MILWAUKEE BAR ASSOCIATION, INC. 1858

MBA Messenger

MILWAUKEE BAR ASSOCIATION, INC. Est. 1858

Winter 2011 Volume 4

Picture courtesy of Moving Pictures WI, Tom Caldart

Justice Undelayed:

First Annual 5K Run for Justice Benefits Milwaukee Justice Center

Milwaukee Bar Association
424 E. Wells St.
Milwaukee, WI 53202-3746

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Regular Features

4 Letter From the Editor

5 Volunteer Spotlight

5 Member News

6 New Members

6 Message from the President

7 CLE Calendar

21 *Pro Bono* Corner

22 Classifieds

Be Part of the *Messenger*

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

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

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Contents

Winter 2011 • Volume 4

In This Issue:

5 Finally! Proposed County Budget Spares Courts from Major Cuts

8 How Do You Get More Clients? Use the Narrow Focused Request
by Attorney Michael Moore, Moore's Law

9 Blessings, and Other Metrics Worth Counting
by Honorable Richard J. Sankovitz, Milwaukee County Circuit Court

10 Anatomy of a Mediation
by Honorable Willis J. Zick

11 It Ain't a Virtual Firm 'til It's Both Virtual and a Firm
by Attorney Dustin A. Cole, President, Attorneys Master Class

12 Access to Justice Wins Big in Inaugural MJC 5K Run
by Kathryn Scott and Joe Riggenbach

13 MBA Helps Girl Scouts Earn Merit Badges While They Learn About the Law

14 Why Serve on a Nonprofit Board?

15 Hooters Sues Competitor Over Alleged Trade Secrets Theft After Top Executives Fly Away
by Attorneys Eric H. Rumbaugh, Luis I. Arroyo, and Steven A. Nigh, Michael Best & Friedrich

16 The Mannerly Lawyer: Etiquette and Legal Practice
by Attorney Douglas H. Frazer, DeWitt Ross & Stevens

17 iPad Can Be MVP in 21st Century Law Practice
by Attorney Melissa R. Beresford

19 Third-Party Testing of Children's Products Required by CPSC
by Attorney Paul E. Benson, Michael Best & Friedrich

20 MBA's *Pro Bono Publico* Award Winners Illustrate Impact of Volunteer Service

21 MBA *Pro Bono* Cocktail Reception Connects Attorneys with Opportunities

A Day Late (and Always a Dollar Short)

In the article entitled "America Invents Act Becomes Law" in the Fall 2011 *Messenger,* the stated effective dates for various provision of the law are one day off. The correct effective dates for those provisions are as follows:

First-to-file system: *March 16, 2013*
Post-grant review system: *September 16, 2012*
Traditional post-grant review for business method patents: *September 16, 2012*
Pre-issuance prior art submissions by third parties: *September 16, 2012*

The errors are those of the *Messenger* and not the authors. The *Messenger* regrets the errors and defensively points out that each of the foregoing dates falls on a weekend, when everyone will be watching sports on TV anyway. Right?

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Letter From the Editor

Charles Barr, Editor

I heard a story once about a man who served in the U.S. Army during World War II. Once he completed basic training, he decided to apply to Officer Candidate School. OCS accepted his application, as a consequence of which he separated from his unit, just before that unit shipped out to Europe. The unit ended up at the Battle of the Bulge. To the last man, it was wiped out.

The story of our man continued. When he completed OCS, he was assigned to an artillery unit. His new unit was tabbed to participate in the invasion of Japan. Our man was trained as an "artillery advance man." The mission of an artillery advance man in a beachhead invasion was to stake out a forward position, alone and under fire, at which to place a piece of large ordnance. This enterprise almost never succeeded on the first few tries. When an artillery advance man was killed before accomplishing his job, another was pre-assigned to take his place and start again, in numbered order. I've seen this process in war movies, which apparently reflect real war at least in that respect.

The real-war life expectancy of an artillery advance man, once he began his mission, was twelve minutes. Our man was number two in line. In other words, he wasn't coming back from Japan.

His unit had already mobilized for the invasion when President Truman decided to drop the Bomb. Our man was diverted to the Philippines, where he served the remainder of his active duty in a non-combat position. He came home after he completed his military service, finished college, got a job, got married, had and raised three kids. I'm one of them.

My dad almost never talks about his time in the Army. As I said, he told me this story *once,* and at that, it was a long time ago, and offhandedly, after a few drinks. I got the moral of the story, though, and I'm pretty sure he did, too—not once, but twice. I tend to recall his story at this season, when we mark the end of one year and beginning of the next, and, if we're lucky, get some time to power down and reconnect with family and friends.

My theory is that all of us, whether we realize it or not, have stories like this—not always as dramatic, but no less remarkable—about the dice rolls, gossamer threads, and unfathomable twists that determine how we've come to this point in our lives and, indeed, how we came to be here at all. Some of us get the moral; some never do.

So what's in the *Messenger* as we wrap up 2011? You've heard of the legal thriller "Anatomy of a Murder"—in fact, it was reviewed in a recent issue. Well, this time we've got "Anatomy of a Mediation," by none other than former circuit judge and veteran mediator Willis J. Zick. While perhaps not quite as spine-tingling as the movie, Will's article is an invaluable roadmap through the evaluative model of mediation. It is a must-read for anyone who will or may be mediating in the future, or is simply wondering what hit him or her at the last mediation.

Judge Richard Sankovitz, our local rulemeister, is back! He reports that all is quiet on the local rules front—indeed, soporific, as he colorfully puts it—so instead he fills us in on Universal Screening, an important project on use of evidence-based decision making in criminal courts, in which Milwaukee courts are playing a leading national role.

We have a timely legal update on the Consumer Product Safety Commission's requirement of third-party testing for children's products, and a cautionary tale demonstrating the importance of protecting trade secrets, courtesy of the famous—or infamous, depending on your point of view—Hooters. And while we're thinking of it, the *Messenger* owes a shout-out to Michael, Best & Friedrich, which not only contributed those two articles but has reliably contributed "hard law" updates to every issue for several years. Thanks, Michael Best!

This issue offers a plethora of practice tips and commentary, on everything from legal technology to lawyerly etiquette. And there is budget news—*good* budget news—for the Milwaukee County Circuit Court. We kid you not.

We hope you enjoy this issue of the *Messenger,* and from all of us here in the frenetic press room, please accept warm wishes for a happy and healthy holiday season and New Year. Here's hoping that the best days of our miraculous lives are ahead of us.

— C.B.

Volunteer Spotlight

Shay Agsten

Shay Agsten is an associate in the Bankruptcy, Banking, Business Restructuring and Real Estate Group at von Briesen & Roper. She concentrates her practice in bankruptcy, creditors' rights, banking, and commercial litigation.

Shay became the Program Chair of the MBA's Bankruptcy Section in January of 2010. In that position, she identifies topics relevant and useful to the Bankruptcy Bar and locates engaging speakers to educate bankruptcy attorneys on those topics. She believes that it is important to maintain an active bankruptcy continuing legal education program in order to educate on current topics and changes in the law, as well as to foster civility and community among bankruptcy lawyers. Shay has organized more than 20 programs and has admirably fulfilled CLE deadlines and expectations through those programs. Sabrina Nunley, MBA's CLE Director, "would like to recognize and thank Shay for her valuable assistance and outstanding effort in coordinating CLE programs for the MBA Bankruptcy Section. The MBA Board requires that each Section offer at least 6 (preferably 12) credits to the MBA membership per program year. Shay more than meets that requirement. Thank you, Shay!"

In addition to her section leadership, Shay serves on the Board of the Bay View Community Center.

For her commendatory service as an MBA section program chair, and her community involvement, we're shining the Volunteer Spotlight on Attorney Shay Agsten.

Finally! Proposed County Budget Spares Courts From Major Cuts

For the first time in recent memory, the Milwaukee County Executive has proposed an annual budget that does not threaten the operational viability of the Milwaukee County Circuit Court, reported Chief Judge Jeffrey A. Kremers. The Chief Judge spoke at the Milwaukee Bar Association's Eighth Annual State of the Court Luncheon on October 12.

While the proposed budget envisions some cuts to court operations, Judge Kremers proclaimed them "minimal and acceptable. We are losing a couple of unfilled positions but [there will be] no layoffs, no furloughs, and no program cuts." All three of these draconian measures have been staples of budgets proposed for the courts by County Executives in recent years, jeopardizing the independence and accessibility that are the bedrock principles of an effective judicial system. That threat has forced the courts to wage dramatic annual battles for its operational life before the County Finance Committee and Board of Supervisors in years past.

"That's it?" That is how Judge Kremers described the reaction of the Finance Committee Chair to his testimony, which—in contrast to the impassioned pleas and detailed study results trotted out in recent years—was a simple declaration that the proposed budget is acceptable to the courts.

The proposed budget not only eliminates the specters of employee furloughs and court shutdowns, but it also preserves funding for the courts' various pretrial programs. While those programs consume a smaller portion of tax levy dollars (about $4 million) than general court operations (about $30 million and about 300 employees), the Chief Judge stressed the importance of the pretrial programs, noting that "for every dollar spent on pretrial programming, several more dollars are saved on the cost of pretrial incarceration. Jail is the most expensive resource in the criminal justice system and we should use it wisely." (See Judge Richard Sankovitz's article on evidence-based decision making initiatives on page 9 of this issue.)

continued page 15

Member News

Gimbel, Reilly, Guerin & Brown announced that **William A. Jennaro** has become "Of Counsel" to the firm effective November 1, 2011. He will continue to provide services as a mediator and arbitrator, as well as to practice in the areas of family law, white collar criminal law in federal and state courts, personal injury/wrongful death, admiralty, real estate, gaming, and dealership law.

Reinhart Boerner Van Deuren announced the addition of shareholder **Robert J. Lightfoot** to the firm's Health Care Practice. Lightfoot is based in the firm's Madison office.

Robert J. Lightfoot

The firm also announced that **Thomas R. Vance** has joined its Tax Practice.

Thomas R. Vance

Reinhart added six new associates to the firm's Milwaukee office. **James M. Burrows** and **Alexander B. Handelsman** joined the Litigation Practice; **Timothy T. Lecher,** the Labor and Employment Practice; **Hrishikesh Shah,** the Employee Benefits Practice; **John K. Tokarz,** the Business Law Practice; and **Peter J. Wyant,** the Trusts and Estates Practice.

James M. Burrows

Alexander B. Handelsman

Timothy T. Lecher

Hrishikesh Shah

John K. Tokarz

Peter J. Wyant

Message From the President

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

With Thanksgiving upon us, it is always a good time for self-reflection and appreciation of what is good in our lives. When Europeans first arrived in the Americas, they brought with them their own harvest festival traditions, celebrating their safe voyage, peace, and good harvest. I have been travelling a lot lately for business (and some pleasure) and thus, certainly appreciate the good work of pilots and their crew in getting us from point A to point B safely, a fact that most of us take for granted as we half-heartedly listen to the emergency instructions before take-off. As for peace, although it is slow to come, it appears that we are making some progress in Iraq and Afghanistan, and our President promises us more troops will start coming back home soon. One could not pick up a newspaper or watch the news this last week without seeing a feel-good story about a veteran, and witnessing the great appreciation this country has for the dedication and work of our troops. In relation to a good harvest, in the economic sense, progress has also been slow but there is a glimmer of hope that the gridlock of the Great Recession may be breaking and things may be improving. In that regard, it certainly is good to see a crane in downtown Milwaukee at the site of the new Moderne high-rise apartment project at the end of Old World Third Street and Juneau Avenue, and we look forward to the upcoming groundbreaking of the new downtown Marriott Hotel project on Wisconsin Avenue and Milwaukee Street. In the food sense, Turkey Day will soon be upon us and we will all undoubtedly enjoy a feast of grand proportions with our families and friends while watching our beloved Packers lay the smackdown on those resurgent and pesky Lions. Ah, life is indeed good.

As President of the Milwaukee Bar Association, I also have much to be thankful for. Let's start with being lucky enough to head a successful association of 2,200 members with a rich history spanning more than 150 years. Although I was admittedly nervous prior to taking office about how I was going to be able to handle more responsibilities and duties on top of a very busy private practice, I soon realized that my job is made so much easier by an incredibly dedicated and talented Executive Director, Jim Temmer, and his wonderfully skilled but lean staff of true professionals. I was once again reminded of how well this machine runs at the State of the Courts Luncheon, as the exceptional preparation work and keen organizational skills of Katy Borowski kept me and everyone else on topic and, perhaps more importantly from your perspective, on time. For those of you who were not at this event, Chief Judge Jeff Kremers provided a terrific overview of the recent successes and ongoing challenges of the Milwaukee County Circuit Court system. The good work of the MBA *pro bono publico* award winners, Kristine Havlik of Foley & Lardner, Catholic Charities Legal Services to Immigrants (led by Attorney Barbara Graham), and Marquette University Law School student Kristin Lindemann, was applauded and provided an inspiration to everyone in attendance.

I am also quite thankful to have the good fortune of working with a truly exceptional board of directors. We welcome Paul Benson of Michael Best & Friedrich as our newest member of the Board, and look forward to his contributions to an already active and vibrant group.

I am likewise very thankful for the success to date of the Milwaukee Justice Center. This project has filled a definite void in our legal community and is again on pace to serve more than 10,000 clients this year. The MJC provides essential legal information and clinic counseling to people who would otherwise face the court system without any help, and significantly improves the efficiency of our court system. Many thanks again to the numerous volunteers and donors to this very worthwhile project. The MJC will be moving into its new home at the courthouse soon, and we are working diligently on the planning phase of the annual campaign, which you will hear more about in the months to come.

In terms of other future events, Judges Night is coming up on February 7 at the Grain Exchange Room. As many of you know from your attendance in the past, this is a great social event to mingle with colleagues and judges in a relaxed atmosphere. It is really a do-not-miss event. I look forward to seeing you there. There are also many end-of-the-year MBA seminars if you need additional credits, including ethics credits, before the reporting deadline. This is an easy, efficient, and inexpensive way to attend a seminar.

In the meantime, Happy Holidays to you and your families, and a prosperous 2012!

Welcome New MBA Members!

Sarah A. Burnett, *Becker, Hickey & Poster*

Nicholas Dean Castronovo, *von Briesen & Roper*

Jesse Dill, *Jackson Lewis*

Theresa A. Golski

Njoki Kamuiru

Amy Kieffer, *Gray & Associates*

Anne S. McIntyre, *Nelson, Irvings & Waeffler*

Ayame D.C. Metzger, *Milwaukee Bar Association, Milwaukee Justice Center*

Lattrice Milton, *Milton Family Law*

Jeremy P. Shapiro-Barr, *Kohner, Mann & Kailas*

Christine Harris Taylor, *Christine Harris Taylor, Mediator & Arbitrator*

Thomas R. Vance, *Reinhart Boerner Van Deuren*

CLE Calendar

December 2011

December 1, 2011
Family Law
A View from the Bench
Speaker: Honorable Carl Ashley, Milwaukee County Circuit Judge
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 2, 2011
Bankruptcy Law
Topic TBA
Speaker(s): TBA
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 3, 2011
Marquette University Law School and the Milwaukee Bar Association Proudly Present
The 32nd Annual Conference on Recent Developments in Criminal Law
For more information contact Professor Hammer at 414-288-5359 or visit the MBA website at www.milwbar.org (continuing legal education).
8.0 CLE credits

December 6, 2011
Estates & Trusts
Estate Planning With Discount Entities
The use of discount entities (e.g., family limited partnerships and limited liability companies) in estate planning may offer many tax and non-tax advantages to our clients. With these advantages, however, come restrictions and risks. This presentation will focus on: (1) the advantages and disadvantages of planning with discount entities, (2) the implementation of planning with discount entities, and (3) recent developments in the discount entity planning area.
Speaker: Wendy S. Rusch, Foley & Lardner
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 7, 2011
Corporate Banking and Business Law
LLCs: Selected Tax Issues in Formation and Operation
Discussion of the "check the box" classification rules, LLC mergers and conversions, self-employment tax treatment, estate planning uses, and series LLCs.
Speaker: Gregory J. Ricci, Fox, O'Neill & Shannon
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 8, 2011
Civil Litigation
So Those Rules Turn Out to Be Good for Something: a Wisconsin Consumer Act case gone awry shows why following the ethical rules can not only keep your license, but keep your clients from getting sued
This presentation will cover a fascinating consumer act case, and highlight the ethical rules that were broken and the fallout from the violations, before moving on to discuss other common situations that lawyers fall into when they are unfamiliar with the ins and outs of the Wisconsin Consumer Act and similar laws.
Speaker: Briane Pagel, Krekeler Strother
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE ethics credit

December 12, 2011
Real Property Law
Topic TBA
Speaker(s): TBA
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 13, 2011
Health Law
How Sunshine Will Shed Light on What Healthcare Providers Are Getting Paid
GE Healthcare's Director of Global Compliance will provide an in-depth analysis of the details and anticipated impacts of "sunshine provisions" in the Patient Protection and Affordable Health Care Act ("PPACA"), which add various federal reporting requirements regulating drug and medical device manufacturer marketing activities, and disclosure of payments and other transfers of value to healthcare providers, effective January 1, 2012. This seminar will provide invaluable insight into how the healthcare industry will be affected by the "Sunshine Act," and the resulting publication of a constant accounting of the amount and manner of compensation to individual healthcare providers by any given drug or device manufacturer.
Speaker: Rebecca Crews, Director, Global Compliance, GE Healthcare
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 14, 2011
Labor & Employment
Topic TBA
Speaker: Daniel L. Shneidman, Shneidman Law
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE ethics credit

December 15, 2011
Taxation
Valuation Discounts Through the Eyes of the IRS and, More Importantly, the Federal Courts (with Special Emphasis on Newly Published IRS Guidance)
The general topic is valuation discounts for purposes of transferring property to family members. One of the specific topics relates to a new IRS announcement relating to the view of the IRS on discounts in valuation of property for a lack of marketability of the property transferred.
Speakers: Noleta L. Jansen and Robert E. Dallman, Whyte Hirschboeck Dudek
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

December 16, 2011
MBA Presents
Ethics Buffet
Speakers: Richard J. Cayo and Christopher Kolb, Halling & Cayo; Jeremy P. Levinson, Friebert, Finerty & St. John
8:30 - 9:00 a.m. (Continental Breakfast/ Registration)
9:00 - Noon (Presentation)
3.0 CLE ethics credits

December 19, 2011
MBA LRIS Committee Presents
Ethics and the LRIS
A discussion of the ethical implications for all involved when obtaining referrals from the Milwaukee Bar Association's Lawyer Referral & Information Service.
Speakers: Sean M. Spencer, Zilske Law Firm, and Daniel L. Shneidman, Shneidman Law
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE ethics credit

How Do You Get More Clients? Use the Narrow Focused Request

Attorney Michael Moore, Moore's Law

When I was a teenager, I made money selling holiday cards door to door. In those days, you got a catalog of cards and order forms from a card company, then went around the neighborhood and among your extended family taking orders. Once the cards arrived, you delivered them, collected the money, and paid the bill from the card company. The left over cash was yours to keep. Holiday cards are a very non-threatening item to sell, so you could always get people to look. But if you wanted to make a sale, you had to ask them for the order. Getting people to fill out that order form was my first exposure to the Narrow Focused Request.

What is the Narrow Focused Request?

"Ask, and ye shall receive" is a biblical principle that best illustrates the concept. Client development is the process of finding a match between lawyer, matter, and client. To be successful, a lawyer needs to take the next natural step in the progression of matching his or her skills with the needs of the potential client. This is certainly not about arm twisting or hardball coercion. The lawyer's purpose is simply to help the client get what he or she needs or wants. It is a win-win scenario for both. The logical conclusion of any client focused presentation has to be: "Ask for the business, or the answer will always be no."

How do other lawyers get their clients?

When asked this question directly, many lawyers offer a variety of answers, including marketing, networking, public service, and referrals. Legal marketing includes all these methods to build personal brand awareness. As Eric Hoffer observed, "At the core of true talent is the confidence that by persistence and patience something worthwhile will be realized." However, effective lawyers know success is not an accident. Success is a choice. Successful lawyers make the choice to position themselves with potential clients and make the Narrow Focused Request. They get the business.

I didn't go to law school to be a salesperson.

When I was in law school, no one discussed how the lawyers who sued the Long Island Railroad on behalf of Mrs. Palsgraf actually got her as a client. We were trained to be legal professionals, not sales professionals. My first job at a small firm quickly illustrated the reality that there is little benefit to legal marketing without a sale. All the networking in the world is worth nothing if no clients come through the doors. Selling legal services is especially challenging. Broad approaches like seminars or publications usually must lead to individualized face-to-face dialogue to produce results. Marketing legal services is about attracting potential clients who want to take the next step with you personally. A lawyer must make a potential client feel comfortable in exposing his or her problems to the lawyer. Then the lawyer can narrowly identify how his or her knowledge would benefit the potential client.

Is it unethical to "ask for the business"?

In Wisconsin, as in most states, the Rules of Professional Conduct prohibit a lawyer from soliciting "professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." The rules do contain the friend, relative, prior professional relationship, and lawyer exceptions. There is not a "sophisticated person" exception, as some commentators have inferred, however, nor do the rules only apply in hospital emergency rooms. Many times, simply listening to the potential client's concerns and giving feedback naturally leads to a request for future help. You can suggest potential avenues or approaches for consideration, and if the potential client would like to explore them, offer to be of service.

The way you ask is just as important as asking.

Once you have direct contact with a potential client, empathy is the key. Listen to what is being said. What is the potential client's problem? How might you help? As a legal recruiter, my initial meeting with a potential candidate is always a listening session about his or her current situation. Engaging in a discussion designed to reveal a potential client's needs and to determine whether you or your firm might be a good match for those needs is not selling to the client. It is a conversation, a mutual exploration, an offer to guide that client through a specific legal situation. Helping the potential client define his or her most critical issue greatly increases your likelihood of success. People resist what others try to make them do, not what they themselves choose to do. Help the potential client choose to solve his or her problem by hiring you.

Overcome your fear.

A common fear shared by all of us is having to ask for the business, even if we know we can meet a prospective client's need. Often, it is just a simple matter of the appropriate wording. Be courageous, confident, and bold with potential clients. Don't be arrogant, but don't be afraid of being rejected or failing. Be proactive, because clients prefer lawyers with initiative. Why would they hire a lawyer or law firm not direct enough to adequately protect their interests? Do your best and then let go of the outcome. Trust the process. You'll either get the client's work or you won't.

Life is full of risk and uncertainty. Successful lawyers don't let fear of failure stop them. It is human to have fear; just don't let it keep you out of the game. To paraphrase the heart of Alfred Lord Tennyson's poem *In Memoriam:* "Tis better to have (asked) and lost, than never to have (asked) at all."

You can follow-up with Attorney Michael Moore at Moore's Law, Advancing Your Legal Career Exponentially • 414-467-5983 • www.moores-law.com.

Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin
- Improve access to justice for those living and working in Milwaukee County
- Support the courts of Milwaukee County in the administration of justice

and

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

Blessings, and Other Metrics Worth Counting

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court

Mindful of the virtue of taking time to count our blessings, especially during this season, I want to borrow a few moments of your time to update you on our good fortune that Milwaukee is in the national spotlight of a movement to bring sophisticated data management and research to criminal justice.

(Things on the local rules front, which is the usual subject of this column, remain uncontroversial, bordering on soporific. Not a bad thing, really, given how many other things there are to work on at the courthouse. We count among our blessings attorneys who know and follow the local rules.)

Last summer I reported on the prospect of Milwaukee being selected for a federal grant to help develop **evidence-based decision making** in criminal courts. (If you keep up with progress in other professional fields, such as medicine, education, or engineering, you know what **EBDM** entails.)

As you probably have heard by now, Milwaukee made the cut. Under the leadership of the Milwaukee County Community Justice Council, we will be working with the National Institute of Corrections (an agency within the Department of Justice) to showcase the best ways of applying data-driven research and cost stewardship disciplines to criminal justice.

Like institutions in other fields, courts collect a lot of data about the people who pass through our portals, and we can aggregate and count and analyze data relating to thousands and thousands of individual decisions we make about their cases (such as charging, setting bail, deciding how long one should spend in jail or prison, and imposing conditions of probation).

With such data in hand, we can (1) measure how well we are doing, and (2) make more reliable decisions about future contingencies—for example, whether a person released on bail will come back to court or reoffend while in the community; and how much time in jail is useful, or not, in changing a defendant's conduct.

With such data in hand, we, as well as our constituents, can judge how successful we are at fulfilling our mission: holding offenders accountable, reducing crime and recidivism, and giving taxpayers a better return on the dollars they invest in criminal justice.

Until now, we haven't really made much use of the data available to us. But that is beginning to change, in particular with four initiatives we are already undertaking with the help of NIC. (These four initiatives are described in more detail in the Summer 2011 issue of the *Messenger.*)

A key to each of the initiatives is the development and deployment of an actuarial instrument to assess the risks and needs of pretrial detainees. That step of the process is now complete. With the aid of the nation's leading expert in pretrial risk assessment, Dr. Marie VanNostrand, we have developed a six-factor assessment tool that will be used to determine bail risks and offender needs for everyone who is arrested and held in the county jail.

We call it **Universal Screening.** You've probably read about it in the paper. **County Executive Chris Abele, Supervisors Willie Johnson and Lynne DeBruin, District Attorney John Chisholm, Chief Judge Kremers** and other county leaders lobbied hard to keep funds for this initiative in the budget.

Universal Screening will help us make smarter decisions about who we jail and who we supervise in the community, as well as about which cases can be diverted from the normal course of prosecution. A tool like this has been put to use in **Charlotte, North Carolina,** and has helped that community manage so well that it was able to cancel its plans to build an addition onto the county jail.

We have set some ambitious goals for ourselves. By the end of 2013, we intend to:

- Safely release and/or supervise 15% more pretrial detainees than we do now, generating $1,000,000 in savings that can be reinvested in the community, and at the same time reduce by at least 40% our already low rates of pretrial misconduct.
- Divert or defer prosecution in 10% more cases than we do now, generating $350,000 in savings that can be reinvested in the community.
- Demonstrate in a pilot project that by organizing probation around intervention rather than around merely surveilling the probationer for a certain number of years, and by terminating probation as soon as an offender has achieved the court's goals, we can cut the cost of probation by at least 50% and at the same time reduce probation recidivism by 50%.
- Reduce by 25% the number of people with mental health needs who lose their benefits due to being jailed or losing housing, and increase by 25% the number of individuals with mental health needs who are reconnected to the services they need within 20 days after arrest.

We're blessed to have the opportunity to put this know-how to work in Milwaukee, and to show the nation what we can achieve. And we're counting on you and the community to hold us to these goals.

Anatomy of a Mediation

Honorable Willis J. Zick

A. Basic Considerations in All Mediations

Three basic factors must be considered in every mediation:

1. The most accurate possible estimate by counsel of attorney fees, expert witness fees, and all other costs if the case goes to trial. These fees and costs must be paid even if the client wins at trial, unless there is a fee-shifting provision in the case. All fees and costs from the date of mediation forward can be saved by settlement.

2. The best possible prediction of liability to pay opponent's attorney fees and costs, incurred before and after mediation, under one of the limited bases at common law or a statutory fee-shifting provision, together with the best estimate of the amount of such fees and costs. Exposure to these fees and costs can be avoided by settlement.

3. The best possible prediction of the outcome if the case proceeds to trial. Exposure to an adverse result can be avoided by settlement.

All these predictions and estimates must be thoroughly discussed and evaluated in order to decide how far it is prudent to go in attempting to reach settlement. They are the only reasonable bases on which this decision can be made.

B. Additional Considerations in Special Circumstances

In addition to the basic factors present in every mediation, there may be other factors to consider in certain circumstances:

1. A party may be experiencing significant stress, which can be alleviated by settlement.

2. The business, professional, or political standing, or general reputation of a person, may be affected by the decision either to settle or to litigate.

3. A defendant may hesitate to settle because of a fear that he might encourage other potential plaintiffs to sue in similar circumstances. Conversely, there may be a reluctance to litigate for fear that a loss will set a harmful precedent.

C. Counsel Must Provide Estimate of Cost of Trial

Counsel must furnish his client with the best possible estimate of all fees and costs from the date of mediation through the completion of the trial. That expense will be incurred even if the client wins at trial (in the absence of a fee-shifting provision, discussed below), and therefore is extremely important. It is impossible to make an informed decision about settlement without this information. In many moderate sized cases, this cost factor is more important than the prediction of trial outcome.

D. Fee Shifting

Some mediations involve potential liability for payment of the opponent's fees and costs in the event of loss at trial. This liability arises either from common law or, more frequently, from a statutory fee-shifting provision. All relevant factors must be carefully discussed and analyzed in an attempt to predict liability for an opponent's fees and costs. Of course, the reasonable amount of such fees and costs must also be discussed and estimated.

Exposure to fee-shifting exerts substantial pressure because it raises the specter of liability for two sets of fees and costs in the event of loss at trial. Also, the opponent's fees extend to those incurred before *and after* mediation, whereas only the fees of one's own counsel incurred after mediation can be avoided by settlement. Fees prior to mediation have already been incurred.

E. All Factual and Legal Issues Must Be Analyzed

It is essential that all disputed factual and legal issues, together with the positions and arguments of each side, be identified and evaluated in detail. This is the only means by which the parties can make a meaningful prediction of the outcome if the case proceeds to trial.

The most effective way to accomplish this analysis is to begin with a group discussion involving the mediator, all counsel, and all parties. The mediator elicits comments and asks questions of counsel and the parties in an effort to determine with precision the factual and legal issues in dispute and the positions and supporting arguments of each side.

Typically, parties are invited to comment directly on various factual issues in an effort to clarify their positions as precisely as possible. Generally, counsel permit direct comment by their respective clients because it allows their positions to be expressed as forcefully and unambiguously as possible. Of course, all statements by parties or counsel are precluded from admission at trial.[1] If a party has been deposed before mediation, the preferred approach is to read from the deposition, and to resort to direct statements by the deposed party only in the event of ambiguity or omission in the deposition.

After the group discussion is completed, the

continued page 18

It Ain't a Virtual Firm 'til It's Both Virtual and a Firm

Attorney Dustin A. Cole, President, Attorneys Master Class

Not long ago I read a glowing article from a writer, who shall remain anonymous, about his wonderful "virtual law office." And I became more than a little annoyed.

Over my more than twenty years as a law firm advisor and coach, few days have passed when I haven't run into what Michael Gerber, in his "E-Myth" series, describes as the "technician." The technician is all about the work, with no vision of the business. Law school and big firm training aim at creating technicians. They stultify any entrepreneurial bent an attorney may have, and consign them to drone status. Both of those august institutions also teach attorneys to have no boundaries between their personal and professional lives; if you have more work, just work more hours. There is no concept of "efficiency" or "leverage." No wonder so many come out of law school and those big firms "just wanting to do good work" rather than to build a successful legal business. The traditional business development model—long since dead and buried—is just that: "just do good work and the business will come."

Today, the country is crammed with good lawyers—in fact, more than crammed. Overrun. And more than at any time in history, the "just do good work" attorneys are going over the falls by the thousands.

How does all of this relate to "the virtual firm"? In the same way that the typewriter and the computer related to the legal profession in the past. Attorneys actually took a step back when they learned to use the computer. They misused the new, more efficient tool by simply using it themselves to turn out more work, rather than delegating more work downstream, because "now my secretary doesn't have to use carbon paper and White Out to make three copies."

Technician mentality indeed.

So, by extension, most attorneys today are simply using technology to reduce costs: "Gee, now I don't have to have a big office and staff, I can do everything myself over the internet and on my iPad and with my smartphone." No really new model here, just using new tools to do more work more cheaply.

The aspect of the article that particularly annoyed me was that there was absolutely no mention of any other parties in the "virtual law office." No partner, no associate, no paralegal, no assistant. Just me and the www and my Apples.

The fact is, when you are the only person in the business, you don't really have one. You have a job. And when you're not there, there is no business. Just a voice mail or an e-mail inbox somewhere out there on the cloud, waiting for you to show back up.

So let's get down to it. What is the "virtual firm?"

In my definition, it is a legal business that maximizes the advantage of technology to create new, more efficient ways to build and use teams, and to accomplish work. It is built for continuous growth and aimed at constantly increasing revenues.

I believe the virtual firm will become the large firms' worst nightmares in the not too distant future. These new firms will be led by attorneys who are both at the top of their fields and entrepreneurial in their approach to their profession. They will build small firms of perhaps 10-20 quality attorneys, each of whom is not a technician, but a team leader, expert in legal project management. These top attorneys will be supported by state-of-the-art technology that will allow them to collaborate with others virtually, as needed for particular matters.

To this end, the firm will have an outside resource of other top-flight attorneys in various fields who are available for collaboration. Twenty, 30, or 40 attorneys beyond the core team will therefore be listed on the firm's letterhead as, let's say, "of counsel." The team leader of the firm's core team will select exactly the right team members for each case, rather than plugging in as many associates as possible.

There is much new ground that must be plowed with this new model in terms of risk management, insurability, and conflict and other ethical rules, to be sure. But the new model is a necessity, not an option. Nearly every day I speak with attorneys who are attempting, or operating, some better or worse version of this model. The profession must recognize the freight train that is coming and jump on, rather than stand stubbornly in front of it. Bar associations and insurers need to be instructing attorneys on how to do it right, rather than objecting because it doesn't fit the pre-industrial apprenticeship model with which they are used to dealing.

In the end, many of the very attorneys who were thrown out of big firms because the economy emptied their book of business will be heading those new-model firms. They will create amazing new firms that offer unparalleled expertise, service, flexibility, responsiveness—and most importantly, efficiency, transparency, and lower costs. And the technology that allows the firm to collaborate virtually with other attorneys will allow the firm to make the client party to the continuing legal "conversation" and track its progress right alongside the team leader. Much software is already available and in use for just this purpose. Programs such as Trialworks, Needles, and at least three of the new cloud-based case management suites allow both collaboration and, to reduce conflict potential, the ability to limit any user's access to only a specified set of files.

I am currently working with two such "discarded" attorneys to help them create just this kind of firm. One is acknowledged as one of the nation's leading experts in environmental law, the other in the intricacies of the two consumer product safety commissions in the U.S. and Canada. Both had years of major revenue with one of the top 50 law firms (the same firm in different cities) when the recession struck. Their numbers tumbled, and within six months, both were thrown out the window. Beyond these two, I am also advising several smart, mid-size firms in creating "beta test" departments based on the new model.

As an aside, there is a tide washing over the profession, starting at the top, which is central to the success of the new model. The attorneys who become team leaders must now adopt an essential new skillset, that of "legal project manager." They must transition from technician to manager, leader, quality control manager, and "construction manager" of the project. And not only that, they must learn how to effectively lead a team consisting of strong personalities, differing

continued page 17

Access to Justice Wins Big in Inaugural MJC 5K Run

Kathryn Scott and Joe Riggenbach

Friends of the Milwaukee Justice Center gathered at Veterans Park in Milwaukee on Thursday, September 22, 2011 for the First Annual 5K Run for Justice. Participants came together after a full work day to enjoy the fall afternoon and run or walk for the cause. Upon arrival, runners were greeted with original music by the local band "Blue, Seriously." Morale was high as runners and walkers stretched in anticipation of the race.

As the horn went off, participants of all ages began the race along Lake Michigan—the perfect setting for a fall run. Local runner Jim Ricker was the first to finish with an impressive time of 19 minutes, 27 seconds. As the last of the runners and walkers made their way in, "Blue, Seriously" set the mood for a post-run celebration. Participants enjoyed refreshments provided by Big Bay Brewing Company, a beer and soda brewery located in Shorewood. Lights and audio for the event were provided by SP Video.

In the course of the celebration, four awards were distributed. Jim Ricker won the award for fastest male time, establishing a 5K Run for Justice record that may be hard to beat. Kadie Jelenchick received recognition for the fastest female time. Both Jim and Kadie received prizes courtesy of In Step, a local running store. Team prizes were awarded to law firms that formed teams for the race. The Meissner Tierney Fischer & Nichols team finished the race in the fastest average speed and was awarded the Fastest Team award. The Reinhart Boerner Van Deuren team won the Team Spirit award for registering the largest number of participants.

The event was a financial success, bringing in 165 participants ranging from law students and lawyers to avid runners. All sponsorship proceeds and individual entry fees support the MJC in its continuing mission to help self-represented litigants access the justice system. The Milwaukee Justice Center would like to sincerely thank all participants, volunteers, and sponsors, notably Gold Medal Sponsors Foley & Lardner; LexisNexis; Quarles & Brady; Michael Best & Friedrich; O'Neil, Cannon, Hollman, DeJong & Laing; and Weiss, Berzowki & Brady.

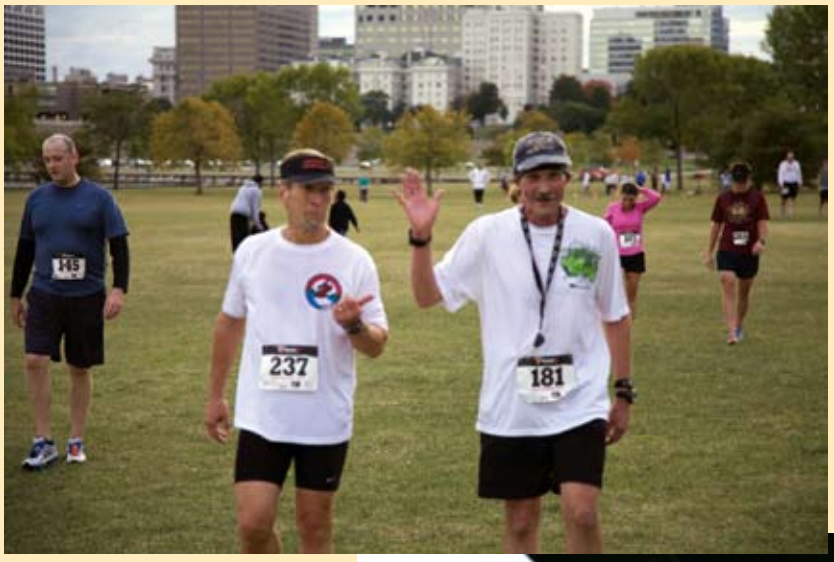
Please check out our Facebook page for photos from the run. Hope to see you at the 5K Run for Justice next year!

Runners catch their breath after the race.

Jim Ricker, overall 5K winner, basks in the glow of victory. At least his shoes are glowing.

Jim Ricker: Pretty simple: (1) Win race. (2) Attract women.

Pictures courtesy of Moving Pictures WI, Tom Caldart



Two runners debate which one went off course first.

Runner checks to see if he still has pulse while concerned friends look on.

Blue, Seriously" entertains runners and walkers. Seriously.

MBA Helps Girl Scouts Earn Merit Badges While They Learn About the Law

For the second consecutive year, the MBA sponsored an all-day Saturday workshop for local Girl Scouts who used their interest in the legal profession as a stepping stone to their next Merit Badges. This year's event, held on November 5 at the MBA, hosted a full house of 67 Girl Scouts aged 11 to 15, as well as 14 parents.

The event featured short presentations on various legal topics. Attorney Ben Wagner and Police Officer Kathy Schult spoke about career opportunities in civil practice and police work. Attorneys Jacques Mann and former MBA President Hannah Dugan provided an explanation of the basics of our legal system. Attorneys Kathleen Ortman Miller and Richard Hart presented on laws and lawsuits that affect children, while Summer Murshid discussed the thorny issue of whether the law should hold parents responsible for crimes committed by children. Attorneys Evan Goyke, Evangeline Scoptur, and MBA Board member Tom Reed shared their expertise in DNA testing and polygraph technology.

The session culminated with a mock trial presented by Attorneys Evan Goyke, Rick Steinberg, and Andrew Golden.

The MBA's Britt Wegner organized this highly successful event, as she did last year. Thanks are due to all the presenters, and of course to Britt, not only for giving up their Saturday but also for helping the MBA to establish another important community outreach program.

Thank you to the sponsor of the Girl Scout Law event: Quarles & Brady!

Girl Scouts and parents at MBA's November 5 program

Tom Reed and Evan Goyke share technological expertise.

Why Serve on a Nonprofit Board?

The world seems to be moving faster every day, and our lives become busier and busier keeping up with our career, family, hobbies, and friends. So why would anyone want to consider serving on a nonprofit board?

A distinct benefit of serving on a nonprofit board is the satisfaction felt in having the opportunity to contribute to the community in which we live. According to recent national statistics, Wisconsin is home to over 30,000 nonprofits, and each one is required to have a board of directors. There is always a need for committed, talented board members!

Board service is an excellent way to have a substantial and ongoing impact in the community. As a member of a dedicated team of concerned and engaged citizens, a board member can identify long-term goals, seek diverse opportunities for collaboration, and help implement innovative strategies for lasting change.

Serving on a nonprofit board of directors also makes good business sense. Two-thirds of corporate executives say that civic engagement in nonprofits produces a tangible contribution to the bottom line.

It is good marketing. Participation on a nonprofit board is a great reflection on our personal value systems, adding to both personal and professional credibility. Board service expands our networks with a greater range of talented people from other businesses, while it deepens our understanding of the community, its residents, and their needs.

It is good career development. Nonprofits need board members with skills in law, marketing, fund development, business development, negotiation, human resources, mergers and acquisitions, and many other areas of professional expertise. Board service offers the chance to exercise existing skills while expanding into new challenges. Almost two-thirds of white-collar volunteers report positive impacts on their career. Some large corporations even use nonprofit board service as a staff development tool!

It is good for you. The benefits of board service contribute to a sense of well-being. Nonprofit board members report a sense of engagement and renewal as they share their talents for a worthy cause. Studies show that reaching out to help others improves emotional health. In addition, serving the community enhances personal status. Board work stretches us out of our comfort zones, making for a potent combination of personal rewards.

Hopefully your interest in serving on a nonprofit board has been piqued. Where do you go to learn more? BoardStar is Greater Milwaukee's answer. BoardStar, a 501(c)3 organization, was formed five years ago with a vision of "strong nonprofit organizations governed by diverse, passionate, and resourceful leaders."

BoardStar offers a variety of opportunities to support a nonprofit board. With a curriculum of 18 workshops and 112 podcasts that feature valuable training on unique aspects of nonprofit governance, BoardStar is committed to building the capacity of nonprofit boards.

Not yet a nonprofit board member? BoardStar can also help match potential board candidates with nonprofit organizations. For more information, go to www.boardstar.org or e-mail info@boardstar.org.

Hooters Sues Competitor Over Alleged Trade Secrets Theft After Top Executives Fly Away

Attorneys Eric H. Rumbaugh, Luis I. Arroyo, and Steven A. Nigh, Michael Best & Friedrich

Hooters of America LLC has sued a competitor in a Georgia federal court for allegedly misappropriating its trade secrets and other confidential business information following the departure of several Hooters executives to Twin Peaks Restaurants.

Hooters' complaint alleges that former Vice President of Operations and Purchasing, Joseph Hummel, gained unauthorized access to Hooters' computers and took trade secrets and other confidential information. Specifically, Hooters claims that around the time of his departure, Hummel downloaded and transferred confidential sales figures, employee training and retention strategies, and purchasing information to his personal e-mail account. The suit also accuses Hummel of additional unauthorized access of private business information following the termination of his employment.

Hummel, as well as Hooters' former Chief Executive Officer and its General Counsel, left the beach-themed restaurant franchise to join Twin Peaks, which operates a mountain lodge-themed restaurant chain featuring an all-female wait staff. Hooters contends that Hummel's theft has allowed Twin Peaks to hit the ground running in its efforts to open 35 restaurants in the next decade, several of which are planned for markets with Hooters restaurants.

The case illustrates the potential damage that departing employees, particularly those with access to sensitive information, can wreak on an employer. Hooters had already taken one step to protect itself: before Hummel left, he signed a confidentiality agreement requiring him to return all confidential and proprietary information to Hooters. In addition to confidentiality agreements, employers should consider having their top executives and other employees with access to sensitive information sign non-competition agreements.

Most state trade secret statutes require businesses to take steps that are reasonable under the circumstances to protect their confidential information in order to preserve the trade secret status of that information. Accordingly, employers should consider implementing electronic security measures beyond mere login credentials, limiting the number of employees who are authorized to access confidential information, and regulating employees' ability to take information off company premises.

When key employees depart, and especially when they depart for a competitor, businesses should consult with counsel immediately, and before examining (and possibly damaging) electronic evidence. Departing employees who take information often leave a shockingly obvious electronic trail, but that trail can be lost quickly if not preserved, or inadvertently destroyed if improperly accessed.

Lastly, businesses engaging talent, and especially talent that comes from a competitor, cannot be too careful or too forceful in ensuring that the incoming talent does not make, retain, or transfer any copies of information from their previous employers. Businesses engaging talent that acted improperly on the way out can quickly become embroiled, along with their new employees, in costly and risky litigation.

***Budget* continued from p. 5**

Judge Kremers did point out that the severe cuts in benefit packages to court employees have prompted an accelerated rate of retirements. The courts have lost 30 to 35 long-term employees in the past 12 to 18 months, a loss of more than 700 years of institutional memory. The courts will need some time to completely fill these positions, and the new employees will need some time to learn the ropes. In addition, the courts have lost over 150 years of judicial experience through retirements of judges in the three years of Judge Kremers' tenure as Chief Judge.

Judge Kremers cited the strenuous efforts of his predecessors, as well as the bar and a majority of the County Board, to keep the courts open in the face of past budget proposals that threatened significant impairment of their operations. While the change of County Executive obviously has much to do with the cessation of hostilities, the years of education of the Finance Committee and other Supervisors on the needs and importance of a functional court system should not be discounted. As Judge Kremers put it: "I greatly appreciate the County Exec's tacit acknowledgement that we have been cut to the bone and beyond in past years and that further cuts would seriously hamper our ability to maintain our commitment to the public to operate a court system

continued page 22

The Mannerly Lawyer: Etiquette and Legal Practice

Attorney Douglas H. Frazer, DeWitt Ross & Stevens


Douglas H. Frazer

Should a lawyer mail a thank-you note to a client with a stamp or meter postage? I posed this question to several colleagues. It led to a reflection on the role of etiquette in legal life. I have long thought of etiquette, as well as ethics, as a field closely related to—almost a subdivision of—law.

Law and ethics, as we might expect, often but not always overlap. Ethics is concerned with the rational determination of right conduct. Its foundation is sometimes law, sometimes religion, sometimes moral philosophy, and sometimes the "Ask the Ethicist" column in the *New York Times Sunday Magazine.* The breach of an ethical principle, to the extent a corresponding law exists, can be dealt with through the courts. More often, unethical conduct is dealt with by, and punished through, sanctioning bodies or by societal disapproval. Fidelity to ethics, like law, is expected even if no one is looking. In fact, a common definition of ethical character is what a person does precisely *when* no one is looking.

On the other hand, as Judith Martin (Miss Manners) points out, etiquette *only* counts when someone else is looking. Etiquette is the collection of the norms and customs that govern a community's social interactions. These norms and customs, in turn, largely concern how our actions in a social context make other people feel. Etiquette, unlike law and ethics, is voluntary. Its sole enforcement arm is societal disapproval.

Although etiquette is nonbinding, it is important. Disagree? Ask a gang member who has been dissed. Does etiquette, with its rules and duties, continue to have a meaningful place in a lawyer's life? I think most successful attorneys would say yes, even if good manners harmonize fully with their view of effective marketing or good lawyering.

What follows are a few of Miss Manners' time-tested principles of etiquette and a gloss on those principles as they might apply to law, lawyers, and law practice.

Human nature does not change.

As Miss Manners points out, it still takes time to get to know and trust people. This is true of our clients, our colleagues, our staff, other lawyers, and everyone else we encounter on a professional or social basis. States Miss Manners, "You will always have to write thank-you notes and answer invitations, admire new babies and pay condolence calls, and look after your guests at your own expense rather than theirs or your employer's." Echoing this, I would invite my own gentle readers to consider visiting clients at their places of work, paying compliments, and taking a sincere interest in the people around you.

Many people mistakenly think a new technology cancels out an old one.

Effective communication, perhaps as much as specialized legal knowledge or analysis, is a lawyer's stock in trade. Just because e-mail or text messaging is new, efficient, or fun does not mean it is the best, or most appropriate, way to communicate. The old tools still exist: the personal meeting, the letter, the telephone, and the fax.

Well-mannered lawyers give thought to the most appropriate way to communicate. Find out how a person would prefer the communication to take place. Take a cue from the means of communication used by the initiating party. Return messages within 24 hours. Remember, the personal touch is often lost with e-mails and voice mail messages. A telephone call is often best for delivering good or bad news, and is almost always appreciated as a "heads-up" ahead of bad news that may follow in writing. Think about calling for open dates before noticing up a court proceeding or a deposition. For acknowledging referrals, a phone call is good; a written thank-you note is better.

Spell-check and proofread e-mail. Do not respond to e-mail with "reply all" unless it is essential to do so. Savvy senders of e-mails often insert long distribution lists in the bcc field to head off this issue.

Finally, in the most bang for your buck department, this observation from Miss Manners: "You glance at an e-mail. You give more attention to a real letter."

Etiquette concerning meals and attire exists.

It may seem silly to state the obvious, but as Miss Manners might put it, even gentle lawyer-readers sometimes need gentle reminders. Dress appropriately. It is best to err on the side of over-dressing than under-dressing. If your style is casual, consider at least dressing up for client meetings or encounters in shared spaces. Close your mouth when eating. Be gracious to the wait staff. And remember, your bread plate is on the left; your water glass is on the right.

You do not have to do everything disagreeable that you have a right to do.

This piece of wisdom extends even beyond the reach of litigators. Granted, a lawyer may elect to be disagreeable for a reason. But when there is no good reason?

It is far more impressive when others discover your good qualities without your help.

In other words, don't brag. Or when we must help others discover our virtues, we do so discretely. One of my practices, for instance, is that I send personal notes to clients or counsel posted with a stamp or stamps—preferably a commemorative—that equal the exact postage. I've tested this technique. Recipients can pick out the difference and articulate the reason they feel the stamped envelope is better. I am hopeful Miss Manners will approve.

iPad Can Be MVP in 21st Century Law Practice

Attorney Melissa R. Beresford

I was sworn in 78 days ago. So, what qualifies me to give an opinion on anything, much less how-to advice to accomplished lawyers? Three things. One: I know technology. Two: I hate technology. I generally use it only if I'm forced. Three: I use the iPad—by choice. It's easy. It's convenient. And, let's face it, it makes me look way cooler than I actually am.

In addition to giving lawyers some cool points, the iPad eliminates the heavy-lifting requirement that currently comes with the job. Weighing in at 1.33 pounds (1.35 if you purchase the 3G version), the iPad is lighter than most file folders, narrower than most cell phones (0.34 inch), and smaller than a piece of paper (9.5 inches by 7.31 inches). Kiss your briefcase and stacks of papers goodbye.

Disclaimer: because I am a recent law school graduate, I am broke. Therefore, I will be focusing on inexpensive (preferably free) apps. As you will see, with a few trips to the App Store, you can customize your iPad to improve the efficiency, clarity, and punctuality of your practice. The iPad allows immediate access to any document you will ever need in the courtroom, a meeting, a mediation, or anywhere else your practice takes you. The iPad is an office manager, paralegal, law clerk, and library all in one.

Dropbox (free) turns your iPad into an infinite briefcase. Install Dropbox on your computer and iPad, and you can access documents, photos, and videos from anywhere. Never be caught without a document again.

Real Practice (free) is a great app for the numerous young attorneys who have courageously decided to step out on their own (thank you, job market). It provides on-the-go client management and client development tools. Respond to prospective clients, track time and billing, manage and retrieve contacts, create and manage tasks, and send client invoices—all from your iPad.

Never miss a deadline with Court Days Pro ($2.99). Customize the app with the court rules and statutes in your jurisdiction, and the app will calculate deadlines and dates based on those programmed rule sets.

With Dragon Dictation (free), there is no need for a dictation service or a paralegal. Simply speak into the iPad, and the words appear on the screen. The app is surprisingly accurate. Import your contacts, and it can dictate even the toughest of names.

Fastcase (free) provides on-the-go research capabilities to busy lawyers. Find Wisconsin statutes and case law in an instant. Additionally, if you subscribe to LexisNexis or Westlaw Next, you are no longer bound to your desk. Download the free app and continue your research trail anytime, anywhere.

Law Stack (free) provides quick and easy access to the Constitution, Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, Federal Rules of Evidence, and Federal Rules of Bankruptcy Procedure. You can customize with add-ons from the App Store (additional fees may apply). Choose from the U.S. Code, Code of Federal Regulations, and some state statutes. (Wisconsin Statutes are not yet available.)

The iPad can change the way you present evidence to a judge or jury.

iAnnotate PDF ($9.99) is feature-loaded. If you can write it, highlight it, or draw it on paper, you can do it with iAnnotate. Save webpages as PDF files, password-protect important documents, and search the full text of all documents in your PDF library. Create and present your documents in front of the jury, but be careful to do a run-through before trial, because some reviews indicate an inability to switch between documents without the app freezing.

While I have not tried it, TrialPad ($89.99) seems to be the go-to app for seamless courtroom presentations. Create separate case and witness folders. Highlight, annotate, and zoom in during trial to captivate the jurors' attention.

The iPad can help select a jury and monitor jurors' reactions during trial.

Never forget a juror's name with iJuror ($9.99). Assign each juror to his or her seat, selecting the character that looks most like him or her for quick reference. Add notes to preset categories, such as marital status, prior arrest, education, prior victim, or prior juror to make *voir dire* a breeze.

JuryTracker ($4.99) allows you to track each juror's emotional reactions and develop predictions on how he or she will vote. E-mail the developer (an attorney) to try this app free for 30 days.

Please note that this article barely grazes the surface of what is available in the App Store. Use this information as a jumping-off point, and take the time to figure out the apps that work best for your practice. Good luck, have fun, and look cool.

***Virtual Firm* continued from p. 11**

work habits, varying hours (and sometimes even time zones), and clearly located not down the hall but "on the cloud," which is radically different. Even further, they must trail boss many lower layers of work as it is outsourced to India, the Philippines, or wherever, often at the specific direction of a more savvy and demanding generation of clients. I predict that within two years, proof of skill in "LPPM" will become an essential requirement for responding to RFPs, and will be an early question of any savvy client.

As part of championing the new law firm model, I am collaborating with Pam Woldow of the Edge Group and Jay Shepherd of PrefixLLC to conduct training workshops in Legal Pricing and Project Management, because it is clear that the new model will demand high levels of skill in both areas.

So—why do I get so annoyed when solo attorneys brag about their "virtual firms"? Because for most it is like bragging about their "typewriter firms" or their "computer firms." "Virtual" is just the tool. If the tool is simply being applied to the old model, it is just rearranging the deck chairs on the Titanic. If it is code for "new law firm model," then I'm completely on board. New tools demand new thinking. Those who are still using their "virtual" hammer to drive the same old nails are doomed to extinction.

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Mediation continued from p. 9

opposing sides retire to separate locations and the bargaining begins. Occasionally, counsel will prefer to skip the group discussion and proceed directly to the bargaining stage.

Reasons for this may be:

1. Shortage of time;
2. A feeling that issues and positions are already adequately defined; or
3. Excessive emotionality of the parties.

Group discussions generally offer significant advantages:

1. Direct discussion is the most effective way to eliminate ambiguity in definition of issues and positions.
2. Direct discussion provides opportunity for each party to witness the strength of conviction and the articulateness, or lack thereof, of his opponent, which assists in predicting the opponent's potential effectiveness at trial.
3. Direct discussion eliminates the possibility of miscommunication that exists when the mediator conveys positions back and forth.

F. Weaknesses, Not Just Strengths, Must Be Considered

Probably the most important factor in a successful mediation is to prevent a party from simply repeating his version of the facts over and over every time an attempt is made to discuss and analyze the opponent's factual statements and supporting arguments. There is a strong human tendency to assume that the trier of fact will accept one's own version and summarily reject that of the opponent.

The mediator and counsel must convince a party that the trier of fact will consider the opponent's position as thoroughly as it does his own and will accept whichever position it finds more convincing. The mediator can express this point by a comment to this effect:

> If you were the jury (or court) you most definitely would win, because you know you are right. The jury (or court), however, doesn't know anything about the case, so it will listen with equal attentiveness and give equally thorough consideration to each side. It will accept whichever position it finds more convincing. Therefore, you must attempt a kind of out-of-body experience and pretend that you're the jury (or court) and know nothing about the case. You must analyze the opposing positions and the facts and arguments supporting each. You must then make your best possible prediction of which position the jury (or court) will find more plausible.

The mediator should also point out that it is impossible to predict a jury (or court) outcome with any degree of certainty, and that all one can do is make the best possible educated guess.

The preceding discussion has considered primarily the evaluation of factual disputes. Each side must also analyze the relative merits of the arguments of counsel on each disputed legal issue in order to predict the legal results that will follow from the jury's (or court's) resolution of the disputed factual issues.

Just as the parties have a natural tendency to reiterate their positions on disputed facts and avoid a careful consideration of their opponents' positions, counsel are sometimes tempted to confuse mediation with trial and refuse to acknowledge and consider the merits of their opponents' positions. The mediator must make every effort to dissuade the parties and counsel from maintaining this "ostrich-like" posture. Otherwise, the analysis essential to a reasoned prediction of outcome cannot take place. It is crucial to a successful mediation that each side consider its weaknesses as thoroughly as its strengths. This is the only way the evaluative process can lead to that disciplined prediction of trial outcome that is critical to a successful mediation.

G. Refusal to Settle Because of "Principle"

Frequently, a party states that he is unwilling to base his settlement position on the estimated cost and the predicted outcome of trial. Rather, he feels compelled to decline settlement due to "principle." The mediator's first response should point out that the jury verdict and court's instructions will contain no reference to "principle." They will refer only to the specific factual and legal issues involved in the case. The mediator may try to lighten the mood with a statement to this effect: "If you're willing to spell 'principle' with an 'al,' this mediation process can help you. If you insist on spelling it with an 'le,' you'll have to seek assistance from your spiritual advisor."

The mediator may then point out that no ethical or moral principle requires a party to go to trial rather than settle when confronted with a lawsuit. The mediator may continue with a statement to this effect:

> Since you know in your heart and conscience that you are in the right and have done nothing wrong, there is no need to spend unnecessary funds in an effort to seek validation of your position through trial, which is always an uncertain process and will in no way address matters of principle. Furthermore, if you proceed to trial and lose, you'll feel even greater frustration and remorse than if you had settled. Ultimately, the most prudent course is to settle as economically as possible and to satisfy your desire for a validation of principle internally, within your own heart and mind.

continued page 22

Third-Party Testing of Children's Products Required by CPSC

Attorney Paul E. Benson, Michael Best & Friedrich

In a 3-2 vote on October 9, 2011, the U.S. Consumer Product Safety Commission ("CPSC") passed final regulations requiring third-party safety testing of children's products. Under the Consumer Product Safety Improvement Act ("CPSIA"), a "children's product" is defined as a consumer product designed or intended primarily for children 12 years of age or younger. A copy of the CPSC staff report can be found at http://www.michaelbest.com/files/Uploads/Documents/US_Consumer_Product_Safety_Commission_10_21_11.pdf.

The regulatory framework created by these rules requires manufacturers, importers, and private labelers to have toys and other children's products regularly tested and certified as CPSC-compliant by a third party. One of the rules requires toys and other products to be retested after any "material change" is made to the product. Such changes include design changes, alterations to the manufacturing process, or new sources for component parts. After retesting, the products can be recertified as CPSC-compliant.

Parties subject to the regulations will also be required to keep records on the testing and certification of children's products. The rule goes into effect 15 months after publication in the Federal Register. A second rule allows companies to use the testing done by a supplier to certify their products. That rule will go into effect 30 days after publication.

Children's products certified as compliant can use the voluntary label "Meets CPSC Safety Requirements."

While the CPSIA already requires testing of certain products such as cribs, jewelry, and toys with small parts, the new rules will greatly expand testing. Consumer advocacy groups were thrilled by the CPSC vote. Many business groups, however, asserted the rules will be expensive, will kill jobs, and represent an abuse of government power.

The Commission voted to publish a proposed rule that would require a company to test a representative sample of its product, and also voted to seek public comment on how to reduce the cost of third-party testing requirements.

Save the Date!

Judges Night
February 7

Annual Meeting
June 12

Golf Outing
August 1

MBA's *Pro Bono Publico* Award Winners Illustrate Impact of Volunteer Service

For the third straight year, the Milwaukee Bar Association awarded its annual *Pro Bono Publico* awards to a deserving law student, individual attorney, and organization. The awards were presented at the Eighth Annual State of the Court Luncheon on October 12, 2011.

The selection committee evaluated outstanding nominations under the following general criteria: development of innovative ways to deliver volunteer legal services or improve access to justice, participation in activities that provide legal services to the poor or increase access to justice, and work on legislation that increases access to justice.

The law student selected for the 2011 *Pro Bono Publico* Award is Kristin Lindemann. Kristin is a third-year Marquette law student who has exhibited a commitment to service through a number of activities.

Kristin has faithfully served as a Marquette Volunteer Legal Clinic volunteer at the Milwaukee Justice Center for the past 18 months. The MVLC provides limited legal advice and referral services, through volunteer attorneys and Marquette law students, at several sites, including the Milwaukee Justice Center. This year, Kristin has served as the Student Coordinator, a role sought by many qualified students. In this role, Kristin works with clinic supervisors to strengthen student training, maximize student involvement, and improve clinic systems. She views her position as an opportunity to lend her organizational skills, lead other law students, and contribute to the overall *pro bono* culture among her colleagues. Kristin has excelled in her role. She continuously asks for additional responsibilities, and has suggested and implemented valuable improvements to the training programs and the operation of the clinic. She has made a substantial and positive difference at the MVLC.

Kristin has not limited her *pro bono* work to the MVLC. For example, she has volunteered extensively with the Legal and Medical Partnership Program, working alongside attorneys from Legal Aid Services of Milwaukee to provide brief legal advice to patients at the Martin Luther King Heritage Health Center.

What really sets Kristin apart is that she has done all this while being a part-time law student prior to this year, and also worked nearly full time as a small business owner. Like many of her part-time classmates, Kristin added law school to an already full life. Her commitment to *pro bono* service on top of all this is truly remarkable.

And speaking of remarkable, Kris L. Havlik's work with Wills for Heroes is just that. Kristine is a partner at Foley & Lardner, where she is an accomplished estates and trusts lawyer. She received the *Pro Bono Publico* award for an individual attorney.

Wills for Heroes is a national program, created after September 11, 2001, which provides eligible emergency personnel such as police officers, fire fighters, and EMTs with free basic estate planning documents.

Kris launched Wisconsin's Will for Heroes program from scratch in 2008. She recruited a team of lawyers to serve as her steering committee, and obtained critical support from the national founder of the Wills for Heroes program, members of the State Bar, the Young Lawyers Division, and countless others.

To date, volunteer attorneys and support personnel, under Kris' leadership, have conducted more than 30 free estate planning clinics in Milwaukee, Madison, and Green Bay. At these clinics, volunteer lawyers prepare wills and other estate planning documents at no charge for eligible first responders and their spouses or domestic partners.

In addition to organizing and launching the program, Kris has personally contributed hundreds of *pro bono* hours to the program by coordinating with sponsors, developing the training program for volunteers, recruiting attorney participants, and developing the estate planning presentations.

Kris continues to provide oversight and direction to the full statewide program, conduct training for lawyer volunteers, and actively participate in numerous Saturday clinics. The success of the program, which has now benefited nearly 1,000 first responders, reflects Kris' ongoing record of leadership and results.

The final *Pro Bono Publico* award went to Catholic Charities Legal Services to Immigrants program. This public interest, nonprofit law firm, led by attorney Barbara Graham, responds to a growing, unmet, and largely ignored legal need in our community. The program provides legal assistance in immigration matters through an innovative delivery system of three full-time attorneys; certified immigration paralegals; three Marquette law students; and over 70 trained private bar, *pro bono* lawyers from Quarles & Brady, Foley & Lardner, and Northwestern Mutual.

Catholic Charities is recognized statewide for its immigration expertise, and stands alone in its mission to respond to families in need of immigration assistance. The work of the Legal Services to Immigrants

continued page 21

The MBA's 2011 *Pro Bono Publico* Award winners: Kristine L. Havlik of Foley & Lardner; Barbara Graham, on behalf of Catholic Charities Legal Services to Immigrants; and Kristin Lindemann, a student at Marquette University Law School

Pro Bono Corner: Lawyer Hotline

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.*

Lawyer Hotline

Contact: Britt Wegner
Office: Milwaukee Bar Association
424 East Wells St.
Milwaukee, WI 53202
Phone: 414-274-5931
E-mail: bwegner@milwbar.org

The Lawyer Referral and Information Service (LRIS) of the Milwaukee Bar Association refers callers to either a community resource or a panel of prescreened attorneys who accept referrals in particular areas of law. Often the caller and the LRIS staff are uncertain whether the matter calls for the services of an attorney; or the caller is unable to hire an attorney or even attend a free walk-in legal clinic, but could benefit from some basic guidance. The LRIS created the Lawyer Hotline as a resource to provide such callers basic legal evaluation and guidance by an attorney over the phone at no charge.

Questions for the Lawyer Hotline are taken during normal LRIS business hours (Monday-Friday, 8:30 a.m. - 5:00 p.m.) on the 414-274-6768 line. When a caller fits the Lawyer Hotline profile, LRIS staff advises the caller, a volunteer attorney will call them back during the next Lawyer Hotline session. Those sessions run from 5:00 to 7:00 p.m. on the second and fourth Wednesdays of each month at the MBA.

Attorneys sign up to work the hotline, and the LRIS provides them with dinner. The volunteer attorneys are provided with a sheet containing a name, phone number, and a brief description of the legal issue. The legal questions can be in any area of law. The caller is advised that the attorney returning the call is not his or her counsel; rather, the attorney's function is to provide general guidance and point the caller in the right direction. The volunteer attorneys briefly note the outcome of each call. In some cases, the volunteer attorney can reach the conclusion that the matter does call for the services of an attorney, and refers the caller back to the LRIS for referral in turn to a panel attorney.

The LRIS encourages any and all attorneys to volunteer for the Lawyer Hotline. Jacques Mann and Charlie Barr are regular volunteers and currently staff almost every session. It is an "easy and fun" way to do some *pro bono* work and provide great relief to the numerous callers who can use some basic legal guidance. (And don't forget the free dinner!) Volunteers can sign up for one session or several; there is no minimum requirement.

If you are interested in volunteering, please contact Britt Wegner at 414-276-5931 or bwegner@milwbar.org.

MBA *Pro Bono* Cocktail Reception Connects Attorneys with Opportunities

The Milwaukee Bar Association hosted its annual *Pro Bono* Cocktail Reception on October 17. Representatives of numerous Milwaukee-area nonprofit organizations made short presentations about the *pro bono* opportunities they offer, followed by an informal networking session over appetizers and wine.

Milwaukee County Circuit Judge Rick Sankovitz keynoted the well-attended reception, as he did last year. Judge Sankovitz opened with a trivia quiz: where did the phrase "Just Do It" come from? The answer is that Nike sponsored a contest to develop its advertising catchphrase in 1988, and a fourth grader came up with the winning entry. The judge's point was that just as that wildly successful initiative emanated from a neophyte who came out of nowhere to win, new and relatively inexperienced lawyers can achieve important results by jumping into *pro bono* service with both feet. Indeed, judges and experienced attorneys in this community are, and should be, inspired by those who actually do the *pro bono* work. In Judge Sankovitz's words, those in the *pro bono* trenches are "saving the profession."

Thank you to those who attended the *Pro Bono* Cocktail Reception at the Milwaukee Bar Association, and the event's sponsor: Quarles & Brady!

***Publico* continued from p. 20**

program promotes family integrity and puts individuals on a pathway to citizenship—a pathway well worn by most of our ancestors. The program serves more than 4,000 clients per year.

Catholic Charities lawyers also proactively educate lawyers and judges on the role immigration law plays in the justice system. They have advocated before the Wisconsin Supreme Court, State Bar of Wisconsin, and Wisconsin Legislature to enhance consumer protection against the unauthorized and often fraudulent practice of immigration law by "notarios." Last month, Catholic Charities lawyers carried their advocacy for refugees, human trafficking victims, and immigrants to the White House for briefings with the Obama administration.

These three award winners truly exemplify *pro bono publico*—service in the public good. May they serve as an inspiration to all of those who practice law or are preparing to do so.

Mediation continued from p. 18

H. Collection Problems

In a substantial number of cases—and increasingly due to economic conditions—the defendant may contend that even if the plaintiff prevails at trial, he will not be able to collect the judgment due to the defendant's financial condition. This injects a new dimension and must be given serious consideration by the plaintiff.

The plaintiff may justifiably insist that the defendant provide all details of his financial condition before considering the claim of uncollectibility. The defendant then must disclose all facts concerning assets, liabilities, income, and expenses, in affidavit form, either at the mediation or as a condition subsequent to the validity of a settlement agreement reached at mediation. The defendant must also answer any specific questions from plaintiff's counsel about the defendant's finances. Lenders or other third parties may be contacted during mediation in an effort to confirm financial facts.

After the financial facts are elucidated as fully as possible, counsel typically argue about (1) whether all of the defendant's assets will be exempt from surrender in a Chapter 7 "no asset" case; (2) whether the defendant's income is high enough to preclude use of Chapter 7 and require a Chapter 13 "wage earner" proceeding, under which the defendant must make monthly payments for a period of three to five years in an amount determined by the trustee; and (3) whether the conduct underlying the present lawsuit will preclude discharge in a Chapter 7 proceeding under the "intentional acts" exception. Counsel at mediation typically are not experts in the rules of bankruptcy.[2] In many situations, counsel contact a bankruptcy expert during mediation. The plaintiff must make his best prediction of how these issues would resolve, and also of the cost to the defendant of bankruptcy and whether the defendant is bluffing.

Occasionally, a plaintiff takes the position that even if it appears the defendant isn't bluffing, he would rather force the defendant into bankruptcy than to accept an offer based strictly on the threat of bankruptcy. The mediator should point out that this is a "nose cutting" position and that it would make more financial sense to accept the highest offer possible than to get either nothing under a Chapter 7 or a minimal amount under a Chapter 13 proceeding.

Occasionally, the claim of uncollectibility is made at the outset of the mediation, and the parties will agree to dispense with discussion of the merits and proceed directly to a consideration of the collection problem.

I. Telephonic Interviews of Third Persons

In some mediations, each side makes a diametrically different claim as to the anticipated testimony of a third person, who has not been deposed, on an important factual issue. It can be helpful to get this person on a conference call, which has become more feasible with the advent of cell phones, in an effort to resolve, or at least clarify, this roadblock.

An example is a mediation involving a lawsuit by a homebuyer against the seller for misrepresentation in claiming no knowledge of a leaky basement. The buyer claimed that a neighbor told him that the seller had told the neighbor of basement leakage. The seller denied that the neighbor would make that statement. The neighbor was reached on a conference call and questioned thoroughly by all counsel in an effort to resolve the dispute. The neighbor ultimately maintained that she had not made this statement to the buyer. This removed the impediment and generated momentum for settlement. Any statement made by a non-party at mediation, like statements by parties and counsel, is barred from admission at trial.[3]

The tried and true approaches outlined in this article are calculated to enhance the probability of success at mediation. Their use is strongly recommended.

[1]Wis. Stat. §§ 802.12(4), 904.085(3)(a).

[2]The details of these bankruptcy rules are beyond the scope of this article. An excellent article by James W. McNeilly, Jr. and Joan K. Mueller, entitled "Bankruptcy Basics for Attorneys," appears in the March 2011 and April 2011 issues of the *Wisconsin Lawyer*.

[3]See n.1. Section 904.085(3)(a) extends inadmissibility to any "oral or written communication ... made or presented in mediation by the mediator or a party ..." (italics added). This language makes clear that statements of non-parties *presented* by a party are as inadmissible as statements made by a party.

Budget continued from p. 15

that is independent, open, accessible, and adequately (albeit minimally) staffed."

On a related subject, the Chief Judge discussed an initiative of Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court to create a statewide outreach program with the mission of educating the public about the legal system, and specifically the reasons why an independent and adequately funded third branch is critical to our democracy. This initiative, modeled after a program in Colorado, would coordinate existing speakers bureaus and outreach efforts and focus their efforts on getting out into the community to discuss issues related to the legal system, with the aid of information and reference materials from our state's high court. Judge Kremers has asked the Public Outreach and Education Committee of the Community Justice Council, in consultation with MBA leadership, to spearhead this effort in Milwaukee.

In other remarks, Judge Kremers addressed a recent attack in the media on a sentencing decision by a Milwaukee County circuit judge. Noting that it is his duty to speak out when his colleagues are bound by ethical rules to remain silent, Judge Kremers noted that it is easy enough, but of little use, to criticize a sentence without knowing all the facts presented to the court and case law on the factors a judge must consider in passing sentence. He asserted that "individual cases or events, especially when twisted to fit a political agenda, make for great sound bites but terrible policies." Judge Kremers called on the bar to consider its role in responding to "the *ad hominem* attacks, leveled against the judicial system or against individual judges, that are often so inaccurate, baseless, cruel, and unfair."

The Chief Judge noted the retirements of two judges with long and distinguished service records: Judge Fran Wasielewski earlier this year and Judge Tom Cooper at the end of the year. Finally, he welcomed newly appointed circuit judge Nelson Phillips, who had been appointed by Governor Walker just five days previously. Judge Phillips will assume a calendar in the Misdemeanor Division.

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