

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.



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Greetings From The Chair

By: Rebecca Rhoda Fisher

Welcome to a new bar association year. The New Lawyers Section is a great way to meet and network with attorneys and educate the community about our profession.

My goal this year is to have the New Lawyer's Section continue with several programs, including KSTP lawline (third Tuesday of every month at KSTP studio) and free CLEs (first to be held on Oct 20, 2005 at 4:00 p.m.). In addition, we are planning on doing several community service projects, including the ABA YLD jury project started last year in coordination with HCBA, MTLA and several other organizations, and increasing participation in the MSBA mock trial program. I also hope to attract new members from those who have already been practicing law to those just graduating from law school.

I encourage each of you to participate in the section some way this year, whether by attending meetings, volunteering to serve on a committee, volunteering to help with a community service project, or attending a CLE. Watch for opportunities and announcements in *Bench and Bar* or on the MSBA website. Our meetings are the third Thursday of the month at 5:30 p.m. at the MSBA offices in Minneapolis. Hope to see you all there!



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REMINDER

Join us for:

1. NLS meetings the third Thursday of every month starting September 15, 2005.
5:30 p.m. at the MSBA offices.
2. 10-14-05 - Attractive Nuisance Tour at First Avenue in Minneapolis.
Tickets are on sale now through Ticketmaster, First Avenue or see the HCBA website (www.hcba.org).
3. KSTP Lawline the fourth Tuesday of every month at KSTP studios on University Avenue in Minneapolis.
4. 10-20-05 NLS FREE CLE (Elimination of Bias).
4:00 p.m. at the MSBA offices.
Stay for the NLS Council meeting that follows the CLE.

Suggestions For Handling Your First Order For Protection Case

By: Nekima Levy-Pounds, Esq.

Without a doubt, handling your first Order for Protection (OFP) case on behalf of an abused person can be a daunting experience for new lawyers. Following are tips and techniques that may help you navigate through the OFP system (in Hennepin and Ramsey Counties) with finesse:

- Read the Minnesota Domestic Abuse Statute. The statute will provide specifics on what types of facts must be set forth in an OFP petition to satisfy the meaning of domestic abuse under Minnesota law and who can obtain an OFP. The statute will also explain the types of OFPs that are offered, the available relief, and the probable duration of an OFP.
- A temporary (or emergency) OFP petition must be filed on behalf of your client. The Petition should set forth the facts which warrant the granting of a temporary (and later permanent) OFP. If your client has not yet filed a temporary OFP petition, there are at least two approaches to take: 1) enlist the assistance of a domestic abuse advocacy organization such as Domestic Abuse Service Center (DASC), The Sojourner Project, Tubman Family Alliance or St. Paul Intervention Project to obtain the information from your client and file the petition or 2) Meet with your client; obtain the information needed for the petition; have it notarized; and take it to the signing judge during the appropriate hours as posted. If the temporary OFP is granted, your client can expect to have a hearing within five days of that date. The scheduled date and time of the hearing will be listed in the Order. The name of the judge will not be listed, unless there is already pending litigation between the parties, such as a divorce. Family Court judges usually rotate on the domestic abuse docket.
- If the OFP petition was filed by someone other than yourself, take time to thoroughly read your client's petition. In Hennepin and Ramsey County Courts, most judges (or referees) will only hear testimony pertaining to allegations that are written in the petition. If possible, work with an advocate prior to filing the OFP petition to ensure that all of the pertinent information is included in the petition. Also, make sure the appropriate remedies have been included in the petition.
- Interview your client as thoroughly as possible. It is important to make sure that you have a detailed history of your client's situation regarding the abuse. You

should ask your client about current and prior incidents of abuse; whether there are children stemming from the relationship; whether the police were involved in any incidents; was your client ever hospitalized as a result of domestic abuse; had she previously had an OFP against her abuser; and whether there were any witnesses to the abuse. Ask your client for any documentation such as medical records, photographs, or police reports.

- Prepare questions that encompass the allegations in the petition. Make sure to moot with your client prior to the hearing if possible. This will give you an opportunity to discover awkwardly worded questions. It may also help you identify the kind of witness your client will be and help ease anxiety on the part of yourself and your client. Mark all exhibits ahead of time. If there are witnesses, you should interview them and prepare questions as needed.
- If possible, review the Respondent's criminal history. This may be helpful in showing the Court a pattern of violent and abusive behavior. It may also reinforce to the Court your client's reasons for being fearful of the Respondent.
- In Hennepin County, there are separate waiting rooms for Petitioners and Respondents. Be sure to check in with the clerk. Be prepared for a long waiting period before your case is called. The number of cases on the domestic abuse docket varies each day and if there are a large number of cases, it could take several hours before your case is called. Remind your client to keep the whole day open and to make child care arrangements, if possible. To have a better idea of what to expect, ask the clerk if the Respondent has been served. If the Respondent has not been served, you can usually expect your case to be called earlier; as the judge will likely grant a continuance to allow service of the Respondent.
- Try to speak with the opposing side prior to your case being called. Find out whether to expect a trial or whether the matter can be settled. If a tentative agreement is reached, put it in writing. Once your case is called, let the judge know the status and terms of the proposed agreement. If no agreement is reached, let your client know to expect a trial.

- OFP hearings work like most other civil proceedings, except there is usually no opening statement. You should ask that all witnesses be excused from the courtroom, and then proceed to call your first witness- usually your client. After the court has heard both sides of the case, you may be expected to give a closing argument. The judge may take a brief recess and issue an Order upon his return. He may also take the matter under advisement and send an Order in the mail from a few days to a few weeks following the conclusion of the hearing. If that happens, your client's temporary Order will remain in effect until entry of a new Order granting a permanent (usually lasts 1-2 years) OFP or denying the request for an OFP.

In addition to the suggestions above, take care to call attorneys in your jurisdiction for advice and guidance. Do not underestimate the importance of working with a domestic abuse advocate to help guide you through the process. Sometimes, advocates know more about the system than do attorneys, and can be an invaluable resource for you and your client. Above all, do not be afraid to ask questions about the process. There is always someone willing to listen and offer advice to new attorneys.

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How The Loan Repayment Assistance Program Is Benefiting The Community

By: Heather Rastorfer Vlieger

The Immigrant Law Center of Minnesota (“ILCM”) is located in the heart of St. Paul’s Frogtown neighborhood. ILCM’s dedicated attorneys provide an array of immigration legal services to meet the steadily increasing needs of Minnesota’s growing immigrant and refugee communities. This important work has been made possible in part by the Loan Repayment Assistance Program of Minnesota (“LRAP”), which ensures the provision of legal services to low-income families and individuals by helping dedicated public interest attorneys pay back their student loans. Raymond Gwenigale is a new attorney at ILCM and currently receives LRAP’s assistance. John Keller has been an attorney with ILCM since 1998 and benefited from LRAP’s assistance when he was a new attorney with ILCM.

ILCM’s attorneys carry a large caseload. As a new attorney, Raymond is managing 80-90 open cases. As a more seasoned attorney, John has up to 150 pending cases. In 2004, ILCM assisted more than 1,100 clients by keeping families intact; helping persons escape persecution and abuse; protecting the constitutionally guaranteed fundamental liberties of immigrants; and helping persons become U.S. citizens. Their clients live in St. Paul or one of the 33 counties of Southern Minnesota, and most of them earn less than 100% of the federal poverty guide lines. Nearly 60% of ILCM clients are Latino and 40% originate from Africa, Asia and other non-Spanish-speaking regions of the world. Raymond, whose father is Liberian and mother is Puerto Rican, speaks Spanish flu-

ently; John is also a fluent Spanish-speaker.

Raymond came to law school intending to practice public interest law. After his undergraduate education, he worked for a year at Mid-Minnesota Legal Assistance St. Cloud Area Legal Services (“SCALS”). His desire to go to law school was solidified when he saw how the attorneys at SCALS were able to help people without resources. While in law school, Raymond worked as a law clerk in the private sector to help pay for his legal education and living expenses, but his passion was in his work with the Immigration Clinic at William Mitchell College of Law. He was hooked by his first case, when after nine months, he was able to get relief from deportation for his client. Raymond found deep fulfillment in being able to keep his client’s family together, including a spouse and six U.S. citizen children. The satisfaction of keeping a family together or reuniting family members remains the most rewarding part of Raymond’s immigration practice.

Raymond was also drawn to immigration law because he finds it intellectually challenging. One challenge is that the law changes very quickly. As a new attorney practicing immigration law, Raymond relies on the help and support of former LRAP recipient John Keller and other accomplished attorneys. Raymond said, “LRAP’s benefit to clients is far reaching by helping keep experienced attorneys doing public interest work.”

John too went to law school because he wanted to affect

people's lives positively. With a background in social justice and human rights work in Peru, he was drawn to immigration work. In his practice, John enjoys the rich diversity of his clients' backgrounds and finds it deeply satisfying to provide his clients with the building blocks they need to live out the American Dream. As a skilled attorney, John says, "It's good to know the law well and offer advice to attorneys without as much experience." John states that LRAP was an important factor in his ability to stay in this field.

LRAP's loan repayment assistance is a vital component of the important work Raymond and John are doing. Raymond said, "I love the work I do. I feel great fulfillment when I am able to help people with real life situations. However, I simply could not continue working at an income level that nearly parallels that of my debts. Without the LRAP award, I would have to find a job that adequately reduces my debt-to-income ratio." Similarly, John said, "At the beginning, LRAP was helpful in enabling me to weather the lean

years as a new attorney with relatively low starting pay." John also says that LRAP helped solidify his path of public service because "it was psychologically important to know that LRAP existed and was there to support this important way to use a law license."

In 2004/2005, the Loan Repayment Assistance Program of Minnesota awarded more than \$124,000 to help 34 dedicated attorneys, like Raymond and John, pursue their dreams to serve low-income and disadvantaged clients. The average adjusted annual household income for these recipients was **\$35,000**, and the average education debt load was **\$80,000**. The average LRAP award represented **one-third to one-half** of the recipients' annual education loan payments. To learn more about LRAP, please visit www.lrapmn.org.

Heather Rastorfer Vlieger is the Executive Director of the Loan Repayment Assistance Program of MN and can be reached at HeatherRV@statebar.gen.mn.us.

Practical Tips For Mediation Success

By: Darin T. Allen, Esq. and Jeffrey Homuth

While adversarial proceedings remain at the heart of our legal system, an extremely low percentage of disputes actually proceed to trial. In fact, the overwhelming majority of an attorney's time is spent advising clients and seeking solutions to prevent win-lose litigation. When a dispute between parties occurs, using alternative dispute resolution (ADR) procedures, such as mediation and arbitration, can alleviate pressure on overflowing court dockets. The purpose of this article is to provide an overview of the mediation process and to help attorneys prepare clients to participate and succeed in achieving dispute resolution through mediation.

WHAT IS MEDIATION?

To understand the use of mediation as an alternative to expensive and time-consuming litigation, it is helpful to know what mediation is and how it differs from arbitration and litigation. Simply stated, mediation involves confidential negotiations between disputing parties that are facilitated by a neutral third party – the mediator. The mediator's role is confined to helping the parties arrive at a mutually agreeable solution. Unlike arbitration or litigation, the mediator does not decide the outcome of a mediation proceeding, but encourages settlement.¹

Parties can mutually select a mediator or may choose a mediator from a roster of qualified neutrals offered by an

experienced ADR administrator such as the National Arbitration Forum (NAF) or the American Arbitration Association (AAA). It is beneficial to the parties to select a mediator who is an experienced legal professional with expertise in the subject matter of the dispute. The ability of an attorney to shape mediation proceedings is influenced by ethical and due process protocols, preferences of the individual mediator or forum, and any statutory or procedural rules governing the mediation.

HOW ARE MEDIATION SESSIONS CONDUCTED?

Mediations may be facilitative or evaluative.² Mediators acting in a facilitative capacity guide the parties through negotiations without offering clear indications as to the strengths or weaknesses of the claims.³ An evaluative mediator will interject his or her observations more aggressively, and might make some recommendations for a potential agreement.⁴

Depending on the mediator, negotiations during mediation proceed in the form of joint sessions, private caucuses, or a combination of the two.⁵ If a joint session is used, each party can make an opening statement to outline key facts, issues, and positions. In contrast, private caucuses allow the mediator to meet separately with each party to ascertain true interests and roadblocks to settlement. The private caucus also gives the mediator an opportunity to con-

sider information that the parties do not wish to disclose to one another.⁶ Private caucuses are generally favored by mediators because the format is less likely to breed hostility between the parties and may lead to actual progress in negotiations.

In most cases, mediation sessions take place within the course of a single day.⁷ However, particularly complex or hostile disputes could require multiple mediation sessions.

WHAT DOES A CLIENT NEED TO KNOW?

Even before the mediation session begins, a lawyer has an ethical duty to communicate the risks of both mediation and subsequent legal action to the client.⁸ “A client’s level of trust in his or her lawyer can be irreparably damaged if the client learns for the first time at mediation that there is a risk of summary judgment or that anticipated attorneys’ fees and costs will be substantial.”⁹ To be successful, an attorney must simultaneously focus on securing a positive outcome for the client and on protecting the integrity of the mediation process.

While time and money will often prevent an attorney from setting up a “mock” mediation session, the client should be told what is likely to happen at the mediation and be prepared for the types of exchanges that can occur between the mediator, the parties, and the attorneys. Since mediation is generally less formal than a trial, the client should be ready to play a role in the process and can, if desired by the attorney, field questions directly from the mediator.¹⁰ To prepare the client to participate, the attorney and client should compile a list of the client’s interests and needs, possible needs of the other party, and information the client would like to obtain through the mediation session.¹¹ By making sure that the client understands the purpose of mediation and the potential benefits to early settlement, the attorney can keep the client focused during mediation and ensure that any proposed settlement provides the desired relief.

WHEN SHOULD MEDIATION OCCUR?

As a general rule, a party interested in mediation should begin mediation as soon as possible. There are several advantages to expediting the mediation process. First, since mediation often occurs within the time constraints of other court proceedings, early mediation allows for more time to sort out the complex issues preventing a settlement. Second, early mediation can significantly reduce the costs associated with discovery.¹² Third, the true motivations of a party are not always clear, and the exchanges that occur in mediation could satisfy many of a party’s grievances without a formal court proceeding. Certain clients will not settle a case until they feel that they have had their “day in court.”¹³ Other clients simply need to hear the opposing party acknowledge some remorse for the al-

leged harm. Of course, adverse parties usually avoid communicating in this manner out of fear that such statements may be used against them as an admission if further court proceedings are necessary.

WHAT MEDIATION STRATEGIES ARE HELPFUL?

During the mediation discussions, the lawyer should keep in mind two overarching guidelines. First, both the attorney and client should consider any potential benefits of following the motto: “Hold the facts; disclose the law.”¹⁴ In other words, while it is important to cooperate in facilitating negotiation between the parties, there may be strategic advantages to the client in not disclosing all of the facts that are known by the client, particularly if the facts do not favor the client’s position. For example, from a strategic standpoint, it might make more sense for the attorney to simply express that the law is on his or her client’s side, rather than to attempt to ambush the opposing party with a fact witness.¹⁵

Second, an attorney must be thoroughly prepared and able to communicate to the other side that he or she is willing and able to bring the case to trial.¹⁶ Negotiation simply will not work when one party believes that the opponent is attempting to barter out of a weak position. With that concept in mind, an attorney might wish to establish the litigation option by revealing some of the stronger points of his or her case. During mediation, the attorney must always balance strength and conviction with flexibility and compromise.

WHAT HINTS MIGHT A MEDIATOR SHARE?

One of the more obvious, yet frequently overlooked, miscues by attorneys is a failure to appreciate the input of the mediator. Not only is the mediator a neutral party with knowledge of the proceedings, but, in many cases, mediators offer expertise concerning the dispute’s subject matter, as well as experience in settling similar disagreements. As such, the attorney should listen carefully to proposals from the mediator and discuss their feasibility with the client.

Once the mediation moves into the private caucus stage, the discussions between a mediator and party are technically “confidential.” However, an attorney should seek to read the mediator’s reactions to the client’s statements, and pay attention to any hints the mediator might provide.¹⁷ For example, the mediator might indicate that a settlement figure would be “difficult to sell” to the opponent.¹⁸ If the attorney knows that the mediator has already participated in private caucus with the opponent, then the mediator’s statement likely reflects that discussion. Such a scenario provides an example of why a client in mediation should remain flexible and hold back from expressing a “bottom line” to

the other party or the mediator.¹⁹ The parties may use numbers and proposals to gauge the likelihood of settlement, but should stop short of any stubborn tactics that would breed hostility and compromise the spirit of negotiation.

To foster cooperation and to guide the mediation, one useful practice for attorneys is to prepare a one-to-five-page position paper, which can be delivered to the mediator, and to the opposing party, if desired.²⁰ Concise position papers are extremely useful for mediators, who have the task of comprehending multi-faceted disputes in a short period of time.²¹ Upon the request of a party, the mediator will keep the contents of the position paper confidential.²²

SHOULD SETTLEMENT AGREEMENTS BE USED?

Even when mediation sessions go well, the negotiation does not end with a verbal agreement. After the parties have arrived at a mutually agreed upon resolution to the dispute, the mediator will request that the parties discuss and clarify any agreements.²³ At this juncture, the attorneys might also determine who will be responsible for drafting a final agreement.²⁴ In any event, it is imperative that the parties solidify any agreement in writing and sign the document before leaving mediation. Of course, the goal is not “settlement at all costs,” and the parties should be able to leave the matter open, “subject to mutual acceptance of final document provisions.”²⁵ It is advantageous for the attorneys to get the parties to sign a document detailing the terms of the agreement to eliminate any subsequent confusion over the terms of the agreement. Often, a mediator will prepare a “binding term sheet,” which provides a summary of agreed upon terms and indicates that counsel shall prepare formal documents to be signed at a later time.²⁶ Meanwhile, the signed term sheet represents a binding and effective agreement as to what was decided at the mediation.²⁷

WHAT IF MEDIATION IS UNSUCCESSFUL?

Since the parties agreed to mediate in the first place, mediations have great potential for success. However, in the event the first meditation session is unsuccessful, the attorney should view the meeting as part of an ongoing process of dispute resolution. Remembering that the vast majority of disputes settle short of trial, the attorney and client should meet after an initial mediation session and discuss the next move.²⁸ Even if parties cannot agree on a subsequent mediation date, the exchange of information and ideas from the first mediation session could prove valuable in settlement negotiations prior to trial. If the parties trust the mediator, the mediator could also be valuable in a conciliation role leading up to settlement.²⁹

MEDIATION: A BETTER SOLUTION?

Too often, attorneys approach disputes as “win or lose” contests without first considering more practical solutions. With proper preparation of the client and a clear understanding of what might be accomplished during mediation, attorneys should add mediation to their arsenal of dispute resolution tactics.

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Jeffrey Homuth is a law clerk at the National Arbitration Forum.

Notes

¹ Fletcher Dal Handley Jr. *What Plaintiffs' Lawyers Should Know Before They Mediate*, 25-SUM Brief 70 (1996).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Bobby Marzine Harges, *The ABC's of Effective ADR*, 43 La. B.J. 142 (1995).

⁶ *Id.*

⁷ *Id.*

⁸ Model R. Prof. Conduct 1.4.

⁹ Richard G. Spier, *Mediation Miscues: The 10 Biggest Mistakes Lawyers Make in Mediation*, 59-JUN Or. St. B. Bull. 35,36 (1999).

¹⁰ Bonnie Blume Goldsamt, *Hot Tips for Attorneys Whose Clients are in Mediation*, 224-OCTN.J. Law.43 (2003).

¹¹ *Id.* at 44

¹² Dal Handley Jr., 25-SUM Brief at 70.

¹³ Harges, 43 La. B.J. at 144.

¹⁴ Dal Handley Jr., 25-SUM Brief at 71-72.

¹⁵ *Id.*

¹⁶ Spier, 59-JUN Or. St. B. Bull. at 35.

¹⁷ Dal Handley Jr., 25-SUM Brief at 72.

¹⁸ *Id.*

¹⁹ *Id.* at 72.

²⁰ Harges, 43 La. B.J. at 143.

²¹ *Id.*

²² *Id.*

²³ Melanie A. Vaughn, *Mediation Tips*, 36-AUG Md. B.J. 46,50(2003).

²⁴ *Id.*

²⁵ Spier, 59-JUN Or. St. B. Bull. at 37.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Harges, 43 La. B.J. at 145.

²⁹ *Id.*

What Every New Attorney Needs To Know About E-Discovery

By: Rhea Frederick, J.D

After graduating from law school, surviving the bar exam, racking up a small fortune in law school loans, and finally landing a job, a new lawyer quickly discovers that one's legal education only begins on his or her first day of work. For example, despite the fact that over 93% of all information is created electronically, electronic data and discovery is one topic that is only briefly mentioned – if referenced at all – in most law school courses. As a result, a new attorney served with a discovery request involving electronic data may not know where to turn first. And because so much information is created electronically, the likelihood of being involved in an electronic discovery project is quite high.

Fortunately, a myriad of solutions exist to help new attorneys get up to speed quickly on the topic, manage electronic information, and control costs associated with electronic document productions. What is the optimal method for pursuing electronic document discovery? What will the court and opposing parties expect from you and your clients? How can technology assist you and your client? This article will give tips and ideas for attorneys, new to electronic evidence, on effectively managing the electronic discovery process.

Step 1: Defining Electronic Discovery

Initially, counsel must understand and identify the information being sought. In the case of electronic discovery, this means pinpointing relevant and discoverable data existing in electronic form – such as information created on an individual's computer using a word processor or stored and shared with others on the company's "file server." Digital data is located in a variety of places, including individual desktops and laptops, network hard disks, removable media (i.e. floppy disks, tapes, USB drives, and CDs), cell phones, and personal digital assistants (i.e. Palm Pilots, Blackberries). With the increasing popularity of mobile devices, this list will continue to expand. In addition to these locations, e-data can exist in a myriad of different forms and places that may not be readily apparent – a company's old, forgotten archive tapes, an executive's handheld electronic organizer and mobile phone, or memory in a fax machine that stores received data if it cannot be printed immediately (such as when it runs out of paper). Third parties, like Internet service providers and other peripherally involved entities, may also possess important information.

Minn. R. Civ. P. 34 specifically requires the disclosure of "data, compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form," which includes all forms of electronic data such as electronic files, databases and e-mails. This imposes a duty on attorneys to determine if electronic data might be a legitimate part of the case, thus the need to implement a strategic electronic discovery plan including identifying, locating, retrieving, preserving, and authenticating electronic evidence. Counsel is also responsible for developing, implementing and ensuring compliance with data preservation plans and for producing responsive documents to the opposing party, court or agency.

Groundbreaking E-Discovery Cases

Electronic Evidence is Discoverable: "The law is clear that data in computerized form is discoverable even if paper 'hard copies' of the information have been produced...[T]oday it is black letter law that computerized data is discoverable if relevant." *Anti-Monopoly, Inc. v. Hasbro, Inc.*, 1995 WL 649934 (S.D.N.Y. Nov. 3, 1995). *See also Zubulake v. UBS Warburg*, 217 F.R.D. 309 (S.D.N.Y. 2003), *McPeck v. Ashcroft*, 202 F.R.D. 31 (D.D.C. 2001); *Linnen v. A.H. Robins Co.*, 1999 WL 462015 (Mass. Super. June 16, 1999).

Deleted Data can be Discoverable: Deleted electronic evidence is fully discoverable. *Dodge, Warren, & Peters Ins. Servs. v. Riley*, 2003 WL 245586 (Cal. Ct. App. Feb 5, 2003); *Simon Property Group v. mySimon, Inc.*, 194 F.R.D. 639 (S.D. Ind. 2000).

Duty to Preserve E-Evidence: There is a duty to preserve evidence that parties know, or should know, is relevant to the ongoing litigation, including preservation of all data compilations, computerized data and other electronically-recorded information. *Kleiner v. Burns*, 2000 WL 1909470 (D. Kan. Dec. 15, 2000); *Danis v. USN Communications*, 2000 WL 1694325 (N.D. Ill. Oct. 23, 2000).

Spoilation Sanctions Defined: Failure to preserve e-mail and electronic documents (whether intentional or inadvertent) is sanctionable as spoliation of evidence. *Metropolitan Opera Assoc., Inc. v. Local 100*, 2003 WL 186645 (S.D.N.Y. Jan. 28, 2003); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99 (2d. Cir. Sept. 26, 2002).

Cost Allocation Test: Seven factors to weigh when determining if cost-shifting is appropriate: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issue at stake in the litigation and; (7) the relative benefits to the parties of obtaining the information. *Zubulake v. UBS Warburg*, 216 F.R.D. 280 (S.D.N.Y. 2003).

New Duties for Practitioners: In addressing the role of counsel in litigation generally, the court stated that “[c]ounsel must take affirmative steps to monitor compliance so that all sources of discoverable information are identified and searched.” Specifically, the court concluded that attorneys are obligated to ensure all relevant documents are discovered, retained, and produced. *Zubulake v. UBS Warburg*, 2004 WL 1620866 (S.D.N.Y. July 20, 2004).

Step 2: Data Collection

After identifying and locating relevant data, counsel must collect the data for review and production. The modern era has revolutionized the amount of relevant electronic evidence in an average case, and, in most cases, millions of documents exist. Opening and printing such a large volume of documents is simply not feasible. In fact, such conduct can even result in evidence spoliation if any of the document’s content or valuable metadata – “the data about the data” or information about a document – is altered.

When faced with an electronic data collection, counsel should form a data collection “plan of attack.” The components of a solid plan should incorporate the relevant information sought, potential data locations and key players, internal and external contact information, procedural guidelines, documented chain of custody instructions, an inventory of forensic tools, and a summary of anticipated business continuity issues. Clearly defining the collection scope and priority of key players will avoid creating unnecessary delays and increased costs down the road. In addition, by collecting and processing the highest priority individuals first, crucial case-altering evidence – either helpful or detrimental – may be discovered, changing the litigation team’s positions and strategies.

When organizations operate in multiple locations, utilize differing types of technologies, or have employees with disparate access to these technologies, it can be difficult to ascertain where electronic evidence is held. It is incredibly important to consider all potential data locations, including geographical locations as well as storage locations such as file shares, e-mail devices, archival tapes, hosted e-mail, and attachments.

Because IT may not always understand how to best handle data subject to legal discovery, counsel may need to engage the help of an electronic discovery expert for the collection. Attorneys should seek the help of an expert if the IT staff lacks the requisite equipment, time, training and experience to perform a best practices collection. An expert may also be necessary if calling an IT person as a witness at trial is undesirable or if a conflict of interest might hurt the case.

Step 3: Data Filtering

In most cases, it makes sense to keep electronic data in an electronic format. The benefits include quicker and more efficient searching, Bates number branding, redacting, annotating, and the ability to catalogue and reorganize for production, depositions or trial. Electronic discovery experts, the firm’s litigation support department, or the client’s IT

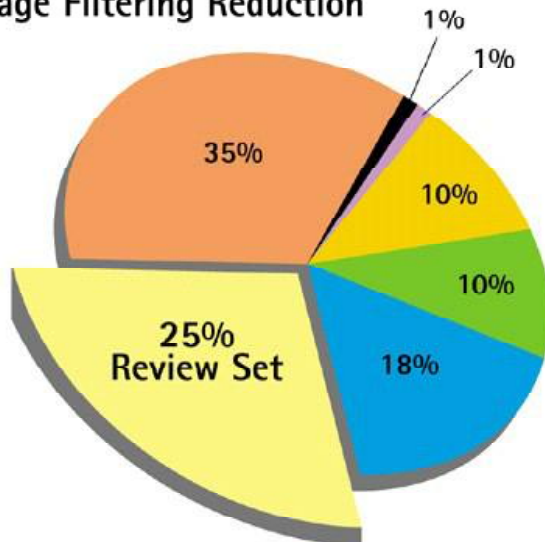
department can create copies of the collected data, without making any alterations, and place it in a central storage location.

Obviously, not every electronic document found within the files retrieved from a document custodian or on backup tapes is responsive or relevant to a discovery request. Electronic discovery filtering engines can be used to scan the data, separating and eliminating the “jokes, recipes and spam” from potentially responsive files and e-mails. For smaller or simple projects, the firm’s litigation support department or the client’s IT staff can use some basic commercially-available e-discovery filtering engines.

However, large amounts of data or complicated data types are best left to an electronic discovery expert’s proprietary filtering technology. Such proprietary technology can narrow the universe of data down to a smaller, more manageable set by providing enhanced options to better define a more complex but precise filtering process, such as limiting the universe of data to certain custodians or to documents with specified file attributes (i.e. keywords, certain document types, created or last accessed within a specified date range). Attorneys using all of the filtering techniques described below typically experience a 75% reduction in the number of documents they need to review for production.

- Custodian filtering – segregating the key custodians who may be relevant to the case and isolating the files associated with those specific individuals;
- Time and date filtering – targeting discrete periods of times, which are particularly relevant to a case or which are required to be produced in accordance with a pending court order;
- File Size Filtering – capturing files between a certain size range in order to isolate mid-sized files from exorbitantly large files;
- De-duplication – identifying documents that are duplicates of one another and eliminating these duplicate documents from the review and production set of documents.
- Keyword searching – applying a set of keywords and terms to segregate potentially responsive information for further review and scrutiny; and,

Average Filtering Reduction



Filtering Options

- De-duplication
- Keyword Searching
- File Type
- Date Range
- Encrypted and Corrupted
- Large File Handling

These are averages based on actual Kroll Ontrack projects. Filtering reduction amounts will vary on an individual project basis. File type filtering presumes system and application files have previously been removed.

As illustrated, approximately 75% of your documents can be eliminated by using the filtering options available to you.

Step 4: Review Options

After data has been gathered and culled using filtering technologies, counsel must determine the data format for the internal review and contemplate the next step – production to the court, governmental agency and/or opposing party. In most cases, two options are available for review; paper and electronic.

If a paper review is chosen, the electronic documents are printed. While paper review may seem straight-forward and “tried and true,” it poses several disadvantages. First, an electronic document’s metadata could potentially be lost since this information may not print out on the face of the document when the “print” button is pushed. Further, when electronic documents are reduced to paper, the review team loses its ability to search these documents, without using scanning, coding, and optical character recognition technology at some point down the road. If the opposing party is demanding the production in an electronic format, first relegating the documents to a paper format only adds expense, time-delay, and the chance of data loss.

An electronic review is another option for reviewing documents for responsiveness or privilege. Using an electronic review option is becoming standard for litigators faced with electronic document productions since it typically provides greater flexibility, efficiency and cost-effectiveness over paper. Electronic review generally occurs one of three ways: (1) reviewing documents in their “native” format, (2) using a local database (like Summation or Concordance) or (3) using an online document review repository – a web-based database into which the data files have been loaded in either a standard file format (such as tiff images) or the native file format for viewing, categorization, redaction, and searching.

Electronic document online repositories represent the most modern document management and review tools and are gaining momentum in the legal community. With such software programs, reviewers remotely access their documents via a secure Internet connection and review each document file by file. The files must be converted to a standard file format or undergo some sort of text extraction in order for the documents to be placed into a web-based tool with searching capabilities. Each page of a document is placed into a database after being converted into two separate components (1) a graphic image (such as a tiff, PDF or jpg) that is able to be viewed in a standard browser, along with (2) an accompanying file that contains the text and metadata for each page.

Consider the following when selecting an electronic online review repository:

- *Speed.* Look for a software package that provides for speedy document viewing. How many seconds does it take to log on to the system? How many seconds does it take to navigate between documents in the system?
- *Security.* The data review repository should handle all security issues. How are the documents protected against interception by someone else on the World Wide Web?
- *Ease of Use.* What does the program’s GUI look like? The software’s graphical user interface (“GUT”) should be easy to use. The layout should be familiar (i.e., similar to a common word processing or e-mail system such as Microsoft Office) and simple to navigate to the commonly used functionalities. How many hours of training are necessary before the review team can begin looking at documents?
- *All-inclusive software.* Can standard software be used, such as Microsoft’s Internet Explorer? Must any additional software or licenses be purchased before the review begins? Are there any hidden costs associated with the review?
- *Robust Functionality.* These systems are constantly changing, offering the customer more advanced features and functionality. Does the repository offer note-taking? Highlighting? Redactions? Redaction coding? Privilege log creation?
- *Searching.* Being able to search the database of documents is one main advantage of keeping documents in an electronic format. How does the repository’s searching work? Can the metadata be searched? Are notes and comments searchable? Is advanced searching (conceptual searching or fuzzy searching) available?
- *Duplicate Handling and Family Cascading.* If the data is kept in an electronic format, relationships between duplicate documents and parent and children documents can be identified and maintained in the database. Using this feature, reviewers can handle related documents together and categorize them simultaneously; reducing time spent reviewing the same documents several times.
- *Mass Categorization.* With mass categorization, reviewers can categorize several documents at once based on search results. This feature gives reviewers the power to quickly review clearly responsive, non-responsive or privileged documents in the document set.

- *Native File Review.* Cutting-edge online document repositories are giving litigation teams the best of both worlds, typically allowing for native and tiff viewing in one unique database. While such tools have only emerged recently in the legal arena, without such a solution, litigation teams are forced to deal with the disadvantages of raw native files or tiff images when reviewing documents. Instead, depending on the features and functionality built into the tool, counsel can leverage the advantages of native file review and tiff image review, without incurring any of the drawbacks of either review format in its individual setting.
- *Paper and Electronic Integration.* Traditionally, law firms have split outsourced discovery work between different paper and electronic discovery experts. If a law firm selects a single, specialized expert offering both electronic paper discovery services, the law firm and its client will likely realize many administrative advantages and be able to develop the most solid theory for the case by having all of the documentary evidence in a single location at one point in time.

Step 5: Production Options

Once the review is complete and all documents have been identified as responsive, non-responsive or privileged, counsel must focus on producing the responsive documents to the opposing party, court or government. Counsel must ask: What format will the documents need to be produced in and will the court, opposing party, or government accept documents in an electronic format? These questions are best addressed by counsel long before the document review ever begins, typically at some of the first discovery planning conferences with the opposing party or court.

While production in the past was generally in paper, production in electronic format is becoming a clear trend. Given the fact that an overwhelming majority of corporate documents appear in electronic form, production in electronic format should not come as a surprise to counsel. The requesting party must make a strategic decision when determining production format, especially in light of its ability to conduct an effective review of the evidence received.

As online review tools and repositories increase in popularity and become more sophisticated, attorneys are also finding it easier and more cost-effective to produce electronic documents in an online repository. The litigation team can categorize, redact, and annotate the documents in the review tool, and when complete, have the relevant and non-privileged documents copied to a separate production database for the opposing party, court, or government agency to complete its review. Expect to see increased use of online repositories for producing and managing volumes of both paper and electronic documents.

In today's high-tech corporate world, courts, counsel and organizations have clearly acknowledged that technology has a significant role in litigation. With this ever-growing recognition of modern technology trends, newly-practicing attorneys representing today's organizations need to know more than simply where electronic evidence resides. They also have a duty to know if that data is accessible and how much it will cost to restore, search and produce the data should litigation or a regulatory investigation ensue. A comprehensive understanding of the electronic discovery process – coupled with strategies to manage electronic discovery costs – will allow new attorneys to gain recognition as their law firms' electronic discovery authority and deliver a successful, case-winning discovery plan of attack.

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Opening Probate Estates: What I've Learned From Experience

By: Susan T. Peterson

If you practice in the area of estate administration, it's critical that you know how to open probate estates in an efficient manner. It's important to the client because nothing, with the possible exception of paying legal fees, is more frustrating to the client than a time delay. It's important to you because your reputation and the good will of the client are at stake. Read on for some tips, based on my experiences, geared toward the expeditious opening of probate estates.¹

Identifying the Client

Typically, a probate administration begins with a call from the surviving spouse or adult child of the decedent. The efficient administration of the decedent's estate begins with this call. For both ethical and practical reasons, as you converse with the caller, try to determine who should be the client. From the beginning, plan with the end result in mind—the client is the person who will serve as applicant or petitioner. In most cases, this is just one individual who is the surviving spouse, the nominated personal representative, or an adult child.² Questions you should ask include: Is there a Will nominating a personal representative? What is the relationship of the survivors, including the caller, to the decedent? Who is willing to serve as personal representative? For example, an adult child not nominated in decedent's Will as personal representative should not be the client unless the nominated personal representative is unwilling or unable to serve. Likewise, where the intestate decedent's spouse survives, an adult child should not be the client unless the surviving spouse is unable to testify convincingly or carry out the duties of a personal representative.

In one of my cases, the surviving spouse was nominated as personal representative, and the Will divided the estate equally between the surviving spouse and the decedent's only other heir, an adult son from a previous marriage. Both were interested in attending the initial conference to learn about the disposition of the decedent's estate and the tasks involved in probating the estate. At the initial conference, I first met with the surviving spouse, who was willing to serve as personal representative and became the client. With her permission, the son was included in the remainder of the initial conference.

Because statutory provisions or provisions in the Will itself may treat individuals differently, if you are considering representing multiple individuals, make certain their interests are identical. Specific devises in the Will or on a tangible personal property list create different interests in the devisees or distributees. Similarly, as in my case above, a surviving spouse has rights to family maintenance whereas others don't,³ and exercising this right will decrease the amount ultimately distributed to the residuary devisees. Finally, all children not disinherited by name have rights to exempt property.⁴ Because exempt property includes the homestead, a vehicle, and up to \$10,000 of personal property, children exercising this right may lay claim to property specifically devised to someone else in the Will or on a tangible personal property list.

Once you have preliminarily determined who the client should be, consider sending out an estate administration questionnaire in advance of the client conference. This questionnaire should request names and addresses of heirs, fiduciaries, and other interested persons and information regarding the decedent's assets (including non-probate assets) and liabilities. When you schedule a conference, request that the client bring to the conference: (1) a certified copy of the death certificate; (2) the original Will (if any) and tangible personal property list (if any); (3) copies of deeds to any real property; (4) financial statements; (5) stock and bond certificates; and (6) the completed questionnaire. Asking the client to bring along these documents, the names and addresses of devisees, heirs, and fiduciaries, and information about estate assets and liabilities saves time and allows you to ask follow-up questions and pursue potential issues at your first client meeting. For attorney-client privilege reasons, other interested parties should not attend part or all of the client conference, as in my case involving surviving spouse and adult son, but if your paralegal will work on the matter, it may make sense to involve him or her in the client conference.

When neither surviving spouse nor adult child is involved and the decedent dies intestate, who serves as applicant or petitioner? Are friends or neighbors allowed to petition the Court to institute a probate proceeding? As I discovered in one matter involving an elderly single woman who died before signing a Will, they cannot. In that unique case, the woman was an only child and died without issue.

Her parents were deceased. Her friend did not know of any relatives but wanted to begin a proceeding to protect the assets in the estate. He did not qualify as an interested party to serve as personal representative, however, because he was neither heir, devisee, child, spouse, creditor, nor beneficiary and he didn't have "a property right in or claim against the estate."⁵ In addition, he was not a person "having priority for appointment as personal representative."⁶

Because the State of Minnesota (as heir)⁷ or my law firm (as creditor) were the only known interested parties and neither was an attractive client candidate, I attempted to qualify the friend as a special administrator under a statutory provision that allows, in certain cases, for "any proper person...[to] be appointed special administrator."⁸ The Court rejected my argument that the friend qualified as special administrator. The Court's rationale was that the relevant statute, § 524.3-614(2), provides that in a special administration only an "interested person," as defined above, may petition the Court.

Determining the Proceeding

In many instances, you will be able to determine which kind of probate proceeding is most appropriate for your matter during the initial client meeting. During the conference, spend a few minutes looking over the Will. Check carefully to make sure all formalities have been observed and that it is the original Will.⁹ Make sure the notary public's date on the self-proved affidavit matches the date on which the Will was signed and witnessed.¹⁰ In the event there is no self-proved affidavit and you proceed formally, you will likely need to track down the witnesses to testify.¹¹ If there is a tangible personal property list, look to see that it was signed by the testator or made in the testator's handwriting.¹² In my experience, problems such as these are commonplace.

In addition, carefully read the distribution provisions and match them with takers. If there are specific devises of real property, examine them closely. Ask the client probing questions about family dynamics and about the decedent's and the decedent's predeceased spouse's receipt of medical assistance or state hospital care.¹³ Scrutinize assets and liabilities and compare totals.

When determining which probate proceeding is appropriate for a matter, it may be helpful to employ the process of elimination. If the decedent's date of death is more than three years ago, the proceeding will be a Determination of Descent.¹⁴ If there are minor children who will inherit, the proceeding will be formal, supervised. If the total probate estate is less than \$20,000, an affidavit procedure is probably appropriate.¹⁵

If the estate is made up of exempt assets only, a summary proceeding may be the best choice.¹⁶ As I learned, an exempt summary proceeding is handy where the surviving spouse or one or two adult children inherit the decedent's estate. When the decedent has many descendants and a homestead is one of the exempt assets and is to be sold, however, a summary proceeding is impractical. Post-decree, the several new owners must work together to list the homestead and sign the purchase agreement and closing papers. Even more complicating, all of the new owners and their spouses must sign the deed transferring title. If one or more individuals or couples are uncooperative, acrimonious, or involved in bankruptcy proceedings, or have tax liens or judgments against them, transferring title to these individuals is a mistake. Instead, apply or petition for the appointment of a personal representative who can take legal title, sell the homestead, and then distribute estate assets.

If there are any questions about the validity of the Will, problems with a formality, or if you need to request Will construction, you will need a formal procedure or risk that the Registrar will deny your Application.¹⁷ And, if real property is specifically devised, you will need a formal procedure UNLESS: (1) the Will identifies real property and specifically names the devisee or the entire estate or residue is given to a devisee; (2) the Will describes a class of devisees or the spouse without specific names (and a Registrar's Determination of Heirs instead of a Court Order determining devisees suffices); or (3) the Will devises "my homestead" without including a legal description (and a Registrar's Determination of the legal description instead of a Court Order determining the legal description is sufficient).¹⁸

A formal procedure is also a necessity when the estate is insolvent. Typically this means that there are more liabilities than assets, liabilities being secured and unsecured debt such as mortgages and credit card bills. But liabilities may also be in the form of exempt property.¹⁹ In other words, an estate with more assets than liabilities can nevertheless be considered insolvent if the assets are exempt property. If a summary proceeding for exempt property is not practical or available in your case, the alternative is a formal, supervised administration.

Determining Takers and Giving Notice

No matter which probate proceeding you plan to use to open an estate, you will need to give notice to all interested parties. To avoid republication of notice and the attendant delay in having to republish notice, determining the takers and giving proper notice the first time is crucial. The Application or Petition will ask you to list the names and addresses of the decedent's spouse, children, heirs,

devisees and other persons interested in the proceeding and indicate the relationship and type or types of interest.²⁰ In cases where the adult children of the decedent are the only heirs or devisees, this task is relatively uncomplicated. In many instances, however, I have found that determining takers and giving proper notice is not so easy.

Keep in mind that those interested in the proceeding need not be persons and that their interest in the proceedings may not be a property interest. For starters, if the decedent wasn't born in the United States or wasn't a U.S. citizen, include the consulate information for the decedent's country of birth or nationality.²¹ If the decedent made a charitable bequest in a Will, include as an interested party the Attorney General for the State of Minnesota.²² If a person who would be interested, if alive, is predeceased, include that person's name, date of death, relationship to the decedent, and a negative allegation for that person.²³ Check the antilapse statute to determine what happens to this interest.²⁴ If appropriate, be sure to list that person's descendants as interested parties.

Also include the decedent's nominated personal representative, distributees of tangible personal property, legal guardians of any minors who may inherit, trustees of a testamentary trust, and any conservators of the estate of an interested person or attorneys representing interested persons. If there are no known heirs, include the Attorney General for the State of Minnesota as heir. List all heirs, even those specifically disinherited by decedent's Will or omitted from the Will, and known and identified creditors, including the county's Estate Recovery Unit, or the equivalent, or the State of Minnesota's Department of Human Services.

Before completing the balance of the pleadings, review the rules regarding ademption and advancement and class gifts to ensure that you have properly determined who takes what.²⁵

Completing the Pleadings

With your compilation of interested persons and analysis of takers, the information you learned at the client conference, and the documents you collected, you will have what you need to complete the appropriate pleadings.

Most of the Application and Petition is straight-forward. Remember, however, to include all of decedent's aliases, including maiden names and nicknames, such as "Tony" for "Anthony." One of decedent's names must be the name decedent used to sign the Will. I typically write the name decedent used to sign the Will first. After a comma, I write "a/k/a" and list all other names.

In addition, if the decedent is testate and the Decree or Order includes a paragraph construing the Will, you will need to make the Court's findings of fact. In other words, in the space provided on the form, summarize the Will distribution provisions and indicate the names of class devisees and whether the devisees have survived. For example, beginning with the first specific devise, write:

Decedent's Will provides for the distribution of tangible personal property pursuant to the terms of his separate writing. No separate writing by the decedent disposing of his personal property was found following decedent's death. Decedent further provided that in the absence of a separate writing disposing of his personal property, said property should be distributed to his wife if she survived him. Decedent's wife, Jane Doe, has survived him. Decedent's personal property is included in the Petition filed herein.

Continue in this vein to discuss all distribution provisions and name all takers.

The proper place to write the end result of the disposition of the estate is in the Order or Decree where it is ordered that title vests "in the following named persons in the following amounts, proportions or parts." Names of heirs or devisees and title to the property should be indicated, following these examples:

- 1) for personal property, outright: "To John Doe, all interest in said personal property, absolutely."
- 2) for real property, outright: "To each of Jane Smith and John Smith, an undivided one-half (1/2) interest in and to said (homestead) real property, in fee."
- 3) for property in trust: "To Jane Doe, all interest in said personal property, in trust."

Don't forget to request Waivers of Bond where appropriate²⁶ and request that all heirs (except the one serving as Personal Representative who signs the Acceptance of Appointment as Personal Representative and Oath by Individual) sign a Nomination of Personal Representative and Renunciation of Priority for Appointment. If you don't file Waivers of Bond and bond is imposed, your client will need to qualify for bond by a bonding company before the Petition is granted and your client appointed personal representative or special administrator. Given the prevalence of poor credit, the possibility exists that your client would not qualify for bond, which would force you to find a replacement client or give up the matter. Similarly, if you neglect to file Nomination forms, you will need to obtain heirs' signatures on these pleadings and file them before the Court will grant your Petition and appoint your client as personal representative. If the heirs don't cooperate at

this point in time, you could lose the matter.

Finally, to avoid the necessity of amending an Application or Petition (or an Order, Decree, Statement, or Letters), proof read the pleadings, double-checking that the included information is correct. And, if your proceeding is informal, don't forget to call the Court to check for Demands for Notice, which would require published notice before your appearance and thus delay your appearance.²⁷

Appearing

If the county of venue doesn't require your appearance, you will file by mail and wait for the Application to be approved or the Order or Decree granted. In the event you need to appear before the Registrar or in Court, appearance is the last step in opening the estate. Assuming the Application or Petition is complete and accurate and all the necessary pleadings have been completed and filed, this final step presents no problems. Simply spend a few minutes with the client before the hearing to rehearse with the client your leading questions and the client's answers. In the event there are sticky issues, flesh out the standard questions to elicit relevant testimony. Make a note to prove up additional facts, not included on the Petition, required by a certain proceeding (for example, in a summary proceeding for exempt assets whether the decedent was absent from the homestead for more than six months prior to date of death). At the time of appearance, if you have updated information such as additional estate assets, be sure to inform the Registrar or Court.

Conclusion

If probate is one of your practice areas, it is important both for the client's sake and your own that you accomplish opening the estate in an expeditious manner. Opening an estate in an efficient manner begins with the prospective client's telephone call. Identifying the client before the client meeting will save time spent in conference with some one who is not the client. Having all the requested information and original documents at the first client meeting saves time hunting for documents and contact information for interested parties, helps you solicit the information you need to determine which proceeding is most appropriate, and facilitates the preparation of all the right pleadings the first time. Finally, careful preparation of the pleadings and the client, if testifying, avoids surprise obstacles to opening the estate.

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Notes

¹ If this article inspires you to take on your first probate, I recommend that, at a minimum, you also read 1, 2 MINN. STATE BAR ASS'N CONTINUING LEGAL EDUC., MINNESOTA ESTATE ADMINISTRATION (2d ed. 2002 & Supps.) and review Minnesota Statutes Chapters 524 and 525. The intent of this article is that it supplement, not supplant, other reading.

² See MINN. STAT. § 524.3-203 (2004).

³ MINN. STAT. § 524.2-404 (2004) (providing for family allowance in the amounts of up to \$1,500.00 for 18 months or, if estate is insolvent, for 12 months).

⁴ MINN. STAT. §§ 524.2-402 (2004), 524.2-403 (2004).

⁵ MINN. STAT. § 524.1-201(24) (2004).

⁶ *Id.*; see MINN. STAT. § 524.3-203 (2004).

⁷ MINN. STAT. § 524.2-105 (2004).

⁸ MINN. STAT. § 524.3-615(b) (2004).

⁹ MINN. STAT. § 524.2-502 (2004).

¹⁰ See MINN. STAT. § 524.2-504 (2004).

¹¹ See MINN. STAT. § 524.3-406 (2004).

¹² MINN. STAT. §§ 524.2-513 (2004), 524.3-1203 (2004).

¹³ MINN. STAT. § 525.313 (2004).

¹⁴ MINN. STAT. § 525.31 (2004); see also MINN. STAT. §§ 525.311 (2004), 525.312 (2004).

¹⁵ MINN. STAT. §§ 524.3-1201 (2004), 524.3-1202 (2004).

¹⁶ § 524.3-1203.

¹⁷ MINN. STAT. § 524.3-305 (2004).

¹⁸ MINN. STATE BAR ASS'N, REAL PROPERTY LAW SECTION, MINNESOTA STANDARDS FOR TITLE EXAMINATIONS (The "White" Pages). Ch. 1, F(1)(b)(1)(a) at 1-F-3 – 1-F-4 (13th ed. 2004).

¹⁹ § 524.2-403.

²⁰ MINN. STAT. §§ 524.1-401(2004), 524.3-306 (2004), 524.3-403 (2004)

²¹ A listing of foreign consuls registered with the Minnesota Secretary of State is available through the Hennepin County Registrar's Office.

²² MINN. STAT. § 524.1-404 (2004).

²³ MINN. R. GEN. PRAC. 408(a).

²⁴ MINN. STAT. § 524.2-6031 (2004); see also MINN. STAT. §§ 524.2-604 (2004) (Failure of Testamentary Provision), 524.2-106 (2004) (Representation), 524.2-709 (2004) (Representation; Per Stirpes; Per Capita at each Generation).

²⁵ MINN. STAT. §§ 524.2-609 (2004) (Ademption by Satisfaction), 524.2-109 (2004) (Advancements), 524.2-708 (2004) (Class Gifts).

²⁶ MINN. STAT. § 524.3-603 (2004) (providing that in informal proceedings, bond is not typically required unless the Will requests that bond be imposed; in formal proceedings, bond is required unless the Will waives bond or all interested persons with an interest in excess of \$1,000.00 waive bond).

²⁷ § 524.3-306.

Hennepin County Affiliate News

By: *Lori Semke*

HCBA NEWLAWYERS MAKE THE MOST OF SUMMER AND GEAR UP FOR NEW BAR YEAR

The HCBA New Lawyers Section enjoyed old and new traditions this summer. On Sunday June 12th, the Section gathered again for the annual St. Paul Saints outing. Members tailgated before the game, stuck their toes in the hot tub in left field, and enjoyed a warm, sunny day at the ballpark with their New Lawyer colleagues. A few days later, New Lawyer volunteers put on their oven mitts to participate in a "Cooks for Kids" event, making dinner for residents of the Jeremiah Project in Minneapolis, a facility providing aid to single mothers going back to school. The HCBA New Lawyers Section Volunteer Appreciation Party was held on July 29th. This year volunteers were treated to a wine tasting at Brookview Park in Golden Valley! Everyone enjoyed the new twist on "toasting" our volunteers.

The New Lawyers Section is also gearing up this summer for a big 2005-2006 bar year! The New Lawyers elected new leadership in May. The 2005-06 officers and directors will be:

Chair: Lori Semke, 612-333-9516
Vice-Chair: Elizabeth Moffitt, 612-335-1861
Secretary: Kirsten Smith, 763-398-0441
Treasurer: Scott Marks, 612-766-7820
CLE Director: Kelly Moffitt, 612-333-9538
Professionalism Director: Kelli Gaborsky, 612-275-0169
Community Service Director: Sarah Larson, 612-337-9645
Social Director: Andrew Moratzka, 612-305-1418
ABA/MSBA Liaison: Robert Hankoff, 805-698-9394

These individuals are working hard to get ready for an exciting year filled with social events and networking opportunities, continued focus on new and inventive CLE opportunities, and creative ways to help members of the New Lawyers Section give back to the community. Keep an eye out for the bi-weekly emails announcing upcoming events, or check out our website at <http://www.hcba.org/programs/newlawyers>.

Members are invited to attend our monthly meetings (the second Wednesday of every month, at noon at the HCBA offices) and are always welcome to contact any member of the board with questions, ideas or to volunteer. Right now

we are recruiting members to participate in one of our committees. Please contact one of the directors listed above to join one of the following committees:

- Community Service Committee
- CLE Planning Committee
- Professionalism Committee
- Social Events Committee

We hope to see you at a committee meeting, happy hour, CLE or community service event soon!

Lori Semke is the Chair of the Hennepin County Bar Association New Lawyers Section, and can be reached at lsemke@flynn-gaskins.com.

Ramsey County Affiliate News

By: Derk Schwieger

New Structure

In the fall of 2004, the Ramsey County Bar Association New Lawyers Committee formed its first Council. The Council consists of two Committee Co-Chairs, a CLE Chair, a Social Chair, and a Community Outreach Chair. The 2004 Council was the idea of senior Co-Chair Laura Hage, and included junior Co-Chair Derk Schwieger, CLE Chair Shannon Nelson, Social Chair Kris Olen, and Community Outreach Chair Elyssa Weber.

Laura Hage has completed her term as Co-Chair, and helped guide the development of many new projects listed below. Joining 2005 senior Co-Chair Derk Schwieger is new Co-Chair Sarah Bashiri, a member of the 2004 council. It is hoped that all of the previous years Council will again participate as Council members.

The purpose of the expanded leadership is to create more opportunities for New Lawyers to become active with the Bar and the Ramsey County community, while continuing our tradition of providing a way for New Lawyers to network. These initiatives have greatly enhanced the presence of the New Lawyers Section for qualifying members, and within the Bar Association itself.

Anyone that has interest in joining the 2005 Council is welcomed, and should contact either of the Co-Chairs.

Social Networking

The New Lawyers have continued their monthly socials, held at various locations throughout Saint Paul from 5:00 p.m. to 7:00 p.m. on the second Thursday of each month. The New Lawyers have been fortunate enough to solicit a variety of law related businesses to sponsor these events.

Sponsors are already speaking for sponsorship opportunities, and if anyone knows of a sponsor for a monthly social, they should contact either of the Co-Chairs.

Continuing Legal Education

Numerous lunchtime CLE's were presented by the New Lawyers on a variety of topics. The CLE's were held over the lunch hour at the Ramsey County Bar Association offices and were very well attended by New Lawyers

and more seasoned attorneys. The topics covered a wide range of practices from Worker's Compensation, Child Custody, Estate Planning, Employment, Criminal Defense, and Mediation.

Lecturers on all topics are welcomed, and if you wish to provide a CLE, please contact either Co-Chair for sponsorship from the Ramsey County New Lawyer's Council.

Community Outreach

As we did last October, we plan to again participate with "Rake a Difference" by raking yards around Saint Paul for the elderly and the disabled. The individuals we met that day were greatly appreciative of this volunteer project.

This November, the New Lawyers are again planning to host the social hour for the Ramsey County Bar Association's 2005 Bench & Bar Benefit. Last year the event was a huge success. It raised over \$40,000 for local charities. The New Lawyers were proud to be part of the Benefit's success, and would encourage all readers of *Hearsay* to attend the event.

The New Lawyers plan to continue to provide support for Santa Brings A Lawsuit, which has been held in the Ramsey County Courthouse. This program has continued to be a success for disadvantaged individuals.

Future Vision

In addition to these primary activities, the New Lawyers Section plan to add Law School Liaisons in each of the Minnesota's four law schools to promote the benefits of membership in the Ramsey County Bar Association. Also, the New Lawyers are going to encourage more seasoned attorneys and judges to attend monthly social events to network and share experiences with New Lawyers.

More Community Outreach projects have been discussed, and will be explored in the next year. Potential projects include a legal forum where financially disadvantaged can come for a consultation with attorneys in multiple practice areas so a variety of legal questions can be answered. Involvement with Habitat for Humanity has also been discussed, and will be explored.

Participation

Wherever you practice, and whatever your years of experience, please check for Ramsey County New Lawyer's events during the upcoming year. Last year was a year of great progress, and this year promises to be a continued success of building on last year's foundation.

Information on upcoming events is available at:

Ramsey County Bar Association
www.ramseybar.org

Co-Chair Derk Schwieger
lawdks@qwest.net

Sarah Bashiri
sbashiri@mnfamilylaw.com

Derk Schwieger is the Chair of the Ramsey County New Lawyer's Group and attorney practicing with Derk Karl Schwieger, LLC. He can be reached at lawdks@qwest.net.

Duluth Affiliate News

By: Kim Maki

With summer underway, the number of activities have decreased significantly for the Duluth New Lawyers group. However, some events of note have occurred, including the election of Kimberly J. Maki of Fryberger, Buchanan, Smith & Frederick, P.A. as president of the Duluth New Lawyers group for the 2005-2006 year.

The Duluth New Lawyers group hosted a lunch with District Court Judge Mark A. Munger on August 4, 2005 at the Duluth Athletic Club. Judge Munger's discussion focused on the judicial system and the practice of law in Duluth. Judge Munger also provided attendees with helpful suggestions regarding style and technique.

The Duluth New Lawyers group also sponsored a volleyball team in a local volleyball league, continuing its

tradition of several years. While the season started off slowly in terms of performance, the team is showing improvement every week.

Finally, the Duluth New Lawyers group is planning an end-of-summer picnic to send off the law clerks who have worked at Duluth firms throughout the summer. The picnic is scheduled for Wednesday, August 10, 2005 at the Park Point recreational area. Activities will include grilling, volleyball and bocce ball.

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

Mankato, St. Cloud, and Willmar Affiliate News

No reports submitted.

2005-2006 NLS Liaisons

Animal Law Committee

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Brian C. Fischer
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Immigration Law Section

Bradley W. Newbolt
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Professionalism Committee

Mary Briede
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Tax Law Section

Brendan Tupa
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NLS Open Liaison Positions

COMMITTEES

Attorney Referral Committee
Bar Media
Community Outreach Committee
Court Rules and Administration Committee
Convention
Diversity Committee
Fair Response Committee
Insurance for Members Committee
Internet Law Committee
Judicial Elections Committee
Law and Literature Committee
Law School Liaison Committee
(University of Minnesota Law School)
Legal Assistance to the Disadvantaged Committee
Legal Education and Bar Admissions Committee
Legislative Committee

Legislative Coordinator
Life and the Law Committee
Membership Committee
Minnesota Law Related Education
Newsletter Editor
Paralegal Committee
Pro Se Implementation Committee
Publications Committee
Rules of Professional Conduct Committee
Senior Lawyers Committee
Technology Committee
Women in the Legal Profession Committee

SECTIONS

Administrative Law Section
ADR Section

Appellate Practice Section
Art & Entertainment Section
Children and the Law Section
Communications Law Section
Computer Law Section
Construction Law Section
Criminal Law Section
Employee Benefits Section
Family Law Section
Food and Drug Law Section
Health Law Section
International Business Law Section
Labor & Employment Law Section
Outstate Practice Section
Public Law Section
Public Utilities Section
Real Property Law 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.

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