



# Messenger

MILWAUKEE BAR ASSOCIATION, INC.

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Fall 2010

Volume 3



## Marquette University Law School Unveils Eckstein Hall

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

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



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Telephone: 414-274-6760  
E-mail: [marketing@milwbar.org](mailto:marketing@milwbar.org)

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### Contact Information

Milwaukee Bar Association, Inc.  
424 East Wells Street  
Milwaukee, WI 53202  
Phone: 414-274-6760  
Fax: 414-274-6765  
www.milwbar.org

# Letter From the Editor



*Charles Barr, Editor*

This edition of the *Messenger* showcases the opening of Marquette University law school's breathtaking, high-tech Eckstein Hall. We've previewed the law school's new home in the past several issues, and now William O'Brien of Marquette's College of Communication provides a more detailed perspective on this momentous addition to Milwaukee's cityscape and legal community. We have photos, too. For some historical perspective, Hannah Dugan recounts the story of legal education in Milwaukee from territorial days right up to the Eckstein Hall dedication.

Although I didn't attend MULS and didn't even grow up in these parts (or at all, depending on whom you ask), I feel a strong connection to the Law School. Almost all the associates and law clerks in the 17-year history of my firm have been from Marquette, and every one of them has been, or has gone on to become, a top-notch attorney. My son is also a Marquette Law grad, and he is an excellent lawyer, as well. So I'd like to add my personal congratulations to Dean Kearney and everyone at MULS. Couldn't have happened to a better law school.

October promises a number of treats for MBA members. October 13 will mark the MBA's premier autumn event, the State of the Court Luncheon at the Wisconsin Club. This is your chance to get the lowdown from Chief Judge Kremers and other Milwaukee County Circuit Court judges on how the court is responding to the challenges posed by ever-increasing budget pressures. The bad news is that the court continues to fight for its economic life. The good news is that the report from the judges at the State of the Court Luncheon is never dull.

The Wisconsin Solo and Small Firm Conference, a joint presentation of the MBA and the State Bar, will be held October 28-30 at Wilderness Resort in Wisconsin Dells. If you're a solo or small firm practitioner and haven't decided whether to go, you need to know that the 2009 conference was the winner of the American Bar Association's Solo and Small Firm Project Award. (See p. 5.) That honor, bestowed by the Solo and Small

Firm Division of the ABA General Practice Section at the 2010 annual meeting in San Francisco, was based on the conference's impressive list of speakers, 32 programs, relaxed and family-friendly setting, and affordability. Of those attending the 2009 conference, 98% said they would return and recommend it to colleagues. Kudos to the MBA's Britt Wegner, the main brain behind this operation, for putting on the best Solo and Small Firm Conference in the whole darn country.

What other goodies are in the *Messenger*? An alarming report on the financial condition of Milwaukee County from the Public Policy Forum. Valuable practice tips on deeds in lieu of foreclosure and the management of immigration records by employers. Lighter fare from frequent contributor Doug Frazer, who muses on the role of food in the operation of a law firm. The latest installment of Judge Rick Sankovitz's tried and true series on the new local rules. Reports on the new Milwaukee Justice Center website and other *pro bono* initiatives. And the second in our series called "The Reel Law," in which cinema expert and past MBA President Fran Deisinger fondly reviews one of his (and my) all-time favorite courtroom dramas, *Anatomy of a Murder*. It was required viewing the first week of my first-year Crim Law course; I kid you not. Plus, it has Lee Remick.

We hope you enjoy this edition of the *Messenger*, as well as the potpourri of interesting events our legal community has to offer this fall. And if someone happens to suggest that you consider writing something for our humble publication, don't get spooked.

— C.B.

The MBA is looking for someone to match attorney Craig Mastantuono's generous contribution of \$500 to the Milwaukee County Drug Court Incentives program. This worthwhile initiative was highlighted by Fran Deisinger in his "Message from the President" column in the Winter 2009-2010 *Messenger*. Please contact Jim Temmer (jtemmer@milwbar.org 276-5934) if you can help out.

# Member News



Kyle Costello

Boyle Fredrickson, Wisconsin's largest intellectual property (IP) law firm,



Kevin Kreger

welcomed **Kyle Costello** and **Kevin Kreger** as practicing attorneys.

DeWitt Ross & Stevens announced the addition of **Marc J. Adesso** to the Business, Estate Planning, Tax, and Real Estate groups.



Marc J. Adesso

Adesso is an associate in the Brookfield office. He focuses his practice on business formation and operation, family-owned enterprises, mergers and acquisitions, tax and estate planning, real estate transactions, and entertainment law.

Grady, Hayes & Neary, is pleased to announce the addition of **Anissa Boeckman**, Marquette University 2007, as an Associate. Boeckman will be working in the areas of insurance defense, children's law, and commercial litigation.



Anissa Boeckman

**Lynn Laufenberg, Christopher Stombaugh, Michael Jassak, and Michael Laufenberg** have announced the formation of the law firm of Laufenberg, Stombaugh & Jassak, S.C. The new firm will build upon more than 100 years of combined experience in the representation of individuals and families that have suffered losses due to the carelessness of others. The firm will have offices at 115 South 84th Street, Suite 250, Milwaukee, and a Southwest Wisconsin office at 147 Keystone Parkway, Suite 101, Platteville.



Todd W. Martin

Reinhart Boerner Van Deuren attorney **Todd W. Martin**, a shareholder in the firm's Business Law and Employee Benefits Practices, has been appointed Managing Shareholder of the firm's Madison office. Martin will take over from Lynn M. Stathas, who has held the position since July 2006, as part of a planned leadership rotation.

The firm also announced that four experienced attorneys—**David J. Peterson, Bret M. Harper, Douglas J. Marsch, and A. John Richter**—have joined the law firm. Peterson, a litigator, practices at the firm's expanding Waukesha office. Harper is a member of the firm's Business Reorganization Practice, Marsch joined the Labor and Employment Practice, and Richter is the newest lateral attorney in the Health Care Practice.

**Christopher E. Ware**, Reinhart Boerner Van Deuren shareholder in the



David J. Peterson



Bret M. Harper



Douglas J. Marsch



A. John Richter

firm's Litigation Practice, has been appointed by Wisconsin Governor Jim Doyle to serve on the Board of the Wisconsin Housing and Economic Development Authority (WHEDA).

von Briesen & Roper announced the promotion of Attorneys **Smitha Chintamaneni, Christopher J. Schreiber, and Jessica M. Zeratsky** to Shareholders of the firm. Chintamaneni is a member of the Litigation and Risk Management Practice Group. Schreiber and Zeratsky are members of the Banking, Bankruptcy, Business Restructuring & Real Estate Practice Group.

The firm also announced the addition of six attorneys: Shareholder **Jennifer Bolger** and Associates **Alyssa D. Dowse, Nathan S. Fronk, David P. Knaff, Megan L.W. Jerabek, and Rachel N. Schepp**. Bolger is a member of the Environmental Law and Litigation Section, and Dowse is in the Compensation and Benefits Section, and Fronk is in the Litigation and Risk Management Practice Group. Jerabek and Knaff are members of the Business Practice Group, and Schepp rejoins the firm as a member of that Group.

## 2010 Solo & Small Firm Awards

At the 2010 Solo & Small Firm Awards presentation on August 6, 2010 in San Francisco, the Milwaukee Bar Association and State Bar of Wisconsin were the winners of the ABA Solo and Small Firm Project Award.



(Left to Right): Marvin Dang (Awards Committee Chair, ABA General Practice, Solo & Small Firm Division); Oscar Rivas (Regional Manager for West, a sponsor of the Awards); Nerino Petro (State Bar of Wisconsin); Britt Wegner (Milwaukee Bar Association); James Durant (Chair, ABA General Practice, Solo & Small Firm Division)



## Welcome New MBA Members!

Jesse B. Blocher, *Habush Habush & Rottier*

Scott Butler

Lindsay K. Caldwell

Jonathan Cattey

Evan N. Claditis, *Hupy and Abraham*

Alyssa Dowse, *von Briesen & Roper*

Dawn Drellos, *Pellman, Drellos & Associates*

Jessica Farley, *Reinhart Boerner Van Deuren*

Nathan Frank, *von Briesen & Roper*

Heather Gatewood, *Davis & Kuelthau*

Michael Gosman, *Whyte Hirschboeck Dudek*

Amber K. Hakes, *Kim & Lavoy*

Michael G. Heller, *Heller Law offices*

Rachel Karpinski

David P. Knaff, *von Briesen & Roper*

Evan E. Knupp, *Seifert Law Center*

Scott Stanton Luzi, *Heins Law Office*

Kathryn MacKenzie

Douglas Marsch, *Reinhart Boerner Van Dueren*

Eric W. Matzke

Angela McKenzie, *Borgelt, Powell, Peterson & Frauen*

Sara C. Mills, *Crivello Carlson*

Michael Moeschberger, *LaFleur Law Office*

Theresa Movroydis, *O'Dess and Associates*

Elizabeth S. Murrar, *Murrar Law Office*

Peter J. O'Meara, *Catholic Charities of the Milwaukee Archdiocese*

Jason S. Richard, *Hupy and Abraham*

Gregory T. Ryan, Jr., *Greg T. Ryan, Attorney at Law*

Charles D. Schmidt, *The Schroeder Group*

James R. Shilobrit, *Hupy and Abraham*

Brent A. Simerson, *Siesnopp & Sullivan*

Nicole M. Standback



# Message From the President

Rachel A. Schneider, *Quarles & Brady*



Welcome to the Marquette University Law School edition of the *Messenger*! I am an adjunct professor at Marquette this fall. I began my morning today by pulling into the newly-opened parking structure below Eckstein Hall, swiping my spiffy new Marquette faculty ID in order to enter the law school, and proceeding to a lovely classroom where I deftly engaged the lectern computer to cause a very large screen and projector to drop down smoothly from the ceiling. It was marvelous.

As a survivor of the UW-Madison Law School renovation project in the mid-1990s, I bring certain biases to my assessment of the new building, especially my assessment of how easy Marquette made it for all the law students, staff, and faculty! Perhaps Dean Kearney received some helpful tips from Dean Davis. Because, let me tell you, nothing puts a damper on future alumni fundraising efforts like having to endure multiple semesters of construction in which your law school is fractured into several disconnected locations. Marquette has certainly done it right—minimal disruption, great use of a relatively small urban space, and an open interior filled with light. Wow!

I heard the new law school building described on the radio as one of the biggest

and best law school facilities in the country. Fortunately, I have not been in enough law school buildings in my life to personally assess the accuracy of that statement. But I can tell you that I almost feel jealous of the students who get to toil away there. Almost. If you have not had the opportunity to behold the new gem of our Milwaukee legal community, I encourage you to do so. Be sure to note that the student “mailboxes” are still hang files. Ah! It’s nice to see some things never change.

I hope you’ll also make note of the list of donors to the Milwaukee Justice Center featured in this issue. That list is too short and I would like to see your name there the next time we print the donor list. To help make that happen, I direct you to the handy-dandy online donation option now available!! (Of course, checks are still very gladly accepted, and no one takes a fee out of those.) Click the “Donate” button at <http://www.milwbar.org/anniversary/justice-center.htm> and fill in the requested information. It’s that easy!

Hopefully many of you also contributed to the MJC by attending the Battle of the Barristers on September 23. I was thrilled when the MBA staff suggested this event and I look forward to additional creative ideas for serving the membership, offering great CLE opportunities, and delivering legal assistance to the community through the MJC and the Lawyer Referral and Information Service (LRIS).

Enjoy the fall! See you at the State of the Court luncheon!

—Rachel

## 7th Annual State of the Court Luncheon

Wednesday • October 13, 2010  
Noon – 1:30 p.m.  
Wisconsin Club  
900 West Wisconsin Avenue, Milwaukee

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For questions or special needs, please contact Katy Borowski at 414-276-5933

# CLE Calendar

## October - November 2010

### October 7, 2010

#### Alternative Dispute Resolution (ADR) Nuts and Bolts of Mediations

History of mediations, how to pick a mediator, submitting materials in mediations, who should attend, conducting a mediation, and recent trends in mediations

Speaker: Charles F. Stierman, Stierman, Steffens & Kuphall

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 11, 2010

#### Corporate, Banking & Business Preparing for an Acquisition and Negotiating the Letter of Intent

Speaker: Sandy Swartzberg, Dewitt, Ross & Stevens

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 14, 2010

#### Civil Litigation Arbitration vs. Litigation: Factors to Consider in Choosing the Appropriate Forum

In today's economy where litigation is more cost-driven than ever, this presentation will provide an overview of the advantages and pitfalls of arbitration clauses, factors to consider in drafting and negotiating arbitration clauses in contracts, and the real-world effects of arbitration as compared to litigation.

Speaker: Smitha Chintamaneni, von Briesen & Roper

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 15, 2010

#### MBA Presents Making the New E-Discovery Rules Work for You and Your Clients

Speakers: Hon. Richard J. Sankovitz, Milwaukee County Circuit Court; Mark F. Foley, von Briesen & Roper; Matthew John Stippich, Digital Intelligence

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 19, 2010

#### Intellectual Property *Bilski v. Kappos*: Recent Developments and Practical Implications

The Supreme Court's decision in *Bilski v. Kappos* changed the landscape of

patent eligibility. Now, various district courts and the Board of Patent Appeals and Interferences have started weighing in with their interpretations of the *Bilski* decision. This program will review recent developments and practical implications in the area of subject matter eligibility.

Speaker: David Luetgen, Foley & Lardner

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 20, 2010

#### Environmental Law Understanding the Hazardous Substance Spill Act's Local Government Unit Environmental Liability Exemption

Local Government Units (LGUs) considering acquisition of contaminated property can seek an exemption from liability under Wisconsin's Hazardous Substance Spill Act, but must meet certain requirements. Importantly, the exemption does not relieve a LGU from all environmental responsibility. Attorney David C. McCormack will provide a review of the legislation and DNR Guidance with regard to this sometimes misunderstood liability exemption.

Speaker: David C. McCormack, McCormack Law

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 21, 2010

#### MBA LRIS CLE Program Ethically Screening Callers—Walking the Line To Effectively Navigate Potential Client Calls

Dealing with urgent situations, maintaining confidentiality, and distinguishing the fine line between general legal knowledge and information versus advice over the phone

Speaker: Ann S. Jacobs, Domnitz & Skemp

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

12:30 – 1:30 (Presentation)

1.0 CLE ethics credit

(Free for MBA LRIS Panel Members)

### October 22, 2010

#### MBA Presents Accounting 101 for Attorneys

Speakers: Brenda B. Brandt, CPA, Vrakas/Blum CPAs & Business Advisors; and Terrence K. Rice, CPA

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

9:00 – 12:00 (Program)

12:00 - 12:45 (Lunch will be provided)

12:45 - 4:30 (Program)

7.0 CLE credits including 1.0 ethics credit

### October 25, 2010

#### Family Law

#### Working with Child Support Enforcement

A discussion of the issues facing the Child Support Enforcement Office, including what has changed and how advocacy counsel can work with the office most effectively and efficiently.

Speaker(s): Janet Nelson, Milwaukee County Department of Child Support Enforcement (and possibly other attorneys from the CSE Office)

12:00–12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 26, 2010

#### Elder Law

#### Family Care Update

Speaker(s): TBA (attorney from Disability Rights Wisconsin)

12:00–12:30 p.m. (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

### October 28, 2010

#### MBA Presents

#### Estate, Financial, and Health Care Planning for Elderly Clients

Speakers: John A. Stocking, Petrie & Stocking; Stephen A. Lasky, Moertl, Wilkins & Campbell; Charles J. Stansberry, Jr., Schober Schober & Mitchell

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

9:00 – 12:00 (Program)

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

12:30 - 4:30 (Program)

7.0 CLE credits including 1.0 ethics credit

### November 3, 2010

#### Bankruptcy

#### Chapter 128 Receiverships

Speaker: Jeffrey Lee Murrell, Law Office of Jeffrey Murrell

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

12:30 – 1:30 (Presentation)

1.0 CLE credit

### November 12, 2010

#### MBA Presents

#### Legal Ethics 2010

Speakers: Richard Cayo, Halling & Cayo; Christopher Kolb, Halling & Cayo

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

9:00 – 12:00 (Presentation)

3.0 CLE ethics credits

#### Fee Schedule for 1.0 CLE Credit Seminars

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



# The Reel Law

Fran Deisinger, Reinhart Boerner Van Deuren

## Anatomy of a Murder

1959; running time 160 minutes

Although there have been several distinct eras of great cinematic dramas, my favorite has always been the period of the late 1950s and early 1960s that produced so many stellar films, shot in glorious black and white and often involving legal or political themes. Think of *12 Angry Men*, *Inherit the Wind*, *Fail Safe*, *7 Days in May*, and *To Kill a Mockingbird*, and even the film I wrote about in the last issue of the *Messenger*, *The Man Who Shot Liberty Valance*.

Among all the great films of this era, my favorite is *Anatomy of a Murder*. Directed by Otto Preminger and released in 1959, this is a film deftly assembled from great parts into an even greater whole. It features a top cast, including Jimmy Stewart (again), George C. Scott, Ben Gazzarra, and Lee Remick; a brilliant score performed by none other than Duke Ellington and his orchestra; great writing; and an exotic locale. This last feature bears special note. It was generally unusual in 1950s Hollywood to shoot dramas on location. Sets were constructed on back lots, and one exterior was as good as another to Hollywood bean counters. As often as not, the location of a story being made into a movie was simply moved to California, or to “Anywhere, USA” that looked just like California. And if a studio was going to the expense of shooting on location, audiences typically expected something like Hawaii or the Riviera. But Preminger carried weight in the 1950s, and he insisted that *Anatomy of a Murder* be shot where it was set—of all places, in Marquette, Michigan, on the shore of Lake Superior.

That aside, *Anatomy* has something going for it that makes it uniquely suited for this review series: more than any other legal drama that I know, it gets what happens in and out of court pretty much right. In the story, Stewart plays Paul Biegler, a lawyer in private practice because he has recently been voted out as district attorney. Biegler seems more interested in fishing than in practicing law, but a murder case falls in his lap. The case involves a soldier (Gazzarra) at a nearby air base who has shot a man who raped his wife (Remick). The problem for the defense is that he shot the rapist an hour after the fact. Stewart enlists his tipsy but earnest friend and fellow lawyer, Parnell McCarthy (played by the wonderful character actor Arthur O’Connell), and the two proceed to develop a defense based on temporary insanity. For the lawyer-viewer, the particular joy of the movie is the realism not just of the courtroom scenes that follow, with Biegler matched against a special prosecutor sent from the state capital to try the case (Scott), but also the interactions between Biegler and his client, such as the particularly well-crafted scene in which Stewart induces the soldier to tell him what happened in a way that allows him ethically to present the temporary insanity defense.

*Anatomy of a Murder* is a movie so dense with great incidents and characters that I won’t try to recount much of it here, but there are several facets of the courtroom scenes that deserve mention. First, the courtroom itself is an imposing hall of American justice, with the judge seated in an almost throne-like enclosure. And it’s real—the courtroom still exists in Marquette. To populate that bench, Preminger used a particularly inspired bit

of casting. The judge is played with dignity, authority, and authenticity by a real lawyer, Joseph Welch. For those who don’t recall the name, a few years before this movie he said one of the most important and history-turning things any American lawyer said in the 20th century. To a demagogue from Wisconsin, he said, “Senator, you’ve done enough. Have you no sense of decency, sir? At long last, have you left no sense of decency?” As much as anything else, that courageous rebuke by a courtly Boston lawyer showed the American public that the imperious Joe McCarthy had no clothes.

Of course, like all great stories, *Anatomy of a Murder* has its moments of humor, too. There are several classic courtroom memes enacted beautifully in this movie, including a wonderful “I’m just a poor country lawyer” moment by Biegler, and perhaps the best cinematic example of the “never ask a question you don’t know the answer to” rule every trial lawyer learns the hard way.

Early in the film, there is a charming scene when a slightly boozy Parnell McCarthy shows up at Biegler’s door late one evening. The two bachelor lawyers pour themselves drinks, and as Biegler begins noodling a jazz theme on his piano, Parnell pulls a volume of the Supreme Court Reports from the wall and says, “What shall we read tonight?” Biegler and McCarthy may be “poor country lawyers” on the edge of the American North, but they know they hold the majesty of the law in their hands. It will come as no surprise that they win the case, too.



## Battle of the Barristers Benefits MJC

MBA members and friends rocked at the Rave on September 23 as seven bands—each with at least one lawyer musician—competed in the Battle of the Barristers to benefit the Milwaukee Justice Center. About 150 people attended to cheer on the bands. Three judges, including MBA President Rachel Schneider, voted for their favorites. The others in attendance acted collectively as the fourth judge by depositing money in seven jars, each with the name of a competing band. All proceeds will fund the Milwaukee Justice Center, the MBA’s

Sesquicentennial legacy, which helps low-income, self-represented persons gain effective access to the justice system.

Congratulations to Faith, Hope & Love—featuring Milwaukee County Circuit Judge Frederick Rosa—the winner of the Battle. The real winner, of course, was the MJC. Thanks to all who participated!

MBA Battle of the Barristers emcee Jim Temmer and Brass Knuckle Symphony, ready to rock →





# There Oughta Be a Rule

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court



Have you ever found yourself frustrated that the other side brought a motion rather than talking to you first and trying to resolve the dispute?

Have you ever submitted a proposed order under the five-day rule and had

the other side object without suggesting a better order?

Have you ever finished a response to a motion and wanted to send the response by electronic mail, only to find that the motion lists no e-mail address?

Did you think, “There oughta be a rule”?

Well, in fact there is, at least in these three instances. From time to time judges and clerks suffer the same frustrations on the same points, and so when the local rules were revised, rules were adopted to avoid these tribulations.

**Shoot first, ask questions later?** Local Rule 1.20 requires that “attorneys shall make a **good faith effort to resolve differences informally before filing a motion.**” This rule has been applied in the Family Division for years, but in 2009 it became applicable in all divisions. The principal motivation for the rule was to avoid the waste of the court’s time that sometimes occurs when the parties show up for a hearing, negotiate on the spot, and then cancel the hearing. But an almost equally important motivation for the rule is to avoid the unnecessary effort required to prepare the motion and response in the first place.

Before filing a motion, you must make contact “face-to-face or by telephone.” Electronic mail, text, or hard copy is permissible, but only if you can certify that “reasonable attempts to make face-to-face or telephone contact failed.”

Furthermore, if you are unable to work things out, the motion must be accompanied by a written certification stating that you complied with the rule and also stating the “manner, date, time and place of such conference or communication, and the names of all the parties who participated.”

There are exceptions, but they are limited.

Rule 1.20.C. provides that the pre-filing requirement does not apply to emergency motions where time constraints may prevent compliance, but the rule requires an ongoing “diligent attempt” after filing and before the hearing to resolve the matter. Rule 1.20.D. provides that the rule does not apply to dispositive motions, such as motions to dismiss or for summary judgment, and actions in which court orders prevent contact between parties.

The rule contains one other common sense prescription, Rule 1.20.E.: if you resolve the matter before the hearing, remember to call the clerk and let us know.

**Five-day rule frustrations?** Rule 1.21.B. specifically provides that if a party objects to a proposed order submitted under the five-day rule, the party must not only point out why the proposed order fails to “express the court’s intended or suggested order” but in addition submit a **counterproposal**—a “proposed order consistent with the objection.” It’s not enough to say that a party disagrees with what has been proposed. The rule puts the rubber to the road, forcing the objector to demonstrate how the order can be improved to avoid what’s objectionable.

One principal effect of the rule is to reduce the court’s workload. The judge may not need to do any editing of her own; she may have two drafts to choose from. But even before competing orders hit the judge’s desk, the rule might solve the problem altogether by smoking out the truly salient points of the disagreement, making it easier for the parties resolve themselves.

**Where’s that e-mail address when you need it?** The rules give 21st Century recognition to the fact that electronic mail is currently the most convenient way to contact others and convey documents to them. Thus, Rule 1.10.B.6. requires that “all documents submitted for filing . . . prominently state the electronic mail address of the person signing the document.”

The court is not quite yet on the verge of electronic filing, but when it gets there, e-mail addresses will be absolutely essential to the operation of the system. Maybe this rule will help us start getting in the habit now.

If you encounter difficulties with the court or with adversaries that make you think “there

oughta be a rule,” let us know. We’re always looking at ways to make our courts run better for all concerned. My e-mail address is richard.sankovitz@wicourts.gov.

The MBA LRIS has a blog where the public can post legal questions!  
<http://www.mbaevice.blogspot.com/>

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For more information or for an application please contact Britt Wegner at [bwegner@milwbar.org](mailto:bwegner@milwbar.org), or Amy Enger at [aenger@milwbar.org](mailto:aenger@milwbar.org).

# What You Need to Know About Electronic Filing in State Courts

Valerie P. Vidal, Quarles & Brady

While electronic filing (or “eFiling”) is well established in federal courts across the country, state courts have been slow to catch up. Over the past several years, Wisconsin has taken several important steps toward initiating eFiling in all of the courts of the state.

The initiative began with the creation of the Circuit Court Automation Program in 1987. The program provided the courts with an internal filing system and eventually permitted the publication of case information on the internet through the Wisconsin Circuit Court Access (WCCA) website in 1999. In July of 2001, the State consolidated the Circuit Court Automation Program with the Office of Information Technology Services (OITS) to create the Consolidated Court Automation Program (CCAP), which continues to be one of the country’s most sophisticated and well-used case management systems.

In the fall of 2000, the Director of State Courts created the Wisconsin Court Electronic Filing Committee (WCEFC) and appointed judges, district court administrators, clerks of court, registers in probate, CCAP staff, and attorneys to consider the creation of a fully integrated eFiling and case management system for the circuit and appellate courts. The Committee immediately began to assess how to develop a system for the state and work with outside vendors to implement its recommendations.

In 2005, Washington and Kenosha counties became test subjects for the e-filing system the WCEFC created. Much like its federal counterparts, the circuit court eFiling system enables the exchange of electronic documents via a secured website (<http://e-filing.wicourts.gov>, also accessible via <https://logon.wicourts.gov/login/login.html?target=ccefiling>). The participating counties reported numerous benefits, which prompted the Wisconsin Supreme Court to approve procedures for voluntary circuit court eFiling (as codified in Wis. Stat. § 801.17) and mandatory eFiling in appellate proceedings for attorneys (as codified in Wis. Stat. Chapter 809; eFiling available at <https://logon.wicourts.gov/login/login.html?target=acefiling>). (In appellate matters, eFiling does not eliminate the requirement of paper documents.)

While each county circuit court decides to what extent it will accept eFiling, several counties are currently taking advantage of the benefits the electronic system provides. The chart below identifies the counties now participating in Wisconsin’s eFiling system for circuit courts.

County	Civil*	Family*	Small claims*
Barron			X
Burnett			X
Calumet			X
Clark	X	X	X
Eau Claire			X
Kenosha			X
La Crosse			X
Outagamie			X
Ozaukee	X	X	X
Pierce			X
Racine	X	X	X
Taylor	X	X	X
Trempealeau	X	X	X
Washington	X	X	X
Winnebago	X	X	X

\* Electronic Filing is not currently available for garnishments, TROs, and injunctions

Parties interested in eFiling must create an account on the system with a valid e-mail address. Users must then register a username, password, and personal identification number (PIN) that will be used for logging in to the system and electronically signing documents. Once an account is created, it enables users to log in to both the circuit and appellate court eFiling systems. Attorneys that opted to electronically report 2009 continuing legal education credits (via the website created for the Board of Bar Examiners at <https://clereporting.wicourts.gov/session/new>) are already registered for both the circuit and appellate eFiling systems.

Once registered, attorneys and pro se litigants may initiate civil, family, and small claims cases electronically, pay filing fees, and file and serve documents on other parties through the circuit court eFiling system. A document filed through the eFiling system has the same legal effect as the original document, and use of the eFiling system does not alter any filing deadline. Additionally, a document eFiled

after the close of business is considered to have been filed on the next court day.

The eFiling systems also permit a subscriber to view and opt-in to receive electronic notices for other cases in which he or she is a party or attorney. Notaries public can register for an account on the eFiling system, which enables them to electronically notarize documents through the system.

After submission of a filing through the eFiling system, the clerk of circuit court will e-mail the filer a “Confirmation of Receipt of Documents” that contains an authorization number. This email simply confirms receipt of the document(s) and does not mean the document(s) have been accepted by the clerk for filing. The filer must then use the eFiling system to pay any required filing fees, which are automatically calculated by the system. A \$5.00 convenience fee is added to all eFiling transactions. Payment must be made by credit card or electronic check. A 2.75% credit card fee or a \$2.50 flat fee for an electronic check is also added to each transaction.

After reviewing the eFiling submission for accuracy and payment, the clerk will e-mail the filer a “Confirmation of Acceptance of Filing” or a “Notice of Rejection of Filing.” If the filing is accepted, the filing party must mail or otherwise serve on opposing parties the “Confirmation of Acceptance of Filing,” which contains instructions to register for the eFiling system.

As previously mentioned, use of the circuit court eFiling system in Wisconsin is voluntary and it may be used on a case-by-case basis. Therefore, even if the case was initiated electronically, an opposing party may opt out of participation in the eFiling system. If that should occur, the clerk will scan paper documents received by the non-eFiling party to create a complete electronic case file.

More information, including helpful step-by-step instructions for registering and filing, can be found on the Wisconsin Court System website, <http://www.wicourts.gov/services/attorney/electronicfile.htm>.

# New Ray and Kay Eckstein Hall Emphasizes Role of Community in Law Study

William P. O'Brien

In ancient Rome, the forum was a hub of trade, social interaction, and political and philosophical debate. When one walks into Marquette University Law School's new \$85 million, 200,000-square-foot Eckstein Hall, the scene is much the same.

Students exchange notes, discuss lectures, and share coffee, while professors buzz about, fielding questions and chatting with colleagues. A sense of synergetic movement fills the air, finding its focal point in a four-story, centrally located atrium.

The stunning Zilber Forum, named after noted Milwaukee philanthropist Joseph Zilber, is an essential element in both the building's design and its function. The recently deceased real estate developer, a Marquette alumnus, donated \$5 million toward Eckstein Hall's construction and \$25 million for future scholarships in 2007. Sensenbrenner Hall, Marquette Law's former home, was built in 1924 and had become overcrowded.

"The forum is really a crossroads for the building, where all the major spaces open onto it," said Tom Ganey, Marquette's University Architect. Added Joseph Kearney, Marquette Law's Dean: "The life of the law school will happen in, through, and around it."

Classrooms, group study rooms, and the law library naturally wrap around the central space, which is punctuated with a zigzag grand staircase. Sycamore wood, metallic handrails, and an abundance of glass create a sleek, modern design.

Aesthetics, however, did not dictate Eckstein Hall's layout, Ganey said. The goal was simply to create the best possible environment for law study.

"The open forum really was a response to the diverse number of activities in this building," he said. "People move from place to place. We wanted them to see one another and bump into one another and have conversations, and it's really working already."

Professor Michael McChrystal, who has been at Marquette Law since 1975, echoed Ganey's thoughts, explaining that chance encounters often lead to more. "A tremendous amount of learning and exchanging of ideas happens face to face," said McChrystal, who

serves as the school's Chair of Strategic Planning. "There's an intrinsic value added by bringing people into a common space."

Throughout Eckstein Hall, the theme of openness and transparency is clear. The law library's physical collection occupies the northeast corner of all four floors, making reference materials and additional study space

available without creating any feeling of isolation. Kearney calls the result a "library without borders." In addition, Kearney's second-floor office is easily accessible and is surrounded by the headquarters of student organizations and publications.

Kearney said he wanted to make sure students were comfortable in the new building. "A law school, at its best, is a destination to which students go in the morning and really do not wish to leave," Kearney said. "We wanted to provide a series of amenities that would make the place feel like home."



The expansive Zilber Forum is Eckstein Hall's social hub.

Image courtesy of Marquette University

A spacious café, workout facility, 600 full-size lockers, and 170 underground parking spaces highlight the list of Eckstein Hall's cushy extras.

Mike Koutnik, a first-year law student, said Eckstein Hall has everything a student could possibly need. His second-floor locker is ideal for storing textbooks between classes and keeping a sport coat handy for interviews and presentations. And just a few weeks into classes, he has already established a somewhat regular routine and identified a favorite study space.

*continued page 12*

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## Eckstein continued from page 11

The 1,348-square-foot Aitken Reading Room features expansive windows overlooking downtown Milwaukee, a two-story ceiling, a fireplace, and enough room for about 100 book-grazing students.

Kearney calls it his favorite spot in Eckstein Hall, and Koutnik describes it as having a “classic” ambience. Recently, a commissioned painting of Abraham Lincoln’s 1859 address in Milwaukee was added to the room.

Eckstein Hall features 11 classrooms and 12 seminar rooms of various shapes and sizes. The building is “a stunner” in terms of its technological capabilities, McChrystal said.

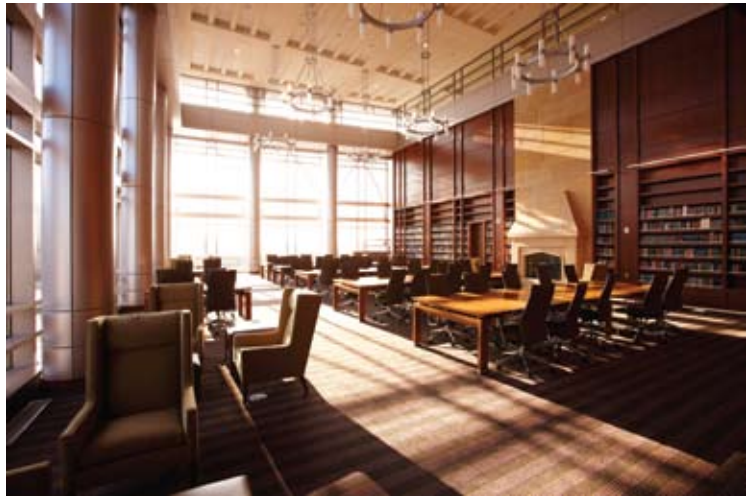
The 5,000-square-foot appellate courtroom exemplifies the building’s technological richness and media-friendly design. It seats 200 and has the cameras, lights, and other equipment necessary to serve as a television studio. An August Republican gubernatorial debate between Scott Walker and Mark Neumann was filmed and broadcast live on location.

In addition to its use for lectures and

filming, the appellate courtroom features a fully functional judge’s bench. Marquette Law is hoping to host the Wisconsin State Supreme Court or the U.S. Court of Appeals for the Seventh Circuit, Kearney said. “We will have not only moot court sessions for the students; we will be able to be a place that hosts actual court events as well,” he added.

A 1,964-square-foot trial courtroom located on the building’s third floor features circular, amphitheater-style seating, jury rooms, and cameras for recording students’ trial skill exercises.

Eckstein Hall’s immense stature and seemingly endless amenities are no doubt impressive, but the legal education ideals of communal discussion, intellectual exchange,



The classically-styled Aitken Reading Room brings a sense of tradition to the largely modern Eckstein Hall.

*Image courtesy of Marquette University*

and leadership development remain its focus, Kearney said. Ideally Eckstein Hall will become “a place where people from the community, not simply business leaders, but a more broad and diverse community, can come together for civil discussion of important issues,” he said.

*The author is a student in the Marquette College of Communication and Assistant Editor of the Marquette Tribune.*



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# 2010 Golf Outing

Thanks to all those who participated in the Milwaukee Bar Association Foundation's 22nd Annual Golf Outing. Though the day was a bit sticky and the bugs were out in full force, everyone had a good time. More importantly, nearly \$20,000 was raised for the Milwaukee Justice Center.



Golfers check in at Fire Ridge Golf Club. ↑



↑ Roger Davidson of Knight Barry Title prepares for the outing.



← Wisconsin Law Journal staff Jennifer Krausser and Sandy Folliard sell mulligans.



↑ Judge Donegan speaks with Dawn Caldart of the Milwaukee Justice Center.



Golf Committee Co-Chair Josh Gimbel greets Judge Skwierawski. ↑

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# LITIGATION SUPPORT



# Volunteer Spotlight



## David Ruetz

Attorney David Ruetz is Assistant General Counsel and Senior Environmental Specialist at GZA Geo Environmental, Inc. in Waukesha.

David has served as the Chair of the MBA's

Environmental Law Section for the past six years. In the past several years, the section has organized presentations on topics such as wetlands regulation, presented by a Wisconsin

Department of Natural Resources (WDNR) water management specialist; an environmental justice

CLE, presented by in-house counsel for a environmental non-profit group; CLE updates on various changes to the American Society for Testing and Materials (ASTM) environmental standards by an attorney who is also an environmental scientist; a CLE presentation on environmental insurance by an expert in environmental risk management; a presentation on water rights issues by an in-house attorney with a title company; and a presentation on industrial hazardous waste inspections by a WDNR compliance specialist. David typically schedules six CLE presentations per year.

David states that serving as section chair ties in with his own practice, because the

environmental field is constantly changing and keeping abreast of those changes is critical to success as an environmental practitioner. He notes that getting to know the speakers, learning about their topics through dialogue with them prior to their presentations, and ultimately attending the presentations has been an excellent method of staying on top of changes in the environmental field.

David also recently became a mentor in the MBA's new Mentoring Program. He states that the opportunity to share life experiences with a new attorney has been very fulfilling, and highly recommends that other attorneys who are interested in sharing their experiences with a new attorney consider participation in the program.

## Crumbling Milwaukee County Finances Threaten to Degrade Circuit Courts

Attorney Herman John, Deputy District Attorney (Retired)

Alarming language regarding Milwaukee County's financial condition characterized two recent research reports by the Public Policy Forum, Milwaukee's independent, data-driven, non-partisan, non-profit, local government think tank. Public Policy Forum President Rob Henken, speaking at a September 28 seminar sponsored by the MBA Courts Committee, asserted that annual County expenditure needs have increased faster than revenue streams for nearly a decade—a scenario that is likely to worsen during the next five years and reach a peak shortfall of \$126 million in 2016.

The reports, commissioned by the Greater Milwaukee Committee, concluded that “[t]he urgency of this matter cannot be overstated . . . [V]alued services in areas like parks, transit, mental health and public safety face severe degradation without prompt and concerted action.” Jeopardized services obviously include our local circuit courts, which are 72% funded by the County.

The first report, “Should It Stay or Should It Go?” (January 2010, 163 pages), was issued six months before the O'Donnell Park garage accident uncovered the County's infrastructure crisis. The report presents two basic options: (1) eliminate County government, as Massachusetts and some other states have done, by transferring its functions variously to

the state, Milwaukee municipalities, and regional or district boards; or (2) retain but significantly streamline County government by transferring non-mandated services (e.g., parks, culture, transit) to separate districts and transferring health and human services to state government.

*The Milwaukee Journal-Sentinel* responded to this report in a January 27, 2010 editorial recommending that a Governor-appointed task force perform for a function-by-function review of County government. As of early September 2010, the Greater Milwaukee Committee had taken no public action on the report, apart from supporting legislation to create a special district and tax for the public transit system. That legislation was not enacted.

The January 2010 report (pp.64-71) includes a lucid explanation of the organization and financing of our circuit courts. The report discusses two major options for improved financing of the “Courts and District Attorney”: (1) full state funding, or (2) greater state funding—including transfer of more functions to the state. The report notes that in 2002 a subcommittee of the Wisconsin Supreme Court Planning and Policy Advisory Committee considered similar options and found strengths and weaknesses in both models, concluding “that there is no ‘right’ way to finance the circuit courts . . .

[T]he ideal of providing a stable, sufficient court financing mechanism impervious to the political and fiscal forces that affect the other branches of government is not realistic”.

The second report, titled “County Budget Preview” (July 2010, 35 pages), discusses the County's 2011 budget gap, which is projected to be \$20 million. While the County has some short-term, one-time options, such as asset leases and sales, furlough days, and deferral of pension obligations, these only continue to “paper over the county's structural imbalance and are not in the long-term interest of citizens and taxpayers,” according to the report. Possible longer-term solutions are increased sales taxes for specific county functions (transit, parks), labor union agreement to significant additional reductions in pension and healthcare benefits, and greater allocation of state shared revenue for courts and social services.

These possibilities depend on political cooperation. If major changes prove to be politically unpalatable, however, another cut-and-paste County budget appears likely for 2011, which does not bode well for retaining, let alone improving, the current level of circuit court services.

Both Public Policy Forum reports are available on the PPF web site ([www.publilpolicyforum.org](http://www.publilpolicyforum.org)).

# A Guide to Food at the Law Factory

Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

The principal function of a law office is to produce legal documents, an experienced colleague once told me. He was right. We do other things, of course. We meet with clients. We then try to advance our clients' interests. We do this on the phone, at meetings, in court. But in the end, our efforts almost always involve the creation of legal documents. Lots of documents. These consist of letters, memoranda, pleadings, contracts, agreements, formations, directives, and memorializations of all kinds. We then bill for these services.

To produce and track these documents, lawyers typically rely on legal assistants and other staff. A law firm is born. It's a kind of legal document factory. If everyone gets along reasonably well and the factory dwellers are happy, the factory hums. All would acknowledge that a common social lubricant of happy factory life is food. As to kind and proportion, however, precious little guidance exists.

So here are some thoughts. Free food, I've observed, is a productivity booster. In our metro Milwaukee firm of about 25 lawyers and staff, the food is ever present. Several Monday mornings a month we walk in to firm-provided treats. Most often, though, the

contributing attorney or staff member pays for the food out of his or her own pocket. We acknowledge this generosity with smiles and thanks. Ever experience breakfast pizza? We do on a regular basis. Most staff and attorneys bring an "offering" on their birthdays. This is typically cake or pie or bagels and cream cheese – but sometimes fresh fruit or vegetables. One nostalgic celebrator offered Ho-Ho's, Twinkies, Ding-Dongs, and Hostess cupcakes. His contract was renewed. A mystery person brings in a fresh challah every Friday morning. The trick is to mix healthy food with the snack and dessert variety. For instance, one person keeps our kitchen stocked with organic peanut butter and whole grain bread. The goal is to make available for general nosh a choice of healthy foods, or better-choice snacks, to counterbalance the pervasiveness of junk food.

To balance this caloric intake and to fight the health insurance premium increases that it could occasion, we have a Wellness Committee. The Committee organizes group walks at lunchtime and exercise challenges. It sponsors guest speakers on healthy food choices. Participants get rewarded, somewhat counterproductively, with food. Come to think of it, maybe the Wellness Committee should rethink the rewards program.

Sometimes there are issues. We hide the chocolate stash. We have to.

Does this make the legal factory more productive? I think so. It also makes the office a more pleasant place for clients to visit. It's a nice gesture to be able to offer a client a piece of pie, a bagel, or a slice of fresh bread with their coffee. It's nice to have a candy jar in the reception area for clients to raid. It's an important corollary to the critical insight a senior partner shared with me early on: you can charge clients whatever rate you want as long as you validate their parking.

From time to time we add some fun to the food. Every quarter the office gets together for an ice cream social. (The firm springs for this.) Sometimes at this event we play party games. For instance, on New Year's Eve everyone brought in a small office item for a time capsule. At another we filled out a workplace-appropriate "pleasure index" concerning common tasks, like doing laundry or returning books to the library. We took turns guessing each other's pleasure index priorities. Every year our staff plans a family friendly potluck/cookout during the warm weather, after work, in a grassy area behind our office. We have a bean bag toss contest. It's simple and costs very little.

These events are easy to plan and easy to do. It helps create a positive office atmosphere.

Do office *tumblers* serve a business purpose? Can we reconcile food and fun with professionalism and profit? In proper doses, I think yes. Will we ever be able to cancel the gym membership? At this rate, and in this factory, I think no.



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# A Guide to the Road Less Travelled: Deeds in Lieu of Foreclosure

Dawn Lindsey, von Briesen & Roper

In this troubled economy, lenders and borrowers alike often end up on the beaten path to foreclosure. If the borrower and the lender enjoy a cooperative relationship, however, a deed in lieu of foreclosure can be an attractive alternate route for both parties.

The biggest advantage to a deed in lieu of foreclosure is that it provides a shortcut to the same destination as foreclosure: the ownership of the mortgaged property by the lender for the purpose of selling it to a third party. A traditional commercial foreclosure takes at least ten months from the filing of the complaint to the confirmation of the Sheriff's sale and transfer of title. A deed-in-lieu-of-foreclosure transaction saves both the lender and the borrower the time and expense of a foreclosure proceeding. (This time-saving potential may be lost, however, if negotiations become protracted.) It also spares the borrower the bad publicity that often ensues from a foreclosure lawsuit, and provides the lender with the opportunity to obtain the information and documents it may need to operate or develop the property prior to a sale.

The concept of a deed-in-lieu-of-foreclosure transaction is simple: the borrower conveys the mortgaged property to the lender in consideration for the release of the borrower and/or guarantor(s) from some or all liability to the lender. Although the concept may be simple, a deed-in-lieu-of-foreclosure transaction typically requires a lot of documentation (e.g., an agreement, a deed, a transfer tax return, a title insurance commitment, an owner's affidavit, an estoppel affidavit, and a gap affidavit). The deed and the agreement, in particular, require careful drafting.

After the mortgaged property is conveyed to the lender, the lender will hold both the mortgage estate and fee estate in the property. Under Wisconsin law, these two estates will merge unless the lender expresses its intent in the deed and the agreement to keep them separate. Merger has the effect of extinguishing the mortgage, and the consequences of such a merger could be significant for the lender: if any junior liens remain against the property, the lender will lose its right to foreclose those liens. Therefore, the lender's lawyer should always include non-merger language in the documents

and obtain a non-merger endorsement to the lender's title policy. It is equally important to preserve the underlying debt, in order to keep the mortgage document alive for a possible foreclosure. Although preserving the debt may seem contrary to the borrower's goal in a deed-in-lieu-of-foreclosure transaction (that the borrower be released from personal liability for the debt), both objectives can be accomplished by language in the parties' agreement acknowledging that the debt is not extinguished but also that it has become non-recourse.

There are three important guides a lawyer should consult in evaluating whether a deed in lieu of foreclosure is the right path for his or her lender client: the Phase I environmental site assessment, the title insurance commitment, and the appraisal. The lender will not want to take title without a clean environmental assessment, and without knowing what liabilities it may be incurring under any development agreements or condominium declarations recorded against the property (evidenced by the exceptions on Schedule B-II of the title insurance commitment). An appraisal is helpful in establishing the fair market value of the mortgaged property. If the amount of the outstanding debt is materially less than the property's fair market value, the lender may be subject to a fraudulent transfer claim by other creditors or a bankruptcy trustee. A subsequent fraudulent transfer claim is a particularly significant risk to the lender if the borrower has other debt problems. If there is a fraudulent transfer risk, the lender may be better served by a "friendly foreclosure," where there is a stipulation to judgment and the redemption period is waived in exchange for releasing the borrower from liability, because a regularly conducted Sheriff's sale avoids that risk under Wisconsin law.

Although it may be the road less travelled, a deed in lieu of foreclosure, when diligently navigated, can be an advantageous option for both lenders and borrowers.

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# Learnedness in the Law:

## a Brief History of Legal Education in Milwaukee

Attorney Hannah C. Dugan, UW'87

During the past year, the Wisconsin Supreme Court has considered petitions regarding the unauthorized practice of law and the merits of the diploma privilege. The petitions demonstrate that the qualifications of a learned lawyer, worthy of the public trust in Wisconsin, are as much in play today as they were in 1848 when Wisconsin gained statehood. Legal education standards also have been in play for decades, especially between the 1880s and the 1930s when the key components of the modern American legal profession—legal education, bar associations, bar admission, and professional standards—merged and emerged to shape the current practice of law. The dedication of Marquette University Law School's landmark building offers the occasion to recount landmark events in local legal education.<sup>i</sup>

### Early Legal Education in Wisconsin and Milwaukee

For decades before statehood, lawyers practiced and judges adjudicated in what is

now Wisconsin. In Milwaukee and elsewhere, men practiced law before military and local (sometimes territorial) courts with no more credentials than showing up and having a judge admit them to practice. After statehood, Milwaukee lawyers were more likely than not to train according to the *de facto* means of law study at the time: they “read the law” under the auspices of local practitioners, who chiefly studied the law on the East Coast before venturing to the Midwest.

Beginning in 1841, Milwaukee lawyers met at bar suppers to discuss law and civic matters, and otherwise to edify themselves. Their collegial dinners were formalized into a bar association in 1858. On May 23, 1858, a committee of the bar reported that its assigned task to pursue law library incorporation statutes was completed, and was enhanced by passage of legislation authorizing law school incorporation, as well, as codified in Chapter 126 of the Laws of 1858. The many toasts offered on the evening of the new association's June 1858 bar supper included the solicitation that the “members of the Milwaukee Bar... ever-advancing in numbers, may increase equally in solid learning, in spotless integrity, in fidelity to clients and in honor, good fellowship and harmony amongst themselves.”

Within four months, eight committee members became investors in the incorporation of a legal institute. With a \$100,000 stock subscription, the members filed with the clerk of court the incorporation documents to establish and operate a law institute and law library association in Milwaukee.<sup>ii</sup> No documentation exists to show that the institute actually opened, but the investment itself reflected movements and intents to formalize lawyer training for bar membership and admission.

In the years after the 1878

founding of the State Bar, the Legislature passed several successive bills regarding legal education, bar membership, admission standards, and the creation and purposes of a board of examiners.<sup>iii</sup> Chapter 63 of the Laws of 1885 established the hierarchy of admission to practice rules. Through the exclusive “diploma privilege,” UW-Madison graduates enjoyed admission preference over other graduates of Wisconsin legal institutes and law schools. The production of a diploma issued by the Board of Regents was a UW graduate's ticket to legal practice in all courts, while other students had to pass examination and residency tests.

The incorporation of law schools and institutes became common throughout the United States. The profession's leaders created a true movement away from “reading the law” (and then proving admission through examination) toward becoming learned in the law and exposed to standard courses in its study. Indeed, by 1903 the Legislature required a three-year period of legal study. By 1905, a supreme court rule required that bar applicants have a four-year high school diploma or certificate of examination. By 1924, the court and the Legislature required practicing attorneys to complete high school, two years of college, and three years of law study in a full-time law school (or four years of study in a part-time or night program.)

It should be noted that in 1912, the local bar earned an important feather in its cap. It hosted an American Bar Association meeting during which the central topic concerned the transformation of legal education. Persons no less prominent than Harlan Stone were in Milwaukee chastising practitioners for teaching law before having adequate experience practicing law.

### The Transition from Many to One Law School in Milwaukee

Because law was a secondary “job” or aspiration for many law school attendees, they could only accommodate studies after daily work hours. Therefore, students commonly enrolled in night law schools. Early on, Milwaukee followed this pattern. The most notable night school or institute, the Milwaukee Law Class, was established in 1893 by three bar members and operated

*continued page 20*

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# Milwaukee Justice Center Launches Website

The Milwaukee Justice Center (MJC) announced the release of its user-friendly website, [www.milwaukeejusticecenter.com](http://www.milwaukeejusticecenter.com). This website increases access to justice for self-represented persons throughout Milwaukee County by expanding the MJC's services to the Internet. Now self-represented persons have 24/7 electronic access to the vital information and forms available in the Self-Help Center, which is located in the Milwaukee County Courthouse.

Currently, [www.milwaukeejusticecenter.com](http://www.milwaukeejusticecenter.com) offers self-represented persons information about divorce, child support, custody, small claims, foreclosure, landlord-tenant issues, Chapter 128, and name changes, and the MJC hopes to expand this list in the near future. Those who visit the site will find information about the MJC's services, hours, and location, as well as links to community and legal resources. The site also contains MJC annual reports, testimonials, and volunteer opportunities.

The Milwaukee Justice Center (MJC) is a private-public partnership among the

Milwaukee Bar Association, the Milwaukee Bar Foundation, Milwaukee County, and Marquette University Law School. It was created to assist self-represented litigants and other self-represented persons in need of legal assistance. The underlying philosophy of the project is that self-represented persons have a fundamental right to access the justice system even if they cannot afford an attorney or do not qualify for legal aid. The MJC is a volunteer-based project that addresses the unmet legal needs of Milwaukee County's low-income, self-represented population by providing services such as self-help desks, brief legal advice clinics, and other legal resources.



# Employers Gain Flexibility in I-9 Form Management

*Kelly Fortier and Jose Olivieri*

The Department of Homeland Security ("DHS") adopted an interim rule in 2006 that permitted employers to electronically sign and store I-9 Employment Eligibility Verification Forms. After considering public comments related to this interim rule, DHS recently published a final rule that affords employers greater flexibility in completing, signing, and storing I-9 Forms electronically. Effective August 23, 2010, the final rule provides the following guidance related to the management of I-9 Forms:

- Employers must complete a Form I-9 for each employee within three business days (not calendar days) of the date on which employment begins.
- Employers may use paper, electronic systems, or a combination of paper and electronic systems to complete a Form I-9. Employers are required to retain only those pages of the Form I-9 on which the employer or employee enters data; employers need not retain the form's

instruction pages.

- Employers may implement an electronic storage system for the management of Form I-9, provided that the system includes indexing capabilities that allow for the identification and retrieval of relevant records maintained by the electronic system. Additionally, employers must ensure that they retain existing I-9 Forms in a system that remains fully accessible.
- Employers are not required to maintain an audit trail that records every instance in which an electronic Form I-9 is simply viewed or accessed. Rather, employers must update a Form I-9's audit trail only when a Form I-9 is created, completed, updated, modified, altered, or corrected. The audit trail should include the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.
- Employers may provide confirmation, such as a printed copy of the electronic record,

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of a Form I-9 transaction to the affected employee, but such confirmation is not required unless the employee requests it. If an employee does request confirmation of a Form I-9 transaction, the employer must provide this confirmation to the employee within a reasonable period of time after the transaction.

Employers should be aware that over the past year, DHS has significantly increased its use of I-9 audits as an immigration enforcement measure. This increase in I-9 audits has resulted in large civil penalties, as well as federal criminal charges in some cases, against employers that were found to have violated U.S. immigration laws.

## Learnedness continued from p. 18

at several successive rented downtown locations. It later changed its name to the Milwaukee Law School (MLS). After fifteen years of operation, the school had graduated over a hundred students.

In 1908, Marquette University negotiated two deals: a simple negotiation to purchase the failing Milwaukee University Law School for \$175, and a more complex negotiation to acquire the MLS. The MLS deal included adding a day program to the night program, assumption and payment of all MLS debts, a payment of \$6,000 for the goodwill and name of the school, a five-year restrictive covenant by the three teachers who were selling the school not to teach for a competitor, and an agreement to educate and issue Bachelor of Laws degrees to the school's matriculated students who wrote and passed the Wisconsin bar exam. (Marquette eventually conferred LL.B.s to 147 MLS students.)

Beginning September 26, 1908, all Marquette College of Law courses were taught by practicing lawyers and sitting or retired judges. The classes were held initially in available campus classrooms, then were concentrated in Johnston Hall until 1910, after which the College occupied the Mackie Building, a remodeled residence located on the southwest corner of 11th Street and Grand

(later Wisconsin) Avenue. From September 1910 until July 2010, the school was in its own separate building at that location. After the Mackie Building was razed in 1923, the College of Law was temporarily relocated in other university buildings pending the erection of a building on the same site to house the newly designated Law School. The new building, dedicated and opened in 1924 and renamed Sensenbrenner Hall in 1954, was built at a cost of \$1,000,000. A major gift of \$50,000 paid the expenses of the reading room, which was modeled after the Great Hall at the Inns of Court in London.

### The Emerging Identity of Milwaukee's Only Law School

Marquette's acquisition of two law institutes set off a series of battles for the new school. The least of the battles was the school's move from being an affiliate of the university to being an integrated college within the university. This eventuality—of leveraging the established university—gave the law school a bit more *gravitas* as it faced its other two chief battles from the 1910s to the 1930s: maintaining a night school and eliminating the diploma privilege in Wisconsin.

### Night School Battles

By 1912, Marquette's three-year day program curriculum and four-year night program curriculum were grand attractions for future lawyers in Milwaukee. Indeed, by 1908 Milwaukee, unlike other similarly sized and similarly situated cities, had no other night law schools. The academic opportunities rationale for maintaining the night school option was compelling. And, of course, that academic mission was more palatable than Marquette's concomitant financial and professional-development rationales for maintaining the night school. Hanging in the balance was the school's membership in the American Association of Law Schools (AALS), and therefore its standing, prestige, and academic credibility among its peer institutions. Retaining membership in the fledging AALS meant that Marquette had to meet emerging curriculum standards and the parallel professional requirements for library collection size and faculty

credentials. Inasmuch as AALS served as the *de facto* "accrediting" entity at the time, Marquette did not want to risk having its AALS membership revoked.

By 1919, AALS was insisting that Marquette eliminate its night program, and Marquette was insistent that it should continue because the city did not offer another night school option. The battles—influenced by Wisconsin admissions legislation and Midwest cultural differences, and driven by powerful and critical personalities at both Marquette and at AALS—were waged for years and often in ways that undermined collegiality. In the end, Marquette retained its AALS membership and therefore its "accreditation," but in doing so gave a good deal of ground. Practitioner faculty members eventually were replaced largely by academics. Library acquisitions met more than minimum standards. In 1924, night classes began to be phased out. "Accreditation" as a Class A school in 1925 by the American Bar Association was awarded only after Marquette agreed to close the night school. It wasn't until the beginning of the millennium that part-time evening programs returned to Milwaukee legal education in a very formal way, and were marketed vigorously.

### Diploma Privilege Battles

Legislation introduced in 1913 by some Marquette faculty sought to reform admission policies, including abolition of the diploma privilege—a bar membership advantage only available at the time to graduates of UW-Madison Law School. For the next two decades, numerous legislative bills were introduced, debated, and lobbied to eliminate the privilege. The arguments lodged were that professionalism and law study standards were compromised by the diploma privilege, that the privilege being exclusively extended to Wisconsin graduates gave the school an unfair advantage in student recruitment, and that the privilege for state-supported Wisconsin students prevented them from "proving" law study proficiency and legal acumen. As late as 1932, Marquette's dean continued to write the Legislature regarding the school's opposition to the diploma privilege. In the end, the 1933 "Fons bill" passed, adding Marquette Law School graduates, who were state residents and otherwise qualified, eligible for supreme court admission under the diploma privilege, effective 1935.

In 1960, state legislation required for the first time that all future Wisconsin lawyers must

*continued page 22*

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# Pro Bono Corner: Volunteer Lawyer Project Family Law Cases

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

## Legal Action of Wisconsin's Volunteer Lawyer Project

**Contact:** Pat Risser

**Office:** Legal Action of Wisconsin, Inc.  
230 W. Wells Street  
Milwaukee, WI 53203

**Phone:** (414) 278-7722

**Fax:** (414) 274-3096

**Email:** [pzr@legalaction.org](mailto:pzr@legalaction.org)

For thirty years, Legal Action of Wisconsin's Volunteer Lawyer Project ("VLP") has involved private attorneys in representing the poorest members of the community in court for free. The VLP recruits *pro bono* attorneys for a range of cases, including landlord-tenant, public benefit, driver's licensing, consumer, and elder law issues. But 30% of Legal Action's cases—and a significant need within the VLP—is in family law.

Well over 60% of family law litigants in the United States is *pro se*. While some of these individuals choose to proceed on their own, a significant number do not have an attorney because they cannot afford one. Experienced family lawyers understand that they are not just advocates in family law cases; they also serve as counselors, teachers, negotiators, and protectors. *Pro se* litigants, particularly those who do not speak English, those with limited education or experience in the legal system, and those with disabilities, are at a real disadvantage without a lawyer.

This is where the VLP makes a difference. While the VLP mainly refers divorce cases, it occasionally recruits lawyers for child support, placement, and custody modifications. The need for attorneys to assist in these cases is great. For example, the VLP recently sought a volunteer attorney to handle the divorce filed by a woman against her abusive husband, who works in the cash economy while the client supports their child, pays the household bills from her wages, and attends school. Another case involved a disabled man in his late 50s, living on SSI income, who sought a divorce from a woman from whom he had been separated for several years. In a third case, a Spanish-speaking client sought to divorce a husband

who moved out while she was pregnant, and whom she had not been able to contact since he left.

Of course, the family lawyer role can be daunting for attorneys, as well as for their clients. The VLP offers considerable support to overcome that barrier. Many *pro bono* lawyers take advantage of the VLP's free CLE-approved family law training, which includes a Basic Track covering basic divorce procedure and substantive law. An Intermediate Track focuses on developing a custody or placement case, and negotiating and drafting marital settlement agreements. Details about the next training, which will take place November 12, 2010 at Waukesha Area Technical College, are available at [www.legalaction.org](http://www.legalaction.org) (click on "Volunteer Lawyers Project" under the Legal Action logo).

The VLP also offers comprehensive manuals to volunteer attorneys, in addition to technical support and mentoring by Legal Action's staff. It helps pay extraordinary expenses of representation such as obtaining medical records, private process service, witness fees, and discovery and interpretation expenses, as long as they are pre-approved by VLP staff. Lawyers representing Legal Action clients are covered by Legal Action's professional liability insurance.

Attorneys who do not typically practice in family court have had real success representing parties in family disputes through the VLP. Attorney Summer Carlisle, a first-year associate at Hawks Quindel who practices labor and employment law,

described her experience with her first two VLP assignments as a "great way to get an introduction to family law, which is such an important area of law for so many people." She feels that she has gained valuable experience in building relationships with clients who are experiencing an especially difficult time. Attorney David Bordow, who once practiced regularly in family court but now concentrates on juvenile and criminal work, has volunteered for one divorce case at a time since 1994. He has enjoyed working with the VLP's clients, noting that they have "provided me with all I need to do the job for them."

Adds Bordow: "I can give a little back to the community, which I think all lawyers should do."

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## Marquette continued from p. 20

be graduates of law schools. In 1966, a State Bar legal education committee supported both law schools' decisions to grant the Doctor of Jurisprudence, rather than to continue an LL.B curriculum. In addition, the committee recommended uniformity between the two schools in degrees awarded, standards to be met by degree recipients, and the granting of doctorates to alumni with LL.Bs.

## Mid-Century Legal Education Movements Hit Milwaukee

Since the early days of the local bar associations, a primary reason for membership was to educate each other about new cases and legal trends in informal and formal settings. In 1953, Marquette Law School, of its own volition, began to offer the bench and bar continuing legal education. A decade later, the school joined the Institute of Continuing Legal Education of Wisconsin (CLEW) to offer practicing attorneys continuing legal education. This formal collaboration with the UW Law School and State Bar of Wisconsin only lasted three years. After mandatory continuing legal education began in 1977, the local law school opened its Center for Continuing Legal Studies. In addition, the various local bar associations began to regularly offer CLEs, and to replenish their coffers with CLE fees. Local law firms began in-house CLE programming soon thereafter.

In the early 1970s, when the supreme court approved the Student Practice Rule, legions of law students were commissioned to supervising attorneys and clinical programs throughout the Milwaukee courts, nonprofits, and government practice areas. As had been the case a century before, private practitioners again provided students with legal practice guidance that "counted" towards bar admission. Ironically, at the same time that the law school faculty increasingly became full-time academics and thereby supplanted the law office as the place of student preparation, the curriculum was being retooled for practicums and clinics under practicing attorneys' tutelage.

Also during the early '70s, yet another call for more Wisconsin law schools occurred. This time University Chancellor H. Edwin Young passionately made the case for 1) the reduction of Madison's class sizes (supposedly in response to accreditation and market forces) and 2) the need for more trained lawyers in the state in order to remain economically competitive. In response to

the request for a second public law school location, a study committee in 1972 most urgently recommended the University of Wisconsin-Milwaukee. The study cited Milwaukee as the preferred choice according to a number of rationales, any one of which could have urged the founding of a second public law school in Milwaukee or could have induced opposition to a Brew City location. The rationales included: 1) the inadequacy of Green Bay campus buildings would cause delay and cost about \$5,600,000 in building construction and library development, while UWM could integrate the law school almost immediately and for about \$150,000; 2) in an increasingly litigious culture, the economics and demographics of the state's largest city would best be served by the proposed public institution; 3) the dearth of women and minorities in Wisconsin law schools was exacerbated by the distance of the concentrated populations of each from Madison or by the costs of relocation to Madison for cheaper tuition; and 4) the increasing number of law school applicants denied admission afforded a reasonable projection that another Milwaukee law school would not affect Marquette's enrollment numbers.

A second public law school or indeed a third law school in the state has not yet been accredited. But on reflection, the rationales of the 1972 study anticipate the necessary changes in legal education during the past 40 years. In Milwaukee, the results of these changes have been: 1) institution of admission selection processes that encouraged retention and therefore a growth in bar membership, 2) increased numbers and percentages of minority and female attorneys, 3) an economically and demographically diverse applicant pool, and 4) increased access to enrollment by working students through the reinstatement of the part-time/evening law school curriculum. All these developments show progress in addressing the legal education concerns raised by the 1970s study.

## Conclusion

Green Bay (or any other state campus, for that matter) still hasn't broken ground for a law school building, nor is any other private or public law school seriously in the works for groundbreaking. As of September 8, 2010, Marquette and Milwaukee host a state-of-the-art law school facility designed also to serve the local bar, bench, and public; a building that facilitates both civic discourse and the needs of an ever-changing student

body. The design itself of the new Marquette University Law School building—with its massive, unfolding atrium; its banks of windows; and its borderless library—reflects that legal education continues to be open and evolving, intent on illuminating the next generations of Milwaukee lawyers.

<sup>i</sup>The sources for this article include: Berryman, John, ed., *History of the Bench and Bar of Wisconsin*, Vol. I (H.C. Cooper, Jr. & Co., Chicago 1898); Abbott, Austin, *Existing Questions on Legal Education*, *Yale Law Journal*, Vol. III, No. I (October 1893); *The Making of Modern Law* (Gale 2010); *The Bench and the Bar of Wisconsin: History and Biography, with Portrait Illustrations* (Milwaukee 1882); Stone, Harlan, *The Importance of Actual Experience at the Bar as a Preparation for Law Teaching*, American Bar Association Publication (August 1912); Habermann, Philip S., *A History of the Organized Bar in Wisconsin* (Madison 1986); Boden, Robert, *The Marquette Law School: 1892-1928* (Milwaukee 2006); Boden, Robert, *Brief History of the Marquette University Law School*, (Milwaukee 2005); Boden, Robert, *1916 Proceedings Against Marquette Law School by the Association of American Law Schools: Part 2 of a Series of Articles on the Early History of the Marquette University Law School* (Milwaukee 2006); *The Story of Evening Legal Education at Marquette University: Part 4 of a Series of Articles on the Early History of the Marquette University Law School* (Milwaukee 2007); *Marquette University Bulletin, College of Law* (Milwaukee 1913); *Marquette University Bulletin, College of Law* (Milwaukee 1922); *A Report by the UWM University Committee on the Creation of a Law School at UWM* (Madison 1973).

<sup>ii</sup>The original stock amounts were pledged from the eight members (individuals and firms), each of whom posted from \$500 to \$2,000.

<sup>iii</sup>Chapter 310 of the Laws of 1891 related to board of examiners uniformity in standards; Chapter 174 of the Laws of 1897 related to standards and credential presentation of out-of-state attorneys requesting bar admission reciprocity.

<sup>iv</sup>By the late 1970s, the Milwaukee Bar Association membership no longer was the only means by which local lawyers organized themselves. The MBA had long since been joined by its Junior Bar, the Association for Women Lawyers, Serjeant's Inn, Inns of Court, the Association of Trial Lawyers, and a host of other specialty bars.

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