

Hearsay

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If you have questions about the newsletter, or would like to submit an article for a future issue, please contact one of the co-editors.

MSBA



www.mnbar.org

Greetings From The Chair

By: Rebecca Rhoda Fisher

The bar year will be coming to a close following the MSBA Annual Convention at Madden's in June. The section and the three standing committees have been very active this year. A brief committee update is below.

We elected committee chairs and Hearsay editors at the May 18, 2006, meeting:

CLE Committee: Jennifer Lurken

Social/Membership Committee: Katie Gettman

Community Service Committee (co-chairs):

Christina Weber and Deanna Dailey

Newsletter Editors (co-chairs):

Shandra Pearson and Kevin Brady

We will be electing officers at the annual meeting at Madden's in June. After the annual, our next meeting will be in September 2006, so watch for MSBA NLS opportunities and announcements in Bench and Bar or on the MSBA website.

CLE update:

The section offered a CLE on Electronic Discovery on March 16, 2006. Lori Ann Wagner of Redgrave, Daley, Ragen & Wagner, LLP and Peter Hannigan of Faegre & Benson were the speakers.

We are in the process of planning CLEs for next year. Please send ideas or suggestions to Jennifer Daugherty at jdaugherty@larsonking.com or Jennifer Lurken at jlurken@larsonking.com.

Social/Membership Update:

The joint Spring Social with HCBA and RCBA took place on April 20, 2006. As usual, the turnout was great and many fantastic door prizes were given away.

The committee has also planned the social event for the MSBA Annual Convention at Madden's in June. We have lined up the band Skatyr's, a cover band that will play songs

that span several decades. It is sure to get people moving and shaking. Don't forget to check out the NLS Hospitality Suite!

Community Service Project Update:

Deanna Dailey and I participated in Law Day by speaking to four government classes at Stillwater High School on this year's theme, separation of powers. We gave a brief overview of the branches, their powers and limitations, and then discussed some current issues of controversy between the branches and left time at the end to answer questions about being an attorney and alternative legal careers.

We are still working with the Criminal Law Section on a methamphetamine awareness education program to take into the high schools in spring. The Criminal Law Section is in the process of coordinating production efforts with local news channels. Once the video is complete, we will be looking for volunteers to show it at high schools across the state.

We worked with MSBA Katrina Relief Infrastructure Subcommittee, HCBA, RCBA and other affiliates to collect office supplies and furnishings at donation locations in the Twin Cities and Affiliate areas. Over \$420,000 dollars were raised by the MSBA Katrina Foundation and three truck loads of furniture have already shipped with more on the way.



Rebecca Rhoda Fisher is the chair of the MSBA New Lawyers Section. She can be reached at RFisherEsq@aol.com.

UPCOMING PROGRAMS

**Power Up!
Networking Event
Tuesday, June 6, 2006
5:30 p.m. - 7:00 p.m.
Solera Restaurant, Minneapolis**

To find out all the details of this program, visit www.ingenuitymarketing.com.

The Court Of Interpretation

By: Der Yang

One of the most important individuals an attorney will meet in the modern courtroom is the interpreter. According to the 2000 census, the foreign born population of the United States was 11.1 percent; in Minnesota the percentage was 5.3 percent (about 300,000 individuals).¹ In 2005, a documented 81,025 students enrolled in Minnesota schools were non-English speakers.² In the state of Minnesota alone, there are 67,623 deaf individuals and 429,606 persons classified as hard of hearing.³ Each year, the courts of this country and state hear cases across the language divide, from American Sign Language to the rare dialects of Tigrinya and Yorouba. It is crucial that lawyers are trained in the effective use of courtroom interpreters.

Interpreters are more than language aides; they are an important component of the integrity of the judicial system. According to Minnesota Statute 546.42:

“***[A] person handicapped in communication is one who[,]...because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding, is unable by reason of the deficiency to obtain due process of law.”

Minnesota Statute 363A.12 states, in part, that “it is an unfair discriminatory practice ... to fail to ensure... program access for disabled persons unless the public service can demonstrate... an undue hardship.” Our Constitution mandates that all United States Citizens have the right to due process. Interpreters are reflections of a diverse society, living under the same laws and the will of a system to value and work with the differences of its citizens.

The effective use of interpreters is critical to the success of your case when dealing with non-English speaking litigants. Whether you are representing a non-English speaker or against one, you must be cognizant of the very likely ensuing language breakdowns, cultural gaps, and situational markers.

Breakdowns in Language

Legal Terms

- The fundamental rule when dealing with words, especially in interpreting, is to make the complex as simple as possible. For legal acronyms and legalese, this means using only legal terminology when nec-

essary and sparingly. Break all units of legal comprehension, word, sentiment, and process into its simplest terms. This is essential in order to facilitate accurate, effective interpreting. For example, saying that a person has an “arraignment hearing” is less communicative than to say to the individual, “Today is the day you have the opportunity to respond to the charges against you.” Smaller words, even when there are more of them, will make meaning easier to transfer. It will also pace the discussion and eliminate future needs to clarify.

Regionalism

- Remember that individuals who speak the same language can use different dialects or forms of speech. For example, there are two dialects in Hmong. The white Hmong dialect is the majority dialect of the Hmong people in Minnesota. While most green Hmong speakers can understand white Hmong fairly easily, unfortunately, only half of white Hmong speakers can understand green Hmong thoroughly. While it is the responsibility of the interpreter to determine if he or she has the dialectical fluency to efficiently complete an assignment, the attorney should also be aware of these possible problems and be ready to slow down the pace of communication to ensure that the interpreter has time to clarify dialect differences with the client.

Assumptions

- While most of us know that proficiency in speech, particularly outside of one’s native language is not a determinant of intelligence, it is important to always ask oneself the question: what does an average, intelligent human being need to know in order to grasp the situation? Omitting important details or insufficient explanations do not benefit anyone. Be as thorough and as clean as the job demands. It is the work of the interpreter and the responsibility of the legal system to ensure that enough time is allocated for thorough, fluent comprehension of the facts.

Image

- Members of each ethnic or cultural group have their own view of themselves. For example, a tenet of the Hmong experience is the progressiveness of the

group. The Hmong is a population that has been without a homeland for hundreds of years. They have had to make their homes in the countries of defined majorities. In order to survive, they must constantly learn new systems, new ways of life, new ideas, and learn and teach the values that comprise different belief systems and populations. It is easy to frame the group in the “traditional” sense, but this hinders the group’s ability for a dynamic response. It is more effective to see and approach the conversation with a Hmong person in the light of progress and grant the culture strength, dignity, respect, and an equal platform to meet. To know that the Hmong are progressive is to provide them the courtesy of fair response, which is fundamental to the legal setting. Each group has a word for the way they see themselves; use this as the guiding tenant in relations with the group.

Cultural Gaps

Values and Ethical Beliefs

- In the specifics, we find the universal. Every Hmong child, no matter the education level or the job held, dreams of buying a home for his or her mom and dad, taking them off welfare and their hard jobs underneath the demands of others, and giving them a chance at rest. We value our parents and the hard work that they have done in raising us. Every Hmong parent wants to give their children education and health—something the people have been seeking for centuries. Every Hmong grandmother and grandfather yearn for the times when their lives were still in their hands and their legs could walk the roads where they yearned to go. Independence and control over Hmong lives are fundamental to this population and who they are in the world. Fundamentally, the Hmong believe in respecting ourselves and the systems around us and the people who work to make us stronger in the world. This is true for the Hmong and many other peoples. An attorney should recognize the values and beliefs of groups from their hopes and their dreams, their examples, and the group’s universal core values of all humanity.

Courtesies

- Patience is the most important rule when dealing with people who do not speak in the same language. Give each other time to think and respond. Show clients that the situation warrants/appreciates their input. Show interest and encourage silently their feedback, their answers, and their questions. Good interpreters are trained to mirror the “register” of any given exchange.

Interpersonal Physical Proximity, Eye Contact, Physical Appearance

- Stay close enough to conduct business, but give the other party room to breathe.
- Eye Contact. There are some cultures in which direct eye contact is a new expectation. Most cultures tend to give people space (visually) to look inside themselves and their surroundings before responding or talking. Many cultures are in the process of learning how best to deal with this change in eye contact. Some have adopted it; others have not. For many individuals, eye contact is not a sign of truth or evidence of guilt. At bottom, it is a sign of shyness, modesty, self respect, and a respect for others.
- Physical appearance. Like the mainstream culture, many minority groups hold respect for men and women in suits. It is perceived as a sign of economic mobility, professional agility, and societal worth. Many of the people making their home in Minnesota hold tremendous regard for authority. Lawyers and judges, as well as legal professionals who are well-dressed, are to be treated with care. It is always worthwhile to ask oneself: what am I wearing next to the person beside me? This provides a measure of sensitivity to the environment and the individuals within that environment.

Situational Markers

Legal Status

- What a person’s legal status is here in this country has very much to do with how much they talk, how easily they talk, and what comes out of their mouths. If you are asking yourself what scenarios you should be looking for to determine a person’s legal status, consider initially what is being searched for in the first place. Are you trying to find illegal immigrants? To see if they have voting power? Evaluate the circumstances of questions before asking the individual, particularly as this pertains to legal status.

Economic Mobility

- Officially, the foreign-born populations are some of the poorest people in the United States and in Minnesota. For example, many Hmong families, particularly the newer ones to America, live below the poverty line. If an individual works in a factory all night and takes care of his children all day, his hands will grow rough from the chafing of heavy machinery. He will be shy to shake hands with others. Does money or pride affect communication and transportation of the group? The answer is yes—fundamentally, profoundly everyday.

Awareness of American Law

- Most foreign-born individuals are afraid of the laws. Many times they learn about the laws when they find themselves in trouble. The fact that laws exist both to protect and to punish is not a proposition that is getting communicated. For most groups, fear breeds obedience. As a group, the foreign born population is intimidated by the complexity of the legal system, its powerful reach, and its often invisible hand.

The attorneys who are alert of language breakdowns, cultural gaps, and situational markers will better know how to use interpreters efficiently. They will know how to ask their questions in ways that will not offend, intimidate, or embarrass. Those who have had successful experiences working with interpreters know something that others do not: they know that interpreters are allies of the court and treat them accordingly. Interpreters are present to ensure that non-English speaking litigants are heard. Cultural compe-

tence, regard for others, and effective use of interpreters in the courtroom are the best services you can provide as an attorney and a member of a diverse society.

Der Yang is an attorney and qualified court interpreter in the state of Minnesota. She is currently the Chief General Counsel of Words Wanted, LLP., the first words agency in the Hmong community. A young activist and technical writer, Der is on a small mission to take all the continuing education courses (not for credit) that will support her legal work, including tax preparation, real estate licensing, and court interpreting. Der can be reached at 651-224-9673.

Notes

¹ Source: Minnesota State Demographic Center; Migration Policy Institute.

² Source: Minnesota Department of Education.

³ Source: Minnesota Department of Human Services, Deaf and Hard of Hearing Services.

A Concise Summary Of The Law Of Release And Waiver In Minnesota

By: Benjamin P. Hayek

I. Introduction

The law claims does not like them. They are often found in the form of very small print and are prone to being ignored. They have a habit of springing upon unsuspecting patrons just prior to recreational activities. Courts admonish that they will be strictly construed against the drafter. They are branded “contracts of adhesion.” Their nature is to deprive one of his or her right to sue for negligence. Yet they are everywhere, and it is a tall task indeed to live one’s life as an active Minnesotan without encountering, and acquiescing to, these ruthless rights-killers. A descendent of the once-fundamental freedom of contract, the subject of the preceding propositions is the release and waiver.

II. General Principles

A waiver is ordinarily the intentional relinquishment or abandonment of a known right.¹ To establish the waiver of known legal right, it must be shown that the party charged with waiver knew of the right waived and intended to relinquish it.² A waiver must be based on knowledge of the facts.³ In other words, there can be no waiver without actual or implied intent to waive.⁴ A written waiver

is to be construed with reference to the circumstances under which, and the objective for which, it was given.⁵ The right of a person to waive the protection of the law is subject to the control of public policy, which cannot be set aside or contravened by any arrangement or agreement of individuals, however expressed.⁶

III. *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920 (Minn. 1982)

Schlobohm is not only the seminal modern case regarding the law of release and waiver, it involves something many are familiar with: health clubs. Like most who join a health club, the plaintiff was presented with a release and waiver just prior to her first workout, the signing of which would consummate the new license-based-relationship predicated upon the noble goal of personal health. Again, like most, the plaintiff gave the document a languid perusal before applying her signature.

A few weeks later, and on the suggestion of an unidentified person who the plaintiff believed was a health professional employed by the club, the plaintiff injured her back while exercising with an uncharacteristically heavy weight. After discovery, the district court granted defendant’s mo-

tion for summary judgment based primarily on the issue of whether the release signed by the plaintiff barred her claim.

On appeal, the Minnesota Supreme Court began its analysis by noting what is in play in release and waiver cases, the familiar ghost of constitutional law's past: the once-fundamental interest in freedom of contract.⁷ Such contracts historically allowed parties to shift certain liability from one to another, and are generally enforceable in the eyes of the law.⁸ But while negligence liability-shifting contracts are generally enforceable, contracts that purport to shift liability for damages arising out of willful or wanton tortious conduct are not.⁹ Indeed, as the reader will see, some negligence liability-shifting contracts are unenforceable in certain circumstances.

IV. Post-*Schlobohm*

Minnesota courts employ a so-called two-pronged test to determine whether a given release and waiver falls out of favor with certain public policy considerations. First, courts examine the power structure relation between the parties for substantial balance and under the circumstances of each case. A significant disparity in bargaining power, and in particular the degree to which the parties were able to negotiate the contract's provisions, will cast doubt on the enforceability of the exculpatory clause at issue.

If a court is satisfied that no significant disparity in bargaining power exists, then the court will focus on the nature of the services being offered or provided. In particular, this prong of the analysis focuses on the type of services being offered or provided and whether the type of services offered are essential to the plaintiff's livelihood, or somehow "necessary to the public" in nature.¹⁰

A. The Employment Law Context

Within the employment law context, exculpatory clauses are usually held unenforceable. Consider, for example, the case of *Walton v. Fujita Tourist Enterprises Co., Ltd.*¹¹ In *Walton*, Travel agent plaintiff fell injuring her ankle in a stairway in a hotel in Japan where she was staying during a ten day "fam[iliarization]" trip, a trip during which travel agents gain first hand information about the hotels and tours they in turn sell to customers.¹² Before embarking on the trip, plaintiff signed a document that, *inter alia*, purported to release and waive any claim she might have for liability arising out of the trip sponsors negligence.¹³

In holding that the exculpatory clause contained in the document was unenforceable as against public policy, the trial court relied upon both parts of the two pronged test outlined in *Schlobohm*.¹⁴ Specifically, the court

focused on the fact that the agreement between the plaintiff and Northwest was not bargained for and prepared unilaterally by Northwest, creating the dreaded "take it or leave it" situation.¹⁵ Second, and (much) more importantly, the court held that participation in such trips was necessary for the business success of a travel agent, and that Northwest's size and market position gave it a virtual monopoly on such trips.¹⁶

Another example is the case of *Bunia v. Knight Ridder*.¹⁷ Plaintiff, while working as a newspaper carrier for Knight Ridder, slipped and fell at defendant's distribution center, allegedly due to packed snow and ice negligently permitted to accumulate on the premises.¹⁸ The district court granted defendant's motion for summary judgment, reasoning that the relevant exculpatory clause the plaintiff signed as a condition of employment barred plaintiff's claim.¹⁹ On appeal, plaintiff challenged the exculpatory clause as unenforceable, arguing that it was contradictory to public policy because it resulted from a disparity of bargaining power, and that it was ambiguous in construction and scope.²⁰

The court began by repeating the *Schlobohm* rule that an exculpatory agreement violates the policy only if there is a disparity in bargaining power between the parties and, *in the conjunctive*, are public or essential services in nature.²¹ Then, after examining *Walton*, the court noted that exculpatory "clauses are almost universally rejected in the employment context."²² As such, the court found that plaintiff in this matter was nearly identically situated of that of an employee (i.e., she was an "independent contractor" in name only).²³ Because plaintiff contracted for consideration that was essential to her livelihood, and she assented to the exculpatory clause from a position of inferior bargaining power, her contractual assumption of risk²⁴ (the release and waiver) was invalid.²⁵

B. Outside the Employment Law Context

Outside of the employment law context, the "disparity of bargaining power" prong is a rather worthless exercise. While many cases talk a rather big game about contracts that are drafted by only one of the parties and "create a 'take-it-or-leave-it' situation," the plain fact is that in virtually every case the acquiescing party is not the drafting party. In other words, there rarely is a situation where two parties get together to hammer out a mutually-bargained-for contract that shifts negligence liability from one party to another. Instead, the common scenario involves a patron and a service provider, whereby the service provider agrees to grant the patron license to enjoy the services provided in exchange for a sum of money and an agreement not to sue the provider

should the plaintiff be injured by the service-provider's negligence. The classic scenario here is one that involves purely recreational activities.²⁶

For example, in *Beehner v. Cragun Corp.*,²⁷ plaintiff was injured horseback riding after she checked into a resort owned and operated by defendant.²⁸ In affirming the district court's conclusion that plaintiff's claim was barred by the exculpatory clause, the court held that horseback riding is not a necessary activity but rather a recreational activity.²⁹ The court also noted that the record was devoid of evidence that the resort services were unavailable elsewhere.³⁰ Last, the court emphasized that the plaintiff was a willing participant in the recreational activity, and not coerced in any way, and that, in cases where plaintiffs were successful in avoiding release and waiver-based summary judgment motions, plaintiffs were compelled to sign the contract to obtain services essential to their livelihoods.³¹ The court then went on to define a necessary or public service as "a service subject to the public regulation or of practical necessity for some members of the public."³² Noting that the defendant did not provide a service typically thought to be suitable for public regulation, the exculpatory clause was not ambiguous, not the result of disparity and bargaining power, and not for a public or essential service, the court affirmed the district court's granting of defendant's summary judgment motion.

V. *Yang v. Voyageaire Houseboats, Inc.*, 701 N.W.2d 783 (Minn. 2005)

The first Minnesota Supreme Court case since *Schlobohm* is *Yang v. Voyageaire Houseboats, Inc.*³³ In *Yang*, plaintiff patronized a resort at which he rented a houseboat for the week.³⁴ Plaintiff brought suit after he became very ill due to a faulty carbon dioxide detector, requiring short hospital stay (and ruining the vacation).³⁵ Finding that house boat ing constituted a purely recreational activity, the district court granted defendant's summary judgment motion on the release and waiver. The court of appeals affirmed.³⁶

The supreme court reversed.³⁷ The supreme court focused on the fact that defendant never mentioned the rental agreement containing the release and waiver until just prior to taking the boat out, despite having his reservation for a number of months beforehand and long before he traveled to the resort (i.e., the release and waiver was rather "sprung" on the plaintiff and his vacationing companions).³⁸ The court also focused on the fact that the type of services offered by the resort, that of renting houseboats for a matter of days, was more like the services offered by innkeepers, thereby rendering it the type of activity generally thought to be suitable for public regulation.³⁹

Holding that the resort essentially functioned as an innkeeper, the court concluded that it is appropriate to treat the resort as an innkeeper when determining the enforceability of the exculpatory clause in the boat rental agreement.⁴⁰ Since innkeepers generally have a special duty to take reasonable actions to protect their guest, the supreme court held that as a matter of public policy, defendant could not circumvent their duty to protect its guests by requiring the guests to sign a rental agreement containing any exculpatory clause that purported to release them from liability for their own negligence.⁴¹

VI. *Anderson v. McOskar Enterprises, Inc.*, — N.W.2d — (Minn. Ct. App. 2006)⁴²

Returning full circle to the health-club context where we began, *Anderson* plaintiff began noticing symptoms similar to that of a headache just minutes after commencing her first workout at the club.⁴³ At the behest of her club trainer, plaintiff continued to work-out despite the pain, which then traveled into her neck, shoulder, and arm. Just two months later, plaintiff underwent a cervical discectomy as a result of the injuries she sustained during her first work-out.

As one would expect, shortly before her first workout plaintiff completed her registration with the club, which included a requirement that she sign a release of liability for "any act or omission, including negligence," causing injury.⁴⁴ Despite the signature on the release, however, plaintiff filed suit seeking damages from the club for negligent acts or omissions during her initial work-out at the club.

On appeal from defendant's successful summary judgment motion on the release, the court of appeals noted that plaintiff admitted to understanding and agreeing to its terms. The court noted that plaintiff did not allege anything over and above mere negligence and from this concluded that there was no issue of material fact over what the release provided, that is, exculpation from any negligence on the part of the club.⁴⁵

What makes *Anderson* particularly noteworthy is its adoption of what has become the majority rule nationwide with respect to whether an exculpatory clause is arguably ambiguous, and, more importantly, what to do if a court concludes that it is. Rather than void the entire release as plaintiff argued, *Anderson* adopted the better reasoned rule of law that "any 'term' in a contract which attempts to exempt a party from liability for gross negligence or wanton conduct is unenforceable, not the entire [contract]."⁴⁶ The principle underlying this rule, as opposed to a rule mandating that the entire contract be voided, is simple: to preserve the contracting parties manifested mutual intent to effect a release of liability in exchange for license.

After concluding its analysis with respect to the arguably ambiguous nature of the release, the court continued on to note that “[e]ven if there was a disparity of bargaining ability here ... there was no showing that the services provided [] are necessary and unobtainable elsewhere. Although fitness activities surely are desirable for most people, they cannot plausibly be said to be necessary.”⁴⁷ As such, the court concluded, given a lack of any “special relationship [between the parties] and no overriding public interest [requiring that] this contract provision, voluntarily entered into by competent parties, should be rendered ineffectual,” the appellate court affirmed.⁴⁸

In other words, that old ghost, the once-fundamental freedom of contract, lives on.

Benjamin P. Hayek practices insurance defense litigation at Lind, Jensen, Sullivan & Peterson, P.A

Notes

¹ *Anda Constr. Co. v. First Fed. Sav. & Loan Ass’n* (Minn. Ct. App. 1984) 349 N.W.2d 275, 278-79 (Minn. Ct. App. 1984).

² *Id.* at 279.

³ *Cohler v. Smith*, 158 N.W.2d 574, 579 (Minn. 1968).

⁴ *Monson v. Pickett*, 93 N.W.2d 537, 541 (Minn. 1958).

⁵ *See Crane Co. v. Advance Plumbing & Heating Co.*, 224 N.W. 847, 846 (Minn. 1929).

⁶ *United Mut. Life Ins. Co. v. Ward*, 275 N.W. 422, 425 (1937).

⁷ *Id.* at 922-23.

⁸ *Id.*

⁹ *Id.* at 923.

¹⁰ Factors enumerated in *Tunkl v. Regents of University of California*, 383 P.2d 441 (Ca. 1963), and cited with approval in *Schlobohm*, include (1) the contract concerns a business of a type generally thought suitable for public relation; (2) the parties seeking exculpation is engaged in performing a service of great importance to the public and often a matter of practical necessity for some members of the public; (3) the party holds itself out as willing to perform the service for any member of the public who seeks it or for any member coming within certain established standards; (4) as a result of the central nature of the service and in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public seeking its services; (5) the party confronts the public with a standardized adhesion contract of exculpation and makes no provision where by a purchaser may pay additional fees to obtain protection against negligence; and (6) as a result of the transaction, the person is placed under control of the sellers subject to risk of carelessness by the seller, his agents, or his employees. *Schlobohm*, 326 N.W.2d at 924.

¹¹ *Walton v. Fujita Tourist Enterprises Co., Ltd.*, 380 N.W.2d

198 (Minn. Ct. App. 1986).

¹² *Id.* at 199.

¹³ *Id.* at 200.

¹⁴ *Id.* at 201.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Bunia v. Knight Ridder*, 544 N.W.2d 60 (Minn. Ct. App. 1996).

¹⁸ *Id.* at 61.

¹⁹ *Id.* at 62.

²⁰ *Id.*

²¹ *Id.* (citing *Schlobohm*, 326 N.W.2d at 926).

²² *Id.* at 63 (citing Prosser and Keaton on Torts, § 68 at 482 (5th Ed. 484)).

²³ *Id.*

²⁴ For a learned discussion of the doctrine of primary assumption of risk in Minnesota, see Michael K. Steenson, *The Role of Primary Assumption of Risk in Civil Litigation in Minnesota*, 30 Wm. Mitchell L. Rev. 115 (2003).
²⁵ 544 N.W.2d at 63.

²⁶ See, e.g., *Haines v. St. Charles Speedway, Inc.*, 874 F.2d 572 (8th Cir. 1989); *Wolfgang v. Mid-American Motorsports, Inc.*, 898 F.Supp. 783 (D.Kan. 1995); *Anderson v. Eby*, 998 F.2d 858 (10th Cir. 1993); *Potter v. National Handicap Sports*, 849 F.Supp. 1407 (D. Co. 1994); *Lahey v. Covington*, 964 F.Supp. 1440 (D. Co. 1996); *Finkler v. Toledo Ski Club*, 577 N.E.2d 1114 (Oh Ct. App. 1989). There is a particularly large body of law concerning exculpatory contracts within the context of automobile racing. See *Hammer v. Road America, Inc.*, 614 F.Supp 467 (E.D.Wis. 1985) (applying Wisconsin law), *aff’d*, 793 F.2d 1296 (7th Cir. 1986); *Dunn v. Paducah Int’l Raceway*, 599 F.Supp. 612 (W.D.Ky. 1984) (applying Kentucky law); *Rhea v. Horn-Keen Corp.*, 582 F.Supp. 687 (W.D. Va. 1984) (applying Virginia law); *Grbac v. Reading Fair Co.*, 521 F.Supp. 1351 (W.D.Pa. 1981) (applying Pennsylvania law), *aff’d*, 688 F.2d 215 (3rd Cir. 1982); *Gore v. Tri-County Raceway, Inc.*, 407 F.Supp. 489 (M.D.Ala. 1974) (applying Alabama law); *Schlessman v. Henson*, 400 N.E.2d 1039 (Ill. Ct. App. 1980), *aff’d* 413 N.E.2d 1252 (Ill. 1980); *LaFrenz v. Lake County Fair Bd.*, 360 N.E.2d 605 (Ind. 1977); *Lee v. Allied Sports Associates, Inc.*, 209 N.W.2d 329 (Mass. 1965); *Winterstein v. Wilcom*, 293 A.2d 821 (Md. 1972); *Barnes v. Birmingham Int’l Raceway, Inc.*, 551 So.2d 929, 932 (Ala. 1989); *Theis v. J&J Racing Promotions*, 571 So.2d 92 (Fla. Ct. App. 1990); *Trainor v. Aztalan Cycle Club, Inc.*, 432 N.W.2d 626, 631 n.1 (Wis. Ct. App. 1988).
²⁷ 636 N.W.2d 821 (Minn. Ct. App. 2001).

²⁸ *Id.* at 825.

²⁹ *Id.* at 827-28.

³⁰ *Id.* at 828.

³¹ *Id.*

³² *Id.* (citing *Schlobohm*, 326 N.W.2d at 925-26).

³³ *Yang v. Voyageur Houseboats, Inc.*, 2004 WL 2049843 (Minn. Ct. App. 2004), *reversed by* 701 N.W.2d 783 (Minn. 2005).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Yang v. Voyageaire Houseboats, Inc.*, 701 N.W.2d 783 (Minn. 2005).

³⁸ *Id.* at 786.

³⁹ *Id.* at 790-91.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 2006 WL 1148115.

⁴³ *Id.* at *2.

⁴⁴ *Id.*

⁴⁵ *Id.* at *3.

⁴⁶ *Id.* at *4 (quoting *Wolfgang v. Mid-American Motorsports, Inc.*, 898 F.Supp. 783, 788 (D.Kan.1995)).

⁴⁷ *Id.* at *5.

⁴⁸ *Id.*

Considerations For Drafting And Enforcing Non-Compete Agreements

By: Jennifer G. Lurken¹

Employers are utilizing non-compete agreements more frequently than ever before, most likely as a result of the increased value of trade secrets and customer lists. Non-compete agreements are contracts in which an employee agrees not to perform certain work for a period of time after termination of employment. Since non-compete agreements are governed by state law, their enforceability varies by state. In Minnesota, courts generally will enforce a non-compete agreement if: (1) the restraint is for a just and honest purpose; (2) the restraint protects a legitimate interest of the employer; (3) the restraint is reasonable; and (4) the restraint is not injurious to the public.² Minnesota courts focus on whether the restrictive covenants in the agreement are narrow in scope and reasonably necessary to protect the employer's legitimate business interests.³ The courts view non-compete agreements with some disfavor because they are in partial restraint of trade.⁴

Adequate Consideration

In evaluating whether to uphold a non-compete agreement, a court first looks at whether a valid contract exists. Most importantly, the court focuses on whether there was adequate consideration for the agreement. In Minnesota, adequate consideration exists if the non-compete agreement is part of the job offer and the employee enters into the non-compete when first hired.⁵ This is because in exchange for signing the agreement, the employee is receiving employment, something that the employee did not have before signing the agreement.⁶ Continued employment is only adequate consideration when it is accompanied by "substantial economic and professional benefits," such as increased wages, a promotion, bonus, fixed-term of employment, or access to protected information.⁷

Reasonableness

Once Minnesota courts find a valid contract exists, they

look at the reasonableness of the agreement. Reasonableness is measured by comparing the legitimate business interests and the extent of the restrictions imposed upon the employee. The reasonableness of the scope and time is determined in large part by the legitimate business interests the employer is trying to protect. Legitimate business interests generally consist of protecting trade secrets, proprietary business information, customer base, customer goodwill, and other confidential information.⁸

Once courts determine that the non-compete agreement protects legitimate business interests, they then turn to the restrictions imposed upon the employee to determine whether it is reasonable. Minnesota cases have mainly focused on the geographic scope and time frame restrictions. Generally, a non-compete agreement can only be as long or as broad as is necessary to protect the employer's legitimate business interests. Minnesota courts also consider any payments to the employee during the period of restriction, the employee's access to the employer's business information, and the nature of the employer's business in this evaluation.⁹ In determining whether the geographical scope is reasonable, Minnesota courts typically look to the area in which the employee was active and had client contact.¹⁰

As long as the employer can prove legitimate business interests, courts generally will find that periods of six to twelve months are reasonable to protect those interests. When goodwill is the legitimate business interest, courts will look at the length of time necessary to obliterate the identification between the employer and the employee in the minds of the employer's customers and the length of time necessary for the employer to find and train a replacement.¹¹

Blue Pencil Doctrine

One saving grace for less experienced lawyers who might have drafted an overly broad agreement is that Minnesota courts recognize the “blue-pencil” doctrine. The blue pencil doctrine allows a court to modify a non-compete agreement that is determined to be unreasonably broad and to enforce it only to the extent that the court finds is reasonable.¹² A court, however, is not required to modify an overly broad non-compete agreement and may instead simply refuse to enforce it at all.¹³ Thus, a new lawyer should take care to draft reasonable non-compete agreements and not rely on the court.

Notes

¹ Jennifer Lurken is an associate attorney at Larson · King, LLP. She can be reached at jlurken@larsonking.com.

² *Jim W. Miller Const. Inc. v. Shaefer*, 298 N.W.2d 455, 459 (Minn. 1980); *Bennett v. Storz Broad. Co.*, 134 N.W.2d 892 (1965).

³ *Davies v. Davies Agency, Inc. v. Davies*, 298 N.W.2d 127, 132 (Minn. 1980); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. Ct. App. 1993). *Freeman v. Duluth Clinic, Inc.*, 334 N.W.2d 626, 630 (Minn. 1983); *Bennett*, 134 N.W.2d at 899.

⁴ *Id.*

⁵ *Sanborn Mfg. Co v. Currie*, 500 N.W.2d 161, 164 (Minn. Ct. App. 1993).

⁶ *Overholt Crop Ins. Serv. Co., v. Bredeson*, 437 N.W.2d 698, 702 (Minn. Ct. App. 1989).

⁷ *Freeman*, 334 N.W.2d 626; *Davies*, 298 N.W.2d at 132; *Sanborn Mfg. Co*, 500 N.W.2d at 164.

⁸ *Cherne Indus. Inc. v. Grounds and Assoc., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979); *Overholt Crop Ins. Serv. Co.*, 437 N.W.2d at 702; *Webb Pub. Co. v. Fosshage*, 426 N.W.2d 445, 449 (Minn. Ct. App. 1988); *Saliterman v. Finney*, 361 N.W.2d 175, 178 (Minn. Ct. App. 1985).

⁹ See e.g., *Roth v. Gamble-Skogmo, Inc.*, 532 F. Supp. 1029, 1032 (D. Minn. 1982) (finding even five years reasonable for former CEO because of access to confidential information and business strategy and payments being made by former employer company). *Compare Lexis-Nexis v. Beer*, 41 F. Supp. 2d 950 (D. Minn. 1999) (noting that information former employee may have retained has lost considerable value after four months).

¹⁰ *Lexis-Nexis*, 41 F. Supp. 2d at 957 (finding geographically unlimited agreement unreasonable); *Millard v. Elec. Cable Specialists*, 790 F. Supp. 857, 859 (D. Minn. 1992) (finding nationwide restraint reasonable). *Compare Walker Employment Serv., Inc. v. Parkhurst*, 300 Minn. 264, 219 N.W.2d 437, 442 (1974) (single county restraint reasonable).

¹¹ See, e.g., *Minnesota Mining & Mfg. Co. v. Kirkevold*, 87 F.R.D. 324, 335 (D. Minn. 1980) (finding two-year restraint reasonable).

¹² *Davies*, 298 N.W.2d at 131 n. 1; *Bess v. Botham*, 257 N.W.2d 791 (Minn. 1977).

¹³ *Klick v. Crosstown State Bank of Ham Lake, Inc.*, 372 N.W.2d 85, 88 (Minn. Ct. App. 1985).

Commentary On In-House Practice: A Different Shade Of Green

By: Jill Pearson

“There’s no perfect job,” my parents always told me (though I think “Ben & Jerry’s flavor-tester” could come close). “The grass is always greener,” was another of their favorite reminders, and I suppose that’s often true. So, how does an in-house gig compare to law firm life? Five years after graduation, it seems more and more of my law school colleagues are looking to find out as they take the leap from the partner track to the corporate world. So I decided to go in search of the answers, relying on in-house colleagues from industries such as banking, healthcare, retail, and manufacturing to help set the record straight. From “liberating” and “exciting”, to “isolating” and “terrifying”—the reviews appear to run the gamut. But for those of you seriously contemplating the switch, let me summarize my findings.

As you might expect, on the positive side there’s the absence of billable hours and the tedious task of tracking them, the thrill of being entrenched in a business and contributing to its success, the amazing variety of legal challenges inherent in the title “general” counsel, and the luxury of engaging in discussions of importance for which no ascertainable (read: billable) client exists. There’s also the perk of day-to-day interaction with non-lawyers, an emphasis on work/life balance, and the occasional invitation from an outside law firm to a concert or sports outing.

Of course, as lawyers, we know there is another side to every story, so let me elaborate on the common complaints as well. “Meetings, meetings, meetings” seemed to top everyone’s list, along with the adjustments that accompany the transition from an esteemed profit-generator to a

mere “cost of doing business.” As such, gone are the catered lunch meetings, the unlimited expense accounts, the marketing budget, the lavish annual parties, and the oriental rugs. Yes, it seems the general consensus is that an ego has no place in the world of in-house counsel!

In the glass half-empty/half-full category is the observation that in-house practice is generally more independent and self-directed, which can be empowering but can also be isolating. And while the fast pace and quick decision-making is liberating for some, others found it terrifying to at times rely more on instincts and judgment than extensive research and review. In some cases, there’s also the task of managing outside counsel, which can be an interesting and occasionally unsettling reversal of roles.

So, as you can see, my parents may be right—perhaps there is no perfect job. As lawyers, we’re fortunate to have

skills that are equally applicable to many different roles and settings, each with its unique opportunities for intellectual stimulation and accompanying challenges. I made my own leap to in-house practice last year, so I can relate to many of the observations of my colleagues. Whether you’ve got your eye on that partner office or the chair of the CEO, be prepared for the inevitable highs and lows.

And don’t forget, from one pasture to the next, the grass always appears greener . . . unless, of course, you’re tasting Ben & Jerry’s.

Jill Pearson is currently an attorney at a Minnesota-based corporation, having previously practiced law at a large Minneapolis law firm.

Positive Developments In Legal Citation Manuals

By: Darin T. Allen, Esq., Masha Marchevsky and Amy Wanezek

Since its introduction in 1926, *The Bluebook, A Uniform System of Citation* (“*Bluebook*”) has been recognized as the standard against which other legal citation manuals are compared. Yet, over the course of the 20th Century, concerns developed within the legal community that new editions of the *Bluebook* were not user friendly and that the *Bluebook* lacked guidance for practitioners. With the arrival of the *ALWD Citation Manual: A Professional System of Citation* (“*ALWD Citation Manual*”) in 2000, efforts were made to evaluate the use of the *Bluebook* and the *ALWD Citation Manual*. In studies comparing the *ALWD Citation Manual* to the Sixteenth and Seventeenth Editions of the *Bluebook*, the *ALWD Citation Manual* was repeatedly found to be the more “user friendly” choice for practitioners and law students. See, e.g., Wanda M. Temm, *New Kid on the Block: The ALWD Citation Manual*, 59 J. Mo. B. 16 (2003).

In what could be described as a partial response to the arrival of the *ALWD Citation Manual*, the editors of the *Bluebook* prepared and published the Eighteenth Edition of the *Bluebook* in 2005. Analysis of the revisions and additions contained in the Eighteenth Edition of the *Bluebook* suggests that competition from the *ALWD Citation Manual* has caused the *Bluebook* to become more accessible to practitioners and law students and easier to use. This article will outline the origins of the *Bluebook*

and the *ALWD Citation Manual*, and will provide guidance for legal practitioners, law students, and legal writing professionals by comparing and contrasting the changes featured in the most recent editions of each citation manual.

Origins of the *Bluebook*

In 1926, the Harvard, Yale, Pennsylvania, and Columbia Law Reviews introduced a booklet to be used as a citation guide for legal writing. The booklet was titled, “*A Uniform System of Citation*.” By 1991, this publication became a book and its title was changed to *The Bluebook: A Uniform System of Citation*. From its conception, the *Bluebook* has dominated the legal writing field as the proper system of citation, and it is widely recognized by attorneys, judges, law students, and legal writing professionals.

The Rise of the *ALWD Citation Manual*

Despite its extensive use, the *Bluebook* faced increasing amounts of criticism during the late 20th Century, resulting mostly from substantial revisions with each new edition, lack of clarity, and a difficult-to-use format. Consequently, in 1997, the Association of Legal Writing Directors (“ALWD”) voted to create an alternative to the increasingly complex and technical *Bluebook*. The new publication by the ALWD was titled the *ALWD Citation Manual: A Professional System of Citation*. The first edition of the

manual was published in 2000, with a second edition published in 2002, and a third edition published in late 2005.

Features of the *ALWD Citation Manual*

The original edition of the *ALWD Citation Manual* did not substantially depart from traditional legal citation rules. Rather, it made learning legal citation easier because it utilized one system for all legal documents, making no distinction between law review articles and other types of writing. In addition, the *ALWD Citation Manual* contained a larger amount of white space and less dense text, making the publication easier to read.

While the numerous simplifications were generally well received, the first version of the *ALWD Citation Manual* did encounter some criticism, especially regarding typographical errors. See Pamela Wilkins, *The ALWD Citation Manual Grows Up: A Guide to the Second Edition*, 83 Mich. B.J. 48 (2004) (citing several articles critiquing the *ALWD Citation Manual*). Consequently, the second edition of the *ALWD Citation Manual* integrated important corrections and changes, including a larger variety of sources and an increased number of examples for citations. The third edition includes additional rules, further clarifications, more examples, and all of the appendices previously only available through the *ALWD Citation Manual* website.

Legal Community Response to the *ALWD Citation Manual*

As the *ALWD Citation Manual* gained acceptance in a number of law schools and paralegal programs, legal writing professionals weighed in with several articles comparing the *Bluebook* and the *ALWD Citation Manual*. In comparing the two citation manuals, numerous articles criticized the Sixteenth and Seventeenth Editions of the *Bluebook* as being far more complex than the *ALWD Citation Manual* and less intuitive for law students and practitioners to use. Specific criticisms of the *Bluebook* focused on inaccessibility to practitioners, mainly due to the majority of the *Bluebook* concentrating on citation rules for law reviews that differ substantially from court documents. See Suzanne E. Rowe, *The Bluebook Blues: ALWD Introduces a Superior Citation Reference Book for Lawyers*, 64-JUN Or. St. B. Bull. 31 (2004).

Practitioners and legal writing professionals reported using the *ALWD Citation Manual* in an effort to compensate for the lack of local citation rules included in the *Bluebook*. Further, the *ALWD Citation Manual* avoided many of the organizational problems that made the *Bluebook* difficult to navigate, particularly the significant substantive changes included in every new edition of the *Bluebook*.

Practitioners, law students, and legal writing professionals praised the *ALWD Citation Manual* for its focus on the “why” of citation, clarity of rules and numerous examples, and shortcuts throughout the book, including sidebars and fast format sections. As a testament to the welcome reception given to the *ALWD Citation Manual*, in 2003, over 100 of the 188 then-designated ABA-approved law schools implemented use of the *ALWD Citation Manual* as the primary resource for teaching legal citation to first-year law students. See Bryan A. Garner, *Practice Strategies: Legal Writing*, 32 Stu. Law. 10 (2003). With law schools readily adopting the *ALWD Citation Manual*, the *Bluebook* no longer reigned supreme as the primary tool for teaching legal citation format.

Practical Updates to the *Bluebook*

The Eighteenth Edition of the *Bluebook* came out in the summer of 2005. The newly revised *Bluebook* features several changes in an attempt to make the publication more accessible to practitioners and law students. Some notable changes to the *Bluebook* include the addition of jurisdiction-specific citation rules and style guides, a changed format for easier reading, new explanations on the “why” of citation, and reformatted shortcut charts for more accessible reference.

In what is perhaps the most significant change to the *Bluebook*, the short and confusing “practitioners’ notes” section contained in the beginning of previous editions was replaced with a longer “Bluepages” section. The Bluepages were added to include “a how-to guide providing easy-to-comprehend instructions for the everyday citation needs of first-year law students, summer associates, law clerks, practicing lawyers, and other legal professionals.” *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass’n et al. eds., 18th ed. 2005). The addition of the Bluepages substantially changed the original purpose of the *Bluebook*, which was to provide a uniform system of citation for law reviews and journals. Given that the *ALWD Citation Manual*’s primary purpose was to provide practitioners with a clear and easy-to-use system of citation, re-focusing the *Bluebook* to increase accessibility for practitioners appears to be a clear reaction by the *Bluebook*’s editors to the increasing use of the *ALWD Citation Manual*.

Moreover, the new edition of the *Bluebook* includes several clarifications and explanations to answer some of the concerns over typeface and rules for court documents versus law reviews. In response to these criticisms, the editors of the *Bluebook* explain, “to alleviate any confusion caused by the proliferation of typeface conventions,” the Bluepages provide a comprehensive how-to guide for basic legal citation, while the remainder of the *Bluebook* em-

employs more complex typeface conventions to be used exclusively for law reviews and other journals. *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n et al. eds., 18th ed. 2005). This clarification indicates that practitioners and students learning legal citation should look to the Bluepages when looking for the correct method of citation for any document other than a law review.

Citation Manual Preferences for Minneapolis and St. Paul Law Schools

The four law schools in Minnesota are split on their preference for the *Bluebook* or the *ALWD Citation Manual*. The University of Minnesota Law School and William Mitchell College of Law use the *Bluebook*, whereas the University of Saint Thomas School of Law and Hamline University School of Law use the *ALWD Citation Manual*. Hamline University has used the *ALWD Citation Manual* since it became available in 2000. The University of Saint Thomas began teaching its founding class of students in 2001 using the *ALWD Citation Manual*.

Some of the reasons provided by the legal writing directors¹ for remaining with the *Bluebook* include preference by the law review staff, a strong following among practitioners and courts, and no clear reason to change. Proponents of the *ALWD Citation Manual* argue that it is a much clearer teaching tool, easier to read, and gaining in popularity among law schools. Additionally, it is argued that in practice, most practitioners do not strictly adhere to the *Bluebook* citation form. Therefore, deviation from the *Bluebook* could potentially help to prepare students for the realities of law practice by reminding them about the importance of local citation rules in a jurisdiction.

The legal writing directors of the different law schools generally do not feel that students taught using the *ALWD Citation Manual* will be at a disadvantage compared to those trained to use the *Bluebook*. The only disadvantage voiced was that prospective employers may require exact compliance with the *Bluebook*. However, proponents argue that use of the conversion charts found on the *ALWD Citation Manual* website adequately prepares students to understand the differences and to make the appropriate citation changes.

Regardless of a school's preference for either the *Bluebook* or the *ALWD Citation Manual*, the majority of the legal writing directors emphasized that the goal of a legal writing program is to teach citation format, not to teach one style or the other. Emphasis should be placed on preparing students to properly cite in a legal document, not on the vehicle used to acquire that valuable skill. Although none of the law schools are considering changing from current

use of either the *Bluebook* or the *ALWD Citation Manual*, the legal writing program directors are committed to ongoing review of citation format developments to provide a positive educational experience for law students.

Conclusion

While the *Bluebook* previously dominated legal citation, it is important for practitioners and legal writing professionals to realize that the *ALWD Citation Manual* functions as an established resource for legal citation. The most recent editions of the *ALWD Citation Manual* and the *Bluebook* provide user-friendly ways for students of legal citation to learn and appreciate the complexities and proper use of cites. While it is always best practice to consult the local rules of a jurisdiction for specific guidance on legal citation, the emergence of the *ALWD Citation Manual* and the revisions made to the *Bluebook* are positive developments that work in favor of effective communication.

Darin T. Allen is the Director of Real Estate and Employment ADR Services for the National Arbitration Forum in Minneapolis, Minnesota. Mr. Allen can be contacted at (952) 516-6418 or dallen@arb-forum.com.

Masha Marchevsky is a second-year law student at the University of Minnesota Law School.

Amy Wanezek is a second-year law student at the University of St. Thomas School of Law.

Notes

¹ A special thanks to the legal writing directors at all of the local law schools: Bradley Clary, University of Minnesota Law School; Kenneth Kirwin, William Mitchell College of Law; Alice Silkey, Hamline University School of Law; and Ursula Weigold, The University of Saint Thomas School of Law.

Hennepin County Affiliate News

By: Lori Semke

FUN TRADITIONS AND NEW BEGINNINGS FOR HCBA NEW LAWYERS THIS SPRING!

The HCBA New Lawyers Section has been very busy planning its spring events while also gearing up for a transition into new leadership. Elections are coming up on June 14, 2006. We are already hearing from many talented lawyers hoping to make an impact on the legal community by becoming a part of the HCBA NLS Executive Committee. We look forward to more of the great events described below, and to whatever new paths are forged by next year's leadership! For more information on the election process, contact Lori Semke at lsemke@flynnngaskins.com.

We have been having some great CLE programs this year—hopefully you did not miss the CLEs we sponsored in May in conjunction with the HCBA Civil Litigation Section. On May 8, 2006 we co-sponsored the Civil Litigation Section's lunchtime CLE on the issue of Jury Consultants, presented by Stephen J. Davidson of Leonard, Street and Deinard. On May 16, 2006, our lunchtime CLE (co-sponsored by the Civil Litigation Section) will be "How to Survive Your First Trial", presented by William F. Stute of Lindquist and Vennum. For more information on HCBA New Lawyers' CLE programs, please contact Larry at (612) 752-6622.

HCBA New Lawyers have also continued their community service efforts this spring. We are proud to have been a co-sponsor of the "We the Jury" project during its first year in Minnesota. The HCBA New Lawyers, in conjunction with the HCBA Community Relations Committee, MSBA New Lawyers, and several other local legal organizations, have volunteered at area schools to facilitate a start-to-finish "mock jury" program in the classroom. The program has been a huge success and we look forward to expanding the program even further next year. New Lawyers have also assisted with the MSBA Katrina Task Force's furniture drive, and Section members donated time to help keep our world clean on Earth Day by volunteering their garbage pickup skills at Minneapolis' Lake Nokomis on Saturday, April 22. Finally, several New Lawyer Section volunteers assisted at the "Ask-A-Lawyer" project during Law Week 2006, giving free legal advice to members of the Minneapolis community at the Minneapolis Urban League during the week of May 1st.

In April, HCBA New Lawyers joined MSBA and RCBA New Lawyers for the Annual Spring Social, which again

was a great success and held at Nochee in Minneapolis on April 20th. June promises to be another busy month of social events as well. Our Annual St. Paul Saints Summer Outing—"New Lawyers' Day at the Ballpark" is coming up Sunday, June 11 at Midway Stadium, where the Saints will take on the Sioux Fall Canaries. Tailgating will start at 11:00, game at 1:00. Tickets are \$17, which includes burgers, brats, hot dogs, snacks, and drinks at the tailgate event, and seats with the New Lawyers for the game! Contact NLS Social Director Andrew Moratzka at 612-305-1418 or apm@mcmlaw.com to get your tickets. Space is limited, so act now!

Also in June, the HCBA New Lawyers Section is again co-sponsoring the Lake Minnetonka Networking Boat Cruise on June 22, 2006, in conjunction with other young professional organizations, including insurers, CPAs and risk managers. Keep an eye on our website for information (<http://www.hcba.org/programs/newlawyers>)! Look for our regular monthly Happy Hour to return in August at a Minneapolis hot spot near you!

Lori Semke is the Chair of the Hennepin County Bar Association New Lawyers Section.

Ramsey County Affiliate News

By: Derk Schwieger

Council Meetings and Happy Hours

The next council meetings and Happy Hours for the Ramsey County New Lawyer's will be on Thursday, June 8, 2006, starting with our council meeting from 4:00 p.m. to 5:00 p.m., and a Happy Hour from 5:00 p.m. to 7:00 p.m. at Dixie's on Grand Avenue, sponsored by John Richardson, QRC.

Volunteer Opportunities

There are summer volunteer opportunities through the Ramsey County New Lawyer's which present an excellent opportunity to give back to the community, as well as network with other professionals. The Annual Ramsey County Fundraiser Golf Tournament, Presented by US Bank, is being held on Monday, July 10, at the Southview Country Club, 239 East Mendota Road, West St. Paul. The Ramsey County Bar is also holding another the Annual Families First event on Saturday, July 22, at John A. Johnson Elementary School, 740 York Avenue, St. Paul. For more details and times for these events, please contact the RCBA office at (651) 222-0846, send an email to info@ramseybar.org.

Continuing Legal Education

A CLE sponsored by the Ramsey County New Lawyers entitled "Legal Malpractice" will be resented by: Chad J. Hintz, *Burke & Thomas, PLLP*, on Wednesday, July 26, from 12:00 to 1:30 p.m. This CLE will be held in room N109, of the First National Bank Building, 332 Minnesota Street, St. Paul. Cost is \$15 for RCBA members and \$20 for non-members. One CLE credit will be applied for. To register, contact the RCBA office at (651) 222-0846, send an email to info@ramseybar.org, or register online with a credit card at www.ramseybar.org.

Next Fall

We will pick up with Happy Hours again in the fall, and have tentatively scheduled an Oktoberfest for October 12, 2006. This event will hopefully be co-sponsored by the MSBA and Hennepin County New Lawyer's, as well as the Ramsey County Bar Association as a whole. The tentative location is Summit Brewery.

The Ramsey Count New Lawyers will have various up-

coming events at the beginning Autumn and the Spring. If you would like information regarding presently scheduled events and new events, please email your request to Alexandria Hennekens at alexandria@ramseybar.org so you could be put on the New Lawyers e-mail list.

Thank you from the outgoing Co-Chair

It has been a pleasure to serve as Co-Chair for the Ramsey County New Lawyer's for the last two years. The people I have been able to work with through the Ramsey County Bar Association have made volunteering as Co-Chair very worthwhile professionally and personally.

Executive Director Cheryl Dalby, Ms. Alexandra Hennekens, and the rest of the RCBA staff are truly first class, and I would encourage all attorneys to utilize the RCBA main office, whether for CLE's, staffing needs, networking, or lawyer referral.

My other Co-Chairs during this time have been Laura Hage two years ago, and Sarah Bashiri during this year. Both Laura and Sarah have been terrific to work with, as have members of the New Lawyer's Council who worked hard to put together volunteer activities, CLE's, and monthly Happy Hours. Council Members have included Elyssa Weber, Mark Priorie, Shannon Nelson, and Kris Olen. Thank you for a great two years.

Best of wishes to the Council, from Co-Chair Derk Schwieger

Derk Schwieger is the RCBA New Lawyers Section Co-Chair. He can be reached at lawdks@qwest.net.

Duluth Affiliate News

By: *Kim Maki*

In an effort to facilitate relationships between new lawyers in the Duluth area, the Duluth New Lawyers commenced a series of presentations by various new lawyers regarding their positions, employers and legal experiences. In February, Ben Stromberg of the St. Louis County Attorney's Office spoke regarding his duties relating to child protection. In March, Yvonne Novak of Gerlach & Beaumier, Attorneys at Law, L.L.P., spoke of her duties relating to administration of her firm and her experiences in bankruptcy law. Finally, in April, Jessica Durbin of Johnson, Killen & Seiler, P.A., discussed her experiences practicing employment law both for the EEOC and her current firm. We are looking forward to hearing from other members of the group in the coming months.

As part of the statewide effort, the Duluth New Lawyers were also successful in collecting furniture and other office equipment for donation to attorneys located in the regions affected by Hurricanes Katrina and Rita. On Monday, April 3, 2006, several new lawyers volunteered to take time out of their workday to help load the donated items on a truck bound for Gulfport, Mississippi. With the help of a few temporary workers and the support of the Eleventh District Bar Association, the loading was complete in just over two hours.

The Duluth New Lawyers is now gearing up for a great summer with new volunteer opportunities, more member presentations, and an election for a new president to take place in August.

Kim Maki is the Chair of the Duluth New Lawyers Section. She can be reached at kmaki@fryberger.com.



Mankato, St. Cloud and Willmar Affiliate News

No reports submitted.

2005-2006 NLS Liaisons

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NLS Open Liaison Positions

COMMITTEES

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Fair Response Committee
Insurance for Members Committee
Judicial Elections Committee
Life and the Law Committee
Membership Committee
Multijurisdictional Practice Committee
Paralegal Committee
Pro Se Implementation Committee
Publications Committee
Rules of Professional Conduct Committee

SECTIONS

Administrative Law Section
Appellate Practice Section
Art & Entertainment Section
Children and the Law Section
Communications Law Section
Computer Law Section
Employee Benefits Section
Family Law Section
Food and Drug Law Section
Outstate Practice Section
Public Utilities Section

As the list indicates there are a number of openings for New Lawyers to become liaisons to various sections in the MSBA. This is a great opportunity to get involved with a substantive or procedural area of law. If you are a new lawyer and interested in becoming a liaison you should contact the New Lawyers Section Chair, Rebecca Fisher at rebecca@rrflaw.com for more information.

2005-2006 MSBA New Lawyers Section Contacts

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