

SPRING 2020

RED RIVER REVIEW

Official Publication of the Red River Valley Paralegal Association



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RRVPA

*Fostering the utilization, networking, development, and education of
paralegals throughout Eastern North Dakota and Western Minnesota.*

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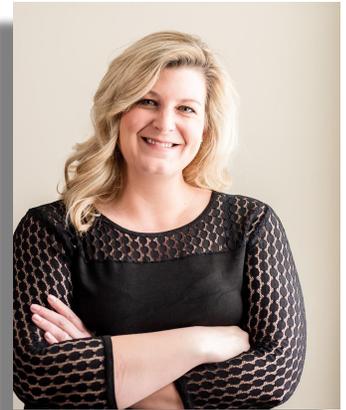
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President's Report

The Red River Valley Paralegal Association, and the paralegal community in Eastern North Dakota as a whole, remain strong despite what our nation is currently facing. I have seen so many shining examples of people in our industry continue to impact others' lives in such a positive way.

As an organization we have taken measures to limit in-person contact, but that won't stop us from continuing to network (even if is over a computer)! Stay tuned for exciting things coming your way this summer!



Rachel Martin

First Vice Presidents' Report



Stacy Brekke

The end of 2019 and beginning of 2020 have been full of learning opportunities for our organization. On October 10, 2019 we hosted our annual conference at the Courtyard by Marriott in Moorhead, MN. The conference was well attended, with 46 members joining us. We would like to thank Nicki Kungel and Mary Locken, Rob Manly, Mike Gjesdahl, Trent Leavitt, Bruce Quick, Tim Richard, and Brent Edison for their participation in our conference. Additionally, we'd like to extend a thank you to our sponsors who provided us with door prizes for the event – Vogel Law Firm, Morley Law Firm, Blue Cross Blue Shield, Bell Bank, Otter Tail Corporation, Ohnstad Twichell, Serkland Law Firm, Eide Bailly, and Bredahl & Associates.



Rachel Meske

Since November we have held five Lunch & Learns with topics ranging from personal injury to starting a business. Tim O'Keeffe of O'Keeffe, O'Brien, Lyson & Foss started us off with a lesson in personal injury law. Following him we had the privilege of listening to Ann Pearson, the founder of The Paralegal Boot Camp, present on Stephen Covey's Seven Habits of Highly Effective People. Next, the entire team at Parvey Larson & McLean joined us to present an interesting and complex topic on jurisdiction in family law cases. After that Jeff Gunkelman from Kennelly Business Law lead us through the steps of starting a business. Last but not least, Tyler Morrow of Kraus-Parr Morrow Weber presented on how cases involving sexually dangerous individuals are handled in our legal system. Our L&Ls have been well attended and prove to be a great asset to members and non-members of RRVPA and we are looking forward to continuing them once things settle down a bit.

If you ever have an idea for a topic or potential speaker for a Lunch & Learn or the annual conference, please reach out to Rachel Meske or Stacy Brekke to discuss.

Second Vice President's Report



Candace Gould

2020 has been an interesting year so far, to put it mildly. All of us have experienced rapid and often unprecedented changes, both in terms of our personal and our professional lives, and I know that these changes have left many of us feeling uncertain about the future. Perhaps that is why, more than ever, I am grateful to belong to this association. It is comforting to know that I am surrounded by a community of reliable, hard-working, and caring individuals. Now, more than ever, it's important to feel connected.

I am pleased to announce that RRVPA has gained 7 new members since last fall. To all of you who have recently joined us, I would like to extend a warm welcome. You've made a good choice!

Currently, RRVPA has 63 voting members, 6 associate members, 1 sustaining member, and 4 student members, for a total of 74 members. If you know anyone who might be interested in joining RRVPA, or who might be interested in learning more about us, please let them know that they can contact me at redrivervalley.paralegal@gmail.com.

Treasurer's Report



Chelsey Norberg

Spring has finally sprung, and the snow is beginning to melt! Our Fall and Winter months have been full of fun and development at our annual conference and lunch and learns with a few holiday parties in our North and South regions. Congratulations to Courtney Guenther for being our Scholarship winner in October! Soon we will begin preparation for our yearly sponsorship drive. Watch for more information to come on this to make our sponsorship drive a success in 2020!

The RRVPA bank account balance as of March 31, 2019 was \$26,295.51.

INTERESTED IN ATTENDING A NALA CONFERENCE? START PLANNING NOW!

- 2020 - July 9 - 11 (Thur - Sat) at [Harrah's Atlantic City, NJ](#)
- 2021 - July 22 - 24 (Thur - Sat) at [Louisville Marriott Downtown, KY](#)
- 2022 - July 14 - 16 (Thur - Sat) at [JW Marriott Desert Ridge Resort & Spa - Phoenix](#)
- 2023 - July 12 - 14 (Wed - Fri) [The Westin Copley Place - Boston](#)

NALA Liaison Report

It has been an interesting start to 2020 to say the least! I hope this finds everyone safe and healthy. I look forward to serving once again as your NALA Liaison.

This year, the 2020 NALA Conference will be held in Atlantic City, NJ July 9th – 11th and it is the 45th Anniversary of NALA – so expect big things! As far as I know, the conference is still on – but I will keep everyone posted on that.

The Official Call for Nominations for Affiliated Associations Director and Affiliated Associations Secretary for voting at the 2020 Annual Meeting of Affiliated Associations, Thursday, July 9, 2020, is online at: [2020 Affiliate Election Forms and Descriptions](#)

Also, please remember these upcoming important dates:

May 1 -- deadline for receipt of nomination forms for Affiliated Associations Director & Affiliated Associations Secretary: [2020 Nomination Forms](#)

May 1 -- deadline for receipt of Affiliate Award nomination forms: [2020 Affiliate Award Online Form](#)

May 1 -- deadline to submit the Affiliate Showcase Exhibitor registration form: [2020 Affiliate Showcase Exhibits](#)

June 1 -- deadline for receipt of Annual Reports to be posted on the Affiliated Associations Resource website [Annual Report Guidelines](#)

June 24 -- deadline for filing the Designation of Voting Representative forms to enable your association to vote at the Annual Meeting of Affiliated Associations: [2020 Designation of Voting Representative](#)

Each of the forms list the names and contact information for your convenience. Links for all of the forms are available at: [Affiliated Associations Resources](#)

Stay safe! Stacy Brekke, CP

Are you taking advantage of all of the benefits RRVPA has to offer?
Here are just a few...

Employment Opportunities: RRVPA promotes paralegal-related job openings of area employers.

Continuing Education: RRVPA sponsors an annual seminar, providing general legal education benefits, as well as continuing education credits required to maintain the CLA/CP certification. In addition, we host monthly Lunch and Learn opportunities with dynamic speakers.

Networking: RRVPA hosts luncheons, socials, and volunteering events, all of which are a great way to get to know other paralegals in the industry.

Scholarships: RRVPA offers an annual scholarship for members who are interested in taking the Certified Paralegal or Advanced Certified Paralegal exam. RRVPA also offers CLE based scholarships throughout the year!

Mentor Program: Members can participate as a mentor in the program, which connects experienced paralegals with an up and coming paralegal.

Things Just Got Real: Welcome to Adulthood

When your child reaches the age of 18 years, they are considered an adult (despite your uncertainties about that). This title comes along with more than just the right to gamble and buy tobacco. Now, you as a parent no longer have certain inherent rights related to their medical or financial details. Many assume that until a child is married, the parents remain responsible for any serious decisions if the adult child were unable to make the decision. Unfortunately, this is not always the case and this fact becomes apparent to families only when they are faced with an emergency. However, there are some simple planning techniques you and your adult children can use to protect yourselves from a potentially bad situation. Let's walk through two scenarios:

Kacey, a 19-year-old art history major, is studying abroad in Italy. Her purse is stolen by a pickpocket. You are attempting to help her with some paperwork at the local embassy and help cancel her bankcard and get her a new bankcard, but everyone is saying that they cannot talk with you or share information. You even try to get information about her tuition, that you are paying for by the way, and the school will not tell you anything. How could this have been avoided? Kacey and her parents would benefit greatly from having a General Durable Power of Attorney in place naming a parent(s) as agent(s) authorized to make financial decisions on her behalf. This would allow the named agent to manage bank accounts, pay bills, sign tax returns, cancel or apply for a lease, and other similar financial and legal affairs for the adult child. This document could also be used if Kacey were in some sort of accident and she was unconscious and unable to handle her finances. Her parents/agents could continue to pay her bills and handle her legal affairs.

Josh, an 18-year-old communications major, was involved in a car accident while away at college out-of-state and was rushed to the hospital unconscious. You are on the phone with the doctors as you try to arrange travel to be with him, but they are being very uncooperative and will not discuss his status, progress, or treatment with you. How could this have been avoided? Josh's parents would have better luck with his health care providers if Josh had executed a Health Care Directive with HIPAA Authorization. Because Josh is an adult, healthcare providers are prohibited by law from revealing health information to anybody, even his parents, about him. A proper Health Care Directive naming his parent(s) as agent(s) would allow them to receive information from providers about his condition and to make medical decisions on his behalf, including treatment decisions. This is particularly important in the event you adult child is unconscious or incapacitated and a time-sensitive decision regarding his treatment and care needs to be authorized.

In either of these scenarios, because neither Kacey nor Josh had a Power of Attorney or Health Care Directive, their parents would not be able to help them without seeking court appointment as a guardian and/or conservator. A guardian is appointed by the court to make personal decisions for the adult child, and a conservator is appointed to make financial decisions. In some cases, both are necessary. In order to be appointed as guardian and/or conservator, the parent would need to petition the court for appointment, and a judge would need to evaluate the situation to determine if this was necessary. This can entail notifying siblings and other interested parties, having a hearing with a judge, and testimony from the child's doctor regarding his or her lack of capacity.

Things Just Got Real Cont.

Not only is this going to be much more expensive, but it will also take valuable time when a child like Kacey is overseas without money or a passport, or an emergency medical decision needs to be made for Josh.

These two documents are generally thought of for elderly clients who may be facing dementia or memory issues, but in reality, every adult (whether 18 or 81) should have them in place in case of emergencies such as these.

Written by Whitney Irish, inspired by Angie Bossert

Whitney Irish is a partner at Vogel Law Firm and counsels clients in the areas of estate planning, oil and gas, probate, trust administration. She works with clients in various stages of life — young professionals, families with young children, business owners, and farmers planning for succession.

Angie Bossert is a Vogel Law Firm paralegal who works primarily with the Estate Planning and Probate practice group. She focuses on the practice areas of probate administration, estate planning, trust formation, guardianship and conservatorship law, oil and gas law, and real estate law and transactions.



**Looking for some new swag to add to your closet?
Stop by Bee Seen in Fargo!**

Bee Seen is the official RRVPA swag provider for the Red River Valley.

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If you choose to purchase an article of clothing from their in-house shop, logo printing is just \$6.



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Regional Update Corner

Update from your trusty Co-South Regional Directors:

We haven't forgotten about you! We were in talks with MSPAM coordinating another group volunteer event. We were finalizing details when COVID-19 just ramped up. Because of that, like so many other events and activities, we halted scheduling anything. Depending on when restrictions are lifted and we are safe to congregate again, we hope to offer one more volunteer event and one more social event before the end of the year. Watch our Facebook page and website for information regarding the Annual Meeting and Paralegal Day celebration in June. Stay tuned and stay safe! And go wash your hands!

- Anna Dillon and Tiffany Plutowski

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Brain Break: Part 1



"I love answering Interrogatories and Requests for Production." said no paralegal ever.



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Thinking about joining NALA?

Members of NALA receive the following benefits:

- Subscription to *Facts & Findings* journal featuring educational and informative articles for paralegals
- Free access to the [Utilization and Compensation Report](#) so that you can negotiate your compensation and benefits successfully
- Discounted rate on NALA continuing education programs and select products
- Special local and national discounts on affinity products and services such as office supplies, car rentals, and identity theft protection
- *Select [complimentary](#) member education
- *\$80.00 gift certificate - to be used towards NALA continuing education programs (*gift certificate is a member benefit and therefore non-transferrable*)

Upcoming NALA Webinars:

April 15, 2020 - 2:00 p.m.
Everyday Ethics for Paralegals

April 28, 2020 - 12:00 p.m.
Bankruptcy Does Not End Litigation

May 7, 2020 - 12:00 p.m.
Discover Your Career Happiness

August 19, 2020 - 12:00 p.m.
The Successful Paralegal in the Digital Age

Also check out their large selection of available on-demand webinars by clicking <https://www.nala.org/continuing-education>

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Gestational Carrier Agreements: ART and Law

What Does “ART” Mean? ART is an acronym for “assisted reproductive technology.” The term describes all fertility treatments where both egg and sperm are handled outside the body.

To an infertile couple, however, ART is not a clinical definition. It is a godsend.

Infertility affects more couples than you’d guess. Statistics vary, as do different users’ definitions of the term “infertility”: however, 20% is an oft-cited neighborhood percentage. Broadly stated, the medical roadblock is with the man a third of the time, the woman a third of the time, and unexplainable a third of the time. It goes without saying that 100% of all gay couples need to engage in either an ART or adoption process to have a child.

What this means is that there are literally millions of couples who would dearly love to have children, but can’t make it happen...without help. Thankfully, help is available.

Infertility can be treated with drug or hormone therapies, with surgery, with intra-uterine insemination (where sperm are placed directly in the uterus), or other methods. Sometimes couples elect an ART approach, the most common of which is “in vitro fertilization” (IVF) and can involve a “gestational carrier.”

During IVF – for women with serious medical issues – a gestational carrier may be used. A gestational carrier is different from a “surrogate.” A surrogate uses her own eggs to conceive a pregnancy. A gestational carrier does not. Instead, the gestational carrier provides a host uterus and carries the child for an individual or couple (the “intended parents”).

Some gestational carrier arrangements are “commercial” (the carrier is compensated). A usual fee is anywhere from \$15,000 to \$30,000. Others are “altruistic” (usually involving a helpful family member or friend who requires no payment).

“Traditional” surrogacy, where the gestational carrier’s own egg is fertilized is strongly discouraged by most all states as violating various public policies.

Laws Differ from State to State: Opinions about reproductive rights and issues are strongly held and widely vary. Likewise, state laws about such rights and issues vary widely, too.

Some states, like Minnesota, have little or no law addressing surrogacy. Gestational carrier agreements are still employed there. But lawyers and parties need to apply more traditional laws to this newer technological circumstance.

Other states have laws that permit surrogacy and/or gestational carrier arrangements, but only when altruistic. Still others, like North Dakota, permit only gestational carrier arrangements, whether for pay or not, but discriminate against their gay citizens.

North Dakota law permits gestational carrier arrangements where the intended parents are married, and the IVF process results in an embryo from the husband’s sperm and the wife’s egg. All other arrangements are deemed “against public policy” and will not be upheld. Despite such blatantly discriminatory language, in light of the U.S. Supreme Court’s decision in *Obergefell v. Hodges*, North Dakota judges routinely ignore it and accommodate gestational carrier arrangements involving gay couples.

ART and Law Cont.

The Team: As you'd expect, gestational carrier arrangements are fraught with issue after issue, whether psychological, ethical, religious, medical, financial, or legal. It takes a strong team of informed professionals to navigate them.

The team includes a medical doctor, certified in reproductive health issues, and his or her well-trained staff. Dr. Stephanie Dahl, of Fargo's Sanford Reproductive Medicine Clinic, describes her and her staff's role like this:

"Our goal is to help families have babies. Sometimes the help we provide is as simple as prescribing oral medication. Other cases involve an IVF process, occasionally with a sister or close family member as a gestational carrier. In those cases, we require mental health screening, and we provide many hours of education prior to beginning the in vitro process. After the first trimester, the gestational carrier follows up with her own OBGYN for the remainder of the prenatal care and delivery. By far, the best part of our job is snuggling with the babies we've helped bring into this world."

A lawyer, well-versed in the ART process and relevant law, is also a must. Like the medical personnel, the lawyer serves an educational purpose. He or she will explain unanticipated issues and concerns, then will draft a Gestational Carrier Agreement for the four parties to sign.

Yes, Four Parties: At the outset, a gestational carrier arrangement involves the legal rights and responsibilities of the intended mother, the intended father, the gestational carrier...and, if she is married, the gestational carrier's husband.

Most states have a legal presumption that a child born to a married woman is her husband's child. Thus, the carrier's husband has a strong and important interest in making sure the law recognizes that a child born of an IVF process is not his. He'll want the legal process to play out correctly, every bit as much as will the other participants.

A contract, called a Gestational Carrier Agreement, will be required. The contract will be signed before the IVF process begins, and in broad terms, addresses two broad categories of issues: non-birth issues; and birth-related issues.

Non-birth issues: There are many non-birth issues a Gestational Carrier Agreement must address:

Will the carrier be compensated? If so, how much? At what intervals? Will payments be escrowed in advance?

Who will pay for incidental expenses for the carrier (e.g., maternity clothes, lost work time)?

Is there medical coverage in place? Who will pay for the carrier's uninsured expenses?

What medical providers and whose screening protocols will be used?

How many IVF transfers will be attempted?

To what extent will each party waive medical confidentiality rights to provide the other needed assurance and the right to participate in the gestational process?

How will "reduction" issues be handled?

ART and Law Cont.

Birth-related issues: This, of course, is what it's all about. Once a child is born:

Who has the right to name the child?

Whose names are on the birth certificate as the child's parents?

Who is financially responsible for the child's medical expenses?

Who can be present at the child's birth?

Who makes circumcision and other medical decisions for the child?

The Gestational Carrier Agreement addresses all of these issues, and more.

A Pre-Birth Order: The safest, clearest, and

best process, for all involved, is to obtain a Pre-Birth Order" from a Court well before the child is born. With a Pre-Birth Order in hand, everyone—the intended parents, the gestational carrier, her husband, and the medical providers—can all proceed with more confidence.

Unfortunately, even those states with laws allowing gestational carrier arrangements usually do not provide a process for obtaining the Pre-Birth Order. Accordingly, the lawyer often ends up explaining an unfamiliar legal process, involving important rights and obligations of multiple parties, to a judge unfamiliar with it all.

Thankfully, Judges nearly always agree: Granting a Pre-Birth Order is a wise and helpful decision.



ART and Law Cont.

Plans B and C: In those rare instances where a judge refuses to grant parties a Pre-Birth Order, there are many other avenues to legally establish the parent-child relationship between the intended parents and the child.

Even without a Pre-Birth Order, North Dakota's Division of Vital Statistics will provide a birth certificate identifying the intended parents as the child's only parents. It simply requires three documents: (1) the Gestational Carrier Agreement; (2) a letter from the lawyer who drafted the agreement; and (3) a letter from the doctor who performed the IVF process and confirmed the resulting pregnancy.

A third approach that leads to the same result—legally establishing a parent-child relationship between the child and the intended parents—is a traditional adoption. Every Gestational Carrier Agreement provides that the carrier and her husband consent to an adoption by the intended parents, and will cooperate with that process. This approach, however, takes longer (a number of months) and costs more.

Whichever legal route is followed to establish the intended parents' legal relationship, all concerned will want to make the medical providers—including the hospital where the child will be born—aware of the gestational carrier arrangement well before the child is born. The hospital will handle its part better if its personnel are not surprised, at the last minute, with news of the gestational carrier arrangement.

Information Sources: Would you like more information about infertility and reproductive issues? Are you curious to learn more about surrogacy and gestational carrier agreements? Here are some good online sources:

www.asrm.org
(American Society for Reproductive Medicine)
www.resolve.org
(The National Infertility Association)
www.reproductivefacts.org/
www.surromomsonline.com
(collection of links about surrogacy)
www.fertilityhelp.com/
(International Assisted Reproduction Center)
www.fertilitylifelines.com
www.cdc.gov/reproductivehealth/
Centers for Disease Control and Prevention

Written by Mike Gjesdahl



Mike founded Gjesdahl Law, P.C. in 1989. His practice is exclusively devoted to families, their transitions, their needs. Today, Mike's practice largely involves high-stake and high-net-worth divorces. Mike is married, and has three children, all of whom currently attend Concordia College in Moorhead.



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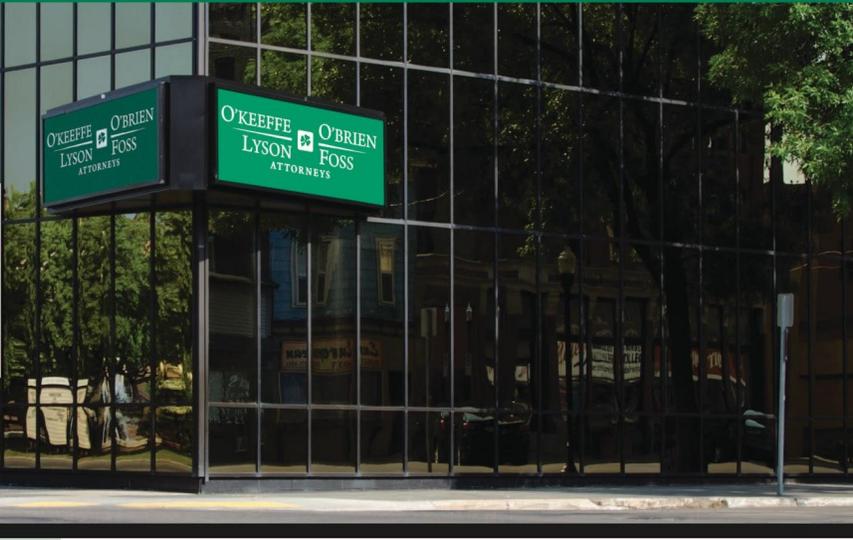
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Utilizing Forensic Accountants on a Budget

How forensic accountants can be used on matters of any size

Attorneys and paralegals deal with financial document examination all of the time. Whether a client has experienced fraud within their business, disputes over an estate and trust funds, or a spouse is hiding assets, the list of accounting needs during litigation is prevalent. Accounting experts are often used to bring clarity to complex financial situations by providing calculations, documenting damages, and identifying information within accounting and financial records. Utilizing experts can provide a lot of benefits in these situations, but oftentimes attorneys avoid them for fear of the costs involved that are ultimately passed through to their client.

In the face of financial disputes, the last thing your clients want to worry about is a large bill for forensic accounting experts. However, forensic accountants can be critical in helping attorneys and paralegals comb through the information and gain an understanding of what happened, while keeping case interruption to a minimum.

Forensic accountants are typically highly certified experts and have years of experience tracing assets and investigating a multitude of fraud schemes. The hiring of these experts or consultants can be expensive, however there are ways to keep costs down. Three common ways forensic accountants assist in matters while keeping costs low and affordable are:

1. Organize, document, and provide data.

Data access and analysis is paramount as the data may tell a story and provide insight. It explains without prejudice and can visually compel the facts of your matter. When data can be produced in a clean and organized manner, it makes the analytical process much smoother. In some cases, a forensic accountant is not needed in order to start

unpacking what the data means. You just need the data in such a way you can analyze it. Forensic accountants utilize many different data analytic tools and their investigative skillsets to examine financial statements, general ledgers, bank statements, and invoices. This allows attorneys and paralegals to take advantage of technology to speed through to the analysis.

Case Example – Family Trust:

A wealthy family with a large Trust fund suspected misuse of funds by one of the children who was the Trustee. The Trust consisted of numerous bank accounts with thousands of transactions and hundreds of transfers. All transactions were documented including a detailed transfer analysis and several disbursement and deposit summaries that provided the law firm with the data to move forward.

2. Review your findings.

Forensic accountants may not need to comb through all the information. Rather, if you compile your findings, a forensic accountant can review your findings and supporting documentation. From there, they can consult on what you may need or other items to consider. Again, a small quantity of time may provide a lot of value for your client.

Case Example – Dealership

A dealership had identified cash theft of down payments by the General Manager. Staff within the dealership were able to quantify the loss and gather all supporting evidence. We were engaged to examine the claim and create a final report. The work performed by the

Utilizing Forensic Accountants on a Budget Cont.

How forensic accountants can be used on matters of any size

dealership saved professional costs for the analysis, while efficiently utilizing a forensic accounting expert to review and opine on the findings.

3. Data analytics.

Organizations are often dealing with large data sets and ultimately lost as to where to find the information they need. Forensic accountants can help you review large data sets for either historical trend analysis, such as year-over-year changes. For example, is the utility company paid 24 times per year when it should be 12 times per year? When it comes to allegations of fraud, forensic accountants can examine the data and apply fraud detection methods to identify questionable activity that may require further analysis.

Case Example – Government

As a proactive measure, a Government entity asked us to conduct data analytics on their payroll to identify potential anomalies for thousands of employees in over 20 departments. Tests performed included:

- Unauthorized overtime;
- Employees with large amounts of holiday pay;
- Employees with large amounts of sick leave compared to similar positions;
- Employees with large number of timesheet edits;
- Payroll deposits into the same bank account for different employees; and
- Duplicate employee names and addresses.

Forensic accounting is critical, but it doesn't have to be costly. The job of forensic accountants is to consult, organize information, analyze data, and provide you with comprehensive, factual reports that can assist in legal matters. You may not have to fully utilize experts in all matters, therefore, by requesting only specific tasks be performed, you can obtain the necessary information for your case.

Written by Brett A. Johnson CPA/CFF, CFE, CFI

Brett works for Eide Bailly conducting and overseeing financial investigations regarding allegations of fraud, waste, and abuse. Brett provides clients with peace of mind by offering fraud detection, investigation and prevention consulting services. He has extensive experience tracing illicit funds through multiple accounts and entities, and identifying employee fraud schemes. Brett conducts internal control examinations to help strengthen controls over assets, and he's provided testimony in state, federal and tribal court systems.



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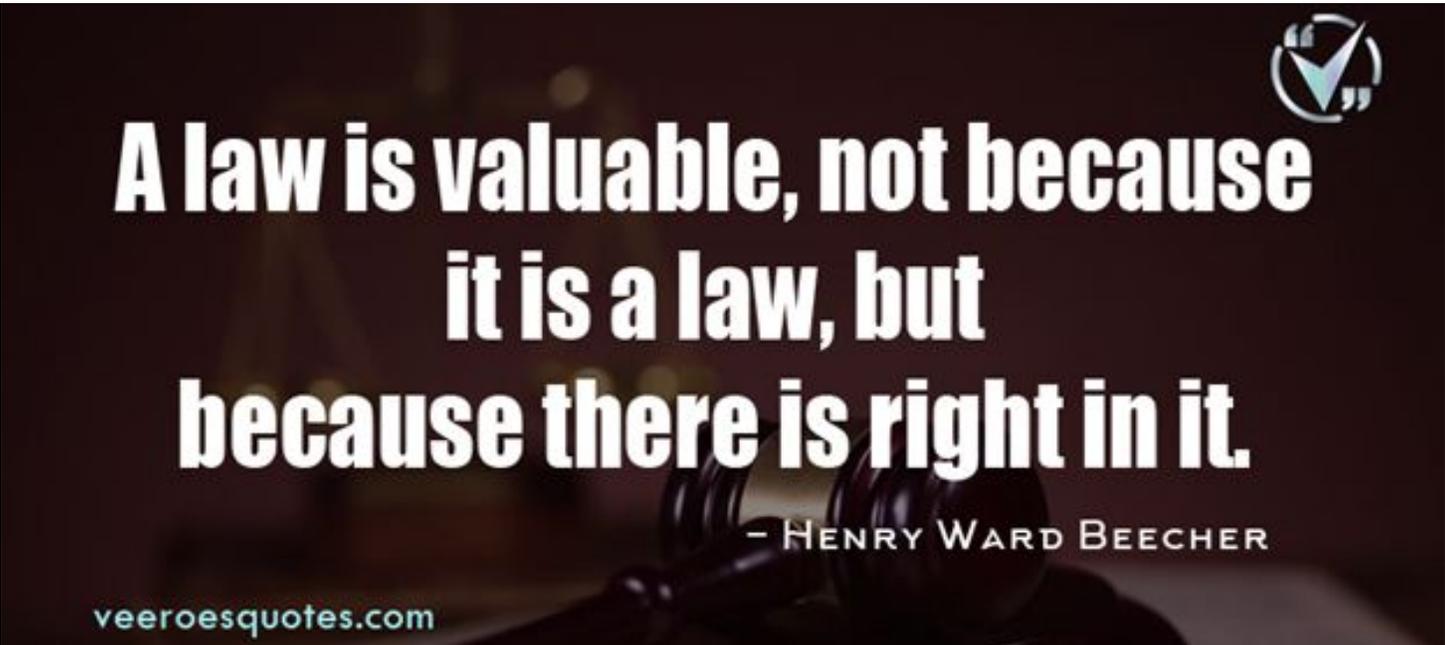
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2019 – 2020 Committees

Education – Rachel Meske & Stacy Brekke

The membership committee is responsible for planning and implementing all educational opportunities for RRVPA members, including Lunch & Learns, our annual Fall Seminar, and other accredited programming. This committee works hard to make sure all content is kept in pace with current technology and the education standards of our ever changing market.

Finance and Audit – Chelsey Norberg

The finance and audit committee is responsible for maintaining the finances of the organization through transparency and communication. This committee also leads our annual sponsor drive each fall and heads up the scholarship opportunities available through the organization.

Membership – Candace Gould

The membership committee is responsible for marketing our organization to new membership within the region, as well as maintaining documentation of current membership, welcoming new members, and acting as a liaison for our organization within the community.

Public Relations – Rachel Martin

The public relations committee is responsible for maintaining and distributing all RRVPA materials, as well as making sure the organization's social media presence is current and relevant. Additionally, this committee designs and publishes the Red River Review, a semi-annual organization publication.

Outreach – Regional Directors

The outreach committee is responsible for researching, planning, and implementing a variety of impactful volunteer opportunities for membership.

Mentor Program – OPEN

The mentor program committee is responsible for facilitating the mentor/mentee program to encourage education through knowledge and experience. This program is especially helpful for area students and those seeking a career in the paralegal profession.

Reach out today if you are interested in becoming more involved in a committee!

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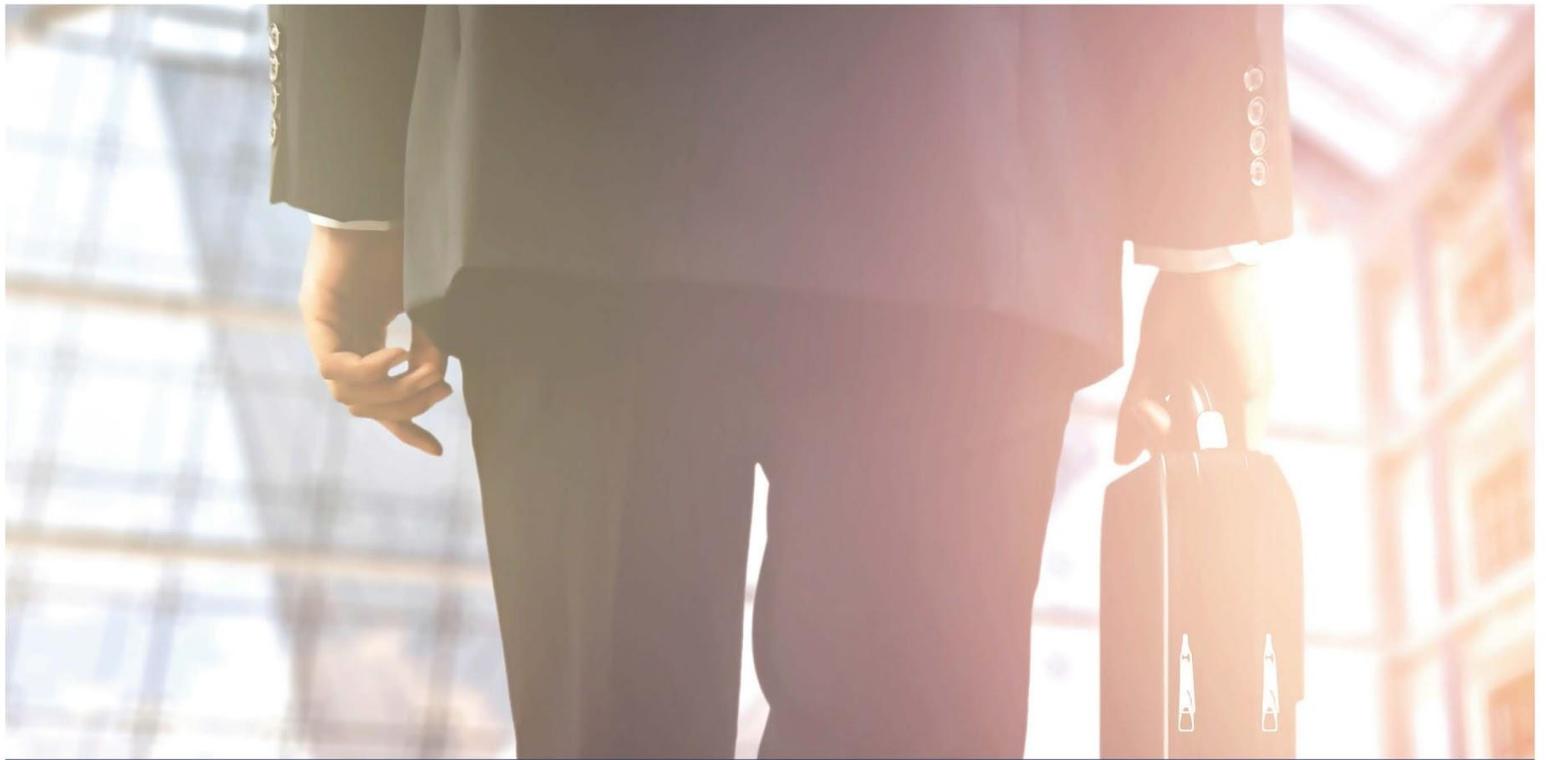
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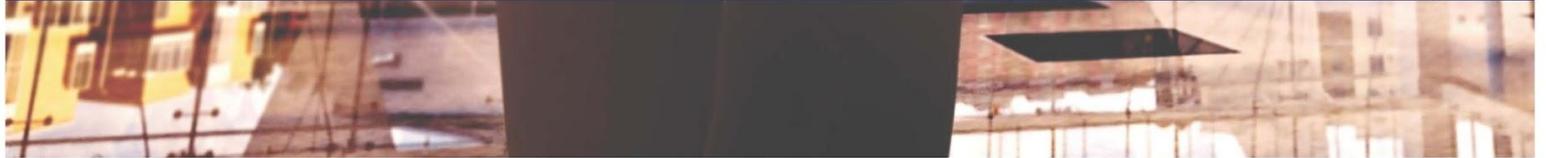


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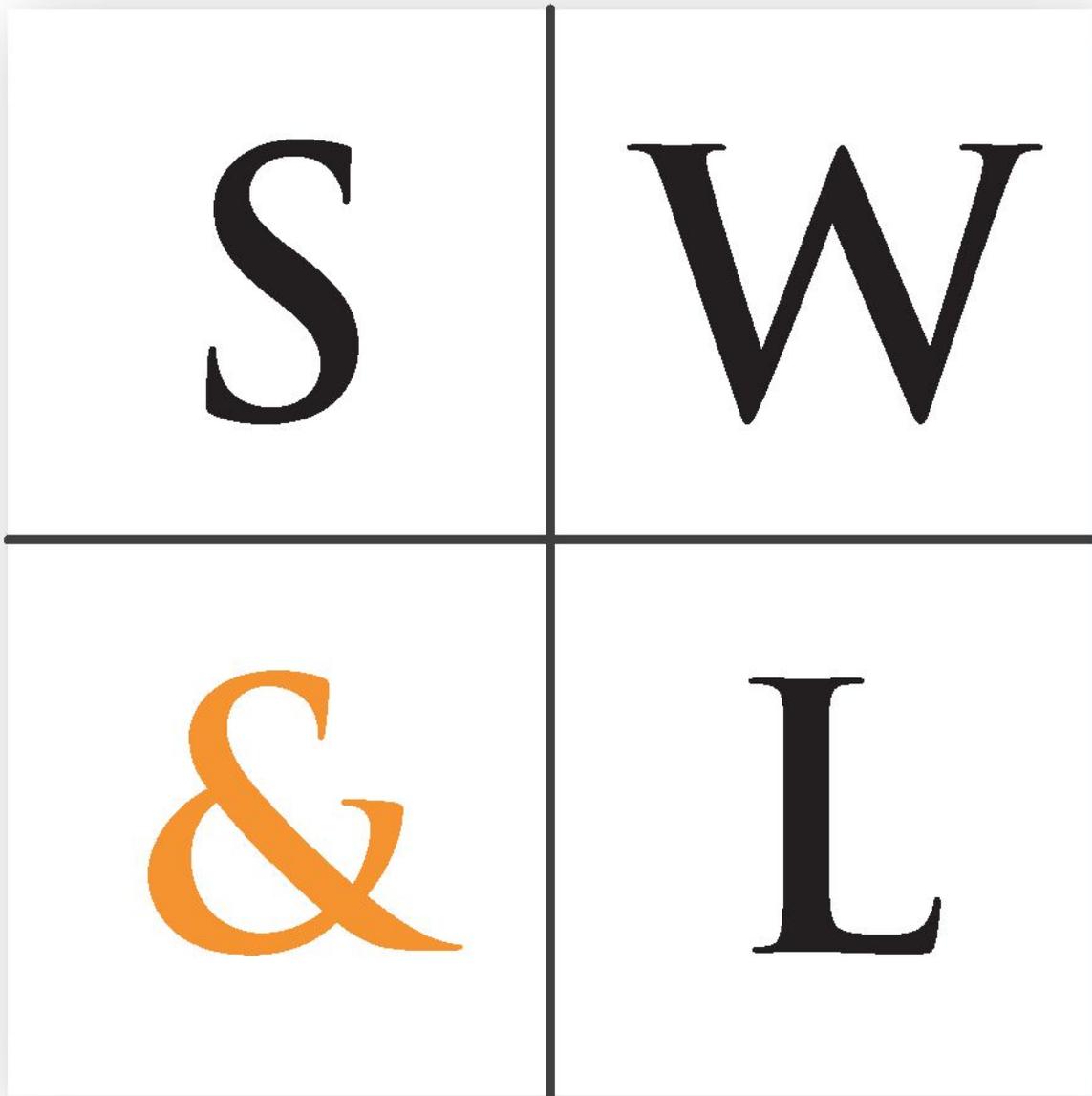
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Can I Pay My Employees Salary and *Not* Pay Overtime?

Many small business owners think that if they pay their employees a “SALARY” that they don’t have to pay them overtime.

Friendly reminder – that is *not* how it works.

Simply being paid on a salary basis is not enough to make an employee exempt from overtime pay. Many employers will make the decision based on the fact that they want to avoid overtime. When in fact, you should be making the decision based on the duties they perform, how you plan to pay them, and how much you plan to pay them.

Federal and state law says that you must pay your employees a minimum established wage plus applicable overtime. However, there are certain exemptions available under North Dakota Law that “exempt” certain workers from overtime.

Most commonly, when thinking of exemptions, people assume the duties test, is all they need to know about. The duties test lists the duties required for exemptions for Executive, Administrative, and Professional classifications of employees (and a few others). What they fail to remember is that there are actually THREE exemption tests an individual must pass in order to be ineligible for overtime pay.

Test 1: The Duties Test

These duties exemptions are listed on the reverse of the ND Wage and Hour ‘ND MINIMUM WAGE & WORK CONDITIONS SUMMARY’ poster that you should have

hanging in your business (where all employees can see it). If you don’t have that poster, [here](#) is a link to the PDF, which lists all applicable exemptions on page 2.

Side note – the Government is a *little* behind and this poster hasn’t been updated since 2015. So, it doesn’t reflect the changes made to the Department of Labor’s Overtime Rule which went into effect January 2020. We’ll review the important changes to note under the Salary Level Test section below.

Many of these duties exemptions are industry specific: Agriculture, domestic services, computer professionals, mechanics, artists, teachers, sales employees, announcers, commercial truck drivers, and a few others. Generally speaking, an employee employed in a bona fide executive, administrative, or professional capacity meets the following requirements:

Executive – an employee whose primary duties consists of:

- a. The management of the enterprise or recognized department or subdivision thereof;
- b. Directing the work of two or more other employees therein; and
- c. The authority to hire or fire other employees or whose suggestions will be given particular weight.

Administrative – an employee whose primary duties consist of:

- a. Office or non-manual work directly related to management policies or general business operations; and

Can I Pay My Employees Salary and *Not* Pay Overtime cont.

b. Who customarily and regularly exercises discretion and independent judgment.

Professional – an employee whose primary duties consists of:

- a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes;
- b. Work requiring the consistent exercise of discretion and judgment in its performance; and
- c. Work that is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.

Test 2: Salary Level Test:

We've established the duties required to be exempt from overtime, now we need to ensure the level of the amount of salary we're paying passes test #2.

The salary level test mandates employees be paid at LEAST \$35,568 per year for a full-year worker or \$684 per week. (If they make less than that, sorry, they must be hourly, and must be paid overtime unless you are willing to make up the difference with regular, quarterly, or annual commission, bonus or catch-up payments.)

This salary level was recently updated by the

Department of Labor and the new amount hasn't been updated on the ND Wage and Hour Division employment poster. That poster still states the old law's salary level of \$455 per week or \$23,660 per year amounts. It also references the old amounts for highly compensated employees. You can read more [here](#).

Test 3: The Salary Basis Test:

This test simply means that the individual in question must be paid on a salary basis. That means the individual is paid a predetermined amount each pay period. The amount cannot be reduced because of variation in quality or quantity of the individual's work. The individual must receive the full salary any week that he/she performs any work, regardless of days worked.

Generally, the salary should be paid as a lump sum amount. Although there are certain total exemptions for particular categories of employees such as lawyers and medical professionals, as well as hourly payment allowances for computer professionals.

So – to answer the question in the title: Sort of.

If you want to pay your employees salary and then not allow them to work over 40 hours in one week, you can make that call. You are the employer. This way – you don't have to pay overtime.

If you want an employee to work as long as it takes to get the work done and they happen to

Can I Pay My Employees Salary and *Not* Pay Overtime cont.

work more than 40 hours in one week, the only way you would get out of paying overtime was if they :

- 1) Passed the duties test - and fit the qualifications of one of the duties exemptions; AND
- 2) They passed the levels test - and they are paid at least \$684 per week. AND
- 3) They passed the basis test - meaning they are paid the same amount each week regardless of hours worked, not worked, or quality/quantity of work.

If you're a small business owner, make sure that you review the salary levels and ensure that you're paying your employees accordingly. If you had an employee who passed the salary levels test at \$23,660 you may no longer be interested in keeping them salaried based on the 2020 changes. In fact, you would need to give them a wage increase of \$11,908 to get them to the new required salary level if you chose to keep their status the same.

Written by Ross Nilson



Ross is an attorney and owner with Nilson Brand Law Office. He primarily works out of the Fargo office but also has a location in Mayville, ND. Ross handles civil litigation, professional liability and board disputes, employment law, contract disputes, and collection matters.

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Mentee

- *One-on-one meetings with experienced paralegals*
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Want more information? Visit the mentor page at www.rrvpa.org.

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Message from NALA

NALA understands that many of our members are currently working remotely from their homes. As we have seen through personal emails, social media, and news stories, we are all starting to feel pretty isolated. To help our members through these challenging times, we have decided to move up the timetable for rolling out our collaborative site, **NALA Commons**.

Initially, we planned to rollout the NALA Commons collaboration site this summer as part of the 2020 NALA Conference & Expo. Due to social distancing and shelter-in-place orders, NALA has realized that an early roll-out would best serve our members in need today, helping them stay connected with each other and providing a unique opportunity to share with and learn from other paralegals across the country.

We ask one favor in return, though. Please be patient and bear with us if we encounter difficulties, as this site was not scheduled to launch in this capacity for another three months. We are all in this together and we felt it was more important for us to launch early with some potential bugs than wait until we had the opportunity to work through several pilot phases. That does not mean we do not want to hear from you if you encounter any problems. If you experience difficulties, or have any questions, please do not hesitate to contact the NALA Commons administrator. Without further ado . . .

Welcome to NALA Commons – YOUR Paralegal Collaborative Community!

We are thrilled to bring you this members-only site! This is the perfect platform to learn and engage in informative dialogue with your fellow paralegals. Feel free to explore the various groups, create your own groups, ask questions, post an answer to a question, start a poll, post interesting articles, share best-practices and tips, and talk about whatever is going on in your paralegal world.

To enter NALA Commons:

1. Log into your NALA account here: www.nala.org
2. After logging in, please click on this link: community.nala.org to enter the NALA Commons Site
3. Upon entering the NALA Commons site, please read the guidelines and policies. This information can be found as a pinned post on the site's home page and also within the New Members to NALA Commons group
4. The NALA Commons offers our members many groups to join and participate in. Click on **Groups** (*left hand column*) and choose the groups you would like to join. Click to **“join group”**
5. Problems or questions? Please reach out to the NALA Commons Administrator

Welcome to NALA Commons! We hope you enjoy your new member benefit.

We also have a new President-elect of NALA, that being Melissa Hamilton from WDALA.

We hope that you are enjoying the new & improved NALA website, with even more offerings now that most of us are working remotely. I hope all is well in everyone's careers & lives and be sure to keep in touch with your colleagues during these uncertain times. **STAY SAFE!!**



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The Red River Review is edited for the members of RRVPA. Publishing and editorial decisions are based on the editors' judgment, the timeliness of the article, and the potential interest of the readers.

The views expressed in The Red River Review are those of the individual authors and do not necessarily reflect the official views of RRVPA. No endorsement of those views should be inferred unless specifically identified as the official policy of RRVPA.

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