

GTLA **BAR** **association** **NEWSLETTER**

Jen Berry, beyond lawyering

Jennifer R. Berry, President, GTLA Bar Association

As your new Bar Association President, I thought I might introduce myself. You might say my path to Bar President was not always a direct path.

I am a native of Traverse City and have always enjoyed the serenity and solitude that living in northern Michigan brings to the soul. I was born at Munson Medical Center and graduated from Traverse City Central. I attended Alma College for a few years and transferred to the University of Tampa to complete my undergraduate studies where I received a Bachelor of Science degree in criminology with a minor in psychology.

After college I went to work for the Manistee Juvenile Court as a youth activities coordinator. I enjoyed working with at-risk kids in a grant funded after school program called YOUC, Youth Organized to Unite with their Community. I helped Cameron Clark, then juvenile Court Administrator, implement a program designed to teach life skills to kids on probation. As a social worker, I learned a lot about parenting and heartache. I discovered how difficult it really can be to try to save the world.

When I left that job, I became a high ropes and climbing wall instructor at a local summer Girl Scout camp. I was technically overqualified for the job, however, I was rejuvenated by the experience. I saw the good in man [kid] kind and knew I still wanted to fight for the greater good. I also discovered I was not cut out to work so closely with children who had been abandoned by society.

After my time in the woods, I went back to bartending, while studying for the LSAT and applying for law school. During that time I met

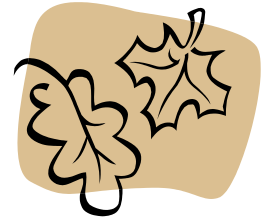
two Joes whom I would later come to work for. Both Joes passed on life changing advice. The one Joe was an environmental lawyer, a subject I knew very little about. He explained how the law was beginning to regulate and assist in the restoration of certain natural resources. I was intrigued. The other Joe was very discrete about his work, but knew the value in achieving the life-to-work balance.

I graduated from Nova Southeastern University Shepard Broad Law Center, in Ft. Lauderdale, Florida. During law school I interned at the college Environmental and Land Use Law Center. I worked with Richard Grosso in public interest environmental law. I got to see legislation in action, when the biggest restoration project in the world was approved by the legislature with the help of Richard's wife, Shannon Estonez of the World Wildlife Fund. She testified before congress, helping pass the Comprehensive Everglades Restoration Plan, an eight billion dollar plan to restore the river of grass from Lake Okeechobee through Biscayne Bay to the Florida Keys. Unfortunately, the Federal Regulations that followed bollixed things up and I realized that resolution was not as easy as an appropriation from congress. Needless to say, my hometown was drawing me back.

After moving home, I interned with what I viewed as the "other" side of environmental law fence. Working on the "other" side helped me realize the very foundation of our legal system was dual representation. Each side has a purpose and, by definition, is well grounded in fact and law. After all, a zealous representation is what our ethics require. This lesson continues to prove to be

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Have an idea to improve your Newsletter? Questions, comments, complaints?
Please email the Editor, Aaron K. Bowron at legaloil@aol.com

GTLA Bar Association

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GTLA Mission Statement: The Grand Traverse-Leelanau-Antrim Bar Association is a Michigan not-for-profit corporation whose members are attorneys principally practicing in Grand Traverse, Leelanau and Antrim counties. Its mission is to maintain the highest professional standards and competence among attorneys, to promote collegiality and camaraderie among attorneys, to improve the administration of justice, and to provide law-related service and education to its members and the public.

2008-2009

The GTLA Bar Association officers for 2008-2009 were elected at the May 1, 2008, annual meeting, with a vacancy and some renewal appointments being made at June 18, 2008, Board of Governors meeting.

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Bar Association Newsletter

Editor & Committee Chair: Aaron Bowron
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Published Quarterly. Kindly mail articles and information to GTLA Bar Association by Monday, December 22, 2008 for publication in the Winter issue.

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Use of a Legal Assistant Can Benefit You and Your Clients

By Gary Klotzbach

“Clients are forcing revolutionary changes within the legal profession. With a shrinking market and an oversupply of lawyers, there is a new urgency to provide quality service at a reasonable cost....It is through the expanded use of legal assistants that lawyers can remain profitable while meeting current client demands.”

Arthur G. Greene, *Leveraging with Legal Assistants: How to Maximize Team Performance, Improve Quality, and Boost Your Bottom Line*, ABA Section of Law Practice Management, 1993



Arthur Greene, as a trial lawyer and member of the ABA's Law Practice Management Section, wrote 15 years ago that legal assistants or paralegals can and should play an increased role in furthering the quality and quantity of the work produced by many law offices. Are Greene's insights even more compelling today? If these insights are compelling, what is the role of Northwestern Michigan College in helping to train legal assistants or paralegals to work in local law firms?

What is a legal assistant or paralegal?

According to the American Bar Association: “A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.”

Thus, the terms paralegal and legal assistant are often used interchangeably. The Legal Assistant Section of the State Bar of Michigan has recently changed its name to the Paralegal/Legal Assistant Section.

What is NMC's Legal Assistant Program?

Northwestern Michigan College has had a Legal Assistant Program since 1989. NMC's two-year program leads to an Associate in Applied Science degree. Of the 65 semester credits that are required for the degree, 25 credits are from legal specialty courses within the program, and an additional nine credits are from law courses within other NMC programs.

Legal specialty courses are taught by local attorneys and include introductions to real estate law, probate, family law, litigation, and torts. Communication skills are stressed, with the following courses now being required for graduation: English Composition I, English Composition II, Mechanics of Business Writing, Professional Communications, Legal Drafting, Legal Research and Writing I, and Legal Research and Writing II. Computer skills are increasingly being emphasized in the program, with a Computers in Business course being added to the program, with Westlaw training being done in Legal Research and Writing II, and with students now being introduced to law office software programs in the Law Office Man-

agement course. The program also strongly emphasizes critical thinking and problem solving skills.

The American Bar Association granted approval to NMC's Legal Assistant Program on August 8, 2005. This approval means that the program has met certain ABA-established educational standards regarding such areas as its curriculum, faculty, and advisory committee. NMC's Legal Assistant Program has significantly benefited from its advisory committee, which meets quarterly and is comprised of local attorneys, judges, legal assistants, librarians, and educators, together with a student representative.

What are the main advantages of an attorney's use of a legal assistant or paralegal?

In a chapter of *Leveraging with Legal Assistants*, attorney D. Jeffrey Campbell cites four main advantages of an attorney's use of a legal assistant: “(1) improvement of service to clients, (2) improvement of efficiency and cost control for clients, (3) improvement of efficiency and cost control for the firm, and (4) improvement of the lawyer's quality of life...”

We are living in an age of consumerism. In a time of instant communication with e-mail and cell phones, a client often expects to hear promptly and regularly from the law office that he or she has retained. Legal assistants can facilitate this communication. As long as they take extreme care to avoid giving legal advice, legal assistants can relay an attorney's update to a client and can take notes of things that the client would like to share with his or her attorney. A legal assistant can prepare first drafts of pleadings and transaction documents for the supervising attorney's review. A legal assistant can do factual or legal research for an attorney. A legal assistant can assist an attorney in many aspects of trial preparation. Of course, giving legal advice, agreeing to representation, setting legal fees, and representing a client in court must only be done by an attorney. However, many tasks that many attorneys now do could be delegated to a legal assistant, thereby freeing the attorney to do more of the tasks that only an attorney can do.

Arthur Greene in *Leveraging with Legal Assistants* focuses on the potential economic benefits from the use of paralegals: “The idea of leveraging is simple: if a lawyer-owner of the legal practice can show a net profit for an employee—that is, revenues received for an individual's work exceed the costs of employment—the profit is added to the profit the lawyer could earn for his or her own work.” Arthur Greene and Therese Cannon state in their book *Paralegals, Profitability, and the Future of Your Law Practice*, “Paralegals can produce profits for lawyers, if their work is properly managed and adequately priced.”

How can a local law firm find out more about how it might benefit from the use of a legal assistant or paralegal, and find out more about NMC's Legal Assistant Program?

NMC's Legal Assistant Program includes an unpaid internship in a law office or law-related setting. These internships are normally from mid-January through early May and are designed for students nearing the end of the program. The internships are for 150 hours, which normally averages out to approximately 10 hours per week, and local law firms are encouraged to participate. If you are interested in discussing the possibility of sponsoring an intern or if you have any questions about the program in general, please call me at 995-1257 or e-mail me at gklotzbach@nmc.edu.

In addition, on Wednesday, November 19th at noon in the Grand Traverse County Law Library there will be a panel discussion entitled "Using Paralegals to Boost Productivity and Profit." Joining me on the panel will be local paralegals Ruth Schaub and Dorothy Grant. Both are active in the Grand Traverse Area Legal Professionals, and Ruth is now serving as president of the National Association of Legal Professionals of Michigan. Additional information about NMC's Legal Assistant Program and its internship program will also

be presented during this panel discussion.

Gary moved to Traverse City in 1957. He graduated from Michigan State University in 1977 and from the University of Colorado School of Law in 1980. He was admitted to the Michigan Bar in 1980 and practiced law in Traverse City until 1995, when he was appointed coordinator of NMC's Legal Assistant Program. As a full-time instructor at NMC, Gary teaches Business Law, Real Estate Law, and Critical Thinking. He was among the first NMC instructors to teach online and served on the Center for Instructional Excellence Board. Gary currently serves on the NMC Foundation Board.

Tip for Real Estate Practitioners:

Keep an eye out for a little known exemption from State Real Estate Transfer Tax on sales of Homestead Property found in MCL 207.526(t). It says that if the SEV for the property at the time of transfer by the owner is less than or equal to that property's SEV on the date the owner purchased or acquired the property, the seller may claim an exemption under MCL 207.526(t), provided that the property is sold for not more than its true cash value.

This "loss of value" scenario is happening more and more and real estate practitioners should keep an eye out for it. It could save your client \$750 in transfer taxes on a \$100,000 transaction. You will have to instruct the title company to apply the exemption, they won't do it on their own. See Attorney General Opinion #7214 for examples of how this works.

Tip provided by David A. Bieganski



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If you would like to advertise in the GTLA newsletter, please complete the form at the bottom of the page.

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In Memoriam John W. Sharp

The GTLA Bar Association extends its deepest sympathies to the family, friends and co-workers of John W. Sharp who passed away on October 11, 2008. John was an attorney at Garan, Lucow & Miller, P.C.

In honor of John Sharp's outstanding service to the legal community and his commitment to Grand Traverse Area Legal Professionals, GTALP will be funding the "John W. Sharp Memorial Scholarship Fund" to be presented in April 2009. The scholarship will be presented to an individual in a law related program of advanced learning, including legal secretarial, paralegal/legal assistant and law school. Donations can be sent to the: "GTALP Scholarship Fund" c/o Dorothy Grant, PP, Smith Haughey Rice & Roegge, PO Box 848, Traverse City, Michigan 49685-0848. Please note "John W. Sharp" in the memo line.

New Medicaid changes for nursing home patients

Jeffrey Wingfield, Rizzo & Associates

As the average private-pay cost of a nursing home is nearing \$7,000 per month, more patients of nursing homes are applying for Medicaid. Michigan's Medicaid rules are set forth in the Program Eligibility Manuals (PEMS). As of October 1, 2008, the PEMS will be updated to reflect new changes. Those affecting nursing home patients are listed below.

If you are unmarried and your house is worth more than \$500,000, you are not eligible. It used to be that you could reduce the equity in your house by obtaining a mortgage or home equity loan, and as long as you kept the loan proceeds separate, the loan proceeds were neither a countable asset nor income. Now, money received to reduce the equity in a homestead is a countable asset. This means it will either have to be spent on nursing home private pay costs or planned with to make it non-countable.

A prepaid funeral contract will be a countable asset if it includes a funeral luncheon. This will be problematic for unmarried applicants who must not have more than \$2,000 to be eligible. If they purchase a funeral with a luncheon and the funeral director is unaware of this rule, they may end up with months of ineligibility and nursing home bills building up at \$7,000 per month.

No gifting - even de minimis - is allowed within five years of applying for Medicaid. Applicants may be penalized for gifting any amount. The penalty is an amount of time where the applicant will not receive Medicaid benefits although otherwise eligible. The time is however long the amount gifted would have paid for the nursing home; in other words, if the gift was \$6,000, the penalty will be approximately one month of no Medicaid.

If a patient is certified by a doctor to most likely go home within six months, the patient will be allowed to keep some money to cover the cost of home maintenance for up to six months.

The allowable fee for guardians and conservators of nursing home patients who receive Medicaid has gone back to \$60/month. It was reduced to \$45/month for a short time.

(continued from page 1)

one of the most useful tools in my ever-growing inventory.

A couple years after moving back to Traverse City, I lost a dear friend from law school to a random medical condition. She was walking out of the Public Defender's office in Broward County, Florida, and collapsed. This caused me to re-examine my purpose in life. Around that same time I got a job offer over what I thought was a referral luncheon. I reexamined where I could be most effective, and knew what I needed to do. I know it sounds hokey, I admit. But, as a co-worker commented recently, "It's nice to work with people who are passionate about what they do." I have learned that true joy comes from being zealous about what you do each day.

It is with that same passion that I approach all aspects of life. I am passionate about helping legal professionals realize we should work together to make our legal system the best, most highly regarded system. We must take our work seriously, however, there are times when we should take ourselves less seriously -- like at bar dinners, golf outings, during the no-talent show and at CLE events. Laughter and happiness are the elixirs of life.

The bar association is here for our support. It provides assistance with referrals between members, and allows access to free legal research via Westlaw at the law library whenever we are in need. The bar allows for networking between colleagues, including collaboration on issues that only comes up once every 10 years. Through active participation in bar activities you continue to make the bar association your association. Through communication, collaboration and commitment we will move forward.

I believe there should be a balance between career and family. I find my balance working along side my mom with the League of Women Voters, especially during election years. She inspires me to work hard every day and to be committed to those things with which I expend my energy. My mom claims she is retired, yet she fills her days with yoga, swimming, volunteering with the League and volunteering at the local library. When I look at my mother, I realize where I get my energy and passion.

Now you know how I got where I am today. I hope to meet you and hear your story during this next year. It is hope to learn about each of you and to learn from each of you throughout my years.

Jack Roney Memorial Golf Outing

The Bar Association's annual Jack Roney Memorial Golf Outing was held September 18, 2008, at King's Challenge Golf Course. A total of 39 golfers enjoyed themselves for the day in our scramble format.

The victorious team from Smith Haughey, posting a score of 9 under, consisted of Jay Hardin, Steve Chambers, Shawn Worden and Andrew Blodgett, whose names will be inscribed on our trophy, to be kept at the law library.

Doug Bishop again obtained a number of door prizes this year. The major door prize, a TV donated by Paul Goebel Group, was won by Brett Baird.

Prize Winners for closet to the pin were Doug Bishop, Steve Chambers, John Racine and Kent Rozycki, longest putt went to Dave Cvengros and longest drives went to Jennifer Jones and Jim Belden.

As always, your suggestions and comments on any aspect of the golf outing are welcome.

John Racine and Doug Bishop
The Golf Outing Committee



Golf Outing participants Mike Swogger, Al Couture, Linda Raetz, Dave Cvengros, Dave Bieganowski

Women Lawyers Association Update

As part of our commitment to "work/life balance", the WLA was scheduled to hold a presentation on "Dealing with Difficult Opposing Counsel" on October 6, 2008. (The date being after this newsletter's publication deadline but before its mailing.) The presenters were to be Victoria Kremski, Deputy Division Director, Michigan Professional Standards of the State Bar of Michigan, and Martha Burkett, Program Administrator, Michigan Lawyers and Judges Assistance Program. Local judges were also invited to participate.

The fall dinner was scheduled to be held on October 2, 2008, at North Country Grill in Suttons Bay. Plans for the winter holiday dinner are underway.

The WLA continues to plan Pro Bono Clinics for January and February. We are currently aiming for a total of four clinics, with two in January and two in February. The intent of the clinics is to provide an explanation of the differences in the clinics, as well as provide helpful hints for those participating in them. An important ancillary goal is to increase participation in the clinics.

We also continue to determine how we can most effectively become involved with the Legal Services of Northern Michigan endowment. Our "5-Minute Networking" program is tentatively being planned for spring.

We have consulted a couple of designers regarding a logo, and are awaiting response.

We would like to thank all returning members who renewed their memberships and welcome all new members. If you would like to join the WLA, are interested in holding an executive position, or would like to become more involved, please email Deborah Rysso at dryssolawonline.com or come to one of our monthly meetings. Meetings are generally held on the second Tuesday of the month, from noon to 1 p.m. in the law library.



Deborah Rysso
WLA President



Wendy Bailey
WLA Treasurer



Mardi Black
WLA Vice President of
Technology/Web Site
Development

GTLA Calendar of Events

- | | |
|---------|---|
| Oct. 31 | Dutch Treat lunch, Minerva's, noon |
| Nov. 11 | Women Lawyers Association meeting, Law Library, noon |
| Nov. 12 | Fall Dinner at Boone's Long Lake Inn. Registration form in this newsletter or on our website at www.gtlaba.org |
| Nov. 14 | Family Law Committee meeting, Law Library, noon |
| Nov. 19 | Gary Klotzbach, Coordinator of Northwestern Michigan College's Paralegal Program and Ruth Schaub from the local NALS chapter will present a brown bag lunch seminar on "Using Paralegals to Boost Productivity." The panel will discuss paralegal internships available to local attorneys at no cost, and using paralegals cost effectively to benefit clients, Law Library, noon. |
| Nov. 19 | GTLA board meeting, Law Library, noon |
| Nov. 21 | ADR Committee meeting, Law Library, noon |
| Dec. 9 | Women Lawyers Association meeting, Law Library, noon |
| Dec. 12 | Family Law Committee meeting, Law Library, noon |
| Dec. 17 | Lee Hornberger (Arbitration and Mediation Office of Lee Hornberger) will give a brown bag lunch presentation on Recent Developments in Michigan Arbitration and ADR Law, including hearing and record requirements, common law v. statutory arbitration, preliminary injunctions, and court review of awards, Law Library, noon. |
| Dec. 17 | GTLA board meeting, Law Library, 4:30 |

Heard in the Halls

James C. Baker, of Smith & Johnson, P.C., is happy to announce that on September 10, his wife Julie gave birth to twins. His daughter, Dylan Michaela, was born at 10:58 a.m., and weighed 5 lbs. 2 oz., and was 18 1/2" long. His son, Jack Donovan, was born at 11:04 a.m., weighed 4 lbs. 15.5 oz., and was 19" long. Mother, daughter, and son left the hospital on Saturday, September 13, and Dad went back to work this past week. All are doing well - just a little bit exhausted.

George F. Bearup, a shareholder in the Traverse City office of Smith Haughey Rice & Roegge has been selected to be included in the 2008 *Michigan Super Lawyers* listing. In addition, **Adam M. Lett**, **Rachel Brochert Roe**, and **Jason R. Thompson** have been selected to be included in the "Rising Stars" category of *Michigan Super Lawyers*. *Michigan Super Lawyers* is an annual listing of outstanding lawyers who have attained a high degree of peer recognition and professional achievement. The selection is based on research performed by a blue ribbon review panel and a survey sent to all lawyers in Michigan who have been in practice for five years or more.

The *Traverse City Business News* has selected **Jennifer Berry**, **Chris Bzdok**, **Scott Harvey**, **Mike Richey** and **Gerald Chefalo** among its "40 under 40". The selection criteria was based, in part, on their occupying "positions of importance, influence and power."

David Bieganowski was recently interviewed on camera by TV 9 & 10 and Fox 33 News regarding firearm safety laws. He was also interviewed by Traverse City's WCCW 107.5 regarding firearm training opportunities at a new local indoor shooting range. Bieganowski was also recently re-elected as a Trustee on the Green Lake Township Board.

Aaron K. Bowron was recently appointed to the Traverse Bay Economic Development Corporation Board of Directors.

Women's Resource Center Executive Director and attorney **Jo Bullis** was quoted in the August 2008 *Traverse City Business News* in an article that profiled the services offered by Legal Services of Northern Michigan, Women's Resource Center, Women Lawyers Association and Third Level Crisis Center.

Retired district court judge **Thomas S. Gilbert** was recently awarded the internationally recognized Certificate of Advanced Addiction Counselor (CAAC) from the Michigan Certification Board for Addiction Professionals. Certification is earned by addiction professionals who have fulfilled the educational, experiential and ethical requirements to provide quality, competency-based services in prevention and treatment of addictions and related problems. Designation indicates that Gilbert is recognized as being qualified to provide safe and effective treatment of addictions and recovery services. Gilbert is the owner of TouchStone Professional Services in Traverse City.

Lee Hornberger, Arbitration and Mediation Office of Lee Hornberger, is a contributor to "Defusing Workplace Time-Bombs: Drafting Employment Agreements and Policies to Prevent Disputes, Avoid Tax Traps, and Settle Cases" (American Law Institute-American Bar Association 2008). Lee has also been appointed to the Awards Committee of the State Bar of Michigan. The Awards Committee recommends recipients of State Bar of Michigan awards, including the annual Liberty Bell Award made to non-attorneys. Lee is the Imme-

diate Past President of the Grand Traverse-Leelanau-Antrim Bar Association.

In addition, the Arbitration and Mediation Office of Lee Hornberger has relocated to 6730 Mission Ridge, Traverse City, MI 49686-6131. Contact him at (231) 941-0746 or leehornberger@leehornberger.com.

Todd W. Millar of Smith Haughey Rice & Roegge has recently been admitted to the Federation of Defense and Corporate Counsel (FDCC). Membership to this organization is restricted to those attorneys who have been judged by their peers to have achieved professional distinction and are committed to promoting knowledge, fellowship, professionalism and the course of justice.

Kyle Trevas was appointed to an open seat on the Elmwood Township Board of Trustees this May and is running to keep his trustee position on the Board in the November election. Mr. Trevas is also on the Advisory Council of the Traverse City Chamber of Commerce Young Professionals organization.

Kevin Washburn, formerly of Smith & Johnson, P.C., has started his own law firm, Old Town Legal, PLC. Kevin can be reached at 231-421-1422 or at Kevin@oldtownlegal.com.

Corey J. Wiggins, an associate with the law firm of Zirnhelt & Bowron, P.L.C., was recently appointed as a member of the Charter Township of Haring Planning Commission. Wiggins also serves on the Charter Township of Haring Board of Review, Zoning Board of Appeals and the Wexford County Planning Commission.

Jay Zelenock has become a partner in Parson Ringsmuth Zelenock. Zelenock graduated from the University of Michigan and Indiana University Law School and has been associated with Parsons Ringsmuth since 1998.

In celebration of its 60th anniversary, the law firm of **Garran Lucow Miller, P.C.** presented the inaugural "Cherry Roubaix" Bike Race in Old Town Traverse City on Saturday, September 20, 2008.

After a 20-year hiatus, competitive cycling returned to northwest Michigan for the first time since the *Tour de Michigan* stopped in the late 1980s. This "criterium-style" race was held on a closed-circuit course winding through the city streets and neighborhoods of Old Town. Participants tested their speed and technical skills and were particularly challenged on sharp corners.

The title of the race pays homage to the famous Paris-to-Roubaix race in France, which includes challenging sections on cobblestone roads. The Cherry Roubaix included its own cobblestone section on the antique-bricked 8th Street. The start-finish area was located at Hagerty Classic Car and Boat Insurance on River's Edge Drive.

Recent Developments in Michigan Arbitration Law

Lee Hornberger, Arbitrator and Mediator

This article is a review of recent Michigan Supreme Court cases concerning arbitration law.

The Supreme Court vacated an arbitration award in *Gates v USA Jet Airlines, Inc.*, ___ Mich ___ (2008), and remanded the case to the Circuit Court. The vacation occurred because one of the parties to the arbitration proceeding submitted to the arbitration panel an ex parte supplemental brief in contravention of the rules governing the arbitration proceeding.

Detroit Fire Fighters Ass'n IAFF Local 344 v City of Detroit, 482 Mich 18 (2008), was a public labor law dispute between the Fire Fighters Association and the City of Detroit. The issue was whether the Circuit Court properly issued a preliminary injunction to prevent the implementation of the City's proposed layoff plan. Local 344 contended that the plan violated the "status quo" provision, MCL 423.243, of the Michigan Compulsory Arbitration of Labor Disputes for Police and Fire Departments Act, MCL 423.231 et seq, by, in part, jeopardizing the safety of the remaining firefighters. The Supreme Court held that the injunction had been erroneously entered.

In *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1 (2008), the issue was whether the Circuit Court abused its discretion when it issued a preliminary injunction preventing the City of Pontiac from implementing its plan to lay off Local 376 members. The Supreme Court held that the Circuit Court had abused its discretion. According to the Supreme Court, Local 376 had failed to meet its burden of establishing that irreparable harm would result if the injunction were not issued. The Supreme Court reversed the Court of Appeals and vacated the Circuit Court order granting the preliminary injunction.

In *Kirby v Vance*, 481 Mich 889 (2008), the Supreme Court, in lieu of granting leave to appeal, reversed the Court of Appeals and held that the arbitrator exceeded her authority under the Domestic Relations Arbitration Act, MCL 600.5070 et seq, when she failed to adequately tape record the arbitration proceedings. The Circuit Court erred when it failed to remedy the arbitrator's error by conducting its own evidentiary hearing. The Supreme Court remanded the case to the Circuit Court for entry of an order vacating the arbitration award and ordering another arbitration before the same arbitrator.

The Supreme Court in *Werdlow v City of Detroit Police-men & Firemen Ret Sys Bd of Trs*, 477 Mich 893 (2006), in lieu of granting leave to appeal, vacated in part the Court of Appeals decision and remanded the case to the Circuit Court for entry of an order granting summary disposition to Defendants. The Court of Appeals correctly held that the Circuit Court lacked jurisdiction to grant the relief requested by Plaintiffs. Section 10, MCL 423.240, of the Michigan Compulsory Arbitration of Labor Disputes for Police and Fire Departments Act, MCL 423.231 et seq, provides that arbitration awards are final and binding on the parties to the arbitration. The Defendant unions were not parties to the arbitra-

tion.

The Supreme Court in *Wold Architects & Eng'rs v Strat*, 474 Mich 223 (2006), held that:

common-law arbitration is not preempted by the Michigan Arbitration Act, MCL 600.5001 et seq; common-law arbitration continues to exist in Michigan; common-law arbitration agreements continue to be unilaterally revocable before an arbitration award is made; and the common-law arbitration in the case at bar was not turned into statutory arbitration because of the conduct of the parties during the arbitration process. The Supreme Court affirmed the Court of Appeals determination that the Circuit Court erred in granting Defendants' motion for summary disposition and in denying Plaintiff's motion to vacate the arbitration award.

Miller v Miller, 474 Mich 27 (2005), held that the Domestic Relations Arbitration Act, MCL 600.5070 et seq, does not require a formal hearing during arbitration similar to that which occurs in regular trial proceedings.

In conclusion, the Supreme Court's recent decisions have concerned preliminary injunctions in the labor relations arena, *Local 344*, id, and *Local 376*, id, parties to the arbitration proceeding, *Werdlow*, id, Domestic Relations Arbitration Act record, *Kirby*, id, and hearing, *Miller*, id, requirements, and the interrelationship between common law and statutory arbitration, *Wold Architects*, id.

DIVORCE MEDIATION

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Suttons Bay, MI 49682

What is a Firearms Attorney?

David Bieganowski, Donaldson & Bieganowski PLC



Recently someone said to me, I understand that you are a "Firearms Attorney", what does that mean exactly? It's a good question. For those of you who want to know, keep reading.

I am a former US Marine and have been a NRA Certified Firearms Instructor for many years. I have had over 1,200 students. From this background is how I started practicing some in this area. By teaching the required training course that a person must take in order to apply for a Michigan Concealed Pistol License ("CPL"), I often encounter folks who have difficulty in the area of firearms.

In Michigan, all handguns are registered and in order to purchase a handgun in Michigan, those without a CPL must obtain a "Purchase Permit" from local law enforcement. Law enforcement can deny an application for a Purchase Permit for several reasons and those who are denied will often seek representation to appeal this denial.

There are approximately 175,000 Concealed Pistol License holders in Michigan. Michigan is a "shall issue" state and most applications go smoothly and there is little discretion to deny a citizen a license. But the law does contain a "weasel" clause that allows the gun board to deny an application if it has clear and convincing evidence that issuing a license is detrimental to the safety of the applicant or to any other individual. This can be a source of litigation if an applicant believes they were denied improperly. If your application is denied, the gun board must inform you in writing within five days, the reasons for the denial and give copies of anything they used to deny you. There is an appeal procedure in the law that allows a circuit court to review any denial. The applicant can even get attorney fees if the gun board's denial was arbitrary or capricious. BUT, if the court finds that the appeal was frivolous, the applicant pays the county's attorney fees. It's a double-edged sword.

I often get questions regarding the training required, the statutory requirements for a CPL, such as when the training requirement is waived, what prior convictions will prohibit a person from obtaining a CPL, and administration of the process. Sometimes county clerks, sheriffs and gun boards don't exactly understand the law or follow its procedures. In a case against the Kent County gun board, I was able to get the court to stop them from requiring items (such as a note from your doctor saying the applicant was not insane) that were not part of the statutory application.

Another area where an attorney gets consulted in the status of a person's firearms rights if they have criminal convictions. We call these Firearms Rights restorations and county gun boards have some responsibility for these. People convicted of misdemeanors normally get their firearms rights back upon release from jail or

probation. Due to a unique quirk in Michigan law, this even applies to misdemeanor crimes of domestic violence. Under Federal law, these persons are normally prohibited from owning and possessing firearms.

Firearms rights of convicted felons is much more complicated. Most felons have their firearms rights restored automatically after three years. Felons that were convicted of a "specified felony" must wait five years and go in front of the gun board to have their firearms rights restored. Often they seek assistance in this process. Due to another quirk, just because a felon gets his Michigan firearms rights restored, that does not mean that his Federal firearm rights are restored. Usually they are not. This is a large source of confusion.

There are other areas such as dealing with gun dealers and Federal Firearms License issues, transfers of certain regulated firearms, and transfers of firearms from probate estates. I understand Cooley Law School actually has a class in firearms law. This area of law is not at all lucrative and I find myself giving away free advice on a regular basis. I guess you could call it a hobby.

POLYGRAPH

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Grand Traverse-Leelanau-Antrim Bar Association 2008 Fall Dinner

Where: **Boone's Long Lake Inn**

7208 Secor Rd. Traverse City, MI 49684

When: **Wednesday, November 12, 2007**

Cocktails: 5:30 p.m.

Quarterly Meeting/Award: 6:00 p.m.

Dinner: 6:30 p.m.

R.S.V.P. Jill Porter by **Friday, October 31, 2008**. Please RSVP by returning the lower portion to the law library at P.O. Box 1958, Traverse City, MI 49685-1958, or emailing your dinner selection to Jill Porter at gtlab@co.grand-traverse.mi.us

Members: No Charge

Non-members: \$30.00

Name: _____

Name: _____

You will be provided with two complementary drink tickets upon arrival. There will be a cash bar available throughout the evening as well. Please indicate your dinner choice from the following list:

_____ 18 oz NY Strip

_____ 6 oz Filet Mignon

_____ 10 oz NY Strip & Shrimp

_____ Alaskan Salmon

_____ 16 oz Seasoned Ribeye

_____ Vegetarian Selection (TBD)

All dinners include the following:

House salad with choice of dressings (French, Bleu Cheese, Thousand Island, Italian or Ranch); Choice of baked potato with sour cream and butter or steamed broccoli; coffee, tea, soda or milk; and Boone's home made bread and butter

How Estate Planning Can Affect Medicaid

Jeffrey Wingfield, Rizzo & Associates

Many attorneys practice estate planning but are unfamiliar with the Medicaid (patient of a nursing home) rules. The following are a few common practices that many estate planning attorneys do not realize affect Medicaid.

- 1) If the house is deeded in a trust, it's no longer exempt. However, this is often good pre-planning for married couples, because it may increase how much they get to keep under the Medicaid rules. All clients should be advised of this issue though; it can cost them tens of thousands of dollars if they don't know.
- 2) The Medicaid gifting rules are unrelated to the IRS gifting rules. Under the IRS rules, you can gift up to \$12,000 per year per individual without using up any of your gift tax credit. However, under the Medicaid rules, any gifts in the five years before applying for Medicaid may be penalized.
- 3) Adding a joint tenant to a deed is considered a gift.
- 4) Financial Powers of Attorney often limit too much. Many attorneys include language that limits an agent's power in an attempt to prevent the agent from taking the client's assets. However, these limitations often cost family members time and money because they are too restrictive to allow family members to make appropriate transactions.

Kaplan Publishes Second Novel

Charles Kaplan has published his second novel, *A Patent on Greed*, which revolves around a mileage enhancer that enables cars to go 250 miles per gallon. Terrorists seek to suppress use of the mileage enhancer by murdering the inventor. The climax and other action takes place in the Traverse City area. This thriller is a sequel to Kaplan's first novel, *A Patent on Murder*. Copies of both works are stocked by Horizon Books and Leelanau Books, or can be purchased from any online book seller.

*"Arriving at one point
is just the starting
point to another"*

– John Dewey



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The Due Process Protocol and Arbitration of Statutory Employment Disputes In Michigan

Lee Hornberger, Arbitrator and Mediator

INTRODUCTION

This article reviews the impact of the 1995 “Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of the Employment Relationship” (Protocol) on the arbitration of statutory employment disputes in Michigan.

The Task Force on Alternative Dispute Resolution in Employment was established in response to the development of pre-dispute employment arbitration and at the instigation of the National Academy of Arbitrators. The Task Force consisted of the American Bar Association, American Civil Liberties Union, Federal Mediation and Conciliation Service, National Academy of Arbitrators, National Employment Lawyers Association, and Society of Professionals in Dispute Resolution [Association for Conflict Resolution] representatives.

In 1995, the Task Force issued its “Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship” recommendations.

II. THE PROTOCOL

A. Statutory Employment Disputes

The Protocol provides that arbitration of statutory employment disputes, conducted under proper due process safeguards, should be encouraged in order to provide expeditious, inexpensive, and fair private enforcement of statutory disputes.

B. Timing of Agreement to Arbitrate

The Protocol did not achieve consensus concerning the timing of an agreement to arbitrate statutory disputes, but did achieve consensus concerning some procedural due process issues.

C. Representation by Counsel

The Protocol provides:

1. Employees should have the right to be represented by a spokesperson of their own choosing and this right should be specified in the arbitration agreement.
2. Payment for representation should be determined between the claimant and the representative. The employer should reimburse a portion of the employee's attorney fees, especially for lower paid employees. The arbitrator should have the authority to provide for fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law or in the interests of justice.

D. Neutral Arbitrator

The Protocol provides that:

1. Arbitrators should have hearing conduct skills, statutory employment law knowledge, and “familiarity with the workplace and employment environment.” Arbitrator rosters should be established on a non-discriminatory basis in order to assure the parties that their interests and objectives will be respected.
2. Unbiased arbitrators whom both parties trust should be selected. Arbitrators should reject cases if they believe the arbitration procedure lacks requisite due process.
3. At the request of the parties, the designating agency should utilize a procedure such as that of the American Arbitration Association. The selection process could empower the

agency to appoint an arbitrator if the striking procedure is unacceptable or unsuccessful.

4. The arbitrator has a duty to disclose any relationship which might reasonably be or be perceived as a conflict of interest and sign an oath affirming the absence of such present or preexisting ties.

5. Arbitrator impartiality is best assured by the parties sharing the arbitrator fees and expenses. If economic conditions do not permit this, the parties should agree on an appropriate split. In the absence of such an agreement, the arbitrator should determine the payment allocation.

E. Discovery

The Protocol provides that employees should have reasonable pre-hearing and hearing access to all information reasonably relevant to their claims. Necessary pre-hearing depositions consistent with the expedited nature of arbitration should be available.

F. Fair Hearing

The Protocol provides that the arbitrator should be bound by applicable agreements, statutes, and procedural rules, including the authority to determine hearing logistics; permit reasonable discovery; issue subpoenas; decide arbitrability; preserve hearing order and privacy; rule on evidentiary issues; and determine close-of-the-hearing and post-hearing submission procedures.

G. Written Opinion

The Protocol further states that the arbitrator should issue an opinion and award resolving the submitted dispute. The opinion should contain:

1. a summary of the issues, including types of disputes, damages and other relief requested and awarded,
2. a statement of any other issues resolved, and
3. a statement regarding the disposition of any statutory claims. The arbitrator should be empowered to award whatever relief would be available in court.

The Protocol provides that the arbitrator's award should be final and binding and the scope of review should be limited.

III. DESIGNATING AGENCIES' RESPONSES TO THE PROTOCOL

A. American Arbitration Association

According to the AAA, the Protocol seeks to ensure fairness and encourages arbitration of statutory disputes, provided there are due process safeguards. AAA Employment Arbitration Rules and Mediation Procedures, July 1, 2006 (AAA Rules). The AAA Rules provide for:

1. The right to representation by an attorney or other authorized representative. AAA Rule 19.
2. Appointment of neutral arbitrators, party appointed arbitrators, appointment of chairperson, disclosure, arbitrator disqualification, communication with arbitrator, and arbitrator vacancies. AAA Rules 12-18.
3. Discovery of witness information and discovery authority. AAA Rules 8- 9.
4. Administrative conferences, arbitration management conferences, hearing locale, stenographic record, oath requirements, order of proceedings, evidence requirements. and closing of hearing. AAA Rules 7-8, 10-11, 20, 25, 28, 30, and 33.
5. A written award and opinion. AAA Rule 39.
6. Under employer promulgated plans, the employer pays the arbitrator's compensation unless the employee, post-dispute, elects to pay a portion. AAA "Costs of Arbitration" section.

B. National Academy of Arbitrators

The NAA Guidelines for Employment Arbitration, "together with the Due Process Protocol endorsed by the Academy," are intended to assist arbitrators in deciding whether to take a case and to fairly conduct and conclude a case. The NAA Guidelines provide for:

1. Adequate rights of representation.
2. A fair manner for the selection of a neutral arbitrator. Arbitrator compensation arrangements should also be fair.

3. Arbitrator authority to ensure reasonable discovery.
4. Arbitrator remedial authority equal to that provided by statute and no unfair hearing restrictions.
5. A written opinion and award.

C. National Association of Securities Dealers (consolidated into Financial Industry Regulatory Authority, FINRA, in July 2007)

The NASD no longer requires arbitration of statutory employment claims. NASD Code of Arbitration Procedure, April 16, 2007. NASD Rule 13201. Statutory employment claims may be arbitrated only if the parties have agreed to arbitrate them, either before or after the dispute arose. If the parties agree to arbitration, the claim will be administered under NASD Rule 13802.

The NASD Rules provide for:

1. Right to representation by counsel. NASD Rule 13208.
2. Neutral public arbitrators. NASD Rule 13802.3.
3. Discovery. NASD Rules 13505-13514.
4. Fair arbitral hearing, NASD Rules 13600-13609, including any relief that would be available in court. NASD Rule 13802(e).
5. The award must set forth a summary of the issues, including the types of disputes, the damages or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claims. NASD Rule 13802(e).

D. JAMS

JAMS has promulgated its Policy on Employment Arbitration Minimum Standards of Procedural Fairness (JAMS Policy). JAMS supports the application of the Protocol and intends that its Arbitration Rules and Procedures for Employment Disputes be consistent with the Protocol. The JAMS Policy provides for:

1. The right to representation by counsel. Standard No 3. JAMS Rule 12.
2. Arbitrator neutrality. Standard No 2. JAMS Rules 16 and 17.
3. Discovery, including the exchange of core information and some depositions. Standard No 4.
4. A fair arbitral hearing, including all remedies available in a court, presentation of evidence, hearing location, and mutuality. Standard No's 1, 5, and 6-7. JAMS Rules 19, 20, 21, and 22.
5. A written opinion. Standard No 8. JAMS Rule 24.

IV. INITIAL COURT DISCUSSION OF PROTOCOL

Initially the Protocol was cited by some courts in considering arbitration due process rights. Jacquelin F Drucker, "The Protocol in Practice: Reflections, Assessments, Issues for Discussion, and Suggested Actions," 11 *Employee Rights and Employment Policy Journal*, No 2, pp 350 (2007).

Hooters v Phillips, 39 F Supp 2d 582 (D SC 1985), aff'd 173 F3d 933 (4th Cir 1999), alluded to the Protocol as part of the plaintiff's contentions.

Rosenberg v Merrill Lynch Pierce Fenner & Smith, 995 F Supp 190, 208 n 23 (D Mass 1998), aff'd 170 F3d 1 (1st Cir 1999), cited the Protocol.

Cole v Burns Int'l Security Services, 105 F3d 1465 (1997), cited the Protocol in dissent concerning the arbitrator fee payment issue. *Id* pp 1490-1491. *Cole* held that an arbitration agreement must (1) provide for neutral arbitrators, (2) provide for appropriate discovery, (3) require a written award, (4) provide for all relief available in court, and (5) not require employees to pay either unreasonable costs or any arbitrators' fees as a condition of access to the arbitration tribunal. *Id* at 1482.

V. ARBITRATION DUE PROCESS IN MICHIGAN

The Michigan Supreme Court considered arbitration due process issues in *Renny v Port Huron Hosp*, 427 Mich 415 (1986). In *Renny*, the Court held that:

"where an employee has expressly consented to submit a complaint to a joint employer-employee grievance board es-

“where an employee has expressly consented to submit a complaint to a joint employer-employee grievance board established by the employer with the knowledge that the resulting decision is final and binding, the decision shall be final unless the court finds as a matter of law that the procedures used did not comport with elementary fairness.” *Id* at 418.

In *Renny*, the employee was not allowed to have an attorney present or see the complaint against her, and was not informed of the identity of witnesses at the hearing. She was not present during the testimony or during opening remarks. There were no records or transcripts of the hearing, and the tribunal made no finding. A witness's appearance was voluntary. An employee had no right to cross-examine or rebut testimony or to make closing arguments. *Id* at 423-424.

Renny held that elements necessary to fair arbitration proceedings are:

- “1) Adequate notice to persons who are to be bound by the adjudication;
- 2) The right to present evidence and arguments and the fair opportunity to rebut evidence and argument by the opposing argument
- 3) A formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status;
- 4) A rule specifying the point in the proceeding when a final decision is rendered; and,
- 5) Other procedural elements as may be necessary to ensure a means to determine the matter in question.” *Id* at 437.

A Conflicts Panel of the Court of Appeals subsequently reviewed arbitration procedural due process issues in *Rembert v Ryan's Family Steak Houses, Inc.*, 235 Mich App 118, *lv den*, 461 Mich 923 (1999).

Rembert did not cite the Protocol although it did cite the AAA National Rules for the Resolution of Employment Disputes which does cite the Protocol. *Id* at 160 n 32.

Rembert indicated that:

“While our decision upholds the principle of freedom of contract and advances the public policy that strongly favors arbitration, it does so subject to two conditions generally accepted in the common law: that the agreement waives no substantive rights, and that the agreement affords fair procedures.” *Id* at 124.

Rembert noted that *Renny*, as well as leading ADR organizations, “suggest certain baseline fundamentals to ensure fairness in an arbitral process for discrimination claims.” *Id* at 161.

Rembert held that to satisfy *Renny* and MCR 3.602, the arbitration procedures must provide:

1. Clear notice that the employee is waiving the right to adjudicate claims in court and is opting for arbitration,
2. The right to representation by counsel,
3. A neutral arbitrator,
4. Reasonable discovery,
2. A fair arbitral hearing, and
3. Written awards containing findings of fact and conclusions of law. *Id* at 163-165.

Saveski v Tiseo Architects, Inc., 261 Mich App 553, 556 (2004), indicated that the *Rembert* record requirements are “more stringent” because a court reviewing a “civil rights claim” must have a means of analyzing whether the arbitrator properly “preserved” the employee’s statutory rights.

There are no other published Michigan cases discussing the *Rembert* due process requirements. In *Miller v Miller*, 474 Mich 27 (2005), the Supreme Court ruled that the Michigan Domestic Relations Arbitration Act, MCL 600.5070 *et seq*, does not require a formal hearing during arbitration comparable to that which occurs in traditional trial proceedings if “the parties and the arbitrator” agree that it does not have to be a formal hearing. *Id* at 33. Any possible tension between *Miller* and *Rembert* is probably inconsequential in statutory employment arbitration dispute cases since parties are extremely unlikely to agree to an informal hearing.

VI. CONCLUSION

Michigan case law is largely consistent with the Protocol requirements of fair hearing, impartial arbitrators, reasonable discovery, right to representation, and written awards. *Rembert* and MCR 3.602. *Rembert* does not adopt the Protocol suggestion of the employer paying part of the employee’s attorney fees, absent a statutory requirement.

Lee Hornberger, Arbitration and Mediation Office of Lee Hornberger, www.leehornberger.com, is Immediate Past President of the Grand Traverse-Leelanau-Antrim Bar Association; and an American Arbitration Association, Financial Industry Regulatory Authority, National Arbitration Forum, and National Futures Association arbitrator. He can be contacted at 231-941-3445 or leehornberger@leehornberger.com.

Minutes from the Board of Governors Meeting

Joe Van Horn, Secretary

Wednesday, June 18, 2008

Present: Jill Porter, Lee Hornberger, Jennifer Berry, Joe Van Horn, Jo Bullis, Barbara LaSusa, David Bieganowski, Eleanor Lynn, Mardi Black, Shelley Kester, Mike Richey, Aaron Bowron

Absent: Larry LaSusa, Deborah L. Rysso, John Blakeslee, Robert Witkop

The meeting was called to order at approximately 4:34 p.m. with a quorum.

Secretary's Report: The April 16, 2008 minutes were approved with Eleanor Lynn moving for approval and David Bieganowski seconding. Motion was carried unanimously.

Treasurer's Report: Jo Bullis provided a report. The 2007-2008 budget was discussed. A loss for the year was incurred. This loss was largely based on difficulties with billing certain items. However, revenues over the last few months have increased for items such as advertisements, TARS referrals, and library copy income. The financial reports for May were reviewed and accepted.

The proposed 2008-2009 budget was also discussed, which was largely identical to that of 2007-2008. It is hoped that any projected loss for fiscal year 2008-2009 will be offset to some extent by increased revenues and other decreased expenses. Shelley Kester moved to accept the proposed 2008-2009 budget, and Mike Richey seconded. The motion was passed without opposition.

President's Report: Lee Hornberger presented the President's Report. There is a current vacancy for a Young Lawyer's Association representative. Aaron Bowron, the former Young Lawyer representative, appointed Corey Wiggins as the new representative. Further, due to Mardi Black becoming the current Treasurer, a vacancy for a Board of Governor position was created. Jennifer Berry moved for the appointment of Shawn Worden to the Board of Governors. Aaron Bowron seconded, and the motion carried.

The annual golf outing is set to occur this year on September 18, 2008, at King's Challenge Golf Club. Additional information will be forthcoming in a separate mailing and in the Newsletter.

Eleanor Lynn, Dave Bieganowski, and Barbara LaSusa were thanked and acknowledged for their prior years of service to the GTLA Board of Governors. Each is stepping down from the Board this month.

Manager's Report: Newly hired Executive Director Jill Porter presented the Manager's Report. A number of things are on the

agenda for the Executive Director for the next several months. Efforts are underway to continue to collect Newsletter revenue for past and upcoming editions of the Newsletter. Efforts are also being made to assist with membership tracking. The current Newsletter deadline for submissions is June 27, 2008. An upcoming CLE on polygraph examinations will be conducted on October 15, 2008, by Robert Stark, a retired law enforcement officer.

Discussion was held concerning the fact that the furniture for the Third Floor Lawyer Room, which was previously purchased by the Bar Association, is going to be replaced. Mardi Black moved that the old furniture be donated to the Women's Resource Center, which will be expected to pick it up. Eleanor Lynn seconded the motion, which carried unanimously.

Committee Reports:

Law Library: Jennifer Berry provided a report. This Committee recently met on May 7, 2008. Discussions are expected to resume with Westlaw concerning replacing certain bound materials in the law library with electronic research capabilities, including access to federal resources.

Mentor: Dave Bieganowski provided a report. A new chair of the committee will be needed as he is stepping down from the Board of Governors. Shelley Kester volunteered as the new chair of this committee. Eleanor Lynn nominated Shelley Kester to be the new chair. The motion carried unanimously.

Women Lawyer's Association: The new elected officials of the WLA are as follows: Deborah Rysso – President; Maura Brennan – Secretary; Wendy Bailey – Treasurer; Ellen Kohler – Vice President for Social Events; and Mardi Black – Vice President for Website/Technology.

The WLA is planning a fall event with a speaker from the State Bar who will discuss how to handle unreasonable opposing counsel. This is part of the WLA's ongoing "work/life balance" initiative. The WLA is also planning a spring "5-minute networking" event based on the "5-minute dating" format.

The meeting was adjourned on motion at approximately 5:20 p.m.

Respectfully submitted,

Joe Van Horn
GTLA Secretary

Wednesday, July 16, 2008

Present: Jen Berry, Jo Bullis, Mardi Black, Aaron Bowron, Lee Hornberger, Shelley Kester, Mike Richey, Shawn Worden, Corey Wiggins, Robert Witkop, Jill Porter

Absent: Kristen Campbell, Larry LaSusa, Deborah Rysso, John Blakeslee, Joe Van Horn

The meeting was called to order at 4:36 p.m. with a quorum.

Secretary's Report: Joe Van Horn was absent. With the correction that the Young Lawyer's Representative is Corey Wiggins, the minutes were approved upon motion by Mike Richey and second by Aaron Bowron.

Treasurer's Report: Mardi Black, the new Treasurer, reported that the June reports are draft and final reports will be presented in August. Further report was tabled until the August meeting. It was decided that there will be no update to the Quick Books software at this time.

President's Report: Jen Berry reported that the Legal Eagles were given \$350. The Legal Eagles are a D league baseball team sponsored by the Bar Association. The game schedule is posted on the website for TClegionbaseball.com. So far this year they have been doing great!

At the Upper Michigan Bar Leadership Conference, Jen picked up a catalog for promoting our newly created logo. She suggested this year the Golf Outing may be able to use the logo on certain clothing items to be given out as door prizes. She suggested that the Board reallocate the \$200 provided to John Racine for Golf Outing door prizes and use it for to purchase items from the catalogue with our logo to give out as door prizes. Motion so made by Mardi Black, seconded by Aaron Bowron, passed unanimously.

Jen Berry will also schedule a meeting with the judges to discuss library access and security issues as well as the funding of certain collections within the library.

Jen will follow up on conversations with ADR Clerk Julie Arends and the ADR Committee members to inquire as to who is interested in being on the Case Evaluation Committee. This is a committee created by necessity of court rule and is a subcommittee of the Judicial Liaison Committee.

The Charitable Giving Committee has traditionally been chaired by the immediate past Board president, and made up of members of the Board Executive Committee. Lee Hornberger, the immediate past president, declined to serve as chairman, so a new chairperson will be selected by the Committee.

Manager's Report: Jill Porter presented the Manager's Report, and announced that, given her experience in this area, she will assume responsibility for updating and revamping the GTLA website. She plans to include a members only section that may allow the members to renew their membership online and access certain library resources from home.

Committee Reports:

CLE: Aaron Bowron reported that Jim Olson will conduct CLE on "Reclaiming the Water Commons: Public Trust International Agreements & Democracy" on September 17, 2008. More information provided in the Manager's Report.

Charitable Giving: See President's Report.

TARS: Jo Bullis reported that she will meet with Jill Porter to coordinate revamping of the TARS database.

Newsletter: Aaron Bowron indicated that he is currently looking for submissions and 'Heard in the Halls' information to include in the next Newsletter.

Representative Assembly: Bob Witkop reported that this is the period when the Assembly takes a 6 month break. The next meeting will occur in September.

New Business:

Discussion was had regarding the issue of allowing a "fast lane" for attorneys going through Court security. This issue was referred to the Judicial Liaison Committee.

It was suggested that condolences for the family of paralegal Theresa Gen Hagen Widgren, of Kurt Bowden's office, be included in the summer Newsletter.

The meeting was adjourned on motion at approximately 5:30 p.m.

Respectfully submitted,

Mardi Black

Treasurer, sitting in for Joe Van Horn, Secretary

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Wednesday, August 20, 2008

Present: Jennifer Berry, Jo Bullis, Joe Van Horn, Mardi Black, Lee Hornberger, Aaron Bowron, Kristen Campbell, Corey Wiggins, Deborah Rysso, Jill Porter

Absent: Shelley Kester, Larry LaSusa, Mike Richey, Shawn Worden, John Blakeslee, Robert Witkop

The meeting was called to order at approximately 4:35 p.m. with a quorum.

Secretary's Report: The July 16, 2008 minutes were approved following corrections with Aaron Bowron moving for approval and Corey Wiggins seconding. Motion was carried unanimously.

Treasurer's Report: Mardi Black provided a report. The June/July 2008 profit/loss and balance sheets were provided. It was noted that revenue from dues for 2008 was up from the same time the prior year.

Executive Director's Report: Jill Porter provided a report. Referral calls for the month of July were somewhat down, as was library usage for that month. To date, there have already been 153 membership renewals. Attempts to collect past Newsletter advertising invoice amounts are ongoing, as well as attempts at increasing upcoming advertising revenue.

Discussion was also held concerning the possible transition to a web-based server for Bar membership information. This would allow for online renewals of memberships, possible online payment, online registration for social events, a "members only" section, etc. Such a web-based server could also likely be utilized at a reduced cost to the Association. This issue was tabled and will continue to be discussed at upcoming meetings and after further research.

President's Report: Jennifer Berry provided a report. Discussions are currently ongoing with the County concerning annual budgeted amounts for the Law Library and where that money is going and how it is being spent. More specific information is being sought. Meetings also continue to be sought relating to funding for certain library resources, such as federal law materials and federal updates.

The golf outing is currently scheduled for September 18, 2008. The League of Women Voters recently hosted a screening of "Iron Jawed Angels" at the State Theater. This event was free and educational. It was also well-attended. The Bar Association's Charitable Giving Committee voted to donate \$150.00 towards publicizing the event. The Bar was recognized in the program for the event for their sponsorship of same.

Discussion was held concerning a possible Bar Association expense reimbursement policy. The State Bar reimbursement form was pro-

vided for review and future comment. This issue was tabled and it will be decided at later meetings whether to adopt the State Bar form, or whether to modify it to fit the local bar. Currently, there are no Association by-laws or policies on expense reimbursement.

The new Alternative Dispute Resolution subcommittee has been selected and is as follows: Pat Heintz, Jay Zelenock, Chuck Johnson, and Mark Mueller. This subcommittee is responsible for screening and selecting case evaluators. The list is then forwarded to the Judicial Liaison Committee for the Circuit Court for categorization.

Discussion was also held concerning the possibility of forming a Professional Conduct Committee. The proposed purpose of such a committee would be to attempt to address concerns with inappropriate or unprofessional conduct by attorneys. Discussion was had, and this proposal was tabled and will be discussed further at future meetings.

Committee Reports:

CLE: Roger H. Mali of the State Bar Business Law Section (BLS) would like to collaborate with the local bar in putting on a presentation pertaining to business law in early 2009. The CLE committee continues to work with the BLS to plan that event.

Newsletter: Aaron Bowron provided a report. The recent Newsletter went out without any problems. Jill Porter was credited with assisting in a smooth Newsletter mailing. Article submissions are encouraged for the fall Newsletter, with a September 26, 2008 deadline. Information for "Heard in the Halls" is also encouraged. In the future, Bar members will also have the option of receiving the Newsletter in electronic format only, should they so choose. This elective option will be made available soon.

Special Events: Jennifer Berry provided a report. The date for the Fall Dinner will be Wednesday, November 12, 2008. The dinner will again be held at Boone's Long Lake Inn. Nominations for the Madeleine Thomas Award are being sought at this time. The award is presented at the fall dinner.

Women Lawyer's Association: Deborah Rysso provided a report. The WLA is planning a speaking event on the topic of "How to Deal With Difficult Opposing Counsel." This will likely occur on October 7 or October 10. The speakers will be from the State Bar.

The WLA is planning a series of four workshops on the Pro Bono Clinics in the area to provide tips on participating in them and describing the differences between the clinics. This is tentatively scheduled to begin in January of 2009.

The WLA is exploring options of how to encourage donations to Legal Services of Northern Michigan via its involvement with the

with the endowment.

The WLA is tentatively planning its fall dinner for September 19, 2008. The restaurant is to be determined.

Young Lawyer's Association: Corey Wiggins provided a report. The "Wills for Heroes" program continues to be reviewed. This is a program for creating wills for emergency first responders and soldiers. Possible involvement will continue to be discussed in the future. The meeting was adjourned on motion at approximately 5:37 p.m.

Respectfully submitted,

Joe Van Horn

GTLA Secretary

Balance Sheet

August 31, 2008

ASSETS

Current Assets

Checking/Savings

Checking - TCSB 469.74

Money Market Savings - TCSB 44,162.79

Total Checking/Savings 44,632.53

Total Current Assets 44,632.53

Fixed Assets

Computer Equipment

Accumulated Depreciation -1,856.09

Cost 3,275.46

Total Computer Equipment 1,419.37

Total Fixed Assets 1,419.37

TOTAL ASSETS 46,051.90

LIABILITIES & EQUITY

Equity

Open Bal Equity 26,571.60

Retained Earnings -4,924.37

Net Income 24,404.67

Total Equity 46,051.90

TOTAL LIABILITIES & EQUITY 46,051.90



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Contact me for:

- Resume
- Writing samples
- References

Profit and Loss

Budget vs. Actual

Budget vs. Actual

	Aug 08	Jul - Aug 08	Annual Budget		Aug 08	Jul - Aug 08	Annual Budget
Ordinary Income/Expense							
Income				Legal Eagles	0.00	0.00	350.00
Dues				Mallings & Postage			
Assoc. Dues	12,125.00	22,500.00	31,000.00	Postage & Mail Handling	74.80	74.80	1,000.00
Women Lawyers Dues	520.00	1,200.00	1,280.00	Printing	0.00	0.00	200.00
Total Dues	<u>12,645.00</u>	<u>23,700.00</u>	<u>32,280.00</u>	Stamped Envelop	0.00	0.00	0.00
				Total Mallings & Postage	<u>74.80</u>	<u>74.80</u>	<u>1,200.00</u>
Golf Outing	284.00	284.00	3,600.00	Manager's Budget			
Int. MM Account	43.85	73.22	1,000.00	Insurance	0.00	0.00	400.00
Meals - Quarterly Mtgs	0.00	0.00	500.00	MABE Dues	0.00	0.00	0.00
Miscellaneous				Office Supplies	114.38	313.66	800.00
Charitable/Donation	20.00	190.00	0.00	Past Pres. Plaque	0.00	0.00	100.00
Mailing Labels	0.00	24.00	40.00	Post Box Rental	0.00	0.00	80.00
Miscellaneous Other	0.00	0.00	100.00	Salary & Fringe	0.00	0.00	17,000.00
Total Miscellaneous	<u>20.00</u>	<u>214.00</u>	<u>140.00</u>	Total Manager's Budget	<u>114.38</u>	<u>313.66</u>	<u>18,380.00</u>
				MI & IRS Fees	0.00	20.00	
Newsletter	480.00	570.00	2,500.00	Miscellaneous Expense			
Photocopies - Library Copier	317.05	448.70	3,000.00	Corporate Filing	0.00	0.00	20.00
TARs				OTRCF Regional Foundation	0.00	0.00	0.00
TARs Dues	1,050.00	2,000.00	3,000.00	Miscellaneous Other	150.00	150.00	100.00
TARs Referrals	125.00	275.00	2,000.00	Total Miscellaneous Expense	<u>150.00</u>	<u>150.00</u>	<u>120.00</u>
Total TARs	<u>1,175.00</u>	<u>2,275.00</u>	<u>5,000.00</u>				
Total Income	<u>14,964.90</u>	<u>27,564.92</u>	<u>48,020.00</u>	Newsletter Exp.	1,183.00	1,338.45	3,400.00
Expense				Pro Bono Clinio	0.00	0.00	5,000.00
Accounting Fees	0.00	0.00	600.00	TARs Expense	0.00	0.00	800.00
Bank Serv. Chg.	0.00	0.00	100.00	Travel Expense			
CLE Comm	0.00	0.00	500.00	Bar President Travel	0.00	0.00	420.00
Copier/Fax	0.00	56.01	600.00	Bar Representative Travel	0.00	0.00	350.00
Depreciation Expense	0.00	0.00	655.00	Manager Travel	0.00	0.00	420.00
Dinners/Program	0.00	0.00	7,500.00	Total Travel Expense	<u>0.00</u>	<u>0.00</u>	<u>1,190.00</u>
Education				Website Expense	0.00	0.00	600.00
Bar Leadership Forum Tuition	0.00	0.00	400.00	Women Lawyers	0.00	0.00	1,280.00
GTALP Student Scholarships	0.00	0.00	100.00	Total Expense	<u>1,966.88</u>	<u>3,160.25</u>	<u>55,675.00</u>
Law Day	0.00	200.00	3,000.00				
Total Education	<u>0.00</u>	<u>200.00</u>	<u>3,500.00</u>	Net Ordinary Income	<u>12,998.02</u>	<u>24,404.67</u>	<u>-7,655.00</u>
Golf Outing Exp	0.00	0.00	3,700.00	Net Income	<u>12,888.02</u>	<u>24,404.67</u>	<u>-7,865.00</u>
Law Library							
Law Books/Supps	444.70	859.70	3,500.00				
Modem & Phone	0.00	147.63	2,700.00				
Total Law Library	<u>444.70</u>	<u>1,007.33</u>	<u>6,200.00</u>				

Print or Electronic?

Beginning with the Winter 2009 Newsletter, the Newsletter Committee is offering GTLA Bar Members the opportunity to "opt out" of receiving a paper version of the Newsletter in lieu of an emailed version. This will reduce duplicative Newsletter mailings and save the GTLA Bar Association postage. If your preference is to continue receiving the paper version on the Newsletter, you need not do anything further; if you do not wish to receive the paper Newsletter, please "opt out" by sending an email to gtrlab@grandtraverse.org with "opt-out" in the subject line.

New Staff Member

Our new library/bar association assistant, Christina Beaudrie, started in September. Christina (Krsty) has a paralegal certificate from Crown College in Washington state and studied Early Childhood Development at NMC. She lives in Traverse City with her husband and two children. Please stop by the library to welcome her.

In addition, NMC student Lauren Luckett will be filling in at the library on an "as needed" basis. And in case you are wondering, yes, she is Lori Luckett's daughter.

Sources You Can Use

By Jill Porter

Living in an area with limited library sources can be challenging for any professional. While more and more materials are available via the internet, it is still necessary to rely on outside services to fill the existing gaps. In coming articles, I will focus on different sources I use on a regular basis as both county law librarian and as a consulting researcher. In the first of these articles, I will look at one of the most popular resource, the State Law Library of Michigan.



The State Law Library is a branch of the Library of Michigan and is located in the Michigan Library and Historical Center in Lansing. It is open to state government employees and the general public Monday through Friday from 1:00-5:00 p.m.

As you might guess, the collection focuses on Michigan law. Legislative materials include bill analyses from 1969/70 to date, Senate and House Journals from 1835 to date, slip bills from the latest four years, the Public and Local Acts and all earlier session laws, the Michigan Compiled Laws and earlier official compilations, the Michigan Compiled Laws Annotated, the Michigan Compiled Laws Service and all annual pocket parts from the annotated statutes. For monitoring current Michigan statutes and bills, the library relies on the Michigan legislature website at www.michiganlegislature.org. One of the library's more important and unique holdings are constitutional convention materials from 1835 forward.

It is worth noting that the State Law Library also collects the session laws, codes and case law for all 50 states and for many states they have attorney general opinions up to 1980. In addition, the law library maintains a collection of the current constitutions and codes of Michigan's Indian tribes.

The library's Michigan case law collection includes all published Supreme Court and Court of Appeals opinions, as well as Supreme Court records and briefs from 1870 to date.

Its collection of Michigan administrative law includes the administrative rules from 1944 to date, and the opinions of some executive agencies.

The State Law Library's federal law collection includes the complete United States Statutes at Large, the official United States Code and its earlier editions, the United States Code Service, the United States Code Annotated, all published opinions of the fed-

eral courts, Supreme Court records and briefs dating from the 1830s, the Federal Register (1936 to date), the Code of Federal Regulations (1938 to date) and the decisions of many executive agencies.

I was most surprised to find that in addition to Canadian statutes and case law, the library also collects the same for the United Kingdom. They also have the laws of Australia, New Zealand and South Africa.

But the collection I use most often and refer county law library users to is the State Law Library's periodical collection. The law library subscribes to over five hundred law reviews, state bar journals and legal newspapers which are supplemented with online access to Lexis-Nexis and other online services.

For researchers outside the area, the State Law Library provides copies of materials in both print and electronic format using several delivery options.

Their fees and delivery methods are as follows:

- Document fees - \$5.00 per citation up to 25 pages, additional 20 cents per page thereafter
- Fax - additional \$1.00 per page (average turn-around time is 24 hours)
- U.S. Mail - no additional charge (average turn-around time is 48 hours)
- Email - no additional charge (materials must be available electronically in order to provide this service)
- Express mail (UPS and Federal Express. Recipient must have an account)

Services are invoiced separately and both credit cards and checks are accepted. |

Finally, no law library would be complete without a collection of treatises. To find out if the library has a particular title, researchers can access the Library of Michigan's online catalog, *Answer*, at <http://35.9.2.51/search~S37>.

The State Law Library can be reached at:

Phone: (517) 373-0630

Fax: (517) 373-3915

Email: lmllib@michigan.gov

Internet: <http://www.michigan.gov/hal>

Media Stars Needed



The GTLA Bar Association's Media Committee needs you! Are you willing to participate on topical panels on talk shows such as the "Ron Jolly Show"? If so, please fill out the form below and mail it to : Jill Porter, GTLA Bar Association, PO Box 1958, Traverse City, MI 49685 or email the same information to gtlab@gtlandtraverse.org.

Please be sure to indicate what areas of law you would be interested in talking about.

Name: _____

Firm: _____

Address: _____

Phone: _____

Email: _____

I would like to participate on panels in the following areas:

_____ Bankruptcy

_____ Immigration

_____ Employee Rights

_____ Landlord/Tenant

_____ Estate Planning

_____ Real Estate

_____ Family Law

_____ Other: _____

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