

Hearsay

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If you have any questions about the newsletter or would like to submit an article for a future issue, please contact the editor.

MSBA



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Greetings from the Chair

Welcome to a new bar year of the New Lawyers Section (NLS). As a NLS member, you probably already know that involvement within the NLS provides numerous opportunities to connect with your peers and with your community, while furthering your career goals. This bar year NLS members will again be involved in various social, community, and legal activities -- I welcome your involvement. Involvement begins with attending the NLS monthly meetings, which are held every third Thursday of the month at 5:30 p.m. at the MSBA offices on the third floor of the City Center building in Minneapolis. Our first meeting will be held September 20, 2007. I look forward to seeing you there.

UPCOMING EVENTS:

- NLS Meeting: Sept. 20, 5:30 p.m., MSBA Offices
- ABA-YLD Regional Conf.: Sept. 27-29, South Dakota
- ABA-YLD Fall Conf.: Oct. 4-6, North Carolina
- Fall Social & Toys for Tots Fundraiser [TBD]



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Non-Compete Agreements for Existing Employees

By: Emily Finger

A small business owner contacted me recently about non-compete agreements. His business had been running for about one year, and he wanted to ask his two existing employees to sign agreements stating that they would not compete with him if he terminated their employment. How could he go about doing this?

Is a Non-Compete Necessary?

The first issue is deciding whether an employer actually needs a non-compete agreement. Because non-compete agreements are not generally favored by the courts,¹ they should be used sparingly. Non-compete agreements are not the only – or even optimal – strategy for protecting trade secrets or customers. Remember that trade secret and confidentiality agreements may give your client what he or she needs without the hassle of the litigation that non-compete agreements often bring.

Special Considerations for Current Employees

Having determined that the client would benefit from a non-compete agreement, the next issue will be structuring the agreement for the “mid-stream employee” who is currently employed by the client. For these employees, a non-compete agreement will only be enforceable if it is supported by independent consideration.²

Independent consideration must consist of “real benefits” that are bargained for between the employer and employee. They must be benefits beyond anything the employee is already entitled to receive, either by virtue of his employment or by a separate agreement.³ Some examples of independent consideration include a cash payment, salary increase, promotion, a stock option or grant, or participation in a bonus plan.

When choosing consideration for a non-compete agreement, it is important to remember that the courts require the consideration to be unique to an employee who signs a non-compete agreement.⁴ In other words, if your client offers the same benefit to other employees who do not sign a non-compete agreement, then the courts will consider the consideration to be illusory and it will not be sufficient. Additionally, continuing employment (the old “sign this or I’ll fire you” trick) is not sufficient consideration.⁵

Drafting a Non-Compete Agreement

The important elements of a non-compete agreement are consideration and reasonable scope, geographical limitations, and duration. As in any contract, the independent consideration, as described above, should be clearly spelled out. A non-compete agreement will only be enforced to the extent that it is reasonably necessary to protect a

¹ *Freeman v. Duluth Clinic, Inc.*, 334 N.W.2d 626, 630 (Minn. 1983).

² *National Recruiters, Inc. v. Cashman*, 323 N.W.2d 736, 740 (Minn. 1982); *see also Sanborn Mfg. Co. v. Currie*, 500 N.W.2d 161, 164 (Minn. Ct. App. 1993) (extending the requirement of independent consideration to cases where the employee has accepted an offer of employment but not yet begun work); *Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Can., Ltd.*, 552 N.W.2d 254, 265 (Minn. Ct. App. 1996) (requiring independent consideration where the employee knew he would have to sign a non-compete agreement, but did not know the terms until it was presented to him two weeks after he began work).

³ *Sanborn*, 500 N.W.2d at 164.

⁴ *Freeman*, 334 N.W.2d at 630.

⁵ *National Recruiters*, 323 N.W.2d at 740-41.

legitimate business interest.⁶ Furthermore, all of the elements will be evaluated by a court based upon the type of business and the nature of the employee's duties.

Scope: The agreement should clearly define what activities are proscribed and why, keeping in mind the aspects of the employer's business to which the employee was exposed. For a smaller business, where an employee may be exposed to all aspects of the business, the agreement can be broader. However, when there are clear divisions, such as between marketing and research and development, the scope must be limited to the employee's actual duties and exposure. Further, the agreement should be clear about what activities constitute competition, such as taking client lists, working for a competitor, or starting a competitive company. All of these specifications will help to ensure that a court would find the limitations "reasonable."

Geographical Limitations: The geographical area covered by the agreement should be restricted to where the employer conducts business.⁷ An unlimited restriction will be unenforceable. The restriction also may not impose an undue hardship on the employee's ability to earn a living.⁸ Thus, a nation- or region-wide prohibition that essentially renders the employee unemployable will almost always be considered an undue hardship and thus be unenforceable.

Duration: As with the other aspects of the agreement, the agreement's duration must be clearly tied to a legitimate business interest. The key is to limit the duration to the period

of time in which an employee could use business information for competition. Courts also consider the time necessary to train new employees and for customers to become familiar with new employees, and the time necessary for customers to distinguish in their minds the employer and ex-employee.⁹ One- and two-year limitations are standard, but if a client is in a fast-developing technology industry, courts may even determine that one year is too long.¹⁰

One final ingredient that is particularly useful to small businesses is an assignment clause. Courts have held that non-compete agreements are assignable as part of the assets of a business.¹¹ Nonetheless, the attorney should draft a clause allowing the employer to assign the non-compete agreement if the owner sells his business to or merges with another company.

Non-compete agreements can be a good source of business for employment litigators, and for that reason their use should be carefully considered. Even so, a well-drafted agreement will usually be enforced and can protect your client from losing its trade secrets and talented employees.

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⁶ *Bennett v. Storz Broadcasting Co.*, 134 N.W.2d 892, 899-900 (Minn. 1965).

⁷ Such a restriction is in line with the theory that a non-compete agreement ought to protect an employer from a former employee's solicitation of its customers. *Webb Pub. Co. v. Fosshage*, 426 N.W.2d 445 (Minn. Ct. App. 1988).

⁸ *Bennett*, 134 N.W.2d at 899-900.

⁹ *Dean Van Horn Consulting Assocs. v. Wold*, 395 N.W.2d 405, 408-09 (Minn. Ct. App. 1986).

¹⁰ See *Earthweb, Inc. v. Schlack*, 71 F. Supp. 2d 299 (S.D.N.Y. 1999).

¹¹ *Saliterman v. Finney*, 361 N.W.2d 175, 178 (Minn. Ct. App. 1985).

Break Glass in Case of Fire: A Quick Guide to Obtaining Temporary Restraining Orders in the Eighth Circuit

By: Robert A. Frazier

The call comes in at 5:00 p.m. on the Friday before a three-day weekend. It reminds you of something from law school. It is the general counsel of Socktoe, Inc. (“Socktoe”), a rapidly growing, start-up business that manufactures an innovative and patented method for keeping pairs of socks together in the wash. A vast improvement over the clothes pin, it has spawned imitators across the globe. Socktoe’s general counsel spends much of her time writing cease-and-desist letters and otherwise policing the imitators. Today, however, she needs help.

Socktoe’s corporate investigators have good and reliable information that a notorious imitator “Socktow” will be conducting a widely advertised, circus-tent, weekend “sales event” in your city next Saturday to push its pale imitation of hosiery cohesion. Although this would be outrageous to Socktoe at any time, the timing is particularly egregious since it comes the weekend before your city hosts an International Products Exhibition at which Socktoe’s legitimate product will be rolled out as part of a major marketing push intended to introduce Socktoe’s product to your city. If Socktow is allowed to conduct its illicit extravaganza, it is likely to steal Socktoe’s thunder, confuse customers, and otherwise damage the Socktoe® brand. After clearing conflicts and reviewing appropriate documentation that convinces you of the merits of Socktoe’s position, you agree to help stop Socktow’s

“sales event” by obtaining a TRO from the federal district court¹ in your city. You are set to work, but what to do first?

1. Prepare a Verified Complaint to Initiate the Lawsuit. Also prepare an affidavit to be signed by someone at Socktoe with firsthand knowledge of the facts. The affidavit should describe in detail how the company will be harmed if Socktow is allowed to hold its “sales event.” Attach the affidavit to the complaint as an exhibit along with other exhibits (photos, documents, etc.) that substantiate your claims. If pressed for time, an adequate complaint filed quickly is better than a perfect complaint filed too late. Under Fed. R. Civ. P. 15, you have the right to file one amended complaint before a responsive pleading is served.

2. Determine Whether You will Seek the Temporary Restraining Order (TRO) *Ex-parte*. Rule 65(b)(1) of the Federal Rules of Civil Procedure lists the criteria for proceeding *ex-parte*:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party’s attorney only if

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the

¹ If proceeding in Minnesota State Court, consult Rule 65 of Minnesota Rules of Civil Procedure. Also see *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965), for the factors considered by the state court in deciding whether to grant a TRO or temporary injunction.

- adverse party or that parties can be heard in opposition, and
- (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required.

Fed. R. Civ. P. 65(b)(1).

If you meet these criteria, you may proceed *ex-parte*. Remember, you must have a very good reason for doing so. When you proceed *ex-parte*, you have an obligation under the Rules of Professional Conduct to notify the judge of all material facts that will enable the judge to make an informed decision, even if not favorable to your position. ABA Model Rules of Professional Conduct 3.3(d).

3. Prepare a Motion or Application for TRO and a Supporting Memorandum.

This is important. You are explaining to the judge why you should get a TRO and should include a detailed statement of facts referencing the affidavits and exhibits in your complaint. Your argument section should include the *Dataphase* factors discussed *infra*. Remember that while you are moving for a TRO, you are also likely moving for a preliminary injunction. Under Fed. R. Civ. P. 65, a TRO can generally last no more than ten days, and at the end of the ten day period, you will likely have a hearing on the issuance of a preliminary injunction. If granted, the preliminary injunction will last up until the trial.

In deciding whether to grant a TRO/preliminary injunction, a federal district court in the Eighth Circuit will consider the factors from *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981). The factors are: (a) likelihood of success on the

merits; (b) irreparable harm if no injunction is granted; (c) balance of harms; and (d) public interest.

a. Likelihood of Success on the Merits. Explain why you are likely to win your lawsuit. Describe the elements of each claim in your complaint and the evidence that you have, or are likely to have after discovery, to establish each of those elements. The "success on the merits" factor does not require that you show a greater than fifty percent chance of prevailing on the merits. *See Dataphase*, 640 F.2d at 113. At this point, the court is not predicting whether your client will "ultimately win." *Interbake Foods, L.L.C. v. Tomasiello*, 461 F. Supp. 2d 943, 960 (N.D. Iowa 2006). Instead, the question at the TRO/preliminary injunction stage is "whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." *Dataphase*, 640 F.2d at 113.

b. Irreparable Harm if No Injunction is Granted. Citing to the affidavit, lay out the harm your client will face in the absence of the injunction. In some cases, such as where there is likelihood of consumer confusion resulting from a trademark violation, the law presumes irreparable harm. *See Northwest Airlines, Inc. v. Bauer*, 467 F. Supp. 2d 957, 963 (D.N.D. 2006). Here, Socktote will never have another chance to make a first impression in your city, and that first impression is not going to be good if Socktote gets to illegally taint the market with its knock-off product.

c. Balance of Harms. Identify and compare any potential harm to the defendant if the TRO is granted with the harm to your client if the TRO is not granted. If the injunction is granted and Socktote cannot

have its road-side circus sales event, Socktow will lose sales. If the injunction is not granted, Socktoe, the holder of a valid patent that has invested significantly in marketing its product will suffer damage to its brand and reputation. Argue that this harm outweighs whatever minimal harm might come to Socktow.

d. Public Interest. In this section, argue why granting the TRO is in the public interest. In this case, you might argue that the public interest weighs in favor of granting the injunction because it is in the public interest to protect your client's innovative product and protect the public from pale imitations. "The public interest weighs in favor of protecting intellectual property and protecting consumers from fraud in all forms" *Northwest Airlines*, 467 F. Supp. 2d at 964.

4. File Your Complaint and Have Summons Issued on Socktow. Then, file your Motion/Application for TRO and supporting memorandum.

5. Advise your Client to Obtain Adequate Security Acceptable to the Court. A TRO or preliminary injunction has to be backed by adequate security to cover any damages to a party that is wrongfully enjoined. Fed. R. Civ. P. 65(c). Courts generally accept a surety bond or letter of credit as security.

6. Call and Write the Court to Ask for an Emergency Hearing. Copy Socktow or Socktow's lawyer on the communication if not proceeding *ex-parte*.

7. Make it Easy for the Court to Issue the TRO. Draft a proposed TRO for the court's consideration. If the court grants the TRO, the court may let you submit the proposed order to chambers. (Consult your local

rules.) Your well-crafted supporting memorandum will provide a good template for drafting the order. Consult Fed. R. Civ. P. 65(d) for the form and scope of the order.

8. Prepare for the TRO hearing. Make a successful argument. Submit your proposed order to chambers.

9. Once the TRO is Issued, Serve on the Defendant ASAP! A TRO is binding on parties and their agents who have actual notice. Fed. R. Civ. P. 65(d).

10. Prepare for the Fast Approaching Preliminary Injunction Hearing. Your weekend is over, but you have knocked the general counsel's socks off by obtaining the TRO, and you are on a firm footing for prosecuting the lawsuit.

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Minnesota Adopts 2002 Uniform Securities Act¹

By: Debra Frimerman

Minnesota securities laws underwent drastic changes effective August 1, 2007. The state replaced its previous securities statutes and rules with a form of the 2002 Uniform Securities Act, with several Minnesota-specific provisions. The new requirements and procedures for registration and the most widely used exemptions from registration for offers and sales of securities for project finance purposes are outlined below.

I. Registration

Under the new Minnesota Securities Act,² any offer or sale of a security in Minnesota must be registered unless either (1) it is a federal covered security, or (2) the security, transaction or offer is exempt from registration under the Minnesota Securities Act. A federal covered security is a security designated in section 18(b) of the Securities Act of 1933 (the “1933 Act”).³ Common types of covered securities include: (1) securities listed or authorized for listing on a national exchange and any security equal or senior to such a listed security, (2) securities issued by an investment company registered

under the Investment Company Act of 1940, (3) sales to qualified purchasers as defined by the Securities and Exchange Commission (“SEC”),⁴ (4) exempt securities under section 3 of the 1933 Act with a few exceptions, and (5) exempt transactions under section 4(2) of the 1933 Act, including Rule 506 of Regulation D.⁵ An exempt security is a type of security that is exempt from registration, regardless of how offers or sales are made. An exempt transaction is a transaction that, despite the type of security, is exempt, based on the method of the offer and sale of the security. Certain types of offers of securities may be exempt even though the sale of the security or the transaction is not exempt.⁶

For securities that must be registered in Minnesota, registration may be made by coordination, qualification or a small corporate offering registration (“SCOR”).⁷ Registration by coordination is available if a registration statement for the same offering has been filed with the SEC under the 1933 Act.⁸ Registration by qualification is available for any type of security and transaction.⁹ SCOR is available to an issuer

¹ This article is not legal advice or a legal opinion on specific facts or circumstances. It is meant to provide an overview. The contents are intended for informational purposes only.

² Minn. Stat. §§ 80A.40-90.

³ 15 U.S.C. § 77r(b). The National Securities Markets Improvement Act of 1996, also known as NSMIA, created the covered securities by amending section 18 of the 1933 Act.

⁴ The SEC has proposed a definition of a “qualified purchaser” but it has not been adopted. Defining the term “Qualified Purchaser” under the Securities Act of 1933, Securities Act Release No. 33-8041.

⁵ 15 U.S.C. § 77r(b).

⁶ For example, an offer made in Minnesota for securities in a transaction exempt from registration under the 1933 Act and for which a registration statement has been filed with the Minnesota Department of Commerce but has not been declared effective is exempt even though the sale of such security would not be exempt or registered. Minn. Stat. § 80A.46, subd. 17.

⁷ Minn. Stat. § 80A.49.

⁸ Minn. Stat. § 80A.51.

⁹ Minn. Stat. § 80A.52.

that complies with Rule 504 of Regulation D or Section 3(a)(11) of the 1933 Act, which is often referred to as the intrastate exemption, the offering is for not more than \$1 million in any 12-month period and the issuer registers its securities with one or more states.¹⁰

For all registrations under the new Minnesota Securities Act, the Minnesota Department of Commerce (“the Department”) now reviews the registration statements for compliance with its disclosure requirements.¹¹ In the past, the Department has conducted a merit-based review of all registrations. A disclosure review standard is typically easier to satisfy than a merit-based review, particularly for development-stage companies with little or no operating history or revenues. It has been suggested that under the new Minnesota Securities Act, the Department will no longer conduct merit-based reviews. However, whether and to what extent the Department will continue merit-based reviews will depend on the rules to be enacted under the new Minnesota Securities Act.¹²

II. Exemptions

A. “35 or Fewer”

Sales to up to 35 non-accredited investors and

to an unlimited number of accredited investors are still exempt from registration if the appropriate filings are made with the Department and certain other conditions are satisfied. To satisfy the “35 or fewer” exemption, the offering must satisfy the following conditions: (1) the offers and sales are part of a single issue (one offering), (2) there are sales to 35 or fewer non-accredited investors in Minnesota during any 12-month period, (3) there is no general solicitation or advertising, (4) no direct or indirect commission or other remuneration is paid to anyone other than a Minnesota-registered broker-dealer or agent, (5) all Minnesota investors are purchasing for investment purposes,¹³ and (6) a notice of the transaction is filed with the Department on a statement of issuer form at least 10 days before any sale.¹⁴ A filing fee is no longer required.¹⁵

B. “10 or Fewer”

The Minnesota self-executing exemption from registration available for sales of securities to 10 or fewer non-accredited investors and to an unlimited number of accredited investors, which is a subset of the “35 or fewer” exemption, is still available but only pursuant to a temporary rule, which may or may not be included in the final rules.¹⁶ To satisfy the “10 or fewer” exemption, the

¹⁰ Minn. Stat. § 80A.50. Many states coordinate review of and comment on SCOR offerings. However, because states review and comment on SCOR offerings before any sales can be made, offerings exempt pursuant to Rule 506 are preferred because only federal and state notice filings are required after the sales are made. On the other hand, an advantage to SCOR offerings is that pursuant to Rule 504, general advertising and solicitation are permitted so long as the other requirements for the offering are met.

¹¹ See Minn. Stat. § 80A.54(a), subd. 1 (permitting a stop order to be issued for any registration statement that is incomplete in a material respect or contains a false or misleading statement with respect to a material fact).

¹² Under the new Minnesota Securities Act, the Department has authority to enact rules requiring escrowing of offering proceeds and impoundment of founders’ securities, which are typically conditions required by states conducting a merit-based review of an offering. Minn. Stat. § 80A.53(e).

¹³ Minn. Stat. § 80A.46, subd. 14.

¹⁴ Interim Guidelines Related to the Minnesota Securities Act Becoming Effective on August 1, 2007.

¹⁵ *Id.*

¹⁶ *Id.*

offering must satisfy the following conditions: (1) the offers and sales are part of a single issue (one offering), (2) there are sales to 10 or fewer non-accredited investors in Minnesota during any 12-month period, (3) there is no general solicitation or advertising, (4) no direct or indirect commission or other remuneration is paid to anyone other than a Minnesota-registered broker-dealer or agent, and (5) all Minnesota investors are purchasing for investment purposes.¹⁷

One important change from the previous “10 or fewer” exemption is that general solicitation and advertising are no longer available.

C. Rule 506 of Regulation D

As is required by the National Securities Markets Improvement Act of 1996 (“NSMIA”), offers and sales made in compliance with Rule 506 of Regulation D of the 1933 Act are still exempt from registration in Minnesota. Rule 506 is a safe harbor for sales made in reliance on section 4(2) of the 1933 Act for transactions not involving a public offering. A transaction must satisfy the following conditions to qualify for the Rule 506 safe harbor and, therefore, be a covered security, which is exempt from state registration pursuant to NSMIA:

1. If offers are made to non-accredited investors, the same type of disclosure that would be required if the issuer registered the securities must be provided, including financial statements;¹⁸

2. No general solicitation or general advertising;
3. The issuer must exercise reasonable care that the securities will not be resold unless registered or otherwise exempt under the 1933 Act;¹⁹
4. No more than 35 non-accredited investors; and
5. Any non-accredited investor must, either alone or with his, her or its purchaser representative, have such knowledge and experience in financial and business matters to be capable of evaluating the risks and merits of the investment.

It is important to note that although offerings made in reliance on Rule 506 are not subject to registration by state regulators, states can bring claims for sales that are not made in compliance with their broker-dealer and agent registration requirements as well as any offerings that violate the state’s antifraud provisions. Further, there is some case law that suggests that if an offering does not strictly comply with all the conditions of Rule 506, the transaction is no longer a covered security and the registration or exemption of the transaction can be regulated by the states.²⁰ In addition, the SEC recently proposed changes to Regulation D, including Rule 506, which will likely change the framework for private offerings at both the federal and state levels once enacted.²¹

The issuer must file a copy of the Form D, including the Appendix; a Form U-2 consent

¹⁷ Minn. Stat. § 80A.46, subd. 14.

¹⁸ It is good practice to provide disclosure to all investors, even if no offers are being made to non-accredited investors, to ensure there is no material fact omitted that should be disclosed to prevent the issuer from incurring SEC Rule 10b-5 liability.

¹⁹ Rule 502(d) of Regulation D suggests that reasonable care may be demonstrated by confirming all purchasers are purchasing for their own account and for investment purposes, disclosing to all purchasers that the securities are registered securities, or placing a legend on the securities that evidences they are not registered under the 1933 Act and are subject to restrictions on transferability.

²⁰ *In re Blue Flame Energy Corp.*, No. 05AP-1053, 2006 WL 3775856 (Ohio Ct. App. Dec. 26, 2006).

²¹ See Revisions of Limited Offering Exemption in Regulation D, Securities Act Release No. 33-8828 for more detailed information on the proposed changes to Regulation D.

to service of process; and a filing fee in the amount of \$100 within 15 days after the first sale is made in Minnesota.²²

D. Accredited Investors

The self-executing exemption for offers and sales to only accredited investors does not have any restrictions on solicitation, advertising, commissions or purpose of investment.²³ Accredited investors are those investors defined as “accredited investors” in Rule 501(a) of Regulation D.

III. Governing Law

While changes to Minnesota’s securities laws

became effective on August 1, 2007, offers or sales made through August 1, 2008 that were prefaced by an offer made before August 1, 2007 can rely on the previous securities statutes and rules.²⁴ Any registrations effective before August 1, 2007 also remain subject to the previous securities statutes and rules.²⁵

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²² Interim Guidelines Related to the Minnesota Securities Act Becoming Effective on August 1, 2007; Minn. Stat. § 80A.65, subd. 1(c).

²³ Minn. Stat. § 80A.46, subd. 13.

²⁴ Minn. Stat. § 80A.90(c).

²⁵ Minn. Stat. § 80A.90(b).

Protecting the Children: The Role of Court Appointed Guardians ad Litem in Juvenile and Family Court Proceedings

By: Robert W. Gadtke

According to information published by the Minnesota Supreme Court, more than 900 court-appointed guardians ad litem are currently serving throughout the State of Minnesota.¹ Approximately sixty percent of these are volunteers, a significant portion of whom are non-lawyers.² In 2003, it was estimated that guardians represented approximately 10,000 children in more than 7,000 juvenile and family court proceedings.³ As advocates for abused or neglected

children, guardians are charged by statute with gathering information on a child’s current needs and circumstances and making recommendations to the court regarding what is in a child’s best interests. These recommendations involve long-term, sensitive issues, such as whether a child can be safely reunited with his/her parents, whether the child and/or the child’s parents could benefit from community services, and which parent, if either, should be awarded

¹ See Minnesota Judicial Branch, Guardian Ad Litem Program, at <http://www.courts.state.mn.us/?page=149>.

² See *id.*

³ See *id.*

physical custody of the child. Because guardians play a crucial role in protecting the rights of children, it is essential for lawyers (both those practicing within and outside of the juvenile and family court systems) to understand their role and how they can help them best render complete and accurate recommendations to the court.

I. Appointment of Guardians ad Litem

Whether the court is required to appoint a guardian ad litem depends upon the nature of the proceedings and the allegations involved therein. In juvenile protection matters, courts are required to appoint guardians in all cases involving children in need of protection or services (CHIPS), filed pursuant to Minnesota Statutes section 260C.007, subdivision 6.⁴ Appointment is also required in cases where a child is without a parent or guardian, where the child's parent or guardian is incompetent, and where a child's parent or guardian is indifferent or hostile to the best interests of the minor child.⁵ In all other juvenile protection matters, appointment is discretionary.⁶

In family court proceedings – those involving divorce, custody, or legal separation where custody or parenting time is at issue – a similar standard is employed. Courts are required to appoint a guardian if they have

“reason to believe that the minor child is a victim of domestic child abuse or neglect, as those terms are defined in sections 260C.007 and 626.556.”⁷ In all other family court matters, the appointment is discretionary.⁸

II. The Role of Guardians ad Litem

At the most basic level, guardians serve as investigators, presenting evidence and making recommendations to the court regarding what is in a child's best interests. The value of their recommendations stems from the fact that they are independent from other players in the court system. As representatives of the judicial branch, they have no personal stake in the outcome of a particular proceeding. By rule, they are prohibited from rendering direct services to the child, from serving as the child's mentor, from giving the child money or gifts, and from supervising visits between the parents and child.⁹

Pursuant to Minnesota Statutes sections 260B.163 and 518.165 and Minnesota General Rule of Practice 905, guardians appointed in juvenile and family court cases are required to: (1) conduct an independent investigation into the facts surrounding the child's circumstances;¹⁰ (2) advocate for the child's best interest in all court proceedings;¹¹ and (3) monitor the case to present appropriate written recommendations to the court.¹²

⁴ See Minn. Stat. § 260C.163, subd. 5 (2007). A similar standard is used in juvenile delinquency proceedings. See Minn. Stat. § 260B.163, subd. 6 (2007).

⁵ See *id.*

⁶ See *id.*

⁷ See Minn. Stat. § 518.165, subd. 2 (2007).

⁸ See Minn. Stat. § 518.165, subd. 1 (2007).

⁹ See Minnesota Judicial Branch Policies and Procedures, Guardian Ad Litem System Program Standards, July 1, 2007, http://www.courts.state.mn.us/documents/0/Public/Guardian_Ad_Litem/SCAO_Policy_6_03_GAL_Program_Standards.pdf.

¹⁰ See Minn. Gen. R. Prac. 905(a) (2007). The investigation must include reviewing all relevant documents, meeting with the child and considering his/her wishes, if appropriate, and meeting with the child's parents and other important third-parties and service providers.

¹¹ See *id.* at (b).

Volunteer guardians are not expected to serve as lawyers. In fact, under guardian program rules, guardians are prohibited from rendering legal advice, absent a court order. Guardians are expected to serve as pure advocates. If a case proceeds to trial and legal representation is necessary, the guardian program appoints a lawyer to represent the guardian in future court proceedings.

III. Qualifications and Training

Under new rules effective July 1, 2007, to be eligible for appointment as a guardian ad litem, individuals must possess either a bachelor of arts degree or a bachelor of science degree in one of the following disciplines: (1) psychology; (2) social work; (3) education; (4) nursing; (5) law; or (6) other child related field.¹³ Individuals currently serving as guardians who have satisfactorily performed their duties are exempt from the new education requirements.¹⁴ The addition of formal academic training represents a significant departure from earlier versions of the rules governing minimum qualifications for guardians. Under previous versions of the

rules, guardians were not required to possess any specific academic background.¹⁵

In addition to the education requirements, guardians are also required to have an abiding interest in children; have an appropriate understanding of the cultural and socio-economic issues effecting people within the court system; and have the ability to present oral and written arguments to the court.¹⁶

The training requirements for guardians vary depending upon the nature of the proceedings in which they are appointed. Guardians appointed in juvenile protection matters are required to complete forty hours of preservice training.¹⁷ Guardians appointed in family court cases are required to complete the juvenile protection training and an additional sixteen hours of training in family law.¹⁸ Guardians in cases involving the Indian Child Welfare Act have separate training requirements.¹⁹ Additionally, all guardians are required to complete an additional six hours of domestic violence training within one year of their appointment.²⁰

IV. Volunteering as a Guardian ad Litem

¹² See *id.* at (e).

¹³ See Minnesota Judicial Branch Policies and Procedures, Guardian Ad Litem System Program Standards, July 1, 2007, http://www.courts.state.mn.us/documents/0/Public/Guardian_Ad_Litem/SCAO_Policy_6_03_GAL_Program_Standards.pdf. An exception does exist, however, for people who “have an equivalent combination of training, education or experience.” *Id.*

¹⁴ See *id.*

¹⁵ See Minnesota Judicial Branch Policy, Conference of Chief Judges, Guardian Ad Litem System Program Standards, Jan. 1, 2005, http://www.courts.state.mn.us/documents/0/Public/Guardian_Ad_Litem/GAL_Program_Standards_Dec_6_2004.pdf.

¹⁶ See Minnesota Judicial Branch Policies and Procedures, Guardian Ad Litem System Program Standards, July 1, 2007, http://www.courts.state.mn.us/documents/0/Public/Guardian_Ad_Litem/SCAO_Policy_6_03_GAL_Program_Standards.pdf.

¹⁷ See *id.* at VII(a).

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

Guardians ad litem have the unique opportunity to advocate on behalf of abused or neglected children who would otherwise have no voice. They get the chance to help children who cannot afford to retain the services of an expensive advocate and, if they are lucky, they get the chance to make a real, long lasting difference in the life of a child who desperately deserves it.

Robert W. Gadtke is a partner in the law firm of Gadtke & Beyer, LLC, located in Edina, MN. He practices primarily in the areas of family law and divorce. He is also a volunteer guardian ad litem in Hennepin County for children involved in juvenile protection proceedings. He can be reached at rgadtke@gadtke.com or (952) 345-8004.



Achieve Success Every Time: Begin with the End in Mind

By: Bill Gschwind

Too often in the world of complaints, motions, contracts and depositions, we forget that the practice of law is a business. And whether you are part of a non-profit or a for-profit firm, without a clearly defined and well communicated vision of where you are going, your practice and your career become stagnant and unsatisfying.

“Would you tell me, please, which way I ought to go from here?” she asked.

“That depends a good deal on where you want to get to,” was the reply.

“I don’t much care where --” she said.

“Then, it doesn’t matter which way you go.”

That excerpt comes from *Alice in Wonderland*. The scene is when Alice comes to a crossroads and discovers the Cheshire cat perched in a tree. It’s a poignant reminder that the path we take will determine our destination. Whether it’s the path that we are taking for ourselves, or the one on which we want to lead our firm, it really does matter where we want to go.

Let’s look at it another way. Every person and every firm travels in time, right? No matter what, you will end up somewhere in the course of the next month or year. So where will it be? Well, like Alice, it depends on what path you take. Most lawyers and their firms have places they “want to go.” Typically, they want to go to a place where they will have increased income, a productive staff, a steady stream of referral clients, and will “make a difference.” These might be considered objectives or goals. But are these goals part of a bigger mission or vision? Sometimes they are, and sometimes they are not. Does it really matter?

I think it does. Let me illustrate. You arrive at work and find on your desk a memo from a partner. The memo says that a trip has been scheduled beginning tomorrow morning. All employees are to arrive at their regular time with the luggage necessary for a one week journey. There will be a bus at the main entrance; everyone is to deliver their luggage to the partner, who will drive, and climb aboard the bus. The memo goes on to say

that this will be a very exciting journey guaranteed to benefit the firm and all the employees. This is a mandatory trip, no exceptions.

How excited are you to climb on board this bus? Do you know where it's going? Do you trust the partner enough to follow her to an unknown destination? And what if you don't want to go where she wants to take you?

A simple and understandable vision is essential since the achievement of your personal, career, and firm objectives depends on a clear understanding of your ultimate destination. And if you are leading a firm, your co-workers depend on a shared understanding of the organizational purpose if they are going to help you reach your destination. A vision should honor the past (all those "places" you and your firm have been before), but prepare for the future (with an eye on where you really want to be when all your dreams come true). Most importantly, a vision must be "lived." If your vision is not "lived" every day in every way, it will be hollow and empty. It will not empower anyone. In fact, it may do more harm than good. And you will find more often than not, no one wants to join you on your journey. While you are busy trying to go in one direction, your family, co-workers and desirable clients are all taking their own routes to their own destinations. You become frustrated in your purpose and fail in your personal and professional relationships.

Creating an effective vision is no simple task. A vision should be succinct, clear, and exciting. It should guide you, the firm and everyone in it while leaving wide latitude to pursue new opportunities. Whether you have a solo practice, work in a small or large firm, or lead a non-legal organization, achieving

the personal and career objectives you dream of will only happen with an inspiring vision, clearly communicated.

Regardless of the size of your firm or the role you play in it, there are always gaps to close: the distance between "where we are" and "where we want to go." Do you and your people know exactly where you are trying to go?

One of the most important responsibilities of a leader is to shape and communicate the vision to everyone in the firm. Let me share a quote with you from Father Theodore Hesburgh, the former President of Notre Dame University.

The very essence of leadership is you have to have a vision. It's got to be a vision you articulate clearly and forcefully on every occasion. You can't blow an uncertain trumpet.

There are actually two things you must do. First, create the vision, and then effectively communicate it so that everyone wants to realize that vision. The vision is a statement of potential. It is a statement of what you can become. When your vision is effectively communicated, it should provide a focus and direction. Your vision should be concise and meaningful. It should be derived from examining your values and principles and what you want to be in the future.

Since your vision will guide you into the future, it is critical that it is well crafted and meaningful to everyone with whom you interact. To make it powerful and useful, work hard on editing it down to its bare essentials. In other words, boil it down to what is memorable and poignant.

An effective and compelling vision will be:

1. Based on an insightful analysis of the present situation;
2. A good choice from well-considered options;
3. Appealing to your deep desires and those who work within the firm;
4. A clear statement of the motivating force that drives you and the firm forward; and
5. Achievable.

Once you have determined your vision, there are six key elements needed to effectively communicate it and to get your people going in the same direction.

1. Keep it simple. Eliminate trite expressions, techno-gobble, or jargon.
2. Use metaphors, analogies and examples. Paint verbal pictures so everyone can picture and visualize where they are going.
3. Use multiple forums. Utilize big and small meetings, memos, and articles, as well as formal and informal interactions.
4. Incorporate repetition. Ideas sink in deeply only after they have been heard many times.
5. Lead by example. Behavior must be consistent with the vision since we believe what we see more than what we hear.
6. Give and take. Two-way communication is always more powerful than one-way communication. Listen and be listened to. By listening, you may find out about a better route, a short cut on your journey.

Once a compelling vision is developed, the next step is to create a mission. The mission is the short-term view of the vision. What can be accomplished in the next year that will support the vision?

From there, you determine the critical success factors. These are usually four to eight key factors that are both necessary and sufficient to realize your company's mission.

Goals are the specific and measurable steps that must be accomplished to achieve the critical success factors. They are SMART: Specific, Measurable, Attainable, Realistic, and Timely. The goals are not limited by number. It's doing whatever it takes to meet the critical success factors. These goals are then broken down into action steps that spell out who does what by when.

This article highlights two common mistakes that attorneys make with regard to their vision that keep them from reaching their potential. First, they fail to clearly articulate one. Second, they fail to communicate it effectively. When you put as much effort into managing your career and your firm as you put into managing your cases, you will re-discover your purpose and really begin to harvest and appreciate the fruits of your labors.

Mr. Gschwind holds an MBA with 27 years of entrepreneurial business experience. He is currently a 2L at William Mitchell College of Law. His firm, inPURSUIT CONSULTING, LLC helps businesses and individuals achieve enormous success. He can be reached at 651-330-0977 or bill.gschwind@inpursuitconsulting.com.

Constructive Discharge in the Eighth Circuit: A Primer for New Lawyers

By: Bryan T. Symes

I. Introduction

New lawyers are more likely now than ever before to encounter constructive discharge allegations, making a basic understanding of the fundamental underpinnings essential. According to the Equal Employment Opportunity Commission's ("EEOC") most recent litigation statistics, its Office of General Counsel increasingly utilizes the constructive discharge theory of liability in administratively filed enforcement actions.¹ The increasing relevance of constructive discharge is also empirically evident through a survey of electronically available state and federal cases within the Eighth Circuit. For example, between 1985 and 1995, constructive discharge appeared in 150 state and federal cases (43 state/107 federal), whereas constructive discharge appeared in 443 cases between 1996 and 2006 (70 state/373 federal). This constitutes a dramatic increase in the occurrence of constructive discharge, by approximately 195 percent over the course of a single decade.²

II. Basic Tenets

Litigators routinely allege constructive discharge in a wide variety of employment

cases under numerous statutory anti-discrimination/interference paradigms, including Title VII, the ADA, the ADEA, the FMLA and ERISA. In nearly every instance, litigators utilize constructive discharge to satisfy the requirements of federal notice pleading under these statutes, which prohibit plaintiffs' recovery in the absence of required allegations of an adverse employment action. Accordingly, constructive discharge, which is often confusingly characterized in judicial opinions as a "constructive discharge claim," is not really an independent cause of action at all. Instead, constructive discharge exists as one method of proving one of several *conditio sine qua non*s associated with discrimination, harassment, retaliation and interference lawsuits.

To sustain a constructive discharge cause of action, a plaintiff is required to do more than demonstrate a mere underlying illegality (*e.g.*, an occurrence of unlawful discrimination, harassment or retaliation/reprisal under statutes prohibiting such conduct).³ Nevertheless, proof of an underlying illegality is a prerequisite to constructive discharge.⁴ Additionally, allegations of constructive discharge will not lie unless the separated employee, prior to his

¹ According to the most recent EEOC litigation statistics, constructive discharge claims (*i.e.* those lawsuits brought by the EEOC that involve allegations of constructive discharge in order to properly plead the occurrence of adverse employment actions under various anti-discrimination statutes) are alleged in 17% of cases, up from 15% in the previous reporting year. EEOC Office of General Counsel FY 2005 Annual Report on the Operations and Accomplishments of the Office of the General Counsel, <http://www.eeoc.gov/litigation/05annrpt/index.html>, last accessed August 17, 2007; EEOC Office of General Counsel FY 2004 Annual Report – Summary of Accomplishments, <http://www.eeoc.gov/litigation/04annrpt/index.html>, last accessed August 17, 2007.

² Westlaw survey conducted on August 17, 2007.

³ *Davis v. Kark-TV Inc.*, 421 F.3d 699, 706 (8th Cir. 2005); *Phillips v. Taco Bell Corp.*, 156 F.3d 884, 890 (8th Cir. 1998); *Coffman v. Tracker Marine, L.P.*, 141 F.3d 1241, 1247 (8th Cir. 1998).

⁴ *Tenkku v. Normandy Bank*, 348 F.3d 737, 742 (8th Cir. 2003).

or her resignation, provides the employer with an opportunity to respond and cure the underlying alleged illegality.⁵

An employee generally demonstrates the occurrence of “constructive discharge,” save one possible caveat discussed *infra* in Section IV, by introducing sufficient evidence that a reasonable person would have found the conditions of employment intolerable, and that the employer either intended to force him or her to resign or could have reasonably foreseen that the employee would do so as a result of the employer’s actions.⁶ On more than one occasion court opinions have reasoned that the allegedly constructively discharged plaintiff may not be unreasonably sensitive to his or her work environment.⁷ The selected, representative constructive discharge cases discussed *infra* are manifestations of this reasoning.

Aside from demonstrating underlying illegality and an employer’s intent to compel resignation, the crucial and most challenging evidentiary hurdle for plaintiffs in a considerable number of constructive discharge cases is introducing sufficient proof of an objectively intolerable working condition, an often insurmountable hurdle.⁸ Therefore, an understanding of the factors that give rise to an objectively intolerable work environment, and the ability to effectively distinguish the pertinent opinions

addressing this apparently nebulous term, is essential.

III. Measuring the Objectively Intolerable Working Environment

One might reasonably imagine in the context of constructive discharge analysis, that what is, and what is not an objectively intolerable work environment is somehow measured against judicial distinctions concerning the source of the underlying allegedly illegal conduct (*e.g.*, co-worker versus supervisor) or the relative frequency of the underlying conduct. No doubt this is to some degree accurate. However, perhaps surprisingly to some, courts within the Eighth Circuit may focus less on those factors and more on the employer’s response to knowledge of allegedly unlawful conduct.⁹

The following illustrative cases suggest that courts within the Eighth Circuit are less concerned with the source or frequency of alleged illegal conduct than they are with the employer’s response:

- *Carpenter v. Con-Way Central Express, Inc.*, 481 F.3d 611, 617 (8th Cir. 2007): No “constructive discharge” found where plaintiff truck driver was repeatedly harassed by co-worker, which included a racial slur and placement of garbage in plaintiff’s trailer four to

⁵ *French v. Eagle Nursing Home, Inc.*, 973 F. Supp. 870, 876 (D. Minn. 1997) (holding, “[a]n employee who resigns her employment without giving her employer a reasonable opportunity to resolve an issue is not constructively discharged.”); *Hanenburg v. Principal Mut. Life Ins. Co.*, 118 F.3d 570, 575 (8th Cir. 1997).

⁶ *Fenney v. Dakota, Minn. & E. R. Co.*, 327 F.3d 707, 717 (8th Cir. 2003); *see also Coffman*, 141 F.3d at 1247; *Tidwell v. Meyer’s Bakeries, Inc.*, 93 F.3d 490, 494 (8th Cir. 1996) (holding that although there was evidence of the employer’s race-based discrimination, there was insufficient evidence to support a finding of “constructive discharge.”).

⁷ *E.g.*, *French*, 973 F. Supp. at 876.

⁸ *Meyers v. Neb. Health & Human Serv.*, 324 F.3d 655, 660 (8th Cir. 2003) (applying objective, as opposed to subjective standard).

⁹ *Smith v. Cleburne County Hosp.*, 870 F.2d 1375, 1380-81 (8th Cir. 1989) (holding, “where an employer has attempted to accommodate an employee, the employer has been held not to have constructively discharged the employee.”).

twenty times over a four-year period. The court reasoned, “racial slurs do not convert [plaintiff’s] resignation into a constructive discharge.” *Id.* at 617 (citing *Reedy v. Quebecor Printing Eagle, Inc.*, 333 F.3d 906, 910 (8th Cir. 2003) (concluding that highly pejorative, racially charged graffiti associated directly with plaintiff’s name was insufficient to show conditions so intolerable that a reasonable person would have to quit)).

- *Duncan v. General Motors Corp.*, 300 F.3d 928, 935-36 (8th Cir. 2002): No “constructive discharge” where female plaintiff’s supervisor, over the course of two-year period: (1) propositioned plaintiff to engage in a physical relationship; (2) exposed plaintiff to a screen saver showing a naked woman; (3) touched plaintiff’s hand four or five times when she handed him the telephone; (4) asked plaintiff to draw phallic objects; (5) made plaintiff the subject of a poster depicting plaintiff as the president and CEO of the Man Haters Club of America; and (6) asked plaintiff to memorialize the tenets of the “He-Men Women Haters Club,” which included comments that women should not have the right to vote, sperm has a right to live, and prostitution should be legalized.¹⁰

Additional cases suggest that courts within the Eighth Circuit may consider two factors more important: (1) the presence of frequent and longstanding harassment coupled with; (2) an employer’s failure to respond to, or disregard for, employees’ attempts to provide

opportunities to correct or cure alleged underlying illegality prior to resignation. The following cases, in which the courts identified “constructive discharge,” are illustrative:

- *Baker v. John Morrell & Co.*, 382 F.3d 816 (8th Cir. 2004): “Constructive discharge” found where female plaintiff was subjected to frequent and longstanding gender-based harassment perpetrated by several of her male co-workers. The court opined “[w]e have held . . . when an employer denies a conscious effort to force an employee to resign the employer must necessarily be held to intend the reasonably foreseeable consequences of its actions[.]” The court stated,

we have little trouble concluding the evidence was sufficient to support the jury’s finding of constructive discharge. The constant barrage of harassment endured by [plaintiff] over a period of many years was objectively intolerable. Moreover, [plaintiff’s] numerous attempts to resolve the problems went largely ignored by supervisors and management personnel to whom she repeatedly turned for help.

- *Hunt v. State of Missouri Department of Corrections*, 297 F.3d 735, 744 (8th Cir. 2002): “Constructive discharge” found where plaintiffs (nurses) complained of

¹⁰ The court opined that plaintiff’s “working conditions were certainly not ideal and in many instances the environment that [plaintiff] endured at GMC was offensive and disrespectful; however, these conditions were not so intolerable . . .” as to constitute “constructive discharge.”

being subjected to sexually charged comments and lewd behavior by two male supervisors. The court opined,

the evidence in the present case reasonably established that plaintiffs' complaints about the manner in which they were being treated were not met with any meaningful support, but were instead answered with threats to their wellbeing, threats of termination, efforts to obstruct their work, additional unnecessary and unreasonable job requirements, and general harassment. Indeed, when an internal investigation of plaintiffs' complaints resulted in a directive to . . . discipline and require sexual harassment training for several DOC employees, [supervisor] did nothing.

IV. Impact of *Pennsylvania State Police v. Suders* on Constructive Discharge Analysis Under Title VII

In 2004, the United States Supreme Court for the first time recognized constructive discharge as a viable method of establishing adverse employment actions under Title VII, harmonizing the disparate opinions of lower courts.¹¹ The *Suders* opinion is significant for this reason alone.

However, arguably the most significant aspect of the *Suders* opinion, at least with respect to constructive discharge, is the Court's declaration that proof of employer intent may no longer be required. Post *Suders*, hostile-environment constructive discharge requires proof that "the abusive working environment became so intolerable that [plaintiff's] resignation qualified as a fitting response," and that "[a] plaintiff who advances such a claim must show working conditions so intolerable that a reasonable person would have felt compelled to resign."¹² Notably absent from the *Suders* formulation of constructive discharge is required proof that the defendant employer, through its actions, intended to compel resignation, or should have reasonably anticipated resignation as a consequence of its conduct.¹³

At first blush, the *Suders* opinion's treatment of the intent component of constructive discharge seems to have limitless application in the employment law arena. However, a close reading of the *Suders* opinion reveals that its constructive discharge paradigm is limited to cases sounding in hostile work environment harassment.¹⁴

V. Conclusion

Armed with the foregoing analysis, the new lawyer should be more than adequately prepared to tackle any constructive discharge project. However, the new lawyer must realize that proof of "constructive discharge" is a tall order, particularly because sufficient

¹¹ *Pa. State Police v. Suders*, 542 U.S. 129, 143 (2004).

¹² *Id.* at 134, 147.

¹³ In his dissent in *Suders*, Justice Thomas recognizes the majority's apparent omission, highlighting the history of the constructive discharge theory of liability as a close cousin of actual discharge, requiring proof that the employer intended to cause a change in working conditions sufficiently difficult or unpleasant so as to precipitate resignation. *Id.* at 152-53.

¹⁴ *See, e.g., Suders*, 542 U.S. at 143, 146 ("This case concerns an employer's liability for *one subset* of . . . constructive discharge claims . . . resulting from sexual harassment or hostile work environment . . . The constructive discharge here at issue stems from, and can be regarded as an aggravated case of, sexual harassment or hostile work environment.").

proof of an objectively intolerable work environment is extremely difficult to establish. In fact, in the majority of the Eighth Circuit constructive discharge opinions reviewed by the author, “constructive discharge” failed because the plaintiff: (1) failed to introduce sufficient evidence of the employer’s intent to compel resignation; or (2) failed to provide the employer with an opportunity to correct or cure the alleged illegality prior to the employee’s resignation.

Bryan T. Symes is an associate attorney with Seaton, Beck & Peters, P.A. Mr. Symes represents employers exclusively in the area of employment and labor law, and provides counseling and litigation services associated with such substantive topics as employment practices policies, discrimination, harassment, reprisal, wage and hour law, FMLA, ADA, employment contracts, employment compliance matters, affirmative action plans, and non-compete and non-solicitation agreements. He can be reached at bsymes@seatonlaw.com or 952-921-4618.



Hennepin County Affiliate News

By: Cyrenthia Jordan

The HCBA New Lawyers Section is excited about the 2007-2008 bar year and has been busy transitioning into new leadership. We have a great board with many new to the HCBA NLS as follows:

Chair: Cyrenthia Jordan
Vice-Chair: Sarah Dunn
Secretary: Mark Belinske
Treasurer: Patty Wisecup
Directors: Joceyln Benton - Professionalism Director
Josh Cooner - Social Director
Krista Matthews Dean - CLE Director
Troy Tatting - ABA/MSBA Liaison
Artika Tyner - Community Service Director

HCBA NLS meets on the second Wednesday of each month from noon to 1:00 p.m. at the HCBA offices in the City Center. Members are invited to attend and join in the planning process by bringing fresh ideas. New lawyers can also look forward to receiving bi-monthly emails from the HCBA, which will provide updates for the upcoming events of the HCBA NLS.

We are off to an exciting start this year and held our volunteer appreciation social on September 5, 2007. We had our first New Lawyers Happy Hour on September 13, 2007 at Atlas Grill, which was a great networking opportunity. Our CLE programs kick off on Wednesday, October 3rd, 10th, 17th, and 24th with a four part series on The Confident Lawyer Workshop from 5:00 p.m. to 7:30 p.m. We also commence our Professionalism programs with “Recess with Judges” on October 3, 2007 starting at noon with Judge Denise Reilly. Feel free to contact our officers and directors with any questions or to volunteer for a program. We hope to see you at our next meeting and welcome you to check out the HCBA website for more details on upcoming events for HCBA NLS.

Cyrenthia Jordan is the Chair of the Hennepin County Bar Association New Lawyers Section. She can be reached at cjordan@mansfieldtanick.com or (612) 339-4295.

Ramsey County Affiliate News

The Ramsey County Bar Association New Lawyers Section had a busy summer. In addition to assisting with July's Families First Picnic and Touch A Truck, we organized Kids Clothes at the Courthouse, a clothing drive held in August.

This fall, RCBA New Lawyers will again host monthly happy hours at various bars in the St. Paul area. We are currently in the process of planning activities including raking the lawns of elderly and physically disadvantaged St. Paul area residents and a clothing drive to collect business attire called "Santa Brings a Law Suit."

Co-chairs for 2007-2008 are Mark Priore of Priore Law Offices and Elyssa Weber of the League of Minnesota Cities. They can be reached at mark_priore@yahoo.com and eweber@lmnc.org.

11th District Affiliate News

By: Stephanie Balmer

Since our last update, the New Lawyers Section of the 11th District Bar has been very busy indeed. We've arranged for a number of experienced and well-known attorneys in our community to speak at our monthly lunch meetings on topics of their choice, which range from effective cross-examination of expert witnesses to how to maintain a rewarding life *outside* of our law careers.

On August 24, the New Lawyers hosted a scramble at the annual 11th District Bar Association picnic at The Legend golf course at Giant's Ridge. The weather was beautiful and good times were had by all.

On September 15, a few members of our group participated in the North Shore Inline Marathon. In an effort to support those ambitious souls, we rounded up several other New Lawyers to volunteer at a water station along the race course.

We have also put together the first-ever 11th District New Lawyers Section Office Crawl. On October 18, our group will be hosted by the St. Louis County Courthouse, four private law firms, and our local Legal Aid office for an afternoon of office tours and socialization. This event has been organized by several members of our group in order to improve upon our understandings of the concrete aspects of our daily practices. It's shaping up to be a very fun, informative afternoon.

Stephanie Balmer is the Chair of the 11th District New Lawyers Section. She can be reached at smbalmer@duluthtriallawyers.com.

Rochester Area Affiliate News

By: Kenton P. Marino

The Rochester Area New Lawyers Section, in partnership with the Olmsted County Bench (Third Judicial District), is planning a Trial Practice CLE open to all local bar members. The CLE will address topics including jury selection, examination of witnesses, common evidentiary issues, entering exhibits into evidence, opening and closing arguments, objections and courtroom decorum. A group of local trial experts—comprised of public defenders, prosecutors, litigators, and judges—will present the material by way of demonstration, lecture and through panel discussion. Organizers hope to hold the CLE in an Olmsted County courtroom in late Fall 2007.

The Rochester Area New Lawyers Section will continue to meet on a monthly basis for an enjoyable lunch. If you are interested in attending, please call Kenton Marino.

Kenton Marino is the Chair of the Rochester Area New Lawyers Section. She can be reached at 507-529-4406 or kenton.p.marino@smithbarney.com.

6th District Affiliate News

No report submitted.

A Look Back: the MSBA Annual Convention

Thanks to the work of MSBA NLS members, St. Paul's own "Orange Whip" energized the crowds following the President's Reception at this year's MSBA Annual Convention on June 28, 2007. The Convention's President's Reception, which celebrated the outgoing presidency of Pat Kelly and welcomed the new presidency of Brian Melendez, concluded with a party sponsored by the NLS. "Orange Whip," a St. Paul favorite, performed a wide variety of high energy cover tunes spanning three decades and kept everyone dancing. The NLS also sponsored a hospitality suite at the St. Paul Hotel. Below are some photographs taken at these fun events.



Above: Rebecca Rhoda-Fisher (former NLS chair), Dan Gilchrist and Nicole James.



Above: Judge Robert A. Awsumb and NLS members Lori Semke and Josh Cooner enjoy the NLS Hospitality Suite.

Below: Justice Lorie S. Gildea, Rebecca Rhoda-Fisher, Judge Susan N. Burke and Chanel Melin at the President's Reception.



2007-2008 NLS Open Liaison Positions

Committees

- «Convention Committee
- «Diversity Committee
- «Fair Response Committee
- «Human Rights Committee
- «Insurance for Members Committee
- «Judicial Elections Committee
- «Law School Liaison Committee
- «Legal Assistance to the Disadvantaged Committee
- «Legislative Committee
- «Life and the Law Committee
- «Membership Committee
- «Multijurisdictional Committee
- «Paralegal Committee
- «Professionalism Committee
- «Pro Se Implementation Committee
- «Publications Committee
- «Rules of Professional Conduct Committee
- «Women in the Legal Profession Committee

Sections

- «Administrative Law Section
- «Alternative Dispute Resolution (ADR) Section
- «Animal Law Section
- «Antitrust Law Section
- «Appellate Practice Section
- «Art & Entertainment Law Section
- «Bankruptcy Law Section
- «Business Law Section
- «Children and the Law Section
- «Communications Law Section
- «Computer Law Section
- «Construction Law Section (co-liaisons)
- «Civil Litigation Section
- «Criminal Law Section
- «Elder Law Section
- «Environmental & Natural Resources Law Section
- «Employee Benefits Section
- «Family Law Section
- «Food & Drug Law Section
- «General Practice, Solo & Small Firm Section
- «Health Law Section
- «Immigration Law Section
- «International Business Law Section
- «Labor & Employment Law Section
- «Out-state Practice Section
- «Practice Management & Marketing Technology Section
- «Probate & Trust Law Section
- «Public Law Section
- «Public Utilities Law Section
- «Real Property Law Section
- «Tax Law Section

New Lawyers can become liaisons to various committees and sections in the MSBA. This is a great opportunity to get involved with a substantive or procedural area of law. If you're interested in becoming a liaison, please attend the next New Lawyers Council meeting, held on the third Thursday of every month at 5:30 at the MSBA offices. Otherwise, if you have any questions, please contact Erika Donner, the New Lawyers Vice Chair, at erikadonner@yahoo.com.

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