to the judicial system.

Second, there is colossal news for the Milwaukee Justice Center. The MJC, as many of you know, is the MBA's signature, Courthouse-based public service project that provides basic guidance necessary to navigate the court system for thousands who can neither afford private counsel nor obtain free legal representation. It is a groundbreaking partnership among the MBA, the MBA Foundation (the MBA's charitable arm), Marquette University Law School, and Milwaukee County.

The 2013 County capital budget allocates funds for a buildout of Courthouse Room G-9 to house the MJC along with the County law library, which is known as the Legal Resource Center. Additional funds for the buildout are anticipated in the 2014 capital budget.

This development could not come at a better time for the MJC, which from humble beginnings in 2009 has morphed into a full-time operation whose volunteer team and number of clients served both have grown by leaps and bounds. It has long since outgrown its current cramped quarters in the Courthouse. Securing a permanent home in that building cannot help but elevate the MJC's operational efficiency, capacity, and

public profile. It is, in short, a huge step forward for the MBA's Sesquicentennial Anniversary project.

Tremendous credit for this feat is owed to past Chief Judge and past MBA President Mike Skwierawski. He has doggedly pressed for suitable MJC accommodations in the Courthouse for several years, and was ready to seal the deal when conditions were finally right. Current Chief Judge Jeffrey Kremers, Clerk of Court John Barrett, Chief Deputy Clerk Jim Smith and, of course, County Executive Chris Abele were all instrumental in making the buildout a reality.

There is, as you might imagine, a string attached. The County requested a commitment from the MBA Foundation to undertake to raise up to \$375,000—about half of the buildout cost allocable to the MJC's shared occupancy—within ten years of the beginning of the work. The Foundation has made that long-term commitment.

A few points about the buildout are in order.

First of all, the County is not "creating" space for the MJC. Room G-9 ("the record room") is already there, and requires substantial upgrades regardless of the use to which it is put. The MJC, which has already won an award from the American Bar Association for its unique public-private partnership, is a deserving—the most deserving, we think—beneficiary of refurbishment of that space. Second, don't let the dollar figures conjure up visions of extravagant digs. The MJC's new space, in keeping with its mission, will be functional above all else. Much of the upgrade necessary in G-9 involves infrastructure such as the HVAC system. Moreover, just because money is allocated in the capital budget does not mean it will all be spent. The County's engineers, in consultation with MJC partners and staff, will determine what is

actually necessary to reconfigure the space. The less the actual cost, the less the magnitude of the MBA Foundation's commitment.

Finally, the MBA Foundation's Second Annual Campaign for the Milwaukee Justice Center is coming up next March. It is important that the message of that campaign be clear. The solitary goal of this and future annual campaigns for the MJC is to provide it with the funds it needs to *operate*. Assuring the operational stability of the MJC going forward is by far the more immediate need than bricks and mortar. Every dollar donated in the annual campaign will go to MJC operations.

You'll hear more about the Second Annual Campaign next March, both in the *Messenger* and otherwise. For the present, however, if you're looking for a last-minute charitable deduction for 2012, we can think of none better than the MJC, care of the Milwaukee Bar Foundation, Inc.

One more crucial year-end item: please take a moment to renew your MBA membership for 2013. The Milwaukee Justice Center exists in large part because we have a strong bar association, uniquely positioned to spearhead initiatives that benefit our legal and broader

continued page 10

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Lawyer Referral Service Kicks Into Next High-Tech Gear

The Milwaukee Bar Association's Lawyer Referral Service has recently become more user-friendly for both potential clients and attorney panel members. The LRIS has teamed with Legal Interactive, an Austin, Texas software company that serves bar associations and lawyer referral services, to acquire new operational software and create a new website (www.findmilwaukeelawyers.org).

The new setup allows potential clients to obtain automatic referrals 24/7 through the website. A site user answers a few questions on drop-down menus to describe his or her need for legal services, and receives an instant referral to a panel member with interest and competence in the type of law involved—all without the intervention of LRIS staff. Online referrals not only economize staff time, but they also provide potential clients more convenient and timely access to referrals.

On the attorney side, the website includes a portal that allows a LRIS panel member to update his or her personal profile and case information online. Soon panel members will be able to register, pay fees, and renew panel listings online, as well. In addition, LRIS is working with Legal Interactive on

virtual law office and iPhone applications. The former will create a network of panel members plus participants in the MBA's mentor program, and the latter will make all LRIS website functionality accessible from an iPhone.

LRIS Director Britt Wegner, who operates the service for both the MBA and the Waukesha County Bar Association, reported that feedback from attorney panel members on the new website has been overwhelmingly positive. She added that the software and website upgrades were necessary to keep the LRIS competitive with counterparts around the country, as well as with local referral services. While the switcheroo to the new software has not been without its glitches, and the new functionality has come online more gradually than suddenly, things are moving in the right direction. Britt and the rest of the LRIS staff appreciate the patience panel members have shown while the inevitable bugs have been worked out. Britt stressed that in order to get the most out of the new LRIS software and website, it is important that panel members keep their personal profiles and case information up to date. This maximizes the accuracy and efficiency of the referral process and, consequently, the level of customer service.



CLE Calendar

December 2012 — January 2013

December 18, 2012

**Intellectual Property Section
New Law, New Ethical Issues?**

Presenters: Timothy J. Pierce, State Bar of Wisconsin; Michael Gratz, Boyle Fredrickson
11:15 - 11:30 a.m. (Lunch/Registration)
11:30 - 1:30 (Presentation)
2.0 CLE ethics credits

December 19, 2012

MBA Presents

Ethical Issues Associated with Marketing Legal Services

Discussion of effective marketing with attention to the Wisconsin Supreme Court rules governing direct contact with prospective clients, advertising restrictions, and representations of qualifications and expertise

Presenters: Brent D. Nistler, Nistler Law Office; Timothy M. Hansen, Hansen Reynolds Dickinson Crueger; Willem J. Noorlander, Reinhart Boerner Van Deuren
Noon - 12:30 (Lunch/Registration)
12:30 - 1:30 (Presentation)
1.0 CLE ethics credit

December 20, 2012

Taxation Section

Impact of Tax Policy on Taxes

Update on important issues in the Department of Revenue

Presenter: Richard G. Chandler, Secretary, Wisconsin Department of Revenue
Noon - 12:30 (Lunch/Registration)
12:30 - 1:30 (Presentation)
1.0 CLE credit

January 23, 2013

Labor and Employment Section

Executive Compensation

Presenter: Charles W. Pautsch, Arnstein & Lehr
Noon - 12:30 (Lunch/Registration)
12:30 - 1:30 (Presentation)
1.0 CLE credit



Lawyers, Gab, and the Blarney Stone

Attorney Douglas H. Frazer; DeWitt Ross & Stevens



Douglas H. Frazer

The life of a lawyer is filled with highs and lows. Most of us remember graduating from law school and becoming members of the bar. We recall cases won, cases lost, transactions closed or abandoned, clients satisfied or upset. Throughout these experiences we hope one thing about our professional life remains constant: our rhetorical skills. Our stock in trade is our ability to explain and persuade, to frame and spin. So understood, can there be a greater thrill for a lawyer (or a politician or journalist) than to kiss the Blarney Stone?

Apparently not—because our recent visit to Blarney Castle revealed a car park discharging busloads of lawyers, politicians, and journalists from all over the world. Many, of course, were in disguise, but no one could mistake the gleeful anticipation each was feeling before stepping out to renew, if you will, his or her special credential.

The Blarney Stone (Irish: *Cloch na Blarnan*) is a block of bluestone built into the upper battlements of Blarney Castle. According to legend, kissing the stone endows the kisser with the gift of gab. The word blarney has come to mean clever, flattering, or coaxing talk. Blarney, however, is something more. It

is flattery sweetened by humor and flavored by wit. In short, the gift of blarney is what we all believe we have.

Blarney Castle is in the south of Ireland, about eight kilometers southwest of Cork. Over 60 acres of parkland and gardens surround the structure—an imposing and somewhat un-castle-like rectangular stone tower on a hill rising about 110 feet. The Blarney Stone can be approached only by climbing a narrow, rope-balustrade, circular staircase to the top of the tower and then waiting, in the open air, with a line of visitors queued along the parapet.

Legend has it that after Cormac McCarthy, King of Munster, assisted Robert the Bruce with men and provisions at the Battle of Bannockburn in 1314, the latter gave half of the magical “Stone of Scone” to McCarthy in gratitude. Dermot McCarthy, a later King of Munster, built Blarney Castle in 1446 and set the stone in the battlement.

The remaining half of the Stone of Scone has never been identified or located. One legend has it, and I’m not making this up, that a fragment has been on display since 1939 in Lubbock outside the Old Electrical Engineering Building at Texas Tech University.

Queen Elizabeth I commanded the Earl of Leicester to secure a loyalty oath from the Lord of Blarney or take possession of the Castle. When Leicester tried to negotiate terms, McCarthy would suggest a banquet or some other form of delay in an effort to avoid discussing the main point. The oath remained unspoken. The Castle remained untaken. The Queen was said to be so irritated that she remarked that McCarthy’s responses were all a lot of “blarney.”

Since 1688 the property has been in the hands of the Jefferyes and Colthurst families.



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.mlmmins.com or 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: Huskins, Paul and Ewins, Kathleen Marie.

Planting the kiss requires a bit of unnatural physical maneuvering. First, you remove your glasses. Then an attendant helps you onto your back as you grasp two iron rails and scoot your body and head over the ledge of the parapet to kiss the stone, which is seated below the ledge as part of a second wall extending about a foot from the battlement. An automatic camera memorializes the moment. For ten euro (€10), you can take home the photo. For eight euro (€8), you can elect to have the digital file permanently deleted.

Over the years, promoters have offered large sums to exhibit the stone in the U.S. All proposals have been turned down. To kiss the stone, you'll need to visit Blarney Castle. Ireland is a beautiful country with many worthwhile things to see and experience. Lawyers may want to put Blarney Castle toward the top of the list.

The Top Ten Causes of Client Complaints:

How to Keep Your LRIS Referrals—and Yourself—Happy

Attorney Ann S. Jacobs, Domnitz & Skemp

We lawyers frequently share our “horror stories” about the clients who made our lives miserable, were unrealistic in their expectations, and caused us no end of grief. But how do clients and prospective clients feel about us? The Milwaukee Bar Association Lawyer Referral and Information Service (LRIS), in conjunction with the Waukesha County Bar Association’s LRIS, refers over 10,000 prospective clients to over 250 attorneys each year. This gives the LRIS a bird’s-eye view of the process from the client’s perspective.

A prospective client who comes to the LRIS is frequently seeking an attorney for the first time. He sometimes doesn’t even know whether he needs an attorney. He frequently doesn’t know how the process works or what to expect. The prospective client is usually under great stress; that’s why he needs an attorney, or thinks he does, in the first place. He is also afraid of being cheated or overcharged—after all, isn’t that the point of every lawyer joke? He is turning to the LRIS because he trusts the name of the Milwaukee (or Waukesha County) Bar Association to help him through this difficult process.

Because the LRIS speaks to so many potential clients, it can tell you what makes for happy referrals, as well as disappointed or angry referrals. These complaints do not come solely from LRIS clients; they are the complaints of clients and potential clients generally. A little attention to the following list can help you not only keep your clients happy, but also keep the folks you turn down pleased and impressed with your professionalism.¹

The Top Ten Client Complaints (in Ascending Order)

10. Not Adequately Explaining Fees, or Charging More Than Originally Expected

We are so accustomed to our fee structures that it is easy to forget that the language we use to discuss fees is new to a prospective client. Many prospective clients truly don’t understand what an “increment” is, or that an advance payment is not necessarily enough for the entire cost of representation.

A client also may not be aware that he can control, to some extent, the money spent on his case, especially in hotly contested

litigation such as child custody disputes. Helping him understand that every time he calls you, he gets billed, is important. Consider offering the client the option of writing down his questions and e-mailing or otherwise sending them to you, so you can decide what kind of response (written, in-person, phone call) is required.

Also, consider keeping a client “in the loop” as fees escalate. Even if you bill monthly, a client quickly forgets the three-hour hearing (not including preparation) that you conducted early in the billing cycle. Don’t forget to let him know when he is approaching the end of his advance payment, as well. Nobody likes surprises.

9. Not Telling a Prospective Client Why You Rejected His Case

Ask any of the LRIS screeners, and they’ll tell you that a top complaint is that a person is told “you have a great case but I can’t take it” by multiple attorneys. Such a caller then returns time and time again to the LRIS seeking yet another referral, with no understanding of why attorneys are telling him he has a great case and no one will take it.

When you reject a case, you are under no obligation to tell the prospective client why. Some attorneys give an explanation; others choose not to do so. Under either scenario, please don’t tell the prospective client what a fantastic case he has. Let’s face it: if it were that fantastic, you would be taking it. Rejecting a case in this way unrealistically raises expectations and contributes to cynicism when multiple attorneys won’t take the case. If the prospect really has a fantastic case you can’t take (perhaps due to a conflict), consider letting the LRIS know so it can better assist the prospect in finding the right attorney.

8. Failing to Keep a Client Updated on the Progress of His Case

You may be surprised to discover that when you don’t respond to your clients, they call the LRIS! After all, the LRIS sent the client to you, so when the lawyer doesn’t respond, the client asks the LRIS to find out what’s going on in his case.

You may have done tremendous work for the client—your file may be a foot thick—but if you don’t let the client know what you’re doing for him, he will have no idea. This

isn’t to say you have to copy the client with every document. But do be sure that you touch base with clients on at least a semi-frequent basis. An e-mail, quick letter, or call can make a world of difference.

7. Holding Onto a Case You’re Considering for an Inordinate Period of Time and Then Rejecting It Too Late

This problem is common in tort cases: a large or complicated file is given to an attorney for review and the attorney is never heard from. The file languishes in the attorney’s office until the statute of limitations is so close that other attorneys are unwilling even to consider reviewing it.

If you take a file in, you need to review it promptly and make a decision. If you’re unsure, figure out what you need to become more sure. Do you need more records? Do you need to consult with a more experienced attorney? Are you hoping your caseload goes down? How long will those conditions persist? If the investigation is going to eat up a lot of precious time and limitations loom, then perhaps this isn’t the case for you. You should tell the prospective client just that, so he will have time to offer the case to other attorneys.

6. Asking a Prospective Client for More Information and Then Not Reviewing It

A prospective client has come to you and given you what he thinks are the documents important to his case. You review those documents and realize that key information is missing and you need to see it before accepting the case. You ask the client to get that information—medical records, court documents, or what have you. The prospective client brings it to you and . . . hears nothing for weeks, even months. When he follows up, you tell him you haven’t had a chance to review the additional information yet. Much like overlong ruminating about a case (No. 7 above), this sort of delay makes a prospective client very unhappy, especially after he has done what you asked him to do.

5. Not Listening to the Prospective Client or Preoccupation With Other Things During the Initial Consultation

The LRIS consultation fee is modest. That doesn’t mean, however, that you should be

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Social Media Are Becoming Essential to Law Practice

Michael Shapiro-Barr, Drinker Biddle & Reath

In a world where social media have become the primary source of communication, many law firms are beginning to ask themselves: "What is our social media strategy?" The use of social media in business has become a vital tool in the continual struggle for businesses to find a way to gain the "edge" over competitors. It is essential for all law firms, no matter their size, to make an investment in the use of social media in business development.

The most significant milestone in the timeline of social media was the launch of Facebook in February 2004. Facebook now has over 955 million active users across the globe. On a broader scale, social media statistics this year are very promising for the continued growth of this massive network. According to a study by the Nielsen Consulting Group on the state of social media in 2011, social networks and blogs account for nearly a quarter of Americans' total time spent on the Internet, with four of five active Internet users visiting social networks and blogs.

While social media in their earliest form were used largely by college students, they have extended their reach to young and old, and for not only personal but also professional use. I have seen great success in the use of social media as a networking tool in law practice. Through the use of LinkedIn, blogging, and Twitter, there are a number of strategies for reaching out to target clientele.

The biggest hurdle to get over is the common concern that attorneys simply don't have the time in their already busy days to spend on social media. When considering the use of social media in your professional life, use the metaphor of peeling an onion. By starting small and peeling away each layer, the concern with time will become less of a deterrent.

The least time-consuming platform for social media is LinkedIn. The use of LinkedIn has become increasingly popular not only for law firms, but for all professional organizations. With little effort, you can create a profile containing your professional information and achievements, and begin building a "digital rolodex" that will update itself automatically. LinkedIn has continued to develop new and useful internal tools

to help professionals find other business contacts that may be beneficial connections. Essentially, LinkedIn has become a virtual "cocktail hour," offering a speedier approach to letting those in the industry know what you do and why you stand out among others. It is very common to find that an attorney who does not have an active LinkedIn profile has received and ignored numerous e-mails from people he or she knows, requesting that the attorney join their networks. In one of my own recent experiences, I established a LinkedIn profile for an attorney and he found new business in the requests for connection that he had received prior to joining. This is just one example of many ways in which LinkedIn can lead to new business.

As we continue to peel back the layers, we reach the use of blogging. While this is more time-consuming than LinkedIn, it is becoming increasingly popular among attorneys. Blogging has become a great way for attorneys to take a more personal approach to their practices. The most important advice about blogging is that if you commit to it, you should post at least once a week. This is vital to the blog's success because it promotes a continual flow of traffic and interest. If this is something to which you can commit, the benefits are well worth the time invested. Many blogs become a group effort in an attempt to lighten the individual publishing load and gain additional perspectives. With the use of blogging, you are able to reach out to people you may not necessarily know are out there and interested in your work. A successful blog can often have a large enough outreach to gain attention from noteworthy news sources.

The final layer revealed in this overview is the use of Twitter. While this is fairly new to law firms, there is important use for this social networking tool. At the very least, Twitter can be used as a gauge of activity. By establishing even a minimal presence on Twitter, you gain a tool to monitor that branch of social media. Twitter's most significant advantage relates to its pairing with an established blog. By posting alerts of new blog posts or content on Twitter, you extend your reach and visibility to a wide variety of viewers. The fascinating advantage to Twitter is the way in which outreach is made. For example, if you happen to have another

Twitter user "re-tweet" your tweet, all of his or her followers will see your post. This is very beneficial when the re-tweeter has a large following. In my recent experience with Twitter, I tagged *Forbes* in an attempt to direct its attention to a recent blog post. This resulted in a re-tweet by a *Forbes* writer, which led to a heavy increase in traffic on my website. While Twitter is more time-consuming than other social media, pairing it with a blog or website turns it into an extension of that site. In most cases, Twitter can be directly linked with your website, allowing for simultaneous posts to Twitter.

Social media could easily have been viewed as a trend in the past, but we're now seeing overwhelming evidence that they have become much more. On a global scale, we've seen them change the world when used as an information highway in rebellions against corrupt rule in numerous foreign countries. We are now beginning to see the undeniable usefulness of social media in business development, as well. Many law firms may have thought of social media as an added expense and waste of resources and time. It has now become essential not only to consider using social media in business development, but also to invest the time and resources to establish a strong presence in those media. The question firms should really be asking themselves is: "If we don't already have a social media strategy, are we being left behind?"

President continued from p. 6

communities. To stay strong, however, we need you—not just for a membership count, but more importantly because your perspective and participation make us a more diverse, inclusive, and representative public service organization. With robust CLE, networking, lawyer referral, and *pro bono* opportunities, among other member benefits, we can guarantee a great return on your investment. Check out the Member Benefits page of the MBA's website, www.milwbar.org, for more details.

Thanks for your continued support of the MBA. Here's to healthy and joyous holidays for all our members and their families.

—C.B.

Ted Warshafsky Remembered as “Giant Among Lawyers”

Attorney Frank T. Crivello, II, Warshafsky, Rotter, Tarnoff & Bloch

Ted Warshafsky, the founder of the Warshafsky Law Firm, died October 14, 2012, from complications of a stroke. For those of us who had the unique pleasure of working with him for many years, he will truly be missed.

There were very few, if any, who did not admire and respect Ted. He embodied what are absolutely all the best traits of a trial lawyer. He fought tirelessly on behalf of the least fortunate members of society, always putting them first, and devoted his extraordinary efforts and skills to their well being. Ted was never afraid to take on the most powerful on behalf of the powerless. His stamina and determination were unmatched, as evidenced by the fact that he continued to try complicated cases well into his eighties. His energy, creativity, and passion are irreplaceable.

After serving his country as a member of the United States Marines, Ted went on to study law at the University of Wisconsin. He received numerous honors, awards, and accolades during his 60 years as a lawyer. These include his election as president of the Wisconsin Academy of Trial Lawyers (now Wisconsin Association for Justice), president of Trial Lawyers for Public Justice, and an officer of the Association of Trial Lawyers of America (now American Association for Justice). Ted was also selected as a member of several exclusive organizations. He was one of less than 50 lawyers in the United States, and the only one in the State of Wisconsin, chosen for membership in the American College of Trial Lawyers. He was also selected for membership in the Inner Circle of Advocates (100 members nationally), the International Academy of Trial Lawyers (500 members in the United States), the International Society of Barristers (600 U.S. members), and the Wisconsin Chapter of the American Board of Trial Advocates (67 members).

Ted was named in *Best Lawyers in America* each and every year of its publication, was annually selected for inclusion in Wisconsin *Super Lawyers*, and was named in *Who's Who in American Law* for over 25 years. He shared his expertise freely with others, teaching classes on cross-examination at Harvard Law School, speaking at countless

seminars and conferences, and authoring the *Wisconsin Handbook for Trial Lawyers*.

For Ted, however, practicing law was not about honors or awards; nor was it about fees or compensation. When a problem needed a solution, Ted Warshafsky fought tirelessly for a better result. His proudest moments were those in which he was able to make the community safer, both then and in the future. For example, when he found children suffering severe injuries following certain vaccinations, he took on the pharmaceutical industry, forcing changes in the vaccine manufacturing process. Those changes remain in place today, saving countless children from unnecessary injuries.

Ted took on large companies such as General Motors, Harley-Davidson, Wyeth Laboratories, and Caterpillar. As a result of his efforts, the design of automobiles and motorcycles has greatly improved, trauma patients in our community receive better care due to changes in hospital procedures, and unqualified professionals have been exposed.

Ted was known for his thoroughness and legal expertise, particularly in product liability and medical malpractice cases. One publication wrote that he was “head and shoulders above almost everybody else [with] excellent command of scientific and technical data He can absorb an enormous amount of data

and knowledge in a particular field He is described as having a brilliant mind, with a common touch before a jury.”¹

Ted’s life went beyond his successes as a lawyer. He was active in politics, serving as chair for Senator Eugene McCarthy during his bid for the Presidency. Ted also delivered the nomination of Julian Bond for Vice President at the 1968 Democratic National Convention, and assisted numerous other candidates who sought to serve the public as elected officials.

Ted was also an avid fisherman, outdoorsman, father, and friend.

To fully express what Ted Warshafsky meant to the Milwaukee community, to the state and local bar, to his thousands of clients, and to those of us who had the privilege of working with him, is an impossible task. He was a true giant among lawyers, a mentor to those working with him, a passionate advocate for the injured, a staunch protector of individual rights, and our firm’s benevolent leader. We are all better because of him. He will be missed.

¹“Top Lawyers in Town,” *Milwaukee Magazine* (June 1990); “Best Lawyers in Milwaukee,” *Milwaukee Magazine* (Feb. 1995); “Best Lawyers in Milwaukee,” *Milwaukee Magazine* (Oct. 1999).

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9th Annual State of the Court Luncheon



↑ Maria Lopez accepts the Law Student Pro Bono Publico Award.



← Hannah Dugan accepts the Individual Attorney Pro Bono Publico Award.



↑ Colleen Fielkow accepts the Organizational Pro Bono Publico Award on behalf of Reinhart Boerner Van Deuren.

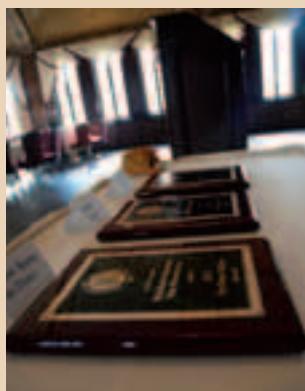


↑ Wisconsin Supreme Court Chief Justice Shirley Abrahamson and Milwaukee County Circuit Court Chief Judge Jeffrey Kremers





↑ Dawn Caldart, Alyse Pfeil, and Ayame Metzger of the Milwaukee Justice Center, along with Clerk of Circuit Court John Barrett (center) and Chief Deputy Clerk Jim Smith



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An Introduction to the First Judicial District

↑ Chief Judge Jeffrey Kremers introduces new attorneys to the First Judicial District. More than 20 new attorneys attended the program on September 20, which was co-sponsored by the MBA and the Milwaukee County Circuit Court.

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Pax Budgetana:

Milwaukee County Courts Secure Another “Cost to Continue” Budget

Honorable Jeffrey Kremers, Chief Judge, Milwaukee County Circuit Court

Clerk of Circuit Court John Barrett and I submitted 2013 annual budget requests that were adopted without significant change by County Executive Abele, and accepted without further change by the County Board’s Finance Committee and, ultimately, the Board itself on November 5. The budget for 2013 can best be explained by dividing it into two components.

Combined Court Operations

This component primarily entails those functions overseen by the Clerk of Circuit Court. It includes staffing for the courts, administration, jury services, and all the “behind the scenes” operations. The following chart compares the 2012 budget with the recently passed 2013 budget:

2012	2013	2012/2013 Change
Expenditures 38,721,380	Expenditures 38,681,257	(40,123)
Revenue 9,244,809	Revenue 9,218,908	(25,901)
Levy 29,476,571	Levy 29,462,349	(14,222)
Full Time Empl. 285.8	FTEs 284.2	(1.6)

This illustrates that the court budget submission was a cost-to-continue budget.

Pretrial Services

This budget area, which is supervised by the Chief Judge, includes pretrial services, Universal Screening, and the Day Reporting Center.

The hallmark of the Universal Screening Program is a data-driven, evidence-based decision making model for determining conditions of pretrial release in criminal cases. The pretrial services budget comparison is:

	2012	2013	2012/2013 Change
Expenditures	4,987,406	5,071,243	83,837
Revenue	653,462	598,101	(55,361)
Levy	4,333,944	4,473,142	139,198
FTEs	1.0	1.0	0.0

The increase from the current year budget to 2013 is the result of funding for a Drug Treatment Court Coordinator.

Other highlights from the budget include a project for the scanning of 9.1 million court documents now in paper storage. In addition, the County has committed funds to replace some of the sound systems in courtrooms, and to begin the “buildout” for the Milwaukee Justice Center in Room G9.

The 2013 County budget transfers control of the House of Correction from the Sheriff to a Superintendent of the HOC effective April 1. While that is not part of the court budget, the change will certainly affect the courts.

continued next page



JUMPS FENCES. NOT HOOPS.

| Trudy Innes Richardson
Litigator
Tallahassee, Florida

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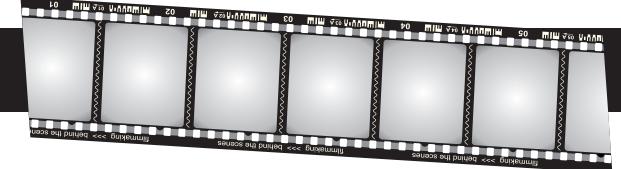
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The Reel Law



Attorney Fran Deisinger, Reinhart Boerner Van Deuren

Win Win

Directed by Thomas McCarthy
2011; 106 min.

Recently I had the pleasure of presenting a program about legal ethics with Mike Aprahamian of Foley & Lardner. We used clips from “legal” movies to illuminate many of the Rules of Professional Conduct. I wish I had seen *Win Win* before that presentation, because its plot pivots on a conscious violation of those rules.

Mike Flaherty (the wonderful actor Paul Giamatti) is the kind of lawyer who has become increasingly rare in movies more recently captivated by the excitement and glamour of big firm lawyers. (Fortunately for Hollywood, audiences are generally as ignorant about the reality of big firm law practice as they are about police work and hospitals.) Mike and his partner Vig (Jeffrey Tambor) have a two-man office in an old house in New Jersey. The boiler in the basement needs \$6,000 in repairs, Mike’s daily schedule is lucky to have two appointments, and even his often hung-over secretary is after him about the state of things. Mike doesn’t want to worry his wife Jackie and their two young daughters, so he doesn’t tell Jackie about the financial problems.

As played by the schlumpy Giamatti, Mike is a likeable guy under a lot of pressure. But just after an anxiety attack nearly gets him an ambulance ride, an opportunity presents itself. One of his elderly clients, Leo (Burt Young), is slipping into dementia and needs a guardianship because his adult daughter in Ohio cannot be located. Mike realizes that the guardian will be entitled to a \$1,500 per month commission. He knows that ordinarily the state would step in and move Leo into an eldercare facility. But at the guardianship hearing, Mike surprises the court by volunteering to be the guardian himself. The judge wants to know why, and Mike explains that Leo wants to stay in his home (true) and that the state doesn’t have the ability to attend to him there (also true). Mike says he will do it, and the judge gives him the appointment.

The problem is: Mike has no intention of doing what he has told the court he would do. As soon as he is appointed, he puts Leo in the eldercare facility himself, but still pockets the commission checks. For those

interested (and speaking as a professional responsibility lawyer, I hope that means all of you), this conduct, at minimum, violates Rule 1.7(a)(2) regarding conflict of interest due to a personal interest of the lawyer and Rule 3.3(a)(1) prohibiting a lawyer from making false statements of fact or law to a tribunal. Yet, to Mike, no one has been harmed. Leo is well cared for at the facility; Mike is still looking after him, albeit not directly; and Mike is relieved of his financial burden.

But easy money is never easy in the movies. Soon after the appointment, Mike goes to Leo’s house to pick up some things for him and finds a teenage boy sitting on the steps. He is Kyle, Leo’s unknown grandson from his ne’er-do-well daughter. Kyle is intense but friendly enough, and when Mike takes him to meet Leo, Kyle is content to sit and watch television quietly with the old man. Kyle is clearly a boy in search of family, but Mike’s first reaction is to send him back to Ohio—not to get rid of the complication but because he believes it’s the right thing to do. Later that night, however, Mike gets a call from the police and learns that Kyle got off the bus and broke into Leo’s home. He takes Kyle to his own home, and under Jackie’s maternal glare Kyle admits his mother is in drug treatment when she isn’t cavorting with her boyfriend, and declares that he wants nothing to do with her. Kyle starts living in Mike and Jackie’s basement.

This development launches the second act of the narrative. Mike and Vig also happen to be the wrestling coaches at the local high school, whose team is as downtrodden as their practice. But when Mike takes Kyle to practice, Kyle is better than anyone on the team. With a little Internet research, Mike discovers that Kyle is a terrific wrestler who finished second in his weight class in Ohio. Mike enrolls him in school, and Mike, Vig, and Mike’s friend Terry (Bobby Cannavale), whose wife has just left him, immediately take to Kyle as the team’s answer, and not coincidentally as a stand-in hero to salve the disappointments in their own lives.

All goes well as Kyle settles into the family and inspires the wrestling team—until Kyle’s mother Cindy inevitably shows up, telling Mike that she wants to take Leo and Kyle back to Ohio with her. Mike realizes that Cindy really just wants Leo’s money, and when Cindy hires a lawyer (the formidable

Margo Martindale), Mike tries to cool Cindy’s interest and chase her out of town by revealing that Leo has disinherited her, with all his money going to support a local park. But Cindy’s lawyer has given her the transcript from the guardianship hearing, and Cindy lashes out by revealing Mike’s deception to Kyle. Kyle runs away, Leo disappears, and after a frantic search Mike, Terry, and Jackie find them at Leo’s house, where Kyle confronts Mike with the truth.

With everything unraveling, the shamed Mike decides to come clean with the court, but the crisis is resolved on the courthouse steps when Cindy cuts a deal with Mike whereby she will go back to Ohio alone, he will send her the commission checks, Leo will go back to his own home (with Mike and his family and Kyle caring for him), and Kyle will stay with Mike and Jackie to finish high school. In the last scene we see Mike at his new second job as a bartender, an honest man once again.

Win Win has its share of plot contrivances, and it never resolves Mike’s ethical lapse in legal terms. Its portrayal of a man ultimately atoning for a bad decision is nevertheless satisfying. *Win Win* is a “small” movie with no special effects, just a few locations, and a small speaking cast. Armed with a fine script, the very good actors under Thomas McCarthy’s direction play out the story quietly and well. Like most such films, *Win Win* had only a brief stay in theaters. If it slipped your notice, it is a minor gem well worth the rental.



Budgetana continued from last page

The court budget is a reflection of the collaborative spirit that has developed among the County Executive, the County Board, the Clerk of the Circuit Court, and me.

I believe we were very reasonable in our requested budget for 2013. We understand and appreciate the difficult financial circumstances the County continues to face. Therefore, we sought and achieved what is essentially a cost-to-continue budget with a couple of minor tweaks.

With this budget we are being given nothing less, but certainly nothing more, than we need to keep the courts open.

Current Trends in Obamacare: Where It Is Going and What to Watch for

Attorney Charles P. Stevens, Michael Best & Friedrich

For us in the Employee Benefits Group at Michael Best & Friedrich, it is as if we were on the receiving end of the old Chinese curse: "May you live in interesting times." The federal government has certainly made things interesting with respect to health coverage. The Patient Protection and Affordable Care Act (PPACA) is complex in some areas and vague in others. For example, the 2014 transformation of the insurance industry into state or federal insurance exchanges describes outcomes but is light on how we, as a nation, get there. Moreover, many people, distracted by the possibility that either the Supreme Court review or the November election might have resulted in the law being overturned or changed, did not get serious about dealing with these aspects of the law until late in the game. This is not only true of employers, but also of state governments and the federal government; everyone now has some catching up to do. This article attempts to describe what employers are likely to see in the weeks and months ahead.

New Regulations

The Obama administration is in the process of releasing a large amount of additional guidance on health care reform. Just released are proposed rules (i) defining "essential health benefits" that health plans must provide; (ii) establishing new rating rules for individual and small group market insurance policies pertaining to guaranteed availability, renewability, risk pools, and catastrophic plans; and (iii) setting standards applicable to wellness programs. Still to be issued are rules regarding taxation of medical devices; how money will be allotted for hospitals that treat the uninsured; and how coverage for contraceptives and abortifacients will be guaranteed for employees of religious-based organizations such as schools, hospitals, and charities. Many of these rules were not released until after the election, possibly to reduce the political heat they may have caused, or simply because the election could have taken the law in a much different direction. Furthermore, additional rules are expected regarding how insurance exchanges will work starting next October when they are first to permit open enrollment. Now, for the first time, the federal government is establishing rules on how it will permit insurers to set different prices based on

age, family size, geographic location, and tobacco use.

Employers are also awaiting regulations from the IRS indicating how it will enforce a \$100 per day excise tax per plan participant on "discriminatory" health plans. This tax effectively bans health plans that provide better benefits for those in the top 25% of pay than are provided to those in the bottom 75%, but the rules are not being enforced pending further guidance because it is so easy to inadvertently fail to comply and the penalty is so disproportionate to the infraction.

Insurance Exchanges

One of the ways Obamacare was rendered "affordable" by Congress is by having the states establish insurance exchanges and run much of the day-to-day administrative tasks through them. Because the federal government does not have constitutional authority to force states to do this, however,

Congress adopted a carrot-and-stick approach. A significant carrot is that certain premium subsidies are available to lower-income individuals through exchanges "established by the State under section 1311."¹ A stick is that, if a state does not create an exchange, the federal government will do so under section 1321, and the language of the law provides no premium subsidies for low-income individuals under federal exchanges.

Interestingly, the IRS has issued guidance indicating it will provide premium subsidies under *both* state and federal exchanges. A working paper challenging this interpretation was issued earlier this year by Case Western Reserve University Law School, arguing that this IRS interpretation could be an \$800 billion issue that determines the outcome

of Obamacare.² Also, according to the working paper, the plain language of the law dictates that neither the individual nor employer "shared responsibility" penalty can be assessed in states where only the federal exchange has been implemented. It is anticipated that these issues will eventually receive judicial scrutiny. For the time being, they are unknowns as health care reform continues to evolve.³

The decisions by (at this time) 16 Republican governors not to create state exchanges is another interesting development. Many business, health care provider, and insurance groups have urged states to set up exchanges so as to maintain greater control. Nevertheless, the Republican governors who have declined to create state exchanges have been uniform in their complaint that state control is not possible under PPACA, which provides that state exchanges must comply with current and future regulations

continued page 22

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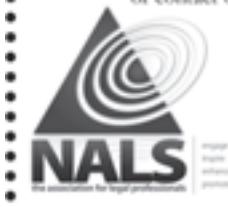
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A Place of Our Own: Milwaukee Justice Center Set to Expand Into New Space

Justin A. Metzger, Community Outreach & Marketing Manager, Milwaukee Justice Center



Many Wisconsinites who are faced with civil legal problems are unable to afford an attorney. Most of those who are unable to afford an attorney still earn too much to qualify for free legal assistance from any of the various *pro bono* organizations that serve our communities. Still others do qualify for free services but cannot be accommodated by those organizations. That leaves a large group of Wisconsinites with no other choice than to navigate the stressful and confounding world of the civil court system on their own. That's where the Milwaukee Justice Center (MJC) comes in for Milwaukee County residents.

The Milwaukee Justice Center is a cooperative project among Milwaukee County, the Milwaukee Bar Association, the MBA Foundation, and the Marquette University Law School. Its mission is to provide *pro se* civil litigants with greater access to justice, whether by assistance with filling out legal forms that are difficult for *pro se* litigants to understand, or providing brief legal advice on a one-time basis.

"Self-help" started in 1995 at a small desk on the seventh floor of the Milwaukee County Courthouse, staffed by volunteers for a few hours per week. The Milwaukee Justice Center was established in 2009, when it opened permanent floor space for its Family Law Clinic in the Milwaukee County Clerk of Circuit Court Office.

Now the MJC is about to embark on a significant expansion of its current location. In November, the Milwaukee County Board approved a capital improvement budget allocating \$423,000 in 2013 for a newly-

constructed space in Room G-9 combining the Milwaukee Justice Center and the Legal Resource Center (the County law library). An additional allocation of \$825,000 is slated for 2014. The MBA Foundation has committed to raising up to \$375,000 in matching funds

for the MJC portion of the project. The expansion will give the MJC a permanent and consolidated home for all of its projects, including the Family Law Clinic and Brief Legal Advice Clinic. The expansion will also allow the MJC to serve its quickly-growing client base.

"It is remarkable to be on the cusp of this expansion," Attorney Dawn Caldart, MJC Executive Director, said. "The additional space will transform the way we deliver services."

From the opening of the current clinic in 2009 until the end of 2011, the Milwaukee Justice Center assisted more than 15,000 clients. Caldart said that in 2012 alone, however, the MJC is on track to serve more than 11,500 clients, marking a 43 percent annual increase.

"The increase in clients served is largely attributable to the Center's expanded hours," Caldart remarked. "The Center is now staffed by volunteer attorneys, law students, and interns from 8:30 a.m. to 12:00 noon, and 1:00 to 4:00 p.m., Monday through Friday."

And it is not just the clients that the Milwaukee Justice Center assists. The Milwaukee County Circuit Court has seen benefits, as well. "The Milwaukee Justice Center has been very helpful for us in the courts," Milwaukee County Clerk of Circuit Court John Barrett said. "We now have a professional place here in the courthouse to send people who need procedural help, without having to worry about legal advice issues, or about courthouse workers appearing unhelpful."

The Milwaukee Bar Association has also benefited from its sponsorship of the MJC. MBA President Charlie Barr said the MJC helps the Association accomplish several of its core missions, which include improving access to justice for Milwaukee County residents and supporting the County courts.

"Similarly, the MJC is an excellent way for MBA members to honor their professional commitment to *pro bono* service," Barr added. "It provides an opportunity to realize a lawyer's highest calling—that is, to use his or her legal training and experience to promote the public good."

Barr also noted that the MJC, with its unique service model, allows more clients who do not financially qualify for traditional *pro bono* services but are nonetheless unable to afford a private attorney, or who do qualify but cannot obtain those services, to gain access to justice. "That chasm has a teeming and steadily increasing population," Barr explained. "It is an unavoidable reality that, for the foreseeable future, legions of needy persons without legal training will have to represent themselves in the courts. This is not just a Milwaukee County reality; it is a national reality."

Those interested in learning more about the Milwaukee Justice Center and how it helps the Milwaukee County community can visit www.MilwaukeeJusticeCenter.org or facebook.com/MilwaukeeJusticeCenter.



Your Smartphone Ain't So Smart

David Ratkovich, LPD, ETS Intelligence



In the world of technology, we look for convenience and functionality before we ever consider data security. But consider this: the cell phones we use to send all that sensitive client data and personal information can be accessed very easily by just about anyone. It is not secure. And we wonder why the U.S. has such a problem with identity theft!

Today we are expected to be accessible to our clients every minute of every day. That expectation interferes with face time with other clients, as well as with our family and personal lives. It can be just plain overwhelming to keep track of e-mails, text messages, and voice mails.

Mostly because we are all so busy, we like the convenience of smartphones. We can be anywhere and still conduct business almost as well as if we were sitting at our desks. Not exactly the best for drafting documents, but a laptop and coffee at a local shop or restaurant with a Wi-Fi hotspot can fix that, too, right?

But are we really protecting the best interests of our clients? If we think in terms of providing timely advice to them, then the answer is "yes." If we think in terms of risk management, however, then maybe not so much.

That free Wi-Fi hotspot available in every coffee house and many other businesses is a haven for information thieves. I refer not to the businesses themselves; they have the best intentions to provide service to their customers. Rather, I refer to the criminal element that preys on this type of public access. The identity theft crisis in this country is fed every day by people connecting to unsecured Wi-Fi and then going about their business.

So how do we conduct business in the mobile environment that has become our everyday routine while still maintaining data security for our clients and ourselves?

Software installed by cyber-security technicians (CSTs) can provide military-level encryption for laptops, desktops, smartphones, and other devices. All types of data, including e-mail, should be encrypted whenever possible. In addition, remote

access capabilities allow CSTs to remote-lock or remote-wipe the hard drive if any of these devices are lost or stolen. This makes technical support easier, as well. A lot of day-to-day issues can be fixed by accessing your computer or handheld device remotely with little or no down time.

You should also consider adding an insurance policy or an addendum to an existing policy to cover data theft or loss. The federal government is creating new regulations addressing the responsibility of businesses to protect customers' and clients' sensitive data, including personal legal information (PLI). Several insurance companies now provide coverage for liability caused by the theft and loss of sensitive data such as social security numbers, credit card numbers, medical records, insurance loss records, passwords, and other proprietary information.

Theft of data is only one concern. It is just as likely, and perhaps more so, that you will experience some form of device failure or file corruption from a power surge, virus, or hard drive failure. In addition, natural disasters such as Superstorm Sandy can cause catastrophic losses to equipment and infrastructure.

In a well-conceived emergency preparedness plan, technicians and administrators work together to develop and implement an organized, understandable plan with which everyone in the organization has at least "User Level" familiarity. Working with trainers and consultants can be beneficial in larger firms with more complicated strategies.

Cyber-security technicians can recover deleted or lost data from smartphones, laptops, and desktop computers. This can include deleted text messages, pictures, web logs, call logs, and basically everything that was ever transmitted by those devices.

Whether you are concerned about risk management, disaster planning, or just convenience, developing and implementing a sound cyber-security policy is in your best interests and that of your clients.

The author is Executive Director of ETS Intelligence, LLC. He can be reached at dratkovich@etsintelligence.com, or 847-886-2455.

Judge Coffey Served 58 Years on the Bench

Judge John Louis Coffey, who died November 10 at the age of 90, was a Senior Judge of the U.S. Court of Appeals for the Seventh Circuit. He served on the Seventh Circuit bench for over 30 years, taking senior status in 2004.

Judge Coffey, a Milwaukee native, earned his law degree from Marquette in 1948. After five years in the Milwaukee City Attorney's Office, he became a judge of the Milwaukee County Civil Court. He served successively in the Municipal and Circuit Courts of the County and the Wisconsin Supreme Court before President Ronald Reagan appointed him to the federal bench. (In 1982, a different political era, the Senate confirmed him less than a month after his nomination.)

Judge Coffey was a World War II veteran of the United States Navy.



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Supreme Court Rejects Key Parts of Arizona's Immigration Enforcement Law

Attorney Kelly Fortier, Michael Best & Friedrich

On June 25, 2012, the United States Supreme Court, in a 5-3 decision, struck down three of the four challenged provisions of Arizona's immigration enforcement law, commonly known as S.B. 1070. The majority's decision in *Arizona v. U.S.*, --- U.S. ---, 132 S.Ct. 2492, 183 L.Ed.2d 351, reaffirms the power of the federal government to set immigration policy and to preempt state laws that conflict with federal laws.

The Court blocked S.B. 1070 provisions that created new state misdemeanors for unauthorized aliens seeking or engaging in work in the state and for failure to complete or carry an alien registration document as required by federal statute. It also blocked the provision authorizing an officer to arrest without a warrant a person whom the officer believes to have committed a public offense

that makes the person removable from the United States.

The Court upheld the law's best-known provision, which requires state law enforcement officers to make a reasonable attempt to determine the immigration status of individuals they stop or arrest if there is reason to believe the individuals might be unlawfully present in the United States. The Court found it was improper to enjoin this part of the law before state courts had an opportunity to interpret it and without some evidence that the measure, as enforced, conflicts with federal immigration law.

This highly anticipated decision follows last year's other notable Supreme Court immigration ruling in *Chamber of Commerce of the United States of America v. Whiting*, ---

U.S. ---, 131 S.Ct. 1968, 179 L.Ed.2d 1031. In *Whiting*, the Court upheld the Arizona law that (a) provides for revocation of business licenses of employers that employ unauthorized workers; and (b) requires Arizona employers to use E-verify, a federal, Internet-based system used to confirm the immigration status of employees. Several states have similar laws requiring the use of E-verify by state employers and contractors. The Court's recent decisions did not overturn or change these state E-verify requirements. Multi-state employers must continue the difficult task of navigating the patchwork of state E-verify laws.

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Public Records Requests: Who Is Paying for Redaction?

Attorneys José A. Olivieri, Luis Arroyo, and Rob Mulcahy, Michael Best & Friedrich

On June 27, 2012, the Wisconsin Supreme Court held that a governmental authority may not impose a fee on a requester of public records for the costs incurred by the governmental authority (including staff time) in deleting nondisclosable information included within the requested records. The decision, *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, 341 Wis. 2d 607, 815 N.W.2d 367, resolves ambiguity in the court's previous decisions in *Osborn v. Board of Regents*, 2002 WI 83, 254 Wis. 2d 266, 647 N.W.2d 158, and *WIREdata, Inc. v. Village of Sussex*, 2008 WI 69, 310 Wis. 2d 397, 751 N.W.2d 736, which suggest that such costs are recoverable.

The 2012 case arose from a dispute between *Milwaukee Journal Sentinel* reporters and the Milwaukee Police Department. The reporters requested several hundred records from the Police Department. In response, the Police Department stated it would only disclose the records if the reporters prepaid a fee of several thousand dollars for the "actual cost of complying with [the request]." More specifically, the Police Department wanted the reporters to pay the costs associated with redacting nondisclosable information from the records.

In its unanimous decision, the Wisconsin Supreme Court reiterated that the purpose of Wisconsin Public Records Law is to ensure that "all persons are entitled to the greatest possible information regarding the affairs of government ... [and the public records law should] be construed in every instance with a presumption of complete public access." 2012 WI 65, ¶ 39 (citations omitted). The court also confirmed that when records are disclosed, governmental authorities can pass some of the costs associated with producing the records on to the requester. But recovery of costs is limited. Specifically, the court relied on the statutorily-enumerated activities under Wis. Stat. § 19.35(3) for which a governmental authority can impose a fee in connection with the production of public records. Those activities are: (1) "reproduction and transcription of the record; (2) photographing and photographic processing; (3) locating a record; and (4) mailing or shipping of any copy or photograph of the record." The court read the statute narrowly and found that since "redaction" is not among the enumerated items for which a governmental authority can charge a fee, the Police Department's attempt to recover fees for the time it took to redact the requested records was impermissible.

This decision clarifies for governmental authorities that costs associated with redaction of public records cannot be passed on to the requester.

The authors can be reached at 414-271-6560.

Save the Date!

*Judges Night
February 12*

*Annual Meeting
June 11*

*Golf Outing –
August 6*

LRIS Top Ten continued from p. 9

giving a prospective client anything less than your full attention. If you truly are too busy to give a prospective client 30 minutes, then perhaps you should consider putting your LRIS membership on hold. A prospective client takes his consultation very seriously and wants you to take it that way, too. This means not checking your e-mail, taking calls, or eating your lunch during the consultation. Give him your undivided attention.

4. Promising to Complete a Specific Task by a Specific Date and Then Not Doing It

Whether it is filing a pleading, drafting a will, or issuing an opinion letter, be realistic when you promise to do something. It is always better to under-promise and over-deliver.

3. Telephone Answering Device or Voicemail Making a Bad Impression

Whether your calls are answered by a person or a machine, be sure you are making a good impression on your callers. If a prospective client hangs up before talking to you, you've lost the opportunity to consider that case.

- Don't be too personal: "Hi, this is Bob, leave a message" does not convey competence and professionalism. If you use your LRIS referral phone number for both business and personal purposes, be sure that your outgoing message is appropriate for both.
- Don't let it sound as if you're never there: a receptionist who responds, "I don't know if he'll be in today, or tomorrow. In fact, I don't know when he'll be in to take your call," does not convey a message that the attorney will be responsive to the potential client's needs.
- Answer the phone, and answer it with meaningful information: if it rings and rings and rings, a potential client hangs up. If the voicemail says, "This is 555-1212, leave a message," the potential client doesn't even know if he has reached a law office, and he hangs up.

If you're only receiving calls from 35% to 40% of the LRIS callers referred to you, consider whether prospective clients are abandoning you at the phone answering level. You may even want to call your own office and pretend you are a referral from the LRIS, to see how your staff handles that call.

2. Telling a Prospective Client You Don't Handle a Type of Case for Which You Are Listed With the LRIS, or That You Aren't Currently Taking New Cases

Nothing frustrates a prospective client more than being referred to an attorney with a particular kind of case, and then being told the attorney doesn't practice in that substantive area. It also makes the LRIS look incompetent. Rather than viewing the LRIS as a trusted resource, the prospective client concludes that the time spent speaking to the LRIS and committing to the fee schedule was a complete waste. A prospective client may also suspect that you are refusing to speak with him for wholly improper reasons, such as his minority status or accent.

You decide what practice areas are referred to you. Nobody should be on every list. If you are getting calls in a practice area that is not yours, you need to change your listings. Perhaps you handled that kind of case at one time but no longer do so.

Sometimes a prospective client thinks he has one type of case but really has another—of a type you don't handle. In that situation, let the LRIS know! It will happily refer the prospective client to an attorney in the right practice area.

Important Note: if you don't handle the kind of case referred, you are required to send that caller back to the LRIS for a new referral. You aren't permitted to refer him to a friend. This is an LRIS rule. If your concern is that a limited number of competent attorneys can handle a particular kind of case for a prospective client, talk to LRIS staff.

1. Failing to Return Phone Calls

It is the simplest complaint, but the most common. Clients hate it when their calls aren't returned. When that happens, the client thinks you don't care about him, you are avoiding him because you did something wrong, or your staff is incompetent and doesn't relay messages to you.

When calls aren't returned, the client calls the LRIS.

Then the LRIS calls you.

Working with the LRIS can generate both cases and goodwill from callers. Treating potential and actual clients with respect and dignity is the number one goal. Keep in mind that the client perspective is the key to happiness—both for you and for your LRIS referrals.

¹The author thanks Allen Charne of the New York City Bar Lawyer Referral Service, who graciously allowed the extensive use of his materials in this article.

Maria Lopez Wins MBA's Law Student Pro Bono Publico Award

Attorney Beth E. Hanan, Gass Weber Mullins

The horizon is a little brighter for immigrants needing legal assistance, thanks to the efforts and enthusiasm of third-year law student Maria Lopez.

Maria is the 2012 recipient of the Milwaukee Bar Association's *Pro Bono Publico* Award. As a first-year student at Marquette University Law School, Maria was part of the group that founded the Marquette Immigration Law Association. That association connects the Law School to Milwaukee's immigrant and refugee community by recruiting and organizing students to volunteer with community agencies that provide free and low-cost legal services to immigrants and refugees. Maria also has volunteered her time with *Voces de la Frontera*, a Wisconsin immigrant rights group, where she has worked alongside volunteer attorneys to provide legal advice to immigrants.

Maria's *pro bono* work has included trips to the Kenosha Detention Center to interview detained immigrants for possible *pro bono* representation by the National Immigrant Justice Center. She has also served with the Marquette Volunteer Legal Clinic, working with volunteer lawyers to provide brief legal advice and referral to clients, and often navigating complex immigration questions. This past summer she worked with the Illinois Migrant Legal Assistance Project, reaching out to migrant workers in housing camps to provide information about their rights related to employment, public benefits, and housing.

One of her law professors noted Maria's ability to create excitement among her peers to engage in *pro bono* work, observing that her service ethic and actions are keys to fostering the *pro bono* culture in the legal community. With energetic, selfless law students like Maria Lopez, the *pro bono* culture in the Milwaukee legal community should be alive and well for a long time.

Hannah Dugan Wins Individual Attorney *Pro Bono Publico* Award

Attorney Shannon A. Allen, Friebert, Finerty & St. John

On October 24, the MBA presented Hannah Dugan with the 2012 *Pro Bono Publico* Award in the individual attorney category.

Throughout her career, Hannah has promoted access to justice in legal practice and in human services administration. Hannah has been an advocate for thousands of low-income and vulnerable people seeking legal protection for themselves and their families through the justice system. As an administrator of nonprofit law firms and as executive director of a major nonprofit human services agency, Hannah has led with a strong commitment to mission and creativity while maximizing valuable and limited resources.

Hannah consistently develops new projects to respond to ever-changing client needs. Her program designs have expanded her practice areas, attracted constituents and donors, and anticipated and planned for the ever-changing landscape of poverty. For instance, Hannah designed an earned income tax credit attorney representation project prior to the end of Aid to Families with Dependent Children, which the tax

credit largely supplanted as a source of cash assistance for low-income families. She also designed a foreclosure/predatory lending legal representation project beginning in 1999, a decade before the current housing crisis exerted its full impact.

Through her hands-on approach and interpersonal skills, Hannah inspires and leads others to exercise their talents in service of the common good. For example, she coordinated one nonprofit law firm's *pro bono* projects in ten Wisconsin counties, including recruitment and training of over 1,000 panel attorneys, supervision of non-attorney staff, case management, and development and promotion of five specialized panels to address service gaps. To enhance the program, she designed and developed ancillary *pro bono* panels of court reporters, accountants, and vocational experts. She has also influenced and encouraged others to work for the public good through her legal teaching and writings. These are grounded in her goal to inspire and inform the successor generation of poverty lawyers and nonprofit administrators.

Hannah's *pro bono* work is not limited to her caseload. She has concentrated her own *pro bono* work on the "improving the administration of justice" provisions of the *pro bono publico* rule, SCR 20:6.1. She has led public policy discussions, launched projects with specific problem-solving goals, and reinvigorated institutions to move them from mission-drift to renewal. Local bar associations and the State Bar have utilized Hannah's ideas, such as the Milwaukee Supervised Visitation Program, which provides a resource for children to safely and happily interact with and know their non-custodial parents; and the 1999 establishment of the Immigration Legal Services, which has helped to keep families together and has protected vulnerable citizens.

This year, Hannah is celebrating her 25th year as a lawyer. Our community is fortunate to have her, because for Hannah, *pro bono* service is not just part of a job, but truly a passion.

Reinhart Boerner Van Deuren Wins MBA's Organizational *Pro Bono Publico* Award

Attorney Beth E. Hanan, Gass Weber Mullins

The *pro bono* reach of Reinhart is deep. For its long-standing, broad-ranging commitment to provide *pro bono* legal services to individuals, small business, and environmental and charitable groups in our community, Reinhart Boerner Van Deuren earned the MBA's 2012 *Pro Bono Publico* Award.

Over the years, Reinhart lawyers have offered *pro bono* legal services in an array of substantive matters, with successful and important results for individual clients, community safety, community enrichment, and environmental protection. Reinhart was a founder of the Legal Aid Society of Milwaukee in 1916, and its unwavering commitment to *pro bono* representation continues today.

Reinhart's *pro bono* practice is led by shareholders Colleen Fielkow and Mark Cameli. Dozens of Reinhart lawyers make a substantial volunteer commitment to Legal

Action of Wisconsin, the Marquette Volunteer Legal Clinic, and the Milwaukee Justice Center. Their clients seek protection from domestic and child abuse, and resolution of landlord-tenant disputes. For many years, Reinhart has loaned one or two of its lawyers for several months each year to the Milwaukee County District Attorney's office. Those lawyers have handled violent crimes, TPR cases, drug cases, and cases involving child pornography and sexual assault.

Reinhart lawyers periodically take *pro bono* appointments from the U.S. District Courts for the Western District of Wisconsin and Northern District of Illinois, as well as the Seventh Circuit Court of Appeals. These cases have involved conditions of confinement, freedom of religious exercise, and use of excessive force.

It is not only Reinhart litigators who volunteer their legal services. For example, Robert

Meldman of Reinhart runs the UWM Low-Income Taxpayer Clinic, Reinhart business lawyers provide advice to start-ups through the Wisconsin Women's Business Initiative Corporation, Dave Peterson has represented a local land trust in preserving the tax-exempt status of a nature preserve, Bill Cummings has represented the Wauwatosa Historical Society in lease negotiations for The Little Red Store, and Jeff Clark has served as legal counsel to the Southeast Wisconsin Bioterrorism Preparedness Group since 2001. The list goes on.

Over the past decades, this full-service firm has demonstrated a full-service commitment to *pro bono* work. We commend Reinhart Boerner Van Deuren as the recipient of the 2012 MBA award for outstanding organizational commitment to service in the public good.

Care Act continued from p. 16

issued by the Department of Health and Human Services (HHS).⁴ Without this control, the Republican governors argue, the administrative burden and cost associated with building and maintaining these exchanges is hard to justify in their state budgets. Because Congress assumed that all states would create state insurance exchanges, no federal money was allocated for administering federal exchanges. As a result, uncertainty abounds as to how the battle over state and federal insurance exchanges will play out.

What is becoming clear is that the insurance exchanges will not be ready by October of 2013. An extraordinary amount of work needs to be done and few believe it can be fully accomplished within the time remaining. For example, the law requires health plans to provide "minimum essential benefits," and Congress empowered HHS to provide further guidance on how these benefits are to be defined. HHS then adopted rules permitting states to set a "base benchmark" plan design that would be used as a standard for typical employer-provided coverage in each state, and HHS also set a September 30, 2012 deadline for states to do so. Only 20 states complied by the deadline. Many states asserted that they could not set a benchmark without further guidance, which HHS did not release until November 20, 2012.

While it is anticipated that many states that are not creating state insurance exchanges will nonetheless establish a base benchmark plan design within the next few months, HHS has adopted a procedure for establishing one if a state does not. Insurance carriers need these benchmark plan designs so they know what products to put on the exchanges and how much to charge for them. Everyone is behind schedule.

Considerations for Employers

A key concern for employers is how to make critical decisions with so much financial impact at stake but with so little certainty as to outcome.

Under the play-or-pay rules, employers with 50 or more employees or full-time equivalents working at least 30 hours per week must provide coverage or could be required to pay a \$2,000 penalty per year per full-time employee (with no penalty assessed with respect to the first 30 employees). However, \$2,000 is much less than employers would pay for coverage, so is this not an incentive for employers to drop coverage? In fact, the

law, contrary to its name, is not anticipated to make health care more affordable for employers. Moreover, the regulations issued by the IRS, the Department of Labor, and HHS make providing health coverage much more of an administrative burden—another factor motivating employers to let the government provide health care.

Employers that contemplate dropping coverage will want to know what their competitors are doing, but how will they know until January 1, 2014? When will employers learn from their insurance brokers what their insurance carriers will charge in 2014? What if renewal rates are not finalized until much later than normal due to the uncertainty? Will employers in a particular industry adopt similar changes in coverage, and who will lead?

Furthermore, health coverage or penalty concerns are likely to cause employers to reconsider how they staff their businesses. Accordingly, small employers who would like to expand beyond 50 full-time employees will have to decide if it is worth the additional health care costs and administrative burdens. Many employers will consider moving full-time employees to part-time, or using leased employees. Ultimately, employers will provide a discernible response to the law adopted by Congress in 2010 and, it is hoped, the system will become more predictable.

Our Advice

Our advice for employers is to do your homework and listen for announcements and trends. Communicate early and often with your consultants. Get second opinions before taking irreversible steps, maintain flexibility, and try to keep Plan B available. If you are negotiating a collective bargaining agreement, try for language that preserves flexibility or at least permits mid-contract changes or a re-opening if necessary. Be nimble.

Through all of this, try your best not to drop coverage altogether. Remember that employee benefits serve the purpose of setting one employer apart from another, and attract and maintain the best employees. Furthermore, if a sizable number of employers drop coverage, the insurance industry will survive only if the federal government highly subsidizes coverage. It is anticipated that the federal government would struggle to do this if it charged a penalty of only \$2,000 per employee. Thus, some say that \$2,000 could become \$4,000 or more. In time, employers who have

dropped coverage could face the prospect of paying the same amount they paid for coverage previously, but with no control at all over the coverage their employees receive. What is more, the insurance industry could be completely transformed if the federal government sets the rules and controls the purse strings.

In the next several years, employers, brokers, insurance carriers, and health care providers will need to be innovative within a regulatory framework that discourages innovation through its inability to contemplate and make room for it.

Employers will need to make decisions on modifications to their workforces, their health plan designs, the amount employees are required to pay, and whether to provide coverage at all. These decisions must occur in an uncertain environment, in which certain states have signaled unwillingness to comply and others may not be ready in time to meet all compliance requirements. Fasten your seatbelts.

The author may be reached at 414-225-8268 or cpstevens@michaelbest.com.

⁴Internal Revenue Code, § 36B(b)(2)(A).

²This paper, co-authored by Jonathan Adler of Case Western Reserve University School of Law and Michael Cannon of the Cato Institute, can be downloaded from the Social Science Research Network, <http://ssrn.com/abstract=2106789>.

³See Capretta and Levin, "Why ObamaCare Is Still No Sure Thing," *Wall Street Journal*, November 18, 2012.

⁴PPACA, §1311(d)(4)(A).

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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