

Annual Meeting 2019



Hon. Mary M. Kuhnmuench (ret.) (left), recipient of the 2019 E. Michael McCann Distinguished Public Service award, pauses a moment with her award's namesake, Michael McCann, at the 2019 Annual Meeting on July 16. Read more about Judge Kuhnmuench's experiences on the bench in this issue.



HIGHLIGHTS

- Golf Outing
- Annual Meeting
- Justice Center
- ...and more!

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Regular Features

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Make Your Voice Heard

Send your articles, editorials, or stories to jsawinskicouch@milwbar.org. We also have seats available on the



Messenger Committee.

We look forward to hearing from you! The *MBA Messenger* is published quarterly by the Milwaukee Bar Association, Inc., 747 North Broadway, Milwaukee, WI 53202.

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Matt Falk

By Atty. Matthew R. Falk, Falk Legal Group

Note: Matthew Falk's term as president concluded June 30, 2019. By this time, Matt has been a leader in hosting a diversity summit at the MBA, amending the MBA's mission statement to encompass diversity and inclusion, and started a funded diversity clerkship in the federal court beginning in 2020.

The Milwaukee Bar Association hosted an *On the Table MKE* event this past fall. *On the Table MKE* is a large collection of small Milwaukee gatherings held on a single day, where participants join together to share a meal, talk about topics that matter in their lives and put their ideas in motion to improve the quality of life in greater Milwaukee. The MBA hosted one and selected diversity as its topic. For a white lawyer and working his entire professional career in Milwaukee, the session represented a wave of emotion — sad, humbling, scary, thrilling, and encouraging. For the reasons addressed below, I remain strident in my commitment to helping the MBA emerge as a champion of diversity in Milwaukee.

In addition to the MBA Executive committee, participants included representatives from law firm diversity departments, the LGBTQ Community and academia. The group represented many facets of diversity, from their racial make-up, to their upbringing in various parts of the world. While the larger topic was diversity, the conversation and exchange quickly focused on race relations between Milwaukee's black and white communities—an area that many feel presents growth opportunities or, stated more emphatically, screams out for change.

While our group was not a scientific representation of our community, we were able to openly discuss challenges present to race relations. These are a few of the topics we openly discussed and that were included in our exchange:

1. In Milwaukee, it is impolite to speak about race;
2. Black people leave Milwaukee because of its segregated neighborhoods;
3. Black people do not want their kids to go to a school where no kids look like them;
4. White people have no appreciation of or experience in a multi-racial identity/ experience; and
5. Everyone knows the liability aspects to the black community; however, no one knows its strengths, assets or value to the community as a whole.

In considering these issues, the first one really struck me: white people do not like to talk about race. It struck me as so true and a big part of Milwaukee's challenge. In subsequent exchanges about the MBA's *On the Table MKE*, I stumbled upon Robin DiAngelo's Book *White Fragility: Why it's so Hard for White People to Talk about Racism*. DiAngelo's book provides an eye opening answer to this question and opportunity for Milwaukee.

This column is too short to do the book justice. However, DiAngelo's book discusses how white people in North American live in a society that is deeply separate and unequal by race. White people benefit from that inequality. Yet, white people are insulted by racial stress and simultaneously feel entitled and deserving of entitlement. White Fragility is born out of superiority and entitlement and triggered by our discomfort about talking about race.

She goes on to give a great example – one that I would like to focus on here. She refers to The Good/Bad Binary system as one of the most effective adaptations of racism in recent history. That system reduces racism to simple, isolated and extreme acts of prejudice. Racists, in turn, are white people who intentionally (immorally) discriminate against people of color. Nice people (moral people), non-racists, do not intentionally discriminate. The following emerges: Racist = Bad; and Not Racist = good. This paradigm makes it impossible to talk about race since it exposes white people who acknowledge prejudice or bias to be lumped into the bad paradigm.

As any trial lawyer selecting a jury knows, we all maintain prejudices. Jury selection forces trial lawyers to get comfortable with exposing that bias. A goal of an effective trial lawyer is to identify those prejudices that help and those that hurt your client's case. We then use our preemptory challenges to “deselect” the panel according to

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Fall 2019

We're located at 747 North Broadway, Downtown Milwaukee.

Recent Regulatory Guidance & the Impact on Defined Contribution Plans

Friday, September 13 - 12:30-1:30 pm
Martha Mohs, *Reinhart Boerner Van Deuren*
1.0 CLE credit

Technical, Regulatory & Legal Issues Associated with the Use of Per- and Polyfluoroalkyl Substances (PFAS)

Wednesday, September 18 - 12:30-1:30 pm
Rula Deeb, Ph.D., BCEEM, PMP & Jeff Tracy, P.G. *Geosyntec Consultants*
1.0 CLE credit

Scooters, Streetcars & Bikes: Transportation Law Review & New Developments

Thursday, September 19 - 12:30-1:30 pm
James Davies, *Bubl'r Bikes*
1.0 CLE credit

Making the Best Record

Friday, September 20 - 12:30-1:30 pm
Karen Renee, *eCourt Reporters*
1.0 CLE credit



Wage & Hour Update 2019

Wednesday, September 25 - 12:30-1:30 pm
Larry A. Johnson, *Hawks Quindel*
1.0 CLE credit

The Rise of CBD in Wisconsin: Pitfalls & Considerations

Thursday, September 26 - 12:30-1:30 pm
Jason Luczak, *Gimbel Reilly, Guerin & Brown*
Emil Ovbiagle, *OVB Law & Consulting*
1.0 CLE credit

Gearing Up: Considerations for Beginning a Law Practice

Friday, September 27 - 12:30-1:30 pm
Matt Beier & Tom Watson, *Wisconsin Lawyers Mutual Insurance Company*
1.0 CLE credit

What Estate Planners Should Know About Income Taxation of Trusts & Estates

Tuesday, October 1 - 12:30-1:30 pm
Maureen L. O'Leary & Peter Smiley, *Willms-O'Leary*
1.0 CLE credit

The Attorney's Guide to Modern Digital Forensics

Thursday, October 3 - 12:30-1:30 pm
Erik Thompson, *Data Narro*
1.0 CLE credit

Executive Compensation 101: An Introduction to the Basics

Friday, October 11 - 12:30-1:30 pm
Martin Tierney & Mark Lotito, *Michael Best & Friedrich*
1.0 CLE credit

Right of Publicity 101

Tuesday, October 15 - 12:30-1:30 pm
Robert Arthur, *Arthur Law Office*
1.0 CLE credit

Show Me the Money: Forensic Investigation & Business Valuation in Family Law Cases

Friday, October 25 - 1:00-4:00 pm
Ron Bero & Paul Rodrigues, *The BERO Group*
2.0 CLE credits

Mediating Employment Disputes in the Western District & Beyond

Wednesday, October 30 - 12:30-1:30 pm
Hon. Peter Oppeneer, *U.S. District Court for the Western District of Wisconsin*
Jill Hamill Sopha, *Sopha Mediation*
1.0 CLE credit

WisLAP & Ethics: What's the Connection?

Wednesday, November 6 - 12:30-1:30 pm
Allison Ritter, *Ritter Law Office*
1.0 LAU CLE credit

Anatomy of a Legal Malpractice Insurance Policy

Tuesday, November 12 - 12:30-1:30 pm
Matt Beier & Tom Watson, *Wisconsin Lawyers Mutual Insurance Company*
1.0 CLE credit

Can't Agree on eDiscovery? Try ADR: Tips, Pitfalls, & Resolution

Wednesday, November 13 - 3:00-5:00 pm
Hon. Richard J. Sankovitz, *Resolute Systems Inc.*; Timothy D. Edwards, *Anthony Lawhon PA*; Jaya Sharma, *Sharma Mediation & Arbitration Inc.*
2.0 CLE credits

2019 Law & Technology Conference

Friday, November 15 - 8:00 am -4:00 pm @The Westin
7.0 CLE credits

The Future of Remote Notaries in Wisconsin

Monday, November 18 - 12:30-1:30 pm
Brad F. Hoeschen, *Old Republic National Title Insurance Company*
1.0 CLE credit

Elder Law & Long Term Care Insurance

Tuesday, November 26 - 12:30-1:30 pm
Dayna J. Lefebvre, *Becker, Hickey & Poster*
Melissa M. Burback, *Northwestern Mutual*
1.0 CLE credit

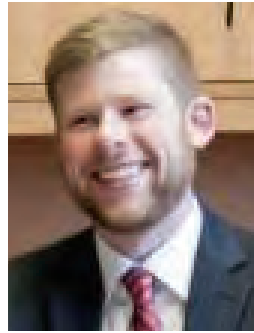
Free CLEs for newly licensed members (last five years) and law students.

Visit the MBA online to register.

Top Five Suggestions for Staying on Top of Updates to your Practice Area

by Matt Ackmann, Hawks Quindel

New developments such as the Trump tax reform or the law relating to moving a child's residence are good examples of the need to stay updated and current on the law. Here are my top five suggestions for staying ahead of the developments.



1 Google Alerts.

Setting google alerts for topics in your practice area are great ways to find content without having to spend the time weeding through the internet. If an alert you set is not producing or producing the wrong content, modifying it is as easy as setting it.

2 Bar Associations.

The State Bar and many local bar associations offer periodic newsletters or blog posts focused on developments in the law. In addition, the State Bar listserv for your practice area is a great resource to share and learn about pending changes to the law.

3 CLEs.

Annual update CLEs offered by bar associations and private entities are often great resources for programs centered on recent updates to your practice area.

4 Social Media.

Following social media trends related to your practice area is another great way to efficiently gather information. Follow legislators, government entities, and non-profits associated with your practice area to see how the discussion around a proposed or recent change is developing.

5 Networking.

Practice area groups and organizations are great resources to learn about pending legislation or recent changes to the law from your peers. Not only will you be alerted to the change, but you can glean different perspectives on how the change may impact your practice.

Four Attorneys Promoted to Shareholders at von Briesen & Roper

Randall D. Crocker, President and CEO of von Briesen &



Andrew T. Frost



Melanie L. Persich



Danny G. Thomas



Peter J. White

Roper, announced in July the promotion of Attorneys Andrew T. Frost, Melanie L. Persich, Danny G. Thomas, and Peter J. White to Shareholders of the firm. **Andrew T. Frost** focuses on mergers and acquisitions/capital markets, executive compensation and employee benefits. **Melanie L. Persich** practices in toxic tort, insurance coverage, and general litigation matters. **Danny G. Thomas** focuses his practice on toxic tort, civil litigation and corporate investigations. **Peter J. White** focuses on business, tax and mergers and acquisitions.

Gimbel, Reilly, Guerin & Brown Welcome Kristen N. Nelson



Kristen N. Nelson

Attorney **Kristen N. Nelson** joined the firm's Health Law Section. Atty. Nelson has worked previously in private practice specializing in criminal, civil and regulatory representation of health care providers. GRGB Partner, Patrick Knight, notes that Atty. Nelson "understands the multiple issues currently faced by health care providers and has demonstrated the ability to guide them through the complex processes involved in such investigations."

Experienced Health Care Lawyer Joins Quarles & Brady



John Hintz

Attorney **John Hintz** has joined the firm's Health & Life Sciences Practice Group in the role as Of Counsel in its Milwaukee office. Atty. Hintz focuses his practice on health care business transactions, including forming and administering clinically integrated networks, negotiating managed care contracts, and establishing and maintaining clients' legal compliance. Atty. Hintz also teaches managed health care courses at Marquette University Law School.

Scott Wagner Joins Mallery & Zimmerman



K. Scott Wagner

K. Scott Wagner has joined the firm as a shareholder in Mallery & Zimmerman's Milwaukee office. Scott has over 29 years of experience successfully representing clients in highly complex commercial litigation, including shareholder disputes and derivative actions, contract disputes, and class actions involving anti-trust, securities fraud and breaches of fiduciary duties by majority shareholders. Scott is annually listed in *The Best Lawyers in America* and *SuperLawyers*. Scott's significant litigation experience is a welcome addition to the firm's established litigation and business/corporate practices, enhancing the firm's ability to provide clients with superior legal services.

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 Lauren N. Zenk, *Quarles & Brady*

President continued from page 4

those prejudices—remove those jurors with prejudices that hurt our client's claim.

In our community we all maintain prejudices. Racism enters the picture when we act on those prejudices.

Our generation has a great opportunity: we can continue to work toward a more inclusive legal community. I encourage you to reflect on your own prejudice and bias. Honestly reflect on the ways we unintentionally reinforce harm on our black community. We cannot depend on black people to fix our prejudice: instead, we need engagement from our white

community. As a call to action, consider the following roadmap to start the process of undoing—to stop unintentionally making life bad for black people. Consider the following: First, engage in reflection and self-awareness to see your own bias; Second, participate in continuing education specific to issues of diversity; Third, foster more inclusive relationships; and Fourth, engage in intentional anti-racist practices.

Each step represents growth opportunities to make Milwaukee a more inclusive community. Start today!



31st Annual MBA Foundation Golf Outing



Difficult putts were nailed and balls lost in the weeds. August 7, 2019 was yet another beautiful day that kept the perfect weather streak alive for the golfers at the MBA Foundation Golf Outing. The coveted lowest overall score award went to the foursome of Smitha Chintamaneni, Ben Stern, & Adam Finkel of von Briesen & Roper, & Nick Jung of Cardinal Capital Management Inc.

New this year, the Silent Auction was held online to allow MBA members, and even the public, not attending the Golf Outing to participate. This expanded the auction reach to thousands of bidders, allowing the auction alone to raise more than \$3,000 for the MBA Foundation and its primary project, the Milwaukee Justice Center (MJC). A bidding war broke out for the laser rangefinder, but the biggest result was, understandably, the signed Christian Yelich Milwaukee Brewers jersey.

All proceeds from the Golf Outing and Silent Auction enable the MBA Foundation to do meaningful work addressing the unmet legal needs of Milwaukee's low-income, unrepresented litigants through court-based programs and resources. See you next year!



MBA 2019 Annual Meeting

Many smiles and lots of laughs were shared under a big tent on Mason Street and in the new MBA facility on July 16, 2019.



▲ Chief Judge Maxine White jokes with the incoming 2019-2020 board members just before the serious matter of giving the oath of office.



▲ Just before the Annual Meeting, the \$50,000 Founder (gold ribbon) and \$25,000 Pillar (silver ribbon) capital campaign donor firm representatives met for a ribbon-cutting ceremony to declare the new MBA facility officially open



▶ MBA Members and guests enjoyed food and drinks inside and out of the new MBA facility during the Open House following the Annual Meeting.



◀ Immediate Past President Matt Falk, Lifetime Achievement recipient Mary Kay Braza, and President-Elect Nadelle Grossman share a humorous moment during the awards ceremony.

2019 Award Recipients

Distinguished Service

Hon. Michael J. Dwyer

Milwaukee County Circuit Court (ret.)

First elected in 1997, Judge Dwyer served 12 of his 22 years on the bench in the Family Division. He has devoted countless hours to enact statewide policy changes concerning court efficiency, self-represented parties, domestic abuse, exploited youth, and many other causes. For more than a decade, he has chaired the MBA Family Bench-Bar Committee, creating transparency between the bench and bar and organizing two significant annual CLE programs. Upon retiring this year, Judge Dwyer intends to mediate family cases.



Lawyer of the Year

Dean P. Laing

O'Neil, Cannon, Hollman, DeJohn & Laing

In this past year, Dean Laing has obtained two favorable decisions from the Wisconsin Supreme Court, both making new law, and settled two personal injury cases in excess of one million dollars each. His personality and trial skills allow him to be an attorney to represent both Fortune 500 companies and severely injured persons. He is believed to be the only Wisconsin attorney to receive Best Lawyers of America's Lawyer of the Year award as both a plaintiff's attorney and a defense attorney.



E. Michael McCann Distinguished Public Service:

Hon. Mary M. Kuhnmuensch

Milwaukee County Circuit Court (ret.)

Recently retired, Judge Kuhnmuensch served as a Circuit Court judge for over 20 years and presiding judge as elected by her peers as president of the Wisconsin Trial Judges Association for eight. Her belief in supporting the "little guy" and providing a voice for the voiceless lead to work with the Milwaukee Homeless Veteran's Initiative, the Saint Mary's Notre Dame College Alumni Board of Milwaukee, Rosalie Manor, Milwaukee Women's Center, Big Brothers Big Sisters, and the Jewish Family Services.



Lifetime Achievement:

Mary Kay Braza

Foley & Lardner (ret.)

Mary Kay is a founding member of the Foley & Lardner Sports Industry Team, leading the firm to become a national sports law leader, having a direct role in some of the sports industry's highest-profile acquisitions, litigation and media deals. She is also an advocate for advancing women in law, has served as a litigant on behalf of pro bono clients, an adjunct professor at Marquette and John Marshall Law Schools, a frequent speaker on sports-related legal topics, and a local champion for those who suffer from mental illnesses.



MBA 2018 Annual Meeting



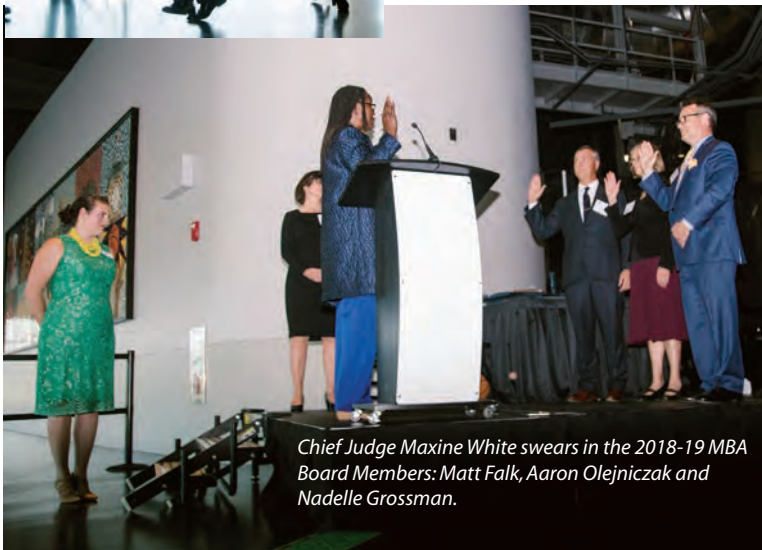
Outgoing president Shannon Allen and incoming president Matthew Falk know how to make an entrance.



Shannon Allen and Matt Falk shows off their skills.



Reception in the Fiserv Forum Panorama Club.



Chief Judge Maxine White swears in the 2018-19 MBA Board Members: Matt Falk, Aaron Olejniczak and Nadelle Grossman.



Reception in the Fiserv Forum Panorama Club.

2018 Award Recipients

Distinguished Service

Justice Shirley S. Abrahamson
Wisconsin Supreme Court

After being appointed to the Supreme Court in 1976, Justice Abrahamson was elected in 1979 and re-elected in 1989, 1999, and 2009, serving as chief justice from 1996-2015. Before joining the Supreme Court, she practiced in Madison for 14 years and was a professor at the UW Law School. Many organizations have recognized Justice Abrahamson for her work, including the American Judicature Society, the National Center for State Courts, and the American Bar Association.



Lawyer of the Year

Scott W. Hansen

Reinhart Boerner Van Deuren

Over the past year, Scott Hansen has been a lead attorney on several teams that successfully achieved decisions in favor of the defense, including a record setting jury verdict in the U.S. District Court for the Eastern District of Wisconsin in a patent infringement case and a federal antitrust case. Scott has shown his skill in all aspects of litigation – trial, motion practice and negotiation, and as a trusted adviser to his team, his clients, and his colleagues throughout the legal community.



E. Michael McCann Distinguished Public Service:

Amy E. Wochos

Milwaukee County Clerk of Circuit Court's Office

As a dedicated public servant, Amy Wochos has been a driving force behind the development of a number of projects, programs, and initiatives designed to expand access to civil legal aid for those with no or limited ability to pay for legal assistance. In her roles within the Clerk's Office, she was one of a few individuals who created the working entity that is the Milwaukee Justice Center, and was instrumental in working to bring the Eviction Defense Project to the Courthouse.



Lifetime Achievement:

Franklyn M. Gimbel

Gimbel, Reilly, Guerin & Brown

After serving as an Assistant U.S. Attorney from 1963 through 1968, Frank founded his firm. Over his distinguished career, he has tried over 200 jury cases, argued a case in front of the U.S. Supreme Court where he won a reversal in trial, and served as the lawyer for the Milwaukee Deputy Sheriff's Association for 31 years. In 1976, he became the first criminal defense attorney elected president of the Milwaukee Bar Association, then the first of the State Bar in 1986. Helping people is Frank's passion and he often takes strong stances as an attorney and as a philanthropist on behalf of the Milwaukee community.



The Whole Truth

by Francis Deisinger, Reinhart Boerner Van Deuren

93 minutes, 2016

Directed by Courtney Hunt



After searching for “lawyer movies” on my online streaming service, *The Whole Truth* popped up. I was not familiar with it but it was rather new and rather short, so I thought it might be worth a look. What had me dithering, however, was that it starred Keanu Reeves. Don’t get me wrong; I have enjoyed Reeves in some performances. He also starred, however, in the regrettable *The Devil’s Advocate*, as a young lawyer who eventually realizes that the senior partner he works for is Satan himself. That’s a sufficient concept for a wisecrack, but far too schlocky a premise for a good film.

But a quick search revealed that the director of *The Whole Truth*, Courtney Hunt, also wrote and directed the very well received 2008 film *Frozen River*. So I took the plunge, and found that while it breaks no new ground, *The Whole Truth* is a spare but capable courtroom drama with a well camouflaged reveal near the end.

Reeves plays Ramsey, a criminal defense lawyer in St. Bernard’s Parish, Louisiana, south of New Orleans. We learn in his voiceover narration as the film begins that he has a big problem. He is defending Mike Lassiter (Gabriel Basso), the 17 year old son of his good friend and fellow lawyer Boone Lassiter (Jim Belushi, appearing only in flashbacks). The problem is that Mike has been charged with stabbing and killing Boone, but he refuses to talk with Ramsey. So Ramsey has to defend Mike without any support from his client, yet he has promised Mike’s mother and Boone’s widow, Loretta (Renee Zellweger) that he will not allow Mike to go to prison.

Before I talk about what’s right with this film, let me mention what’s wrong with it. First, even though the film is set and largely shot in southern Louisiana, that location lends no atmosphere or color to the narrative. It’s difficult to imagine how this is possible if you have ever visited that area. The whole thing could as easily have been set in Wausau, Scranton, or Irvine.

Second, note that I mentioned “voiceover narration.” That’s often a sign that the director either doesn’t know how to develop the narrative more naturally, or (and I very much think this is the case here) doesn’t have the budget for it. Cinematic narrative exposition costs money, because it takes more cast time, writing time, camera time, and editing time. This is a

short film with a relatively small cast and few filming locations — also signs of budgetary pressure. As with most films utilizing voiceover narration, we are left to wonder how much better the movie might have been with fuller exposition.

That said, it’s not impossible to make a good film on a small budget, and *The Whole Truth* comes close. From our professional perspective, what it largely gets right are the courtroom scenes and the impact of the rules of evidence and procedure on the story. We learn through flashback that Boone was a philanderer and an abusive husband, and that Mike developed a growing rage about his father’s treatment of his mother. At a garden party at the Lassiter home, a drunken Boone is loudly cruel to Loretta, leading to an argument between Mike and Boone, and an awkward conversation between Loretta and Ramsey, one of the guests. The prosecutor objects to Ramsey using these episodes to “put the victim (Boone) on trial” but also parlays them to establish motive.

In another, more damning flashback, we see Loretta kneeling next to Boone’s bloody body, the knife still in his chest, when she notices Mike standing nearby, staring. Mike somewhat ambiguously volunteers “I did it. I did it.” When the DA puts Loretta on the stand, she agonizingly admits what Mike had said. In light of this testimony, Ramsey knows that he has little hope of convincing the jury that Mike didn’t wield the knife, so he does what he can to portray Boone as a violent man in hope of raising the question of “defense of others” (i.e., Loretta) in their minds. But the trial takes its dramatic turn when Mike, at the threat of firing Ramsey if he won’t allow it, insists on testifying.

Ramsey and Loretta don’t know what he is going to say, and they are visibly shocked when Mike alleges that his father repeatedly sexually abused him, including on a recent private jet trip they took together. Responding to this surprise testimony the next day, the DA calls a flight attendant to the stand who claims Boone and Mike were never out of her sight for more than a minute. But Ramsey’s skeptical young associate Janelle (the British actress Gugu Mbatha-Raw), in a cross-examination I appreciated for its hesitant authenticity, eventually backs the flight attendant into admitting that she may have spent more time socializing with the pilots. It’s enough to raise doubt. I learned after watching this film that although she did not pursue a legal career, the director, Ms. Hunt, attended law school. It shows.

As the jury deliberates, Janelle approaches Loretta outside the courthouse and asks her if she believed Mike’s testimony. Loretta senses where the conversation is leading and angrily tells the lawyer that her only job is to defend Mike. The parties are called back for the verdict, and as the jury files in Ramsey nervously tells Mike that even if the worst happens they will appeal. Mike only glares at him and continues a doodle he has been working on throughout the trial. The verdict is not guilty. But instead of a hug or thanks, Mike just hands Ramsey the doodle. Ramsey looks at the drawing and asks “What’s this?” “It’s your watch,” Mike replies. A final series of flashbacks explains that strange conversation, and reveals the whole truth.

The Whole Truth is a fair courtroom drama that does well enough with what it has.

2 ½ gavels.

Milwaukee Justice Center Update

MJC and Angela Schultz Awarded 2019 Marquette University Difference Maker Award



On January 23, Marquette University President, Dr. Michael Lovell, awarded MJC Partner and Marquette University Law School Assistant Dean of Public Service, Angela Schultz, the 2019 “Difference Makers” award at his annual all-university address. Dean Schultz hosted law school Dean Joseph Kearney and Dr. Lovell at the MJC in August 2013. There, they met with law students and MJC Executive Director, Mary Ferwerda, to discuss the MJC programs, its unique partnership with the Milwaukee Bar Association, Milwaukee County, and the law school, as well as the MJC’s commitment to community collaboration throughout its service to self-represented litigants in Milwaukee County. Angela was joined onstage by Milwaukee Bar Association Foundation President Josh Gimbel, *Gimbel Reilly Guerin Brown*, Milwaukee County Clerk of Court, John Barrett, a number of law student and attorney volunteers, and the MJC staff.

Welcome to the MJC: Megan Morrisey, new Mobile Legal Clinic Coordinator

The MJC is proud to announce that Attorney Megan Morrisey has joined the MJC as the new MJC Mobile Legal Clinic Coordinator.



Megan has dedicated her legal career to serving those caught in our legal system and assisting marginalized individuals by effectively problem-solving their way to a just resolution. She was an Assistant State Public Defender in the Milwaukee Trial Division until 2015. During her legal career, she taught evening courses of Criminology and Criminal Law at Waukesha County Technical College (WCTC). Megan also investigated sexual discrimination, sexual harassment and Title IX discrimination complaints by faculty and student employees at the University of Wisconsin - Milwaukee. Recently, Megan was the Community Outreach Director at Stork & Company where she presented on infant safe-sleep education and distributed Baby Boxes to address and combat the high infant mortality rate in Milwaukee.

Megan currently teaches Interviewing and Counseling, in the Disputes Resolution Certificate Program, at Marquette University Law School. This course incorporates techniques and artful skills in interviewing clients by casting actors from Milwaukee’s Repertory Theater in the role of clients. This course creates a unique opportunity for the law students to practice their newly refined techniques and skills in addressing the needs of their clients who are often frustrated and anxious about their legal dilemmas.

Megan graduated from the University of Wisconsin—Madison with a Bachelor’s degree in Behavioral Science and Law and a Certificate in Criminal Justice. She is a graduate from the University of Wisconsin Law School, where she participated in the Legal Defense Program and the Wisconsin Innocence Project.

Welcome to the MJC: Alexi Richmond, new Legal Assistant

The MJC is excited to welcome Alexi Richmond as the new Legal Assistant, overseeing the operations of the front desk information and clinic intake services. Alexi is a native of Wisconsin and is happy to call Milwaukee home once again. She is a 2017 graduate of the University of Nebraska-Lincoln, earning a bachelor’s degree in Spanish and Political Science. She has extensive experience interacting with the public through her undergraduate intern experiences with state and national elected officials and in her professional positions as a legal assistant with firms in Nebraska and Wisconsin.



Announcing the MJC Advisory Committee

The MJC has instituted a new advisory committee to offer insight and suggestion on the programs and services offered through this unique collaborative project. Advisory Board members are comprised of employees at MJC Partner organizations (Milwaukee County Clerk of Courts, Milwaukee Bar Association, and Marquette University Law School), attorney volunteers, and a representative of Chief Judge Maxine Aldridge White’s office. The members are: Judge Jane Carroll, *Chief Judge’s representative*; Atty. Kathy Charlton, *Hawks Quindel*; Atty. Steven DeVougas, *DeVougas Law Group*; Anna Hodges, *Chief Deputy Clerk of Court, Milwaukee County*; Tammy Kruczynski, *Senior Administrator, Milwaukee County*; Atty. Mont Martin, *Wiernick, Martin & Neumaier*; Sarah Martis, *Executive Director, Milwaukee Bar Association*; Atty. Katie Murphy, *Child Support Services, Milwaukee County*; Atty. Barb O’Brien, *Borgelt, Powell, Peterson, & Frauen*; and Dean Angela Schultz, *Assistant Dean for Public Service, Marquette University Law School*.

Congratulations, 2019 Jon Allen Page Setter Awards

Named in honor of the late Jon Allen, a former member of the MJC family whose energy and work ethic embodied the spirit of this award, these awards recognize those who “set the pace” for Milwaukee Justice Center Volunteer Service. Awards are presented each June at the MJC Run for Justice.

Attorney Pace Setter

Attorney Dennis Milbrath, *Levy and Levy*



Mobile Legal Clinic Pace Setter:

Attorney Jay Creagh, *Godfrey & Kahn*

Administrative Pace Setter

Gwyn E. Wallander, *Pre-Law Advisor, UW-Milwaukee*



Law Student Pace Setter

Xavier Prather, 2L, *Marquette Law School*

Intern Pace Setter

Katie Toohy, *Senior, Marquette University*



pro bono corner

The Marquette Volunteer Legal Clinic recently launched an Estate Planning Clinic at the United Community Center. The new clinic is intended to reach Spanish-speakers who do not yet have powers of attorney documents and/or wills. Clients make appointments to attend and receive questionnaires by mail to complete prior to the appointments. Each appointment is attended by a volunteer law student and lawyer who work together to ensure the testator's wishes are codified.

The project is supported by Quarles & Brady, which provides a professional interpreter, and the State Bar of Wisconsin, which provides access to its HotDocs estate planning document assembly program. Marisa Zane is the Estate Planning Clinic's director. If you are interested in learning more about the clinic or would like to volunteer, please contact Marisa at marisa.zane@marquette.edu.



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 **MBA**
MILWAUKEE BAR ASSOCIATION

Bicycle Weekend: The Lake Michigan Ferry Circuit

Douglas H. Frazer, DeWitt Ross & Stevens

Busy lawyers are always looking for quick weekend getaways. Allow me to share my Lake Michigan ferry circuit ride last summer.

July 14, 2018

Fox Point 3:30 a.m.

I set off on my Surly 4130 touring bike for the Lake Express Ferry Terminal south of the Hoan Bridge. In my panniers and handlebar bag: extra tire tube, hex wrenches, hand pump, mobile phone, charger, wallet, sunglasses, change of clothes, light rain jacket, bike lock. It is raining most of the way. But no traffic. I get a flat tire 350 yards from the terminal. I walk the bike.



Lake Express Ferry Terminal 4:45 a.m.

I've read that AAA now offers roadside service for bicycles. I call to arrange a pick up at the Muskegon terminal upon my arrival. I can get dropped off at City Hub Cyclery in downtown Muskegon. The agent informs me that I can't make an "appointment." I'll need to call again upon arrival. A young father with his family offers to help me change the tube. He works for Trek in Waterloo. It takes him about 90 seconds. The Lake Express, placed in service in 2004, is a fast catamaran-style car ferry. It is 191 feet long and sails at 34 knots. It can hold 248 passengers, 44 cars, and 12 motorcycles. My sailing departs at 6:00 a.m. It's a two-and-a-half-hour crossing. I pay an additional \$10 for the bike. Total fare: \$110.

Muskegon 9:30 a.m.

I pedal to City Hub Cyclery for a quick check-up. My tire is underinflated, but that is quickly remedied. I am on my way to Ludington. A series of bike trails, including the well-known 22.5-mile Montague-Hart segment, will take me two-thirds of the way.



North Muskegon 10:30 a.m.

I stop at a McDonalds for breakfast and senior coffee. Free Wi-Fi. Back on the trail for 45 minutes. Near the Michigan's Adventure amusement park, it starts to rain.

Montague 12:30 p.m.

I find the trail head and set off to Hart.



Hart 3:00 p.m.

I am ready for a McDonalds McFlurry, but instead find the Hart Dairy Delight. The banana split is enough for two people. I eat the whole thing. The next 20 miles to Ludington are on low traffic county roads.

Ludington 5:05 p.m.

What a beautiful harbor town. There is an inland lake, a marina, the ferry terminal, a large white sand beach, and a delightful business district. I buy my ticket on the SS Badger for the 8:45 p.m. crossing to Manitowoc and repair to the Ludington Bay Brewing Company, 515 James Street, for a change of clothes, several cold beers, and dinner.

SS Badger 8:45 p.m.

Talk about a step back in time. The Badger, 410 feet long, 107 feet (7 stories) high, was placed in service in 1953 at the peak of the Lake Michigan railroad car ferry activity. The train engines would push rail cars on and drag them off - commercial trucks and private vehicles could get on and off under their own power. The ship can hold 600 passengers. The passage is four hours. The ship has a reinforced hull which allows it to function



as its own icebreaker (currently it runs only May through October). It has sophisticated, coal-fired Skinner Uniflow engines. It cruises at 15.6 knots. It has outside deck *Bicycle*

continued next page

continued from last page

areas, deli-style snack bar, buffet-style dining area, 40 private staterooms (\$49), upper deck lounge, aft end lounge, video arcade, children's playroom, gift shop/ship's store, free quiet room/museum, two free TV lounges, free movie lounge, and limited Wi-Fi. The Badger is a National Historic Landmark and a designated part of U.S. Hwy. 10. Total fare to Manitowoc on this working museum: \$71, including \$6 for the bicycle.

Manitowoc 11:45 p.m.

We arrive in the fog. I bicycle to Harbor Town Inn, 3 miles west of downtown. A quick shower and I am asleep. Manitowoc hosts the Wisconsin Maritime Museum. I don't have time on this trip.

July 15, 2018

Manitowoc 8:30 a.m.

I set out for points south.

Cleveland 10:00 a.m.

A mile and a half outside of the village, I phone my friend (and attorney) Judith Perlman. She's home! She feeds me cookies and we catch up.

Whistling Straits 11:30 a.m.

The clubhouse would make a great stop for a late breakfast or early lunch. I've done it a number of times, so I continue on to Sheboygan.

Sheboygan 12:05 p.m.

My next stop is the John Michael Kohler Arts Center, 608 New York Avenue. This may be my favorite museum ever. It certainly has the best public washrooms anywhere, brightly painted floor to ceiling in imaginative colors, designs, and imagery - including the fixtures. The current Mary Nohl exhibit is terrific. (The Mary Nohl House, an internationally recognized art environment, is on Beach Drive in Fox Point.)

Kohler-Andrae State Park 1:30 p.m.

The bike route goes through the park, but I can't find the exit. A park ranger sets me straight. It's a segment of the old park road - now closed to vehicular traffic.

Oostburg 2:15 p.m.

Here is the northern terminus of the Interurban Bike Trail. I fill up my water and head south.

Port Washington 3:00 p.m.

I can't find a Dairy Queen, but I do find a Cousins Subs. I have a tuna sub and lots of ice cold water.

Cedarburg 4:30 p.m.

I take a nice long shady water stop downtown by the bridge. It's hot and I'm taking it slow. It's good to get off the bike and stretch the legs. My boy parts are telling me that next time I should choose a different saddle. I continue south through Mequon, Brown Deer, Glendale, and a sliver of Whitefish Bay.

Fox Point 6:15 p.m.

I am home for dinner. Total miles: 150—75 each day. I've been listening during the ride to V.S. Naipaul's "A House for Mr. Biswas" and various podcasts, including episodes of "This American Life," Malcolm Gladwell's "Revisionist History," and Esther Perel's "Where Should We Begin?"

This ride can be extended to three and even four days, and include kids. There are other things to see in the Sheboygan area, including the Kohler Design Center, and the Blackwolf Run golf course. On the Michigan side, Muskegon, the Michigan's Adventure amusement park (a nice stop for young in fact or the young at heart), and Ludington are well worth visiting. All in all, a splendid weekend and a wonderful ride.

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, and estate and trust litigation and administration.



100% Club members consist of firms with five or more attorneys and who are all registered Milwaukee Bar Association (MBA) members.

What a Judge Sees

Hon. Mary M. Kuhnmuensch



I recently retired as a Milwaukee County Circuit Court Judge. Wisconsin Circuit Courts are trial courts, and on any given day, thousands of people across our great state make their way into a courthouse to have their disputes heard by a trial court judge. There are 249 trial court judges in the state of Wisconsin, and for almost 21 years, I was honored to be one of them.

During my time on the bench, I had the proverbial best seat in the house. From that seat I was privy to everything from the intimate secrets of a failed marriage, to the long-term effects of violent crime in our community. From that seat I witnessed the frailty and the strength of the human condition. With that seat came an incredible responsibility, a responsibility to treat everyone who came before me with dignity and respect. Equally important, was my duty to judge without being judgmental.

On my best days, I aspired to be “Solomon like.” On my worst days, I left the courthouse hoping that I lived up to my own version of a physician’s Hippocratic Oath, “first do no harm.” The unvarnished truth is that trial judges have a front row seat to the best and the worst of humanity, and we are expected to deal with both in measured cadence. Like many of my colleagues, I found that easier said than done, particularly when confronted with the raw and unfiltered emotions of the litigants before me.

Over the span of 21 years, I witnessed the unbearable pain on the face of a mother whose son had been killed in a senseless act of gun violence. I heard the anguish in her voice as she described all of the future events that her son would never experience, such as a wedding or the birth of a child. I saw the hopelessness in the eyes of an unemployed father struggling to make mortgage payments to keep his home from foreclosure, and I heard the frustration in the voices of parents of mentally ill adult children, as they struggled with the emotional toll

of the commitment process. I bore witness to the tears of husbands and wives in countless divorce proceedings when I asked them whether their marriage was irretrievably broken, and I heard the soft cry of a six-year-old boy as he described the beatings he suffered at the hands of a parent.

But I was also privileged to see the strength and courage on the faces of victims of domestic violence as they stepped forward for the first time in their lives to speak publicly about the mental and physical abuse that they had endured. I witnessed the commitment of law enforcement officers and victim advocates who worked tirelessly on behalf of victims of sexual abuse and assault. I appointed hundreds of dedicated and hard working lawyers who never hesitated when called upon to serve as pro bono advocates for those who could not speak for themselves. I listened to countless statements of remorse, and was incredibly humbled to witness the human capacity to forgive.

I loved every minute of every day that I served as a trial court judge, because each day presented an opportunity to say something that might provide hope, or solace or encouragement to someone struggling with the difficulties of life. Over the years, friends and family often asked me about the most important qualities of a good judge, and I usually replied that a good judge needed to be patient, kind, hard working, honest and intelligent. I emphasized, however, that good trial judges weren’t afraid to deal with the “messiness” of life, and they were always at their best, when the people before them were at their worst. For two decades I had a front row seat to the “messiness” of life. It was incredibly challenging, often heart breaking but always rewarding.

Hon. Mary M. Kuhnmuensch, Retired Milwaukee County Circuit Court Judge and former President of the Wisconsin Trial Judges Association



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A New Lease on Life

Sarah Martis, CAE, MBA Executive Director



may need to support them and their practices. Much of the space is free for members. The facility is even equipped with a free copier/printer/scanner for members.

In late August 2018 the MBA vacated its headquarters of a quarter century at the corner of Jefferson Street and Wells Street. Motivated by the end of the current lease and the desire to ensure the MBA facilities are in lock step with the mission to support and improve the professional environment for Milwaukee area attorneys, we embarked on an adventure that had MBA staff and volunteer leaders alike traversing the central business district for a facility that would meet our current needs and be flexible enough to meet the demands of the future.

Our search took us to over fifteen buildings from July to September 2017. We were negotiating terms with several properties by late September and finalized a new lease in March 2018 at 747 North Broadway. In April 2018 the hammers started swinging as the structure that supported Milwaukee mainstay Grenadiers and its successor Moceans came crashing down. The MBA took official occupancy of the facility in December 2018.

Many comment that the new facility must be larger than the old facility. The reality is that it is 400 square feet smaller. The layout of the facility allowed us to maximize the space while paying for less square footage and ensuring that we are utilizing every inch. The new space is extremely efficient for our operations.

The facility is street level and has wonderful floor to ceiling windows that provide a light and airy feel. Milwaukee area attorneys are encouraged to come into the space for MBA events and CLEs as well as for their own business purposes. The office is well equipped to handle everything from a video deposition, recording a mock trial, large scale conference calling, mediation, client meetings to quiet work space or dropping in for a cup of coffee. Between the boardroom that seats 12, training rooms that seat 35 individually or over 80 when combined, two small meeting rooms for 4-6 and a welcoming lobby and co-working space – we are ready for anything the attorney community

Attorneys from suburban or outlying counties may find additional benefit in landing at the MBA when they are between meetings or court downtown. Complimentary beverages and snacks will keep you satiated while you work!

I hope you will come see, and more importantly utilize the home and hub for attorneys in the Milwaukee area.

Special thanks to:

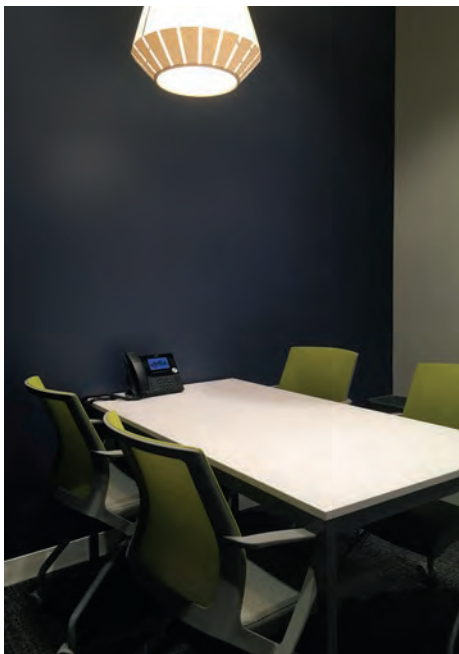
Marvin Bynum, Elizabeth Johnson, Erin (Maggie) Cook, Godfrey & Kahn, for their fastidious oversight in helping the MBA negotiate our lease agreement

Frank Pitsoulakis, Reinhart Boerner Van Deuren for his expertise in engaging with our contractor

David Pudlosky, who stayed the course and provided creative space solutions to help us achieve our goals in the form of a building



continued next page



The MBA Board of Directors for their countless volunteer hours ensuring the facility was selected and implemented in a responsible manner for the betterment of the organization and in support of Milwaukee area legal professionals

All of the capital campaign donors, without whom we would not be where we are today

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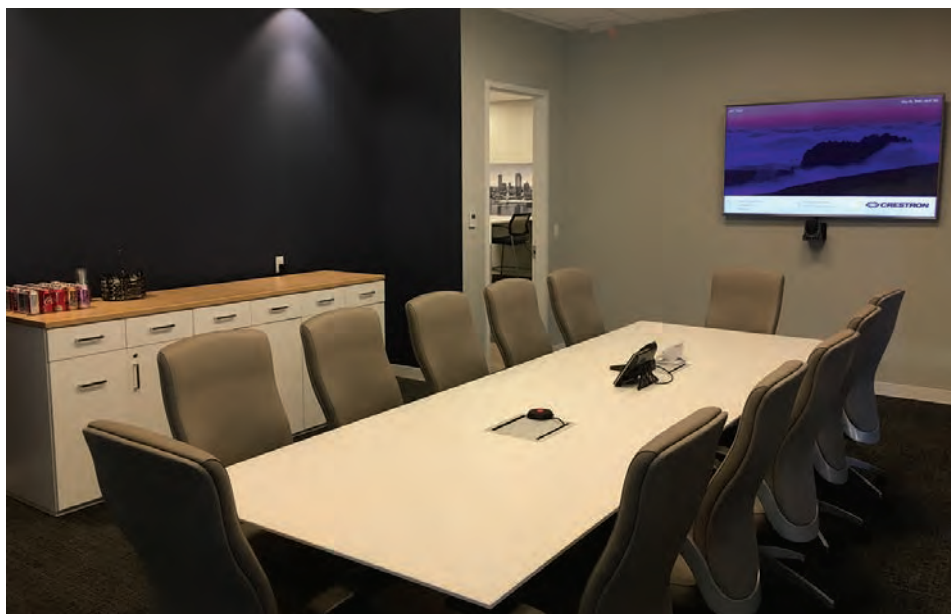
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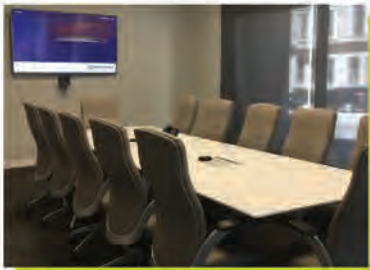
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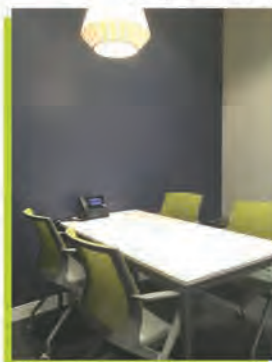
- Complimentary beverage & snack service



- Conference calling & high-speed Wi-Fi
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How Past Representations Can Become a Current Problem

Attorney Mark Bassingthwaite, ALPS



Malpractice claims alleging a conflict of interest have been a serious concern for insurers for years. One of the reasons is this. Conflict claims can get expensive fast, if for no other reason than they almost always boil down to a greedy attorney putting his or her financial interests above someone else's. So not good, particularly if a jury has any say in the matter.

As a risk guy working in the malpractice insurance arena, I've taken a number of calls over the years from attorneys wanting help in working through a potential conflict situation. These are the calls that both challenge and fascinate me the most. Suffice it to say, before becoming a risk manager, I had no idea how complicated and crazy some of the conflict fact patterns could get.

Given the frequency of conflict questions that come my way, I wanted to share a little advice concerning one particular conflict resolution misstep lawyers sometimes make with Rule 1.9 of the Rules of Professional Conduct, commonly known as the past client rule. Let's start with a fact pattern. Nine years ago, Attorney Smith defended a prosecutor in an ethics probe. Six years ago, Attorney Smith made a lateral move and joined the firm of Jones, White and Parker. Attorney Parker, one of Smith's current partners, has been asked by the city,

a long-term client of the firm, to defend the city in a gender discrimination suit. The employee suing the city happens to be the prosecutor that Smith represented nine years ago. The question is, can the Attorney Parker accept the new matter?

At the outset, let's assume that Attorney Smith properly closed her file nine years ago by sending a closure letter to the prosecutor once the ethics probe was resolved; because, if that never happened, there could be an argument that the prosecutor remains an inactive current client and we'd need to review Rule 1.7, the current client rule. With documentation that the prosecutor is a past client in place, however, we're clearly now dealing with Rule 1.9.

Thinking about Rule 1.9 part (a), which most of us readily recall, it's tempting to look at the above fact pattern and conclude that even though the situation involves the same person, the same employee, and the same position there's no conflict because a gender discrimination suit and an ethics probe are not the same matter nor are they substantially related matters. The conflict resolution misstep that sometimes occurs is in stopping here because this is all the attorney remembers Rule 1.9 saying. Unfortunately, the decision to stop here ignores the fact that it is the same person, same employee and same position and it's a potential misstep because Rule 1.9 part (c), which prevents Attorney Smith from using information relating to or gained in the course of her prior representation to the disadvantage of her former client, has been overlooked.

Prior to the firm agreeing to represent the city, Attorney Smith would need to review her file to see if any information was learned that could be used to her past client's disadvantage. If the answer is yes, then the firm cannot represent the city. Yes, it's Smith's partner, Attorney Parker, who would be defending the city but the information Smith has will be imputed to her partner under Rule 1.10, the imputation of conflicts rule.

Conflict of interest situations are something every lawyer should take very seriously. Perhaps it comes as no surprise that I chose to discuss this fact pattern because it's real. Learn from the missteps of others. The above referenced firm ended up being disqualified by the judge. One must always remember that there's more to Rule 1.9 than the question of whether the past and current matters are the same or substantially related. Rule 1.9 also requires you to think about what you know, to include any information that is in your files that you may have forgotten about. Forget that and you could find yourself facing a similar outcome.

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Ryann H. Beck

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Ryann has a diverse range of experience relating to intellectual property matters, including domestic and international patent and trademark prosecution, licensing, and enforcement. Ryann has technical expertise in computer software applications, control systems, electrical and electronic circuits and systems, patient monitoring systems, medical devices and other mechanical devices.



Emily M. Chilson

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Emily focuses her practice on domestic and international patent, design, and trademark prosecution. Emily has technical expertise in mechanical technologies, including engines and related control systems, wearable technologies, transportation-related equipment and sub-systems, machinery used in the paper industry, pumps and circuits, and metal cutting machines.

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Supreme Court Says Plaintiffs Must Have Copyright Registrations Before Filing Infringement Actions

On March 4, 2019, the U.S. Supreme Court's unanimous ruling written by Justice Ginsburg in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*, resolved a circuit split by holding that a party may sue for copyright infringement only after the Copyright Office officially registers the copyright, or refuses registration. In the past, courts have been split regarding whether the Copyright Act allows a copyright owner to file suit as soon as all of the materials required for an application have been submitted to the Copyright Office ("application approach"), or only after the Copyright Office has acted on the application by either issuing a registration certificate or refusing registration ("registration approach").

A copyright owner in those jurisdictions following the "application approach" is therefore no longer able to sue for copyright infringement by merely filing an application for registration, except in limited circumstances applicable to certain categories of copyrightable works. For example, the Copyright Act specifically provides that a copyright owner who is preparing to distribute a work that is vulnerable to predistribution infringement such as movie or musical composition may apply to the Copyright Office for preregistration. A copyright owner may also sue for infringement of a live broadcast prior to registration. Even in these specific instances, however, the copyright owner must eventually pursue registration in order to maintain a suit for infringement.

In the present case, Fourth Estate Public Benefit Corporation ("Fourth Estate") is a news organization that produces online journalism and licenses articles to websites. Wall-Street.com ("Wall-Street") obtained licenses to several articles produced by Fourth Estate. Under the licensing agreement, Wall-Street was required to remove Fourth Estate-produced content

from the Wall-Street website before canceling the agreement. However, when Wall-Street canceled the agreement, Wall-Street continued to display the articles.

When Fourth Estate filed its infringement action against Wall-Street, it had filed applications to register its articles, but the Copyright Office had not yet issued the registrations. Wall-Street sought to dismiss the action, claiming that Section 411(a) of the Copyright Act's provision of "registration" as a prerequisite to suit meant actual registration and not mere application. The district court dismissed the action, finding that "registration" required that the Register of Copyrights "register the claim," not simply that an application be filed. The Eleventh Circuit affirmed this decision.

The Supreme Court agreed. In a unanimous decision, the Court held that registration of a copyright is a prerequisite to filing suit based on the plain text of section 411(a), except in very limited circumstances discussed above. Justice Ginsburg noted that the registration approach "reflects the only satisfactory reading" of the applicable language in the Copyright Act.

The Court considered the possible delay between filing an application and receiving the registration (currently estimated at seven months), but found the delay to be an issue to be resolved by Congress, not by the courts. The Court did confirm, however, that once a copyright is registered, the copyright holder can recover for both pre- and post-registration infringement.

The take-away from this decision is that copyright owners in those jurisdictions allowing the "application approach" as providing a basis to commence an infringement action will now need to factor in the additional time required to secure a copyright registration (or a final ruling on registrability from the Copyright Office) prior to commencing an infringement action. This decision will not have as large of an impact the Tenth and Eleventh Circuits which have already chosen to follow the "registration approach."

As a practical matter, however, copyright owners facing imminent or actual infringement can avail themselves of the Copyright Office's expedited application review process called "special handling" that results in the Copyright Office evaluating the registrability of a work quickly, typically within five working days. The required elements for "special handling" are an acceptable application, an acceptable deposit, and a nonrefundable filing fee. The filing fee for special handling of qualified applications for registration is \$800 per claim. If the work is deemed registrable, the Copyright Office will issue a registration certificate on an expedited basis.



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Healthcare Threat Management: What's Different and Why

by Attorney Sheridan Ryan, Medical College of Wisconsin Clinical Risk Management

In the spring of 2009, a physician showed us a note he found left on his car. It was a short note, handwritten on a child's "Little Mermaid" stationary:

Dear Doctor,
Now that spring is officially here, I thought I'd write you a note. My little friend loved spring what with Easter, and the tulips and daffodils, no more snow pants. But oh that's right, he will never enjoy this again – because remember you killed him. Hope you are having a good spring. I'll be watching you.



This wasn't the first time a provider was concerned for their safety and wary of standard safety advice such as to obtain a restraining order. Indeed, how should non-immediate threats be handled to best ensure safety? That letter launched our journey to find out.

Unlike other industries, in healthcare, some potential victims have treating relationships with those who threaten them. This by itself creates a unique challenge, but healthcare has still more hurdles to offer the healthcare threat manager.

Broadly, threat assessment is the process of gathering information to make a decision regarding the potential for violence.¹ Management refers to actions taken to gain control over a situation and threat management to "the actions that can be, should be, or have been taken to prevent violence."² Healthcare threat management strategies may range from least intrusive (e.g. actively monitoring a situation to detect change) to most intrusive (e.g. arrest, prosecution, involuntary commitment for treatment). Threat management experts advise beginning with the least intrusive option available while still ensuring safety.³ While threat assessment does not differ in healthcare from other industries, threat management strategies may differ considerably due to features unique to healthcare.

Patients Who Threaten Providers

When a patient threatens a provider, the "knee-jerk" reaction may be to dismiss the patient. Of course, in any industry, whether or not such an action will promote safety should be considered: "[I]t is contrary to the practice of threat assessment to actually be responsible for further escalating a situation."⁴ But in healthcare, there are additional concerns. Only in healthcare is there risk that the termination of the professional relationship with the threatening individual could result in harm and claims of medical abandonment.

Indeed, a full threat investigation may reveal the threatening behavior to be indicative of a new or undertreated medical or psychiatric problem that the provider or other providers in the organization are actually in a position to address.

Maintaining a treating relationship with the patient can offer the ability to monitor for safety and intervene as warranted. Also, a thoughtful approach reduces concerns for claims of abandonment, and ensures strategies implemented are neither over- nor under-reactive. However, in healthcare there can be strong organizational influence reluctant not to dismiss patients who have acted in intimidating or threatening ways.

Healthcare Organizational Policies

The Joint Commission and OSHA's healthcare workplace violence (WPV) prevention recommendations aim to prevent all forms of WPV, including verbal and non-verbal threats.^{5,6} In attempting to comply with the Joint Commission's "zero harm" goal⁷ and OSHA's unending commitment to "zero tolerance for violence" policies,⁸ healthcare facilities may adopt organizational dismissal policies supportive of dismissing patients who have expressed threats. While the intent is to support staff, promote a safe workplace, and comply with Joint Commission and OSHA recommendations, the healthcare organization may fail to recognize that dismissing such a patient may not enhance safety and in fact could worsen the potential for a violent outcome. Dismissal may also result in harm to the patient that far outweighs the patient's actions.

Though laudable, "zero" as relates to human interactional violence is almost certainly an unachievable goal, the continued adherence to which reflects the JC's and OSHA's lack of understanding of violence. If one realizes no more than the fact that acts of violence can be unintentional or intentional, instrumental or reactive, perceived as the only alternative or one of many, and that healthcare facilities cannot realistically intervene to affect all possible contributing factors to violence in the lives of all people who enter their facilities or come onto their premises, than this should be apparent.

Another organizational consideration⁹ is the healthcare facility's mission or vision statement, which may espouse commitment to the health of the community it serves. Our own does, and so did those of nine out of ten other facilities that we randomly selected for review. Policies supporting the practice of dismissing patients from medical management do not seem consistent with efforts to promote community health. Moreover, in our experience, dismissal is simply not an effective violence prevention management tool. A significant percentage of dismissals end up being reversed, and by virtue of federal law,¹⁰ patients can always return for care through the emergency department.

Unlike what might be expected of other industries, healthcare should recognize that mental health can fluctuate just as physical health does, and that healthcare often presents frustrations sufficient to test even the most resilient among us. While most patients behave within generally accepted social norms despite what may be very stressful conditions, it should not be a surprise that some people – those in a mentally fragile state for whatever reason – who are in the midst of a health crisis, navigating healthcare system obstacles, and experiencing concurrent social stressors (e.g. divorce, job loss,

continued next page

Title X continued from last page

mortgage foreclosure), are pushed beyond their limits and act out. OSHA, as anyone working in healthcare arguably should, purports to recognize the high stress atmosphere healthcare can be: “Pain, devastating prognoses, unfamiliar surroundings, mind- and mood-altering medications, drugs, and disease progression can all cause agitation and violent behaviors.”¹¹ Such awareness is necessary to direct WPV prevention efforts where they are likely to have greatest effect.

Healthcare Workplace Violence

Despite recognizing healthcare as a high stress environment, “Every year, OSHA staffers are ‘shocked’ by the number of workplace injuries and fatalities in [healthcare].”¹² And almost every year, healthcare organizations receive annual reports showing a rise in violence that don’t indicate whether the increase is truly reflective of a rise in incidents or rather an increase in reporting. Those advising healthcare organizations in WPV prevention would benefit from understanding what makes up the violence statistics because for many in healthcare, what comes to mind is an increase in instances of “street” violence – intentional assaults, batteries, and homicides committed by aggrieved patients or their angry family members against healthcare providers, when in reality, the reason healthcare is consistently at the top of the WPV statistics is because healthcare facilities are where violent patients are brought for care.¹³

Although it may not be obvious in Joint Commission or OSHA-promulgated guidelines, there are three types of violence seen in healthcare typically contemplated in these guidelines. If a healthcare facility recognizes the different types as well as the different prevention approaches each type calls for, it can then ensure each type is being addressed to the fullest extent possible.

Healthcare security professionals are usually the primary resource for dealing with incidents of general violence (e.g., the aforementioned “street” violence), and have a significant role, ideally alongside behavioral health team members, in addressing incidents involving affective or reactive violence (e.g., a patient in a delusional state acting out against a perceived threat). Acts of serious targeted violence are rare

by comparison but are the most feared by clinicians and can have devastating consequences, so ensuring everything possible is being done to prevent such violence is a hugely worthwhile albeit time-consuming endeavor requiring a team approach. For this reason, the study of threat assessment and management for the prevention of targeted violence in healthcare is well-suited for collaboration among a healthcare organization’s security professionals, attorneys, risk managers, clinic managers, providers, human resources and others.¹⁴ Working collaboratively, healthcare organizations can then commit to an achievable goal of doing everything it reasonably can to prevent harm to providers, staff, patients and visitors.

About Sheridan Ryan, JD, PT, CPHRM, CTM

Sheridan Ryan is a Certified Threat Manager and primary organizer of an annual seminar focusing on prevention of targeted violence in healthcare: www.mcw.edu/mcw-risk-management/threat-seminar.htm.

Many thanks to the following Marquette University Law School students and MCW risk management legal interns for their research contributions to this article: Scott Hale, Craig Leckie, Katherine Hampel, Benjamin Timmerman, McKenzie Subart, and Samantha Brown.

¹Meloy, Hart, Hoffmann, *International Handbook of Threat Assessment*, Meloy & Hoffmann, Eds., Ch. 1, pp. 3-4, (NY, Oxford University Press 2014)

²*Int’l Handbook of Threat Assessment*, p. 4.

³Gavin de Becker, *The Gift of Fear*, pp. 132, 139-147 (NY, Dell Publishing, 1997); James Cawood & Michael Corcoran, *Violence Assessment and Intervention*, p. 12, (FL, CRC Press 2009).

⁴Van der Meer and Diekhuis, “Collecting and Assessing Information for Threat Assessment,” Ch. 4, p. 58, *Int’l Handbook of Threat Assessment*.

⁵The Joint Commission Sentinel Event Alert Issue 59, April 17, 2018.

⁶OSHA & Worker Safety, “Guidelines for Zero Tolerance,” *Environment of Care News*, Volume 18, Issue 8 (August 2015), p. 8.

⁷The Joint Commission Sentinel Event Alert Issue 59, p. 4, April 17, 2018.

⁸OSHA & Worker Safety, Vol 18, pp. 8, 10.

⁹For an excellent discussion of organizational influences in threat assessment, see Cawood & Corcoran, *Violence Assessment and Intervention*, chapter 7, (FL, CRC Press 2009).

¹⁰Emergency Medical Treatment and Labor Act (EMTALA) was enacted by Congress in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (42 U.S.C. §1395dd).

¹¹OSHA & Worker Safety, Vol 18, p. 8.

¹²Gloria Gonzalez, *Business Insurance*, 1/11/2017.

¹³Besides violent patients brought to healthcare facilities for treatment, social services and healthcare providers deliver care to patients in private settings and are included in healthcare WPV statistics. See Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers, OSHA 3148-06R 2016.

¹⁴www.mcw.edu/mcw-risk-management/threat-seminar.htm

Don't Miss the 2019 MBA Law & Technology Conference



The MBA Law & Technology Conference returns on November 15, 2019 to The Westin Milwaukee and will touch on hot tech topics for all legal practitioners. Three nationally recognized keynote speakers are scheduled including Bob Ambrogi, a speaker, blogger and “Above the Law” featured writer. The day-long conference will be organized into two tracks with cutting-edge subjects like

measuring jury perceptions with technology, legal analytics, social media, the “Dark Web,” contract management solutions, and more.

Keep an eye on the MBA website for a complete list of the day’s programs, presenters, vendors and other special events. The conference will also reprise a perennial favorite – top tech tips and tricks for everyday use. However, this year we will also feature tips submitted by MBA members in addition to those of our experts. Got a tip to share? Take our survey. The Tech Conference will have something for every lawyer, from small firms to large. Please join us for an exciting day of technology, fresh ideas and networking. Oh, did we mention CLE too? Go to bit.ly/2019LawTech to register and learn more.

In Memoriam: Former MBA President Thomas Drought



Pictured is Atty. Thomas Drought speaking at the MBA Annual Meeting on June 3, 1983.

Atty. Thomas J. Drought passed away peacefully at the age of 86 on August 9, 2019. Loving husband of Elizabeth Ann Mayer Drought (Bette). Loving father of Ellen, Amy, Thomas James Jr. (TJ), James (Jim) and Kay, and father-in-law to Nancy McMahon Drought, Jeffrey Griffin and Jeff Levin. Cherished grandfather to Julia, Jonathan and Timmy; Adam, Thomas James III (Tommy), Matthew and Elizabeth (Liza); Samuel, Thomas and Paul; and Emma, Jonah and Daniel. Beloved grandfather-in-law to Michael and to Liesl. Loving great-grandfather to Amelia. Cherished brother of Patricia Brynteson and Ellen Templeton. Tom was preceded in death by his parents, Ralph and Estelle Drought.

Tom was raised in Whitefish Bay and enjoyed living close to Lake Michigan his entire life. He graduated from Whitefish Bay High School and the University of Wisconsin-Madison. He served as a captain in the Army in the U.S. and then in Korea as a radio officer from 1954-1956. After returning from Korea, Tom attended law school at Marquette University before transferring to the University of Wisconsin-Madison where he received his law degree like his father and grandfather before him. Tom met Bette Ann when Tom was a first-year law student. They realized that they had much in common, including growing up in adjoining suburbs (Whitefish Bay and Shorewood) and spending childhood vacations in Three Lakes, Wisconsin. Throughout his life, Tom said that the day they married, September 7, 1957, was the happiest day of his life.

Following in the footsteps of his father Ralph, Tom joined the Cook and Franke law firm started by his grandfather James. Tom became a noted expert in estate planning and probate and trust administration during a legal career that spanned from 1959 to 2016. Even after Tom had "retired" from Cook and Franke, he continued practicing law, joining the law firm of Davis and Kuelthau at age 79. Throughout his very long legal career, Tom so appreciated the intellectual and social companionship of members of the Milwaukee Bar Association and the State Bar of Wisconsin, among other organizations. Tom served as president of the Milwaukee Bar Association from 1977-1978 and was a member of the Board of Governors of the State Bar of Wisconsin. Tom served the Village of Bayside as village attorney from 1969 until 2001 and also served as Village of Bayside president and trustee. Tom was a committed member of Fox Point Lutheran Church and a co-founder of the ChristPond Retreat Center in Random Lake, Wisconsin. He dedicated years of volunteer service to the boards of the Schlitz Audubon Center, the Ice Age Trail Alliance, Carroll College and Froedtert Hospital. Tom served on the Bayside and Nicolet School Boards.

In his personal life, Tom loved spending time at Lake Julia in Three Lakes and in Gills Rock, Door County, Wisconsin with friends and family. He played bridge and paddle tennis, water skied, cross country skied, bicycled and hiked, but most of all he loved fishing. He and his close friends in the "fishing group" fished from Canada to the Florida Keys together every year for over 50 years. Tom loved the Wisconsin Badgers with all his heart and went to as many football games at Camp Randall stadium as he could. He attended Wisconsin's first Rose Bowl appearance in Pasadena in 1953. Tom was an admirer of classic films and a frequent visitor to the theatre. Tom also adored

music, from Judy Garland to Patsy Cline to the Beatles and Simon and Garfunkel to Dixieland jazz to Broadway musicals. When he passed, we were listening to music from Evita.

Tom traveled the world widely. His favorite destinations were wild and remote places like the Arctic, Antarctica and the Amazon. He learned about the history of each destination and indeed was a "lifelong learner" and dedicated reader of nonfiction history his entire life. Through the final years of his life, when Tom battled first a stroke and then cancer, Tom and his family were supported by Stowell Associates, Home Helpers of Greater Milwaukee, Eastcastle Place and Heartland Hospice. Tom remembered everyone's name and appreciated the help that he received to be as independent as possible for as long as possible. Just this year, he traveled to Gills Rock, Washington Island and Three Lakes; fished; attended performances at the Milwaukee Repertory Theater; and attended several Brewers games. Tom requests that, in lieu of flowers, he would appreciate support to these organizations: the Schlitz Audubon Nature Center, the Ice Age Trail Alliance, Fox Point Lutheran Church and the Milwaukee Bar Association Foundation. The family will celebrate Tom's extraordinary life on Saturday, October 5, 2019 with a memorial service beginning at 11:00 AM at Fox Point Lutheran Church, 7510 N. Santa Monica Blvd., Fox Point, WI 53217. The service will be followed by a lunch reception and further celebration. The family suggests that attendees consider wearing bow ties in memory of Tom.

Published in Milwaukee Journal Sentinel on Aug. 18, 2019.

MBA Memorial Service

The MBA hosted its annual Memorial Service on Friday, May 3 at the Milwaukee County Courthouse. Chief Judge Maxine A. White presided. Below is a list of attorneys and judges honored at the service.

- | | |
|------------------------------|-----------------------------------|
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| John D. Bird Jr. | Lynn Ellen Hackbarth |
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| Ronald Steven Dague | John F. Maloney |
| Judith Ann "Judy" Drinka | Joseph H. McGinn |
| Arthur D. Dyer | V. Robert Payant |
| Daniel P. Fay | James Petersen |
| Harold H. Fuhrman | Richard A. "Dick" Petrie |
| Conrad Gaarenstroom | Paul J. Scoptur |
| Bradley Grell | Beverly A. Temple |
| Paul Guardalabene | Joseph Ziperski |