



Spring 2013 • Volume 1

Messenger



**The Second Annual
Milwaukee Justice
Center Campaign**

March 11-22, 2013

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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

Okay, look, even I tire of seeing the same faux-lawyerly photo every time I read the galley proof for this column. I can only imagine that goes tenfold for you, dear readers. Ergo, I combed our vast archives and came up with something different. It's still me—alas, some things never change—but in a slightly different pose: to-wit (or, should I say, to-half-wit), scientifically testing the bounce factor of a particular variety of Florida turf known as “right field.” The plausible point of the pictured pratfall is to evoke the image of spring, which is right around the corner. Although here in Cheeseland that can be one hell of a long corner. Nevertheless, hope springs eternal, as they say, even as we wait eternally for spring actually to arrive.

Since spring is a time of renewal, the *Messenger* has indulged in a modest stylistic facelift. Gone is right-hand justification, and in its place is the “ragged right.” No, that doesn't refer to the Tea Party. It refers to the right-hand side of a typeset column. The right-hand justification reflected the implicit assumption that our readers are, in the main, orderly left-brained thinkers rather than bohemian artistes. Last year, however, we resolved to test this theory with a broad-ranging, statistically valid survey. As it turned out—such is the fate of so many resolutions—our survey population totaled two: my wife and my ex-law partner, which, incidentally, is better than the other way around. Lo and behold, both these highly analytical lawyers favored the ragged right. So there you have it. We also switched the font style to something a little less buttoned up, and reduced the font size. And you might see two columns or even one,

instead of three, as well as an outsized first letter, at the beginning of some articles—you know, like a real magazine, the kind people actually read. If all this letting down of hair doesn't exactly rock your world, we hope it doesn't offend you overmuch, either.

Stylistic and photographic conceits aside, the *Messenger* delivers plenty of content this time. We have updates on how the courts have responded to two hot-button pieces of Wisconsin legislation: Act 10, which limits the collective bargaining rights of most public employees; and Act 23, the voter identification law. We learn about the Milwaukee County Veterans' Treatment Initiative, a progressive, court-based program to address the unique needs of veterans involved in the criminal justice system. Former Chief Judge Mike Skwierawski describes the benefits of a special master in complex civil cases.

As for our regular contributors, it's all hands on deck. Resident legal historian Hannah Dugan writes about the Voluntary Defenders Program, an early precursor of the Milwaukee Justice Center, and the pioneering attorney who helped get the program off the ground. Judge Rick Sankovitz extols the virtues of electronic filing, which has finally come to the Milwaukee County Circuit Court. Doug Frazer shows us how to get the most bang for our CLE buck on the road. And cinematic guru Fran Deisinger uncovers yet another classic courtroom drama in *The Reel Law*.

We hope you enjoy this edition of the *Messenger*. As long as you're stuck indoors waiting for spring, why not drop us a line, or an article? Anyway, as you gaze wistfully out the window at some sullen “wintry mix,” take heart: somewhere, thousands of miles away, pitchers and catchers have reported. (And yes, I caught the ball.)

—C.B.

Photo courtesy of Jeff Whitney, Jeff Whitney Photography, www.jeffwhitneyphotography.com.

Calendar of Events

April 25

EDWBA Annual Meeting

May 3

Memorial Service

May 4

Law Day

June 11

MBA Annual Meeting

August 6

MBA Golf Outing

Volunteer Spotlight



Jan Bruce Eder

Jan Eder retired June 1, 2012, after a distinguished career of more than 22 years as Legal Counsel with Milwaukee County Child Support Services. Jan's special area of concentration was probate-related child support issues.

His desk chair at CSS was still warm when he began volunteering at the Milwaukee Justice Center. Jan is there every Thursday and Friday afternoon assisting low-income Milwaukee County residents, principally with family law issues. He also covers civil procedure, probate,

guardianship, name change, and other topics as they arise.

Jan finds his volunteer work at the MJC "very rewarding after every consultation, especially receiving the 'thank you's' from the clients and knowing I've assisted them. It's not only the legal advice that is important to them; it's also telling them what to expect, helping them navigate the system, and putting the finishing touches on their legal documents."

Jan notes that a client meeting at the MJC "can run the whole gamut of emotions, from Kleenex to a laugh." He believes "the most

important aspect of this volunteer program is that it gives clients an understanding of the legal issues relevant in their cases and a sense of relief that they will enter the big, foreboding courthouse and courtroom with a new-found sense of confidence."

On January 24, the Judiciary, Safety and General Services Committee of the Milwaukee County Board of Supervisors specially recognized Jan, not only for his decades of service at County Child Support Services, but also for his volunteer work at the Milwaukee Justice Center. To that accolade, the MBA adds its commendation to Jan for continuing to embody the spirit of public service.

Member News



Beck, Chaet, Bamberger & Polsky announced the promotion of **Christopher "CJ" Murray** to shareholder. His practice focuses on receiverships, creditor/debtor law, business law, and litigation.



Brandon Derry

Hupy and Abraham announced that **Brandon Derry**, of the firm's Madison office has become a shareholder.

Quarles & Brady announced that **Noelle A. Bobbe** has joined the

firm as an associate in the Real Estate Practice Group, and that **Tonya Vachirasomboon** has joined the firm as an associate in the Corporate Services Group, both in the firm's Milwaukee office.



Tonya Vachirasomboon



Noelle A. Bobbe



Kyle B. Flanagan



Christopher J. Kriva

Richard W. Donner – Real Estate Practice (Milwaukee office)
Rebecca E. Greene – Employee Benefits Practice (Milwaukee office)
Robert W. Habich – Real Estate Practice (Waukesha office)
Jessica King – Trusts and Estates and International Practices (Milwaukee office)

Adam R. Konrad – Business Law, International, and Tax Practices (Milwaukee office)
Justin F. Oeth – Real Estate Practice (Madison office)

The firm also announced the addition of two new attorneys: **Kyle B. Flanagan** in the Business Law Practice, and **Christopher J. Kriva** in the Health Care Practice.

von Briesen & Roper announced the addition of six attorneys. They are: **Julie A. Bernard; Patrick J. Bodden; William (Bill) O. Jackson; Brian W. Sammons; Mark E. Schmidt; and Louis E. Wahl, IV.**



Jeremy R. Bridge



Richard W. Donner



Rebecca E. Greene



Robert W. Habich



Jessica King



Adam R. Konrad



Justin F. Oeth

Reinhart Boerner Van Deuren announced seven new shareholders. They are: **Jeremy R. Bridge** – Intellectual Property Practice (Rockford office)

Needed: Law Day Volunteers

Law Day 2013 is right around the corner and the Milwaukee Bar Association is seeking volunteers for the free walk-in legal clinics. On Saturday, May 4th, four Milwaukee-area libraries will host the free clinics, which offer a one-on-one meeting with an attorney to any interested member of the public. These meetings will provide information and referrals appropriate for each individual's legal situation. We are currently seeking volunteers from 1:00 – 4:00 p.m. at the following locations:

- Central Library • 814 West Wisconsin Avenue
- Bay View Library • 2566 South Kinnickinnic Avenue
- Center Street Library • 2727 West Fond du Lac Avenue
- Atkinson Library • 1960 West Atkinson Avenue

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

Message From the President



Attorney Charles H. Barr



The Second Annual Milwaukee Justice Center Campaign kicks off March 11 and runs through March 22. As many of you know, the MJC dispenses basic, practical guidance to Milwaukee County residents who must navigate the civil legal system without an attorney because they cannot afford one and cannot obtain publicly-funded legal aid. The MJC was conceived in honor of the MBA's Sesquicentennial in 2008, and is our signature public service project.

The MJC serves a pressing community need. Many thousands who don't qualify under the economic guidelines for legal aid nonetheless can't begin to afford private counsel. And due to the severe budgetary pressures on our legal aid organizations, more than 80% of those *eligible* for free legal services can't actually *obtain* them. The statistics in recent years illustrate a flood of *pro se* litigants that has yet to reach high-water mark. The overwhelming majority of *pro se* litigants cannot be expected to, and in fact does not, understand the fundamentals of the legal system or even how to complete the basic paperwork that unlocks the courtroom door. Simply put, justice is harder to come by in a case with *pro se* litigants than in a comparable case where all parties have the benefit of competent counsel—and there are a lot more *pro se* litigants than most people realize. They need someone at least to point them in the right direction.

The MJC does just that—and it *works*. In 2011, the second full year of the MJC's existence, the American Bar Association honored it with its inaugural Partnerships for Success Award. In 2012, the MJC served 10,659 clients, a whopping 32% increase over 2011. These clients benefited from the efforts of 347 volunteers (including 136 attorneys) who devoted 8,836 hours of *pro bono* service—17% more than the previous year. Late last year the County Board of Supervisors, recognizing the project's increasingly significant role in improving access to justice for *pro se* litigants, allocated the space and funds to construct a permanent home for the MJC in Room G-9 of the Courthouse. The MJC has grown from operating a few hours per week at its inception to a full five-day per week operation. And soon there will be a mobile MJC and Marquette Volunteer Legal Clinic once a month in Milwaukee's economically depressed neighborhoods where some residents have trouble getting downtown.

Milwaukee County and Marquette University Law School have partnered with the MBA on this project, and they are superb partners indeed. The County provides the facilities and employs the Executive Director of the MJC, while the Law School, through its Volunteer Legal Clinic, supplies dedicated law students who are crucial components of the teams that deliver much-needed practical guidance to *pro se* litigants.

Beyond those invaluable contributions, the MJC depends solely on the membership of the MBA for the funds it needs to operate. It runs pretty lean: about \$80,000 per year. It gets great bang for the buck. The fact remains, however, that the MJC needs those funds to continue its work. There is no endowment, no trust fund, no alternative source of funding. It is up to the members of this organization to enable the MJC to perpetuate its success.

That is why the MBA Foundation, our charitable arm, conducts an annual campaign for the Milwaukee Justice Center. In last year's inaugural campaign, MBA members demonstrated a strong commitment to the MJC's bedrock premise that unrepresented persons

have a fundamental right to access the justice system even if they cannot afford an attorney and cannot obtain legal aid. We need to reaffirm that commitment this year.

A charitable contribution to the MJC funds a project that has a track record of success and a rapidly growing impact in improving the delivery of justice in our community. Under the leadership of Executive Director Dawn Caldart and Legal Director Ayame Metzger, the MJC has already established itself as a vital component of Milwaukee County's civil justice system.

There is more to it, however, than backing a winner. We all took an oath to serve the cause of justice, and we do so by serving our clients. Underlying that oath is the principle that all individuals—not just those served by private and legal aid attorneys—deserve meaningful access to justice. A gift to the Milwaukee Justice Center thus complements and affirms what we do professionally every day. It completes the circle by ensuring that the many whom we cannot serve nonetheless have a small but essential measure of assistance in the daunting task of representing themselves.

When the campaign leader in your office solicits your contribution to the MJC campaign in the next two weeks, please respond as generously as your personal circumstances permit. On behalf of the MBA's Board of Directors, I thank you.

—C.B.

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CLE Calendar

March — June 2013

March 12, 2013

Health Law Section

Current Issues for Tax-Exempt Entities

This seminar will address some of the critical issues for tax-exempt health care organizations, including new requirements under health reform and continuing compliance issues. Topics will include new requirements under Section 501(r) of the Internal Revenue Code, Wisconsin property tax issues for exempt entities, and complying with the rebuttable presumption framework for executive compensation.

Presenters: David J. Edquist and Bill O.

Jackson, von Briesen & Roper

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

March 14, 2013

MBA Presents

Basic Primer on Wisconsin's New Concealed Carry Law

Discussion of CCW, self defense and the Castle Doctrine

Presenter: Patrick J. Anderson, Kenosha

County District Attorney's Office

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

March 18, 2013

Real Property Section

Top 10 Provisions in an AIA Construction Contract that an Owner Would Want to Change

Presenter: Donald A. Schoenfeld, von Briesen & Roper

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

March 21, 2013

Taxation Section

Circular 230 Refresher and Update

An update on hot IRS tax practice and procedure issues with a focus on recent changes to IRS Circular 230 and their impact on the tax practitioner

Presenter: Michael Goller, Reinhart Boerner Van Deuren

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE ethics credit

March 22, 2013

MBA Presents

The Probate Process From Start to Finish

Taking the First Step: Filing an Estate in Probate Court / Understanding the Role of the Personal Representative in Probate / Managing the Inventory / Administering the Estate Effectively / Maintaining an Ethical Balance in Probate Practice / Determining if Spouse's Elective Share Is a Reasonable Option / Uncovering the Laws of Intestacy and How They May Apply / Litigating the Case in Probate Court / Putting the Case to Rest: Closing the Estate

Presenters: Thomas J. Kroll, Thomas J. Kroll Attorney at Law; F. Brian McElligott, Law Offices of Attorney F. Brian McElligott

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

9:00 - 11:45 (Presentation)

11:45 - 12:30 (Lunch will be provided)

12:30 - 4:00 (Presentation)

8.0 pre-approved CLE credits including 1.0

ethics credit

March 26, 2013

Elder Law Section

Public Benefits You Should Know

Disabled Adult Child, MAPP, Children's

Waivers, and Medicare Savings Programs

Presenter: Heather B. Poster, Becker, Hickey & Poster

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

March 27, 2013

Labor & Employment Section

Social Media in the Workplace: the Latest on Friending, Tweeting, and Connecting on the Job

The collision of social media with labor and employment law is a hot topic for practitioners. Social media can impact all areas of employment, from hiring and firing to handbook policies and investigations. This seminar will present the latest cases, administrative agency developments, and laws affecting social media in the workplace.

Presenter: Jesse R. Dill, Arnstein & Lehr

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

March 28, 2013

Corporate Banking & Business Section

Tips and Traps: Letters of Intent and Asset Purchase Agreements

Learn about the many traps faced by buyers, sellers, and their legal counsel when drafting Letters of Intent and Asset Purchase Agreements, and how to position yourself and your client to get the deal done. This seminar will address legal and non-legal aspects of the negotiation and preparation

of Letters of Intent and Asset Purchase Agreements, and the oft-unintended transfer of bargaining power before counsel is even involved. Hopefully you will come away from the presentation with a number of practical pointers with respect to anticipating and addressing issues arising in most M&A transactions.

Presenter: Steve Glaser, Glaser Business Law

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

April 4, 2013

MBA Bench/Bar Court of Appeals Committee

View From the Bench: a Roundtable Discussion

The Court of Appeals Judges will discuss current appeal issues affecting the bench and bar.

Presenters: Hon. Kitty K. Brennan, Wisconsin

Court of Appeals, District I; Hon. Patricia S.

Curley, Wisconsin Court of Appeals, District

I; Hon. Joan F. Kessler, Wisconsin Court of

Appeals, District I

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

April 10, 2013

ADR Section

Pre-Litigation Mediation

Presenter: William E. Hartgering, IAMS Neutral

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

April 17, 2013

Environmental Law Section

Hazardous Waste Identification and Characterization: a Primer for Environmental Attorneys

Federal and state hazardous waste regulations can be complex and confusing, and the penalties for mishandling such wastes can be significant. This seminar will present information on how hazardous waste is regulated; the categories of hazardous waste; and how they should be properly identified, labeled, stored, transported, and disposed of. This will be a valuable seminar for environmental attorneys who have clients that generate hazardous wastes as part of their operations.

Presenter: Clark Schreiner, CHMM, Brenntag Great Lakes, LLC

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

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Welcome New MBA Members!

Thomas A. Bausch, *Godfrey & Kahn*
 Noelle A. Bobbe, *Quarles & Brady*
 Scott Brunner, *Meissner Tierney Fisher & Nichols*
 Patrick J. Cannon, *von Briesen & Roper*
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 Leroy Ramos, *O'Dess & Associates*
 Mindy F. Rice, *Reinhart Boerner Van Deuren*
 Alexandra G. Robbins, *Simpson & Dearsdorf*
 Amy Rogan-Mehta, *Reinhart Boerner Van Deuren*
 Brian Sammons, *von Briesen & Roper*
 Robert W. Sanders, *Whyte Hirschboeck Dudek*
 Gregory J. Sell, *Davis & Kuelthau*
 Robert J. Shepard, *Godfrey & Kahn*
 Robert Snyder, *Snyder & Ek*
 Jonathan Stone, *Quarles & Brady*
 Changxia (Walter) Sun, *Quarles & Brady*
 Danny S. Tang, *Godfrey & Kahn*
 Gregory Tears, *Michael Best & Friedrich*
 David J. Trautschold, *Michael Best & Friedrich*
 Zachary Watters, *Michael Best & Friedrich*
 Adam N. Ziebell, *Godfrey & Kahn*

March of Dimes Addresses Problem of Babies Born Too Soon and Too Small in Wisconsin

Attorney Jennifer Peterson, *Media Counsel & Deputy General Counsel, Journal Communications, Inc.*

In an average week in Wisconsin, more than 150 babies are born prematurely. This means that approximately ten percent of all babies are born too soon and too small. As the proud mother of two babies, each born after three months of bed rest, I am thankful for the research, support, and care that helped them arrive healthy.

The March of Dimes is working to improve the health of babies by preventing birth defects, premature birth, and infant mortality. That foundation has committed to a multi-year national prematurity research, awareness, and education campaign. The fact is that we don't yet understand all the factors that contribute to preterm birth. We must continue to make progress in research to identify causes and prevention strategies, and to develop intervention and quality improvement initiatives to improve outcomes.

You can help us fight for premies at Milwaukee's inaugural Barristers for Babies Luncheon on Wednesday, March 13 at the Pfister. Our lunch event will provide you the chance to learn about the mission of the March of Dimes; the foundation's needs; and Milwaukee's premier walking event, March for Babies. You'll have the opportunity to show your support by committing to a Revenue Leadership position, creating a walking team in your organization, or through a donation of any amount.

Several Milwaukee area lawyers are graciously hosting this opportunity for our legal community to come together in support of stronger, healthier babies: Cinthia Christensen (Children's Hospital of Wisconsin), Kristina L. Ebner (Godfrey & Kahn), Tony Machi (retired Milwaukee County Court Commissioner), Lori S. Meddings (Michael, Best & Friedrich), State Senator Lena Taylor, and myself.

The March of Dimes is proud to be the only nonprofit that fulfilled its initial mission of eradicating polio. Over the past 75 years, the March of Dimes has made tremendous medical advances and today provides \$100 million annually in active research grants throughout the U.S. and in a dozen countries worldwide, including \$1.8 million right here in Wisconsin.

Please join us for Milwaukee's Barristers for Babies Luncheon:
 Wednesday, March 13, 2013
 11:45 a.m. – 1:30 p.m.
 The Pfister
 424 East Wisconsin Ave, Milwaukee, WI 53202
A plated lunch will be served.
 Please RSVP to
crogaczewski@marchofdimes.com.

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 fifth most common mistake leading to a malpractice claim*. A dual calendaring system which includes a firm or team networked calendar should be used by every member of your firm.

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

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

Adventures in Professional Self-Improvement: the Destination CLE

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

I had a dream. I awoke from it in a cold sweat. In the dream, I had died. But that was not the bad part of the dream. The bad part involved my continuing legal education (CLE) account.

Permit me to explain. After joining the firm it took me several years to figure this out, but the firm assigns shareholders a dedicated CLE account. Our individual earnings are put in this account: \$1,500 per year. This is done on a non-discretionary basis. Shareholders may make disbursements from this account only for bar dues and CLE. Because I get CLE credits for writing—sadly not for this column—and generally have many carry-over hours for each reporting period, I need few CLE coursework credits. One day I discovered a substantial balance in my CLE account.

Thus, the nightmare. I had died, and my CLE account had escheated to the firm.

Clearly, I needed a plan. Destination CLEs are hardly a new thing. We get brochures and solicitations for them all the time. So I got out my Rand-McNally. I had six states still to visit, and many interesting places appeared to be a short drive from cities likely to host a course I might take. I even resolved to make use of the time in the car by listening to law-related audio books.



New Hampshire State House, Concord

I started with Kentucky. I found a suitable CLE course in Louisville (estate planning) on a Friday in May. I attended, I listened, I left. Louisville is home to Louis Brandeis, Mohammad Ali, and is the UPS air hub. Mammoth Cave National Park, several hours to the south, was impressive. The cave system is immense. Then north along the Abraham Lincoln birthplace and boyhood site trail. He really did come from the sticks. Then up to the state's très petite capital,

Frankfort, over to Lexington, and north to Cincinnati. Jerry Springer, a Northwestern University Law School graduate, used to be mayor there.

In 2009, I flew into Mobile, Alabama, detoured into Mississippi, and found my course (municipal contracts) at a hotel on Orange Beach on the Gulf Shores coast. Then east into the Florida Panhandle, to Tallahassee, and up to Atlanta. On the return, I hit Talladega, Birmingham, and Montgomery.

In 2010, my CLE account took me to Concord, New Hampshire for an ethics course involving environmental issues. I continued north to Mount Washington, east to Waterville, Maine and on to the Franklin



Mount Washington Hotel, NH (site of the Bretton Woods monetary and financial conference, 1944)

Roosevelt summer home at Campobello, Acadia National Park, Bangor, Lewiston, Brunswick, Freeport, Kennebunkport, and Portland.

The Alaska Bar Association's Annual Meeting rotates between Anchorage and Fairbanks. In May of 2011, I flew to Anchorage and drove to Fairbanks with brief stops in Wasilla and Denali National Park. At the annual meeting, I got ethics credit and breakfast, listening to former Bush Department of Justice official (now law professor) John Yoo speak about legal issues arising from enhanced interrogation techniques—including a video of several water boarding sessions. I also had the honor of joining a table of extremely welcoming state court judges, including Alaska Supreme Court Justice Craig Stowers.

Afterwards, I followed the Alaska Pipeline to Valdez, doubled back and continued on to Palmer, and then to Seward and Homer in the Kenai Peninsula.



City Hall, Wasilla, Alaska

By 2012, I was down to North Dakota. The CLE pickings are slim up there, so I drove to a course in Minneapolis concerning foster child placement and visitation. Then on to St. John's College outside of St. Cloud, Fargo, Great Falls, Winnipeg, International Falls, Thunder Bay, Sioux St. Marie, and back down through Marinette and Green Bay.

So now it's on to Puerto Rico and the U.S. territories. If you hear of CLE opportunities in these or other out-of-the-way locations, let me know. Of course, I'd consider remaining in Wisconsin if the right opportunity turns up. Elkhart Lake, I'm told, is great during the summer.

Douglas H. Frazer, Northwestern 1985, is a shareholder in the Metro Milwaukee office of DeWitt Ross & Stevens. He focuses his practice on tax litigation and controversy.

The Role of a Special Master in Complex Civil Litigation

Honorable Michael J. Skwierawski, Milwaukee County Circuit Court (Retired)

In the past ten years, the state trial courts in Wisconsin have appointed special masters in an ever-increasing number of cases. The combination of more time-consuming, complex, and often contentious discovery and the decreasing availability of circuit court judges has driven lawyers to seek the additional accessibility, flexibility, and timeliness that a special master can bring to the pretrial discovery process.

Basis for the appointment

The most common use of a special master in Wisconsin involves the facilitation of pretrial discovery, assisting the parties and the court in narrowing the issues, expediting the discovery process, keeping the case moving, and getting it ready for trial. Although this function is not explicitly authorized by the referee statute, Wis. Stat. § 805.06, the statute grants the court broad discretion to appoint a facilitative special master for discovery.

Use of a special master has been further validated in a number of reported Wisconsin appellate decisions. Nineteen cases discuss the position in terms such as the “special master for discovery,” the “special master,” the “discovery master,” the “referee,” and the “discovery referee.” Although no Wisconsin decision directly addresses the legal basis for the appointment of a special master, many cases directly analyze the decisions made by special masters. Those decisions are either criticized or supported, but never overturned as the result of a lack of legal authority for the appointment. Thus, the appellate courts in Wisconsin have tacitly approved the use of a special master for general discovery purposes.

In addition, the Wisconsin Supreme Court adopted several amendments to Wisconsin’s discovery rules relating to discovery of electronically stored information, effective January 1, 2011. Sec. 804.01(2)(e)1.f was created to encourage the attorneys and parties to discuss:

In cases involving protracted actions, complex issues, or multiple parties, the utility of the appointment by the court of a referee under s. 805.06 ... to supervise or inform the court on any aspect of discovery of electronically stored information.

This is clear authority, approval, and encouragement for the use of special masters for general discovery purposes in appropriate cases, with primary reliance on the referee statute.

To be consistent with §§ 804.01(2)(e)1.f and 805.06, the appointment should be made when the issues are complicated or, in the language of § 805.06(2), upon “a showing that some exceptional condition requires it.” Under this generous umbrella, courts in Wisconsin have appointed special masters in recent cases involving: construction disputes, shareholder-based lawsuits, class actions, environmental litigation such as landfill pollution, insurance coverage litigation including duty-to-defend cases, commercial disputes with large numbers of electronically stored documents, estate claims, divorce and family disputes (concerning either custody or property), asbestos litigation, palimony claims, easement disputes, foreclosure-related claims for insurance coverage, insurance coverage for sexual abuse claims, litigation with little or no cooperation between counsel; and in a few unusual cases, the supervision of a church election, and the closing of a choice school with the placement of all students in new schools.

Case management responsibilities

A special master must stand in the shoes of the judge and take an active role

in the management of the case. The well-established principles of effective case management for judges should guide the work of a special master:

- Early control of the case should be established;
- Each case should be continuously monitored;
- Clear policies on adjournments should be enforced;
- Deadlines should be tailored to the needs of the case;
- Attorneys’ schedules should be reasonably accommodated;
- Opportunities for settlement should be maximized; and
- Attorneys should be reasonably assured that events will occur as scheduled.

The scope of tasks and responsibilities to be carried out by a special master can cover all areas faced by courts, and should be set forth in at least general terms in the order appointing the special master. Even general orders will require a special master to:

- Review traditional answers to interrogatories, answers to requests for admissions, and objections;
- Review objections to privilege logs and claims of inadvertent waiver of privilege;
- Manage disputes concerning electronic discovery, retrieval, translation, privilege claims, and cost allocation;
- Hear and decide motions regarding the scope of discovery of experts;
- Hear and decide motions for sanctions related to discovery;
- Hear any other pretrial motions assigned by the trial court;
- Review and decide spoliation motions;
- Develop case management orders with counsel;
- Assist parties and counsel in narrowing issues for discovery and, ultimately, trial;
- Be available for telephone conferences and rulings during depositions to keep the case moving;
- Review and decide discovery issues with non-parties; and
- Review and narrow witness lists with counsel.

A copy of a comprehensive sample order appointing a special master can be obtained by contacting the author at mjskwierawski@gmail.com.

Other considerations

As for the timing of the appointment, attorneys and judges agree that if a special master is necessary, the order should be issued as early as possible, perhaps at the first scheduling conference.

Should attorneys ever ask for a special master? Yes, particularly if attorneys know the case is extremely complex and problems are likely. As pointed out above, the supreme court’s rule encourages attorneys to discuss this issue at an early discovery conference. While the decision on whether and whom to appoint as special master is vested in the judge, it is very likely that the judge will consider suggestions made by counsel.

Should the special master hear and decide dispositive motions or motions *in limine*? No, unless specifically requested to do so by the trial judge.

There is a potential drawback to a special master: less face time between judge and attorneys. A special master needs to keep the case moving forward and keep the judge regularly informed with status reports; and, in some complicated cases, the special master may need to attend status conferences with the judge and attorneys to assist in planning the next phase of discovery.

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The Reel Law



Attorney Fran Deisinger, Reinhart Boerner Van Deuren

Witness for the Prosecution

Directed by Billy Wilder
1957; 116 min.

In post-war Hollywood, few directors were more sure-handed than Billy Wilder. His films could be emotional without being maudlin (*The Apartment*), slapstick without being witless (*Gentlemen Prefer Blondes*), or dramatic without being overwrought (*Stalag 17*). His take on the courtroom drama is 1957's *Witness for the Prosecution*, from his own screenplay based on Agatha Christie's stage play. *Witness* begins with the homecoming from a hospital stay of celebrated London barrister Sir Wilfrid Robarts, played by the estimable Charles Laughton. He is accompanied by his fussy, bossy nurse, Miss Plimsoll, played by Elsa Lanchester, who at the time of this film had been married to Laughton for nearly 30 years. The comic cat and mouse between Sir Wilfrid and Miss Plimsoll throughout the film no doubt reflects their long intimacy. When Sir Wilfrid says, "Oh shut up!" to one of Miss Plimsoll's many orders ("No cigars!" "Take your pill!" "No excitement!"), Laughton bellows the rejoinder with genuine relish.

Among his hospital discharge orders is that Sir Wilfrid take no criminal cases, lest the excitement be too much for him. When he arrives home, his secretary tells him about the mundane insurance disputes and real estate controversies that he has lined up for him. Sir Wilfrid groans at the pabulum. But in good stage play fashion, the doorbell rings and in walks a solicitor with a client—Leonard Vole, played by Tyrone Power. Vole is about to be arrested for the murder of a wealthy widow with whom he has been spending time—we see the meeting in flashback as Vole tells the story—and the solicitor thinks it is a job for Sir Wilfrid. At first, Miss Plimsoll wins the battle, with Sir Wilfrid calling in another barrister to take the job. But his resolve to follow doctor's orders begins to crumble as his nurse describes, with obvious delight, the bedtime regimen she has in store for him. And when the new barrister discovers that the murdered widow had recently changed her will and left Vole 88,000 pounds, Sir Wilfrid takes over the case.

Vole insists that while he had visited the widow on the day of her murder (and coincidentally, her housekeeper's day off), he left her house much too early to have killed her based on the

forensic evidence of the time of her death. The state of her bedroom, moreover, suggests a burglary. Vole's trump card, he believes, is that his wife Christine (Marlene Dietrich—this is truly an all-star cast) will give him an alibi by confirming that he was home too early to have committed the crime.

The police arrive to arrest Vole, but shortly after he is taken away, Christine visits Sir Wilfrid. Her affect astounds him. She is not the hysterical wife he expects, but a calculating German war bride who tells him coldly that she will say Vole was home early because that is what Vole wants her to say. Suspicious, and convinced she would make a terrible witness, Sir Wilfrid tells her that her testimony will be incredible because of her relationship with Vole and the fact that he rescued her from the post-war rubble. Despite Vole's pleas, he decides not to call her for the defense.

The film moves to Vole's trial at the Old Bailey. This is a delight for the American viewer and lawyer. It is more auditorium than courtroom, with the defendant in the dock, the Lord Justice on a highly elevated bench, the barristers in

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Judges Night 20



Milwaukee County Circuit Court Judges David Hansher, Timothy Dugan, William Pocan, Jeffrey Wagner, and Marshall Murray with U.S. District Court Judge Lynn Adelman.



Steven DeVougas of Hinshaw & Culbertson and Milwaukee County Circuit Court Judge Carolina Stark



Milwaukee County Circuit Court Judges Lindsey Grady and Ellen Brostrom





All photos courtesy of Kevin Harnack at *Wisconsin Law Journal*

Guests enjoy good food and good conversation. ▶



Milwaukee County Circuit Court Judge Rebecca Dallet and ▶ Katie Perhach of Quarles & Brady

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Photo ID Status Update: Injunctions Continue for 2013 Spring Elections

Attorney Richard Saks, Hawks Quindel

Wisconsin's photo ID law, 2011 Wisconsin Act 23, will remain enjoined for our upcoming 2013 spring primary and general elections.

A little more than a year ago, the Milwaukee Branch of the NAACP, Voces de la Frontera, and twelve individual plaintiffs initiated a challenge to the photo ID law as unduly burdensome to the right to vote under Article III, Sec. 1 of the Wisconsin Constitution. In seeking preliminary injunctive relief, the plaintiffs claimed that the photo ID requirement disenfranchised substantial numbers of voters who lacked the types of photo ID required under Act 23. At the time, the only study addressing possession rates of Department of Motor Vehicle-issued photo IDs among the electorate had been performed in 2005 by UWM Professor John Pawasarat, who found that 53% of all African-American adults living in Milwaukee County did not have a valid driver's license, and that among young adults (aged 18-24), 74% lacked a driver's license. The Pawasarat study is available at: <http://www4.uwm.edu/eti/barriers/DriversLicense.pdf>. The plaintiffs also presented undisputed evidence about the financial costs and time-consuming burdens encountered by dozens of predominantly minority voters who attempted to navigate various government offices to procure a photo ID acceptable under Act 23. On March 6, 2012, Dane County Circuit Judge David Flanagan temporarily enjoined the photo ID provisions, citing the Pawasarat study, the affidavits of forty voters who encountered various burdens in attempting to comply with the law, and testimony from UW Political Science Professor Kenneth Mayer about the *de minimis* impact the photo ID requirement would have in deterring vote fraud. The case went to a week-long trial in April, and Judge Flanagan granted a permanent injunction on July 17.

The case is now pending in District II of the Court of Appeals, after the Wisconsin Supreme Court on January 14, 2013, denied for the third time the state defendants' petition to bypass. In a separate case brought by the League of Women Voters and the President of its Wisconsin Election Network, Judge Richard Niess granted summary judgment to the plaintiffs on March 12, 2012, holding that the photo ID requirement is an unconstitutional condition of voting that violates Art. III, Sec. 2 of the state constitution. The state defendants' appeal is pending in District IV. Two other federal cases—*Frank v. Walker* and *Jones v. Deininger*—implicate claims under the federal constitution and Section 2 of the Voting Rights Act of 1965, but have been indefinitely postponed pending the outcome of the two state cases. Significant pleadings and court documents are available for all four cases on the Moritz election law website, <http://moritzlaw.osu.edu/electionlaw/litigation/index.php>.

At trial last April, the NAACP/Voces case presented a factually detailed challenge and established that the photo ID law is so unduly burdensome that it is tantamount to a denial of the right to vote. The court received evidence from 33 voters who encountered myriad obstacles and costs in attempting to obtain their DMV-issued photo IDs in order to vote. Also, Professor Mayer performed statistical matches of government databases that quantified the number of qualified electors who lack photo ID. In its July 17 decision, the court made findings in three key areas. First, approximately 333,276 qualified electors (about 9% of the electorate) in Wisconsin—including large numbers of minority, disabled, and elderly voters—currently lack an acceptable photo ID. Second, procuring an acceptable photo ID, especially for indigent voters, involves a significant expenditure of money and can be

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Act 10: What Was, What Is, and What (Maybe) Is to Come

Paul Jonas, Marquette University Law School (Candidate for J.D., 2013)

Introduction

When I was asked to write an article for the *Messenger* about Act 10, the 2011 Wisconsin law limiting collective bargaining rights for most public employees, my original mandate was to write a “retrospective” story about the Act’s passage and effect. Writing a purely “retrospective” story about Act 10 in the spring of 2013, however, is somewhat like writing a retrospective story about a football game at the end of the third quarter, since we don’t know exactly how the “game” of Act 10 will end. In the words of former Defense Secretary Don Rumsfeld, there remain with regard to Act 10 known unknowns—i.e., things we know we do not know; and probably a few unknown unknowns, things we don’t know we don’t know or, alternatively, things we think we know but really don’t.¹ Confused yet? If so, good. You are now ready to wade into the turbid waters of the hotly debated legislation that is Act 10.

What Is Act 10?

I am confident that as informed Wisconsin citizens and attorneys, nearly all *Messenger* readers are familiar in a general sense with the basic provisions of Act 10 and the controversy surrounding its passage and implementation. That said, by way of refresher for those who might have only a passing familiarity with the specifics of Act 10, the following provisions comprise the heart of the most controversial parts of the law. Act 10 (a) restricts collective bargaining by all municipal, state, and UW System employees not classified as public safety employees (i.e., other than police and firefighters) to bargaining only over base wages, with wage increases not to exceed the change in the consumer price index; (b) requires annual public union recertification by majority vote of all union members; (c) prohibits salary deductions for labor organization dues and allows employees in unionized public workplaces to refrain from paying dues if they so choose; (d) prohibits public sector employers, and the City of Milwaukee in particular, from paying any portion of an employee’s share of required contributions into the Wisconsin Retirement System or the Milwaukee Employees Retirement System; and (e) limits public employer contributions toward employee health care premiums to 88% of the average premium cost for the least expensive available plan.

Armed with a basic understanding of Act 10, we can begin to explore where we as a state have been with Act 10, where we are today, where we might be going, and what it all means.

The Known Knowns

To begin with, we have several definitive judicial rulings on Act 10’s passage and substance, “known knowns,” if you will. For example, the Wisconsin Supreme Court held in June 2011 that the now-famous committee meeting in the Senate parlor on the evening of March 9, 2011—where Republicans passed a stripped-down version of Act 10 while all 14 Democratic Senators enjoyed an extended, quorum-preventing vacation in scenic northern Illinois²—was convened consistently with the requirements of Wisconsin’s open meetings law and the Wisconsin Constitution.³ In so holding, the court made clear that a judge may not interfere in the lawmaking process by enjoining publication of an act of the Legislature, as Dane County Circuit Court Judge Maryann Sumi had done initially.⁴ The court also held that it would not enforce a purely statutory rule of procedure (of which the open meetings law is one) against the Legislature when evaluating the validity of a legislative act.⁵ As a result, the process by which Act 10 moved through the Legislature and was signed by Governor Scott Walker was validated, and Act 10 went into effect shortly thereafter.

In January 2013, the U.S. Court of Appeals for the Seventh Circuit held that distinctions between public safety workers and virtually all other public employees with regard to collective bargaining rights, union recertification requirements, and automatic payroll deduction of dues are supported by a sufficiently rational basis to survive ordinary scrutiny under the Equal Protection Clause.⁶ The Seventh Circuit also held, over a dissent, that the anti-dues collection provision of Act 10—whereby union dues are no longer automatically deducted from the paychecks of public employees other than public safety employees—is consistent with the First Amendment speech and association rights of union members whose dues are no longer automatically withheld.⁷ Barring a rehearing *en banc* or a successful petition for certiorari to the U.S. Supreme Court—neither of which appears likely according to the law professors with whom I’ve spoken at Marquette—the Seventh Circuit ruling probably puts to rest the federal constitutional issues surrounding the public safety/other public employee distinction in Act 10.

The Known Unknowns

Even after the Seventh Circuit’s recent ruling, the Act 10 picture remains blurry. We have moved into the murky world of the “known unknowns,” those critical but as-yet unanswered questions, resolution of which will significantly impact the implementation and long-term vitality of Act 10. First in this

foreboding category is the resolution on appeal of pending issues related to Article XI, sec. 3(1), the Home Rule Amendment to the Wisconsin Constitution; to claims that Act 10 violates employees’ right to contract under the Wisconsin and U.S. Constitutions; and to equal protection concerns about distinctions between union and non-union employees. In September 2012, Dane County Circuit Judge Juan Colas ruled that Act 10 violates Home Rule, which guarantees that municipalities can “determine their local affairs and government” subject to limitations by laws of “statewide concern.”

Specifically, Judge Colas held unconstitutional Act 10’s prohibition of the City of Milwaukee’s continued payment of the employee share of contributions to the City of Milwaukee Employee Retirement System.⁸ Judge Colas also ruled that Act 10 unconstitutionally impairs the rights of the City of Milwaukee and its employees to contract for compensation.⁹ Though technically this pertains only to the City of Milwaukee, a union-friendly ruling on this issue by the Wisconsin Supreme Court could have a ripple effect that would alter, if not do away with, key structural reforms of Act 10.

Judge Colas also ruled that Act 10 violates union members’ rights of free speech, association, and equal protection under the Wisconsin Constitution and, possibly, the U.S. Constitution.¹⁰ This aspect of Judge Colas’ ruling is distinguishable from the Seventh Circuit’s in that the Seventh Circuit considered the Act’s public safety/other public employee distinction, while Judge Colas’ decision considered the union/non-union classifications drawn by Act 10. That said, the constitutional issues in play are similar. The Wisconsin Supreme Court has consistently held that, with limited exceptions, the rights of speech, association, and equal protection enshrined in the Wisconsin Constitution mirror those of the First and Fourteenth Amendments to the U.S. Constitution.¹¹ Though not binding on Wisconsin courts, the Seventh Circuit’s opinion on the constitutionality of Act 10 under the First and Fourteenth Amendment will be highly persuasive in the appeal of Judge Colas’ ruling and, in my opinion, will probably carry the day in the court of appeals, as well as the Wisconsin Supreme Court should that court agree to hear the case.¹²

Speaking of the Wisconsin Supreme Court, there is, of course, an election scheduled for April 2013. Justice Pat Roggensack, a

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Act 10 continued from p. 15

generally conservative jurist who voted with the majority in 2011 to uphold Act 10, will face a challenge from a candidate who, the conventional wisdom would suggest, will be less sympathetic to Act 10 than Justice Roggensack if elected. If Justice Roggensack is defeated in April, and if the reconstituted Supreme Court were subsequently to strike down portions of Act 10 to which challenges are still pending, it seems possible that the statute's opponents may attempt to relitigate Act 10 in its entirety, *res judicata* be damned. The future political makeup of the notoriously divided Wisconsin Supreme Court is therefore another significant "known unknown" that will probably impact resolution of the remaining legal challenges to Act 10.

The Unknown Unknowns

Finally, there is the most shadowy category of all: the "unknown unknowns." In speaking of unknown unknowns, I refer to things we think we know but really don't, not to things we don't know we don't know—the latter being potentially significant but, by definition, impossible to write about with any degree of

specificity. Foremost in this category, I think, is the presumption that recent redistricting changes and Governor Walker's solid victory in the June 2012 recall election show that the current Republican dominance of state government will continue for the foreseeable future, or at least long enough to allow the reforms of Act 10 to become fully and firmly entrenched. While I think this is the most likely scenario, there are reasons to think that a swing toward Democratic control of the Governor's office or the Legislature, or both, is not totally out of the question in the near future.

As for Governor Walker's future, it is worth noting that according to one exit poll taken during the 2012 recall election, fully 70% of those polled felt that recall elections are appropriate only in cases of official misconduct in office or never at all.¹³ In other words, 70% of the electorate, at least according to one poll, was philosophically opposed to the recall itself, yet Governor Walker won by only seven per cent. Therefore, while Governor Walker's win was comfortable, it was perhaps surprisingly narrow given overwhelming opposition to the recall election. The implications of these numbers to

Governor Walker's prospects for re-election in 2014 are anyone's guess. Admittedly, they do not directly show how many people voted for Governor Walker out of opposition to the recall rather than support for the Governor's policies, nor do they shed light on how recall opponents might vote next time around. It is undeniable, though, that general antipathy toward the recall itself was a major issue working in Governor Walker's favor in 2012. That issue will not be on the table in 2014.

Likewise, it is a fact that Wisconsin elected Governor Walker twice and conservative Senator Ron Johnson once in a period of less than two years, then immediately turned a full 180 degrees and elected Tammy Baldwin, an unabashed liberal, to the U.S. Senate. Those of you more politically savvy than I can probably list good reasons why this schizophrenic electoral behavior makes sense.

You might add, and I would concede, that statewide electoral behavior tells us relatively little about the future behavior of voters within the individual Senate and Assembly districts that decide who will control the Legislature.

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April 18, 2013

MBA Presents

May It Please the Court: Effective Case Presentation at Trial

Presenters: Thomas E. Brown, Gimbel, Reilly, Guerin & Brown; Alex Flynn, Alex Flynn & Associates; Martin E. Kohler, Kohler & Hart; John E. Machulak, Machulak, Robertson & Sodos

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

9:00 - 4:15 (Presentation)

12:30 - 1:00 (Lunch will be provided)

8.0 CLE credits including 1.0 CLE ethics credit
Review agenda at www.milwbar.org, continuing legal education

April 26, 2013

Family Law Section

Milwaukee Family Court Judges—Live and in Concert!

The Milwaukee Family Court Judges discuss areas of family law practice, including advice on how best to present issues to the court.

Presenters: Honorable Maxine White; Honorable Carl Ashley; Honorable Frederick Rosa; Honorable Marshall B. Murray; Honorable William Sosnay; Commissioner Ana Berrios-Schroeder; Commissioner Sandy Grady

12:30 - 1:00 p.m. (Registration) No Lunch

1:00 - 4:00 (Presentation)

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

3.0 CLE credits

16 Spring 2013

May 17, 2013

Family Law Section and MBA Guardian ad Litem Subcommittee of the MBA Bench/Bar Family Law Committee

Twelfth Annual GAL Update

Presenters: TBA (Judges/Attorneys/GALs)
Marquette Law School, Eckstein Hall, Room 246
12:30 - 1:00 p.m. (Registration/Lunch)
1:00 - 4:00 (Program)

3.0 CLE/GAL credits

June 19, 2013

Environmental Law Section

Wisconsin Threatened and Endangered Species: Updates and Site Planning Considerations

Discussion of the Wisconsin's endangered species law, highlighting the current state-listed species and those species being proposed for listing and delisting, planning considerations when threatened and endangered species and habitats come into play, and assessment methods required by regulatory agencies

Presenter: Heather Patti, Professional Wetland Scientist, R.A. Smith National, Inc.

Noon - 12:30 (Lunch/Registration)

12:30 - 1:30 (Presentation)

1.0 CLE credit

June 27, 2013

MBA Presents

Drafting Effective Wills and Trusts

Fundamental Principles of Will Drafting / Using Living Trusts and Powers of Attorney as Estate Planning Tools / Basic Tax Considerations—What You Need to Know in Order to Choose the Appropriate Plan / Ethics and Estate Planning / Planning Methods to Control Medical Treatment

Presenters: Sarah N. Ehrhardt, Michael Best & Friedrich; Elizabeth Ruthmanskorfer, Moertl, Wilkins & Campbell; Stephen A. Lasky, Moertl, Wilkins & Campbell

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

9:00 - 4:00 (Presentation)

11:45 - 12:15 (Lunch will be provided)

7.0 CLE credits including 1.0 CLE ethics credit
Review agenda at www.milwbar.org, continuing legal education



Ahead of Her Time: Wisconsin Legal Pioneer Charlotte Bleistein

Championed Precursor to Milwaukee Justice Center

Attorney Hannah C. Dugan



The Milwaukee Justice Center, which the MBA co-founded and co-sponsors, has a historical precedent from half a century ago: the Voluntary Defenders Program. And Charlotte Bleistein, the second longest-standing female bar member in Wisconsin today, served in the dual roles of the program's original female volunteer and its enduring champion.

Charlotte graduated from Washington University Law School in 1939 and was admitted to the Missouri bar.¹ In 1949, after attending Marquette University Law School, she gained admission to the Wisconsin bar, and has been active in Milwaukee and its legal practice ever since. A valued part of Charlotte's practice and *pro bono* service over the years is her early and loyal commitment as a Voluntary Defender.

The Voluntary Defenders Program: a Brief Description

The pilot project, launched in 1957, was the first of its kind in the nation. Its primary goal was to provide free in-court representation every morning for indigents in Milwaukee County misdemeanor cases. It later expanded its mission to felony cases and Children's Court matters. The secondary goal was to "relieve the court of defending as well as sitting [in] judgment of indigents, thereby aiding in the administration of justice and preserving judicial impartiality." The Milwaukee Junior Bar Association,² the Legal Aid Society, and the circuit court designed and operated the project according to a well-constructed set of rules and a high level of cooperation.³ The Legal Aid Society coordinated the Voluntary Defender assignments, and maintained an on-call list for emergency assignments when a volunteer did not appear or had a client conflict.

A Voluntary Defender would appear in Branch 1 (later also Branch 4) on the assigned day, introduce himself or herself to the judge and the staff, and then take a seat to the left in the front of the courtroom. The court clerk identified unrepresented persons and gave their case jackets to the Voluntary Defender, who, in turn, interviewed the defendants for indigence. Indigence evaluations included assessing earned income, size of family, and unusual debts.⁴ The defendant was advised of the right to retain counsel and other basic constitutional rights, as well as of potential motions for dismissal. In misdemeanors, the Voluntary Defender, on the indigent person's behalf, could request an adjournment or proceed immediately to trial if the defense was basic and appeared to be dispositive. The program rules precluded referral

of non-indigent defendants to private counsel and instead required referral to the Milwaukee Bar Association or the Legal Aid Society, each of which used the MBA's Bar Referral Panel. The rules specifically provided that "in those purely sociological cases of drunkenness and family disputes, the Voluntary Defender is relieved of participating."⁵

The Voluntary Defenders differentiated itself explicitly from attorneys who were paid. The rules clearly stated that Defenders were not to be compensated and that the clients could not later retain the volunteer for remuneration. The design, rules, definitions, and promotion of the program distinguished it from defender appointments by the court pursuant to decades-old state case law, in which counsel received remuneration. To deflect private attorneys' criticism of incursion on their client base, the bar emphasized that the Voluntary Defender Program "is only to aid indigents and not to provide free legal service for all people or to encroach upon criminal business of practicing lawyers."

In 1966, after state law made appointment of counsel mandatory in felony cases and the local bar adopted the "Milwaukee Plan—Legal Services," the Voluntary Defender Program changed dramatically. Appearances in the morning court session continued on a *pro bono* basis, but appearances during the afternoon session (for continued cases or those cases requiring additional appearances) were compensated. Every compensated session, however, required the attorney to undertake a

continued page 22

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The Turtle Arrives

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court



Visitors to the United States Supreme Court building will notice that turtles figure prominently in its ornamentation. One is carved into the east pediment, flanking Moses and other lawgivers. Turtles also

support the lampposts in the plaza of the court and in all the interior courtyards. They symbolize the longevity and stability of the law, and its slow and steady progress.

It's hard to be a turtle in the 21st Century, though, when it seems like the hares are having all the fun with their iPhone 5s and fiber optics and apps and what not.

The consolation, of course, is that when the courts get into the technology race, we apply ourselves slowly and steadily and we produce winning results, products that are rock-solid stable and dependable.

And so we are quite pleased to let people know (if they didn't already get the news on Instagram or some Google Alert or something) that *electronic filing is now up and running in the Civil and Family Divisions of the Milwaukee County Circuit Court.*

The same ease, efficiency, and economy of doing business in federal district and bankruptcy courts and the Wisconsin appellate courts—you've been eFiling for years, right?—is now available as well to practitioners handling cases in the circuit court.

CCAP, which has developed one of the more sophisticated and dependable court information technology platforms in the nation, has been perfecting our system for years, operating pilot programs in counties across the state. Last fall it rolled out the program here in Milwaukee, and it is starting to catch on.

More than 250 cases have been filed electronically in a wide variety of disciplines. Some high-volume filers are beginning to file all of their cases electronically.

I had the pleasure recently in two cases to prepare for motion hearings where all the materials were filed electronically and therefore available to me with just a few clicks. Everything was in order, the documents were searchable, and I could cut and paste parts of the briefs into my decision and plug citations into Westlaw. I didn't spill coffee on any of it. Counsel tell me that they like having their documents in one place, easy to find, and they receive immediate notice when anything is filed and when orders are entered.

In this day and age, you wouldn't think of spending the money on printing and postage if you could e-mail a PDF right from your desk, right? When was the last time you filed your taxes in hard copy? Or your CLE credits?

Check out the ten-minute tutorial on the Wisconsin Supreme Court's website, wicourts.gov/services/attorney/electronicfile, and see how easy it is to eFile. You'll see it works pretty much like eFiling in other courts where you practice.

If you file your CLE credits electronically, you are already registered to use the system. Beyond that is a mere \$5.00-per-case fee, which is probably less than you will spend the next time you need to make a last-minute dash to the courthouse to file on time. And John Barrett, our Clerk of Court, is even willing to scan in cases already on file, assuming that the existing filings are not too voluminous.

Hares have been asking us turtles for 15 years or more when electronic filing would come to the circuit courts. Thanks for your patience—and now, hares, it's time to get back in the race!



MBA Seeks Candidates for Office and Award Nominations

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

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

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

Milwaukee Justice Center Build-Out Gets Underway

Justin Metzger, Milwaukee Justice Center

The Milwaukee Justice Center has begun the first phase of its 2013 expansion project. In February, the MJC combined both its Family Law Clinic and Brief Legal Advice and Referral Clinic in the newly-vacated space behind the self-help desk in Room G9 of the Milwaukee County Courthouse.

The move gives the Brief Legal Advice and Referral Clinic a permanent footprint in the courthouse, while expanding both clinics' maximum capacity from four client workstations to seven. "The new area has created a great new workspace," MJC Legal Director Ayame Metzger said. "It provides a more confidential and comfortable environment for both clients and volunteers."

"It's better for everyone because clients and volunteers are not on top of each other," MJC Executive Director Dawn R. Caldart added. "I've had volunteer attorneys tell me that it's nicer not only to have the additional space to work with, but also to have a more professional-looking environment in which to assist clients."

Additionally, the Family Law Clinic has gone digital, with help from the Milwaukee County Courthouse IT department. This allows volunteers to help clients present professionally-typed forms to the courts, instead of more difficult-to-read handwritten forms. The result should be greater clarity and efficiency in hearings.

The expanded floor space and digital conversion also allows MJC staffers to better plan for the full build-out of the final clinic, which is expected to be complete in the fourth quarter of 2013. Both Metzger and Caldart are pleased with how things are working out so far.

Helping Our Heroes: the Promise of Milwaukee's Veteran's Treatment Initiative

Attorney J.C. Moore, Attorney Supervisor, State Public Defender, Milwaukee Trial Office; Attorney Jeffrey J. Altenburg, Deputy District Attorney, Milwaukee County District Attorney's Office; and Honorable Glenn H. Yamahiro, Milwaukee County Circuit Court

From the battles of antiquity to Vietnam, returning warriors have always dealt with scars both seen and unseen. Veterans of the most recent wars in Iraq and Afghanistan are no exception. A report from the U.S. Department of Veterans Affairs found that over 250,000 of these vets were treated for Post-Traumatic Stress Disorder.¹ This is often complicated by a common injury in these wars, which mimics the symptoms of PTSD: traumatic brain injury caused by explosive concussions.² Veterans with these conditions often self-medicate with drugs and alcohol. The VA estimates that 20% of veterans with PTSD also have a substance abuse disorder.³ They may alienate friends and family and drift into homelessness. On any given night, as many as 200,000 veterans are homeless.⁴ In the end, they may feel unable to cope, and tragically turn to suicide. In 2012, veterans did so at the staggering rate of one attempt every 80 minutes.⁵

Given the influences of substance abuse, violence, and mental illness, veterans find themselves in the criminal justice system at disturbing rates. While only seven percent of the U.S. population has ever served in the military and less than one percent has served over the last 10 years, nearly ten percent of all persons incarcerated during those years were veterans.⁶ Things are no different in our community. 53,000 veterans live in Milwaukee County—over 5% of its population.⁷ While no data exists tracking the number of Milwaukee's justice-involved veterans, over the last three years nearly 2,200 persons booked into the County Jail reported military service.⁸

Justice-involved veterans present a dilemma for our system: how to hold veterans accountable for criminal conduct while at the same time recognizing that the effects of military service may be at its core. A nation that collectively asks veterans to put themselves in harm's way cannot in good conscience ignore the consequences. Fortunately, help has emerged in the form of veterans' treatment courts. These evidence-based programs are based on the research-validated drug treatment court model that relies on treatment, court monitoring, and an established system of sanctions and incentives to reward participants for success and hold them accountable for setbacks. Contrary to the typical adversarial approach, the parties and judge work collaboratively with treatment providers and case managers to address participants' diverse needs.⁹ While

veterans' courts are a relative newcomer to the justice system, having originated in 2008, their numbers have quickly grown to over 100 programs nationwide with another 100 planned.¹⁰ Wisconsin alone has eleven programs spanning 28 counties.¹¹

The Milwaukee County Veterans' Treatment Initiative (VTI) began in late 2009 as a collaborative effort between the State Public Defender, the Milwaukee County District Attorney, the VA, and other veterans organizations such as the Center for Veterans Issues (CVI) and Dryhooch LLC. It consisted of an *ad hoc* framework facilitating early identification of low-risk justice-involved veterans and mandatory treatment. Successful completion was rewarded with a favorable case disposition or dismissal. Later, the program gained additional team members who could provide more intensive services, and a judge who could provide direct oversight. Finally, in 2012, a grant from the National Drug Court Institute allowed the team to train for and plan the current VTI.

Currently, the VTI involves a number of different tracks designed for veterans with varying levels of risk and need. It is included within Milwaukee County's larger early intervention system that assesses all non-violent offenders and, when appropriate, swiftly links them with services and programs to reduce recidivism and enhance public safety. Veterans who are booked into the jail and charged with a crime are evaluated by JusticePoint Inc., a pretrial monitoring agency. JusticePoint identifies needs and determines military service history, which is provided to the court at the very first appearance. VA eligibility and access to services is evaluated early in the process and relayed to defense counsel by the Public Defender. Treatment referrals are made to the VA or, if the veteran is ineligible for VA services, to Milwaukee County Behavioral Health through CVI. Dryhooch provides a team of veteran mentors who give critical guidance and encouragement outside of the courtroom. A Milwaukee police liaison addresses warrants for non-compliance or other police contact, and also monitors compliance when court is not in session.

Lower-risk veterans follow a track similar to that already discussed. Higher-risk veterans with entrenched addiction or mental health needs participate in the veterans' track of the Milwaukee County Drug Treatment Court:

a program of 12-18 months duration, more frequent court appearances, and intensive monitoring by JusticePoint. Veterans convicted of misdemeanor drunk driving participate in the VTI while on probation with the State Division of Community Corrections. Successful completion allows the veterans to serve less jail time and terminate probation early. Finally, program efficacy is determined by UW-Milwaukee.

While each member has a critical role, the key to the VTI's success is its collaborative approach, interaction with the veteran, and the strong desire to help our community's heroes. For more information on the VTI, contact Abby Ziebell at Abigail.Ziebell@va.gov.

¹Epidemiology Program, Post-Deployment Health Group, Office of Public Health, Veterans Health Administration, Department of Veterans Affairs, "Report on VA Facility Specific Operation Enduring Freedom (OEF), Operation Iraqi Freedom (OIF), and Operation New Dawn (OND) Veterans Coded with Potential PTSD - Revised" (2012).

²E. Lanier Summerall, M. M., "Traumatic Brain Injury and PTSD," National Center for PTSD (December 20, 2011). Retrieved January 31, 2013, from United States Department of Veterans Affairs: <http://www.ptsd.va.gov/professional/pages/traumatic-brain-injury-ptsd.asp>.

³"PTSD and Substance Abuse in Veterans" (April 3, 2012). Retrieved January 31, 2013, from U.S. Department of Veterans Affairs: http://www.ptsd.va.gov/public/pages/ptsd_substance_abuse_veterans.asp.

⁴Homeless Veterans Fact Sheet, National Coalition for the Homeless, September 2009.

⁵Berglass, D. M., "Losing the Battle, The Challenge of Military Suicide," Center for a New American Security (2011).

⁶National Prisoners Statistics Program, Bureau of Justice Statistics (2007).


⁷National Center for Veterans Analysis and Statistics (February 8, 2013). Retrieved February 9, 2013, from U. S. Department of Veterans Affairs: <http://www.va.gov/vetdata/>.

⁸Data provided by Milwaukee County Sheriff's Department.

⁹"Justice for Vets. The Ten Key Components of Veterans Treatment Court," The National Clearinghouse for Veterans Treatment Courts at the National Association of Drug Court Professionals.

¹⁰National Drug Court Institute. The History." Retrieved January 31, 2012 from Justice for Vets: <http://www.justiceforvets.org/vtc-history>.

¹¹"For Veterans" (January 7, 2013). Retrieved January 31, 2013, from Wisconsin Court System: <http://www.wicourts.gov/services/veteran/index.htm>.



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
- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

MBA Memorial Service

The MBA will host its annual Memorial Service on Friday, May 3, at noon in Room 500 of the Milwaukee County Courthouse. Chief Judge Jeffrey A. Kremers will preside. Below is a list of attorneys and judges who will be honored at the service. If you know of others who should be included on the list, please contact Katy Borowski at 414-276-5933 or kborowski@milwbar.org.

- Paul M. Barnes
- Ronald G. Bernoski
- James E. "Jim" Boren
- Peter N. Brusky
- Donald Buzard
- Anthony D. Cadden
- John Louis "Jack" Coffey
- Philip W. Croen
- Thomas J. Curran
- Tom Dallmann
- Frederick Andrew Eckl
- Eugene J. Hayman
- Frank J. Holton
- Neil L. Krueger
- David Lerman
- John B. McCarthy Jr.
- Thomas J. Mueller
- Sheldon Rapkin
- Verne R. Read
- Thomas J. Rooney
- John F. "Jack" Savage
- James H. Schaefer
- William G. "Bill" Schuett Jr.
- John C. Shabaz
- Jerry Statkus
- Donald E. Tewes
- Gerald N. Theis
- Slack Ulrich
- Philip Lee Wettengel

MBA Hosts Judicial Forums for Supreme Court and Circuit Court Primaries

The Milwaukee Bar Association hosted two judicial forums prior to the statewide primary elections. Wisconsin Supreme Court candidates—Attorney Ed Fallone, Attorney Vince Megna, and the Honorable Pat Roggensack—squared off on February 7 in a forum moderated by the Honorable John DiMotto. More than 60 MBA members, many members of the press, and several television cameras were in attendance.

The February 6 forum for Milwaukee County Circuit Court Branch 45 featured the Honorable Rebecca Bradley, Attorney Janet Protasiewicz, and Attorney Gil Urfer. Marquette University Law School Professor (and former MBA President) Dan Blinka served as moderator. Approximately 70 people attended this event.



Patience Roggensack ▲



Edward Fallone ▲



Vincent Megna ▲

Please watch your mailbox for the MBA Judicial Poll to be mailed out as soon as the final candidates are selected.



◀ Circuit Court Branch 45 candidates Rebecca Bradley, Janet Protasiewicz, and Gil Urfer

All photos courtesy of Judge Charles F. Kahn.



Third Annual MBA Girl Scout Workshop

On Saturday, February 16, 39 Girl Scouts and 12 Troop Leaders gathered at the MBA for the third annual Girl Scout workshop. Volunteer attorneys discussed a variety of legal topics, including the process of becoming a lawyer and potential legal careers, DNA and polygraph information, and what things minors can do that might get their parents in legal trouble. After the presentations, the girls rehearsed and conducted a mock trial from start to finish, complete with opening statements, witnesses, and a jury ruling. Thank you very much to the attorneys and police officer who generously donated their time to make this event possible:

- Hannah Dugan
- Tom Reed
- Evan Goyke
- Summer Murshid
- Evangeline Sceptur
- Officer Kathy Schult

Pro Bono Corner



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

Nonprofit Legal Services of Southeastern Wisconsin, Inc.

Contact: Joe Neterval
Office: P.O. Box 757
Milwaukee, WI 53201
Phone: 414-435-0636 or 414-839-8899
Email: joe.nlsfsewi@gmail.com

Nonprofit Legal Services of Southeastern Wisconsin, Inc. (NLS of SE-WI) is seeking volunteers to assist in developing its new multi-agency delivery model.

In 2004, MBA member Joe Neterval founded Joe's Nonprofit Legal Services, Inc. Neterval previously had founded Centro Legal, a sliding-scale law firm mainly serving low-income clients, and saw a need for additional providers of cost-effective, affordable legal services. Joe's Nonprofit Legal Services evolved into NLS of SE-WI, which has taken on various family law, small claims, traffic, and

criminal misdemeanor matters in counties throughout southeastern Wisconsin.

Last July, Neterval incorporated five new non-profit legal services agencies. NLS of SE-WI became a referral and case management agency for the new organizations: NLS-Central, North, South, East, and West. This multi-agency structure seeks to avoid conflicts of interest in cases that involve two or more low-income parties in need of counsel. It also provides a uniform access point and eligibility guidelines for low-income residents seeking inexpensive legal services. The new agencies all serve Milwaukee County, and share coverage of Waukesha, Walworth, Racine, Kenosha, Ozaukee, Washington, and Jefferson Counties. Neterval hopes to expand the agencies' substantive focus to include immigration, consumer law, and other issues facing low-income clients.

NLS of SE-WI is looking for volunteers to serve on the boards of directors at each of the

five new agencies. The CEO and attorneys that manage each agency provide monthly reports to the boards, and board members will meet quarterly. Additional volunteer opportunities may arise as the boards develop and implement a three-year operational plan to train additional staff and acquire funds necessary to subsidize this project. Neterval envisions that the board presidents and agency directors at the five agencies will comprise the board of directors of NLS of SE-WI, and will oversee the referral and case management agreement with the participating agencies.

In addition to recruiting board members, NLS of SE-WI is interested in speaking to attorneys and non-attorneys about helping to establish the new agencies. Moreover, the group seeks panel attorneys in all of its practice areas to provide limited appearances or participate in reduced-fee representation.

Reel Law continued from p. 11

full rigged and robed regalia at their tables, a full audience in the balcony hovering over the proceedings, and the witnesses sequestered behind glass in an adjacent room, summoned when called to testify by a succession of bailiffs like pageboys at a grand hotel. Pomp and circumstance, indeed!

In court, Sir Wilfrid, the prosecutor, the Lord Justice, and the witnesses spar robustly, with counsel never failing to add "my learned colleague" to every jab between them. There is a wonderful example of the "never ask a question you don't know the answer to" trope in which the housekeeper skewers Sir Wilfrid, leaving him clutching for a nitroglycerin

pill and a thermos of cocoa supplied by Miss Plimsoll, who is watching anxiously from the balcony. Of course, Sir Wilfrid has covertly substituted a thermos of brandy, and after taking sustenance immediately regains the advantage over the witness with a little courtroom trickery.

The remainder of the plot turns on the surprise last witness for the prosecution—Christine Vole! Sir Wilfrid, astounded by her appearance, objects on the basis of spousal privilege, but Christine testifies she was already a married woman in Germany when Vole "married" her, and therefore is not really his wife. The Lord Justice allows the testimony, and Christine then testifies that Vole admitted

killing the widow! Except to say that Sir Wilfrid wins acquittal for Vole, I won't say more about the plot, as this is a typical Christie twister, and you'll enjoy it all the more when you watch it.

And you should watch it! This movie has it all. Fine writing, a fun plot, deft direction, wonderful English character actors (the old housekeeper nearly steals the show), and fascinating settings, especially to our American eyes. All that and the bulldog-faced Laughton, matinee idol Power, and femme fatale Dietrich starring in the same movie. They don't make them like this anymore.



Act 10 continued from p. 16

I merely suggest that the seemingly wild turn in statewide political sentiment that has produced Wisconsin's current delegation to the U.S. Senate should give pause to those who think that redistricting or simple political inertia have placed control of either or both chambers of the state Legislature beyond the reach of the Democrats, current Republican majorities in both chambers notwithstanding. To be sure, I don't think it likely that the Democrats will regain legislative majorities sufficient to push through legislation repealing or altering Act 10 any time soon. On the other hand, Wisconsin voters have proven to be nothing if not unpredictable. As Don

Rumsfeld knew, and the rest of us have discovered in due course, nothing in politics or in life is guaranteed.

¹Secretary Rumsfeld Press Conference at NATO Headquarters, Brussels, Belgium (June 6, 2002) at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3490> (viewed February 21, 2013).

²"In Illinois, Wisconsin Senate Democrats Vow Unity," *Milwaukee Journal-Sentinel* (Feb. 11, 2011).

³*State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, ¶ 21, 334 Wis. 2d 70, 798 N.W.2d 436, *reh'g denied*, 2012 WI 82, 342 Wis. 2d 396, 818 N.W.2d 850, *superseded*, 2012 WI 82, 822 N.W.2d 67.

⁴*Id.* at ¶ 9.

⁵*Id.* at ¶¶ 11-13.

⁶*Wisconsin Educ. Ass'n Council v. Walker*, 2013 WL 203532, 14-15 (7th Cir. Jan. 18, 2013).

⁷*Id.* at 10.

⁸*Madison Teachers, Inc. v. Walker*, 2012 WL 4041495 (Wis. Cir. Ct. Sept. 14, 2012).

⁹*Id.*

¹⁰*Id.*

¹¹*See, e.g., County of Kenosha v. C & S Mgmt., Inc.*, 223 Wis. 2d 373, 388, 588 N.W.2d 236, 244 (1999), holding that Article I, § 3 of the Wisconsin Constitution guarantees the same freedom of speech rights as the First Amendment to the United States Constitution.

¹²Other pending litigation regarding Act 10 includes *Wisconsin Law Enforcement Association v. Walker*, 2012CV004474 (Dane Cty. Cir. Ct.), alleging violations of some association members' speech, associational, and equal protection rights under the Wisconsin Constitution; and *Laborers Local 236 v. Walker*, 2012CV462 (U.S. Dist. Ct., W.D. Wis.), alleging violations of union members' state and federal speech, associational, and equal protection rights. The allegations in these cases generally mirror those in *MTI v. Walker*, *supra* n.8, and I believe they will receive similar judicial treatment.

¹³"Wisconsin Recall Exit Polls: How Different Groups Voted," *New York Times* (June 5, 2012) at <http://www.nytimes.com/interactive/2012/06/05/us/politics/wisconsin-recall-exit-polls.html> (viewed February 21, 2013).

Photo ID continued from p. 14

unduly time-consuming. Third, no meaningful voter fraud would be deterred by the photo ID requirement, and therefore the prospect of such fraud does not warrant or justify the significant burdens, as “serious recent efforts to investigate voter fraud have found nothing that Act 23 would have prevented.”

Across the nation, approximately 31 states have some type of voting ID requirement. Fifteen of these states have a photo ID requirement, but nearly all permit some type of fail-safe voting option for voters who cannot produce the required ID. For example, Indiana’s photo ID requirement, approved by the U.S Supreme Court in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), permits electors lacking a photo ID to vote by affidavit. The Wisconsin photo ID requirement is the most stringent such law in the nation, as a voter appearing at the polls without one of few prescribed forms of photo ID is required to vote by provisional ballot, which can only be cured by producing an Act 23-prescribed photo ID in the local clerk’s office within three days. The Wisconsin law is strikingly similar to the Texas photo ID law that was enjoined by a three-judge panel last summer under Section 5 of the Voting Rights Act. Issues that will be addressed on appeal of the NAACP/Voces case will almost certainly turn on whether the *Crawford* case controls the outcome in Wisconsin, and whether a state constitutional challenge to a photo ID requirement for voting should be subject to heightened judicial scrutiny in determining whether the burdens imposed on the right to vote are warranted.

The author is attorney for the plaintiffs in NAACP, et al. v. Walker.

Special Master continued from p. 11

Does a special master add another layer of court process and expense? The vast majority of rulings and decisions by special masters are not appealed to the court. A special master tries to cut through litigation “red tape,” gets issues to resolution quickly and efficiently, and ultimately reduces the parties’ litigation costs.

Conclusion

If a case in which you are involved is complicated and will require more of a court’s time than the judge might be able to give you, you might want to discuss the appointment of a special master with all counsel and take it up with the court. It is an authorized and accepted way to deal efficiently with complex cases.

Bleistein continued from p. 17

“free” session. By means of such balancing, the program avoided over-litigation at public expense.

One Woman’s Work

Charlotte Bleistein was one of the first attorneys and the first female attorney to participate in the Voluntary Defender Program. In a file she kept, Charlotte wrote that to her, “the plan had the purpose of awakening the public, through the leadership of the attorneys, to the social and legal problems existing in the courts and the necessity for affirmative action in the solution of various problems.”

Charlotte continued her twice-monthly assignments from 1957 to 1970. She noted that the “usual case involved check forgery, burglary, perverts, contributing to delinquency, shoplifting, battery, carrying a concealed weapon, resisting or obstructing an officer, disorderly conduct, and [sic] forgery.” She interviewed up to seven defendants each morning and usually represented one or more of them. She never sought nor received payment for these cases, even after the Milwaukee Plan went into effect and the Public Defender system was initiated. She recalled, however, “that Judge [Robert] Hansen usually managed to appoint [a Voluntary Defender] to be Guardian ad Litem for an alleged incompetent, which then involved an appointment at the Mental Hospital to interview our individuals and then to represent them at their court hearings for which we were paid.”

A Leading Lawyer

March is Women’s History Month, so it seems appropriate to include some additional biography of a leading woman of the MBA. As a student, Charlotte distinguished herself as a member of the law review staffs at both of her law schools. Upon graduation, she obtained employment with the National Labor Relations Board as a review attorney, the Board’s first female field examiner, and then as a field attorney. Initially her law and insurance office were in her home in Greendale—a home she literally built with the help of a neighbor who happened to be an architectural engineer. A lengthy article in the *Milwaukee Journal* Real Estate and Building Section featuring Charlotte and her new home declared: “Lady Builds a New Home.” Charlotte admitted to the reporter “that she prefers to practice law but that in any event ‘if I had no law

practice I would rather build another house than do housework.”⁶

Charlotte represented clients in a variety of cases. Her MBA Lawyer Referral Service registration forms from the second half of the 20th Century reflect legal work in collections, patents, domestic relations, real property, probate, unemployment, worker’s compensation, personal injury, and other torts—and reflect that she assisted German-speaking clients in their native language. Over the years, Charlotte has been active in Girl Scouts and a member of the state and local bar associations, Turners International, United World Federalists, and Greendale community organizations. She successfully ran and served two terms as Greendale Trustee (1953, 1956), leading the vote totals against two fields of male candidates. Her campaign charge: “Vote for the candidate with the woman’s viewpoint and the Lawyer’s training and experience.”⁷

Charlotte Bleistein’s 74 years of serving her community with “the woman’s viewpoint and the Lawyer’s training and experience” serve as a monumental inspiration to members of the bar and current volunteers at the Milwaukee Justice Center.

¹Charlotte was not included as one of the first 150 women who were admitted to the practice of law in Wisconsin. Due to her admission ten years earlier in Missouri, however, she can be counted as one of the first 150 women residents of Wisconsin who practiced law. See *Pioneers in the Law: the First 150 Women* (State Bar of Wisconsin 1998).

²The Milwaukee Young Lawyers Association derives from the MJBA.

³The Voluntary Defenders continued to serve even after the dictates of *Gideon* formalized indigent defense in Wisconsin. In the late 1960s and early 1970s, under the paid Public Defender system, attorneys initially received payment of \$5.00, which was gradually increased to \$10.00.

⁴Individuals making less than \$2,400 and married persons who earned less than \$2,900 a year (with a sliding income schedule for each additional family member) were income-eligible for the free assistance.

⁵Demet, Francis J., “The Voluntary Defender Plan in Milwaukee County,” *The MBA Gavel*, Vol. 19, No. 2 (Winter 1958); Demet, Margadette M., “Legal Services for Urban Needs: Implementation of the Economic Opportunity Act of 1964,” *The MBA Gavel*, Vol. 27, No. 1 (June 1966); Randall, William, “The Voluntary Defender Program,” *The MBA Gavel*, Vol. 23, No. 4 (March 1963).

⁶“Remodeling Is On the Rise,” *Milwaukee Journal* (Sunday, May 17, 1953). The article includes several pictures, including one of Charlotte sawing metal with her left hand, the caption explaining that “Mrs. Bleistein is ambidextrous.”

⁷“Candidates in Local Elections List Qualification, Programs,” *The Tri-Town News*, (Hales Corners, Thursday, April 2, 1953); “Krueger, Bleistein Surges Victors in Voting,” *ibid.* (Thursday, April 9, 1953); campaign letter to “Fellow-Greelanders” from Charlotte A. Bleistein, Spring Election 1956.

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