

FALL 2019

# RED RIVER REVIEW

*Official Publication of the Red River Valley Paralegal Association*

## *Featured Articles:*

Legal Meets Banking; *Insight Into In-House Law*

CP Exam Updates - Information you *NEED* to know

Court Reporting: *Bells and Whistles and What Matters Most*

The Maze of Child Custody Jurisdiction: "But I live here now ...isn't that good enough?"

Prenuptial Agreements: They're Just for Rich People, Right?

While You Were Sleeping: Health Care Directives and Powers of Attorney

Economic Damages: *Three Critical Elements*

The Road to Becoming a Successful Paralegal

Types of Breathalyzers in North Dakota and Minnesota

# In this Issue

|   |    |
|---|----|
| 2019 - 2020 Board of Directors -----  | 3  |
| Officer Reports -----   | 4  |
| NALA News -----   | 8  |
| Prenuptial Agreements: <i>They're Just for Rich People, Right?</i> -----<br><i>Mike Gjesdahl, Gjesdahl Law Office, P.C.</i>   | 10 |
| The Road to Becoming a Successful Paralegal -----<br><i>Rachel Martin, Brudvik Law Office, P.C.</i>   | 17 |
| CP Exam Updates -----   | 19 |
| Upcoming Events -----   | 21 |
| The Maze of Child Custody Jurisdiction: <i>"But I live here now...isn't that good enough?"</i> -----<br><i>Shannon Parvey &amp; Jason McLean, Parvey, Larson and McLean</i> | 22 |
| Legal Meets Banking; <i>Insight Into In-House Law</i> -----<br><i>Sarah Nupdal, Bell Bank</i>   | 27 |
| 2019- 2020 Committees -----   | 30 |
| What We've Been Up To -----   | 34 |
| While You Were Sleeping: Health Care Directives and Powers of Attorney -----<br><i>Valeska Hermanson, Ohnstad Twichell</i>  | 35 |
| 2019 Proclamation for Legal Assistant/Paralegal Day -----   | 38 |
| Economic Damages: Three Critical Elements -----<br><i>Norman Kur, Eide Bailly, LLP</i>  | 40 |
| Bells & Whistles and What Matters Most -----<br><i>Angie Ballman Punton, Norm Mark, A Veritext Company</i>  | 44 |
| Types of Breathalyzers in North Dakota and Minnesota -----<br><i>Adam Justinger, Severson, Wogsland &amp; Liebl, P.C.</i>   | 45 |
| Thank You to Our Sponsors -----   | 47 |

**RRVPA**

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

# 2019-2020 Board of Directors

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# President's Report

As I enter my third term as president of the Red River Valley Paralegal Association, by far the thing I am most thankful for are the relationships I have built. I initially joined as a member because I was new to the community and thought this would be a good networking opportunity. Over the past several years I have made many friends and have been able to participate in numerous impactful events. I am proud to be a part of an organization that supports the legal community in such a profound way. Cheers to another great year!



# First Vice Presidents' Report



So glad all of you could make it to the 2019 Fall Conference; we are hard at work laying the groundwork for the 2020 conference as we have speakers who weren't available this time around, but are free next year! It's a lot of hard work, but so worth it when we can present interesting speakers on hot button legal topics.



# Second Vice President's Report



In the short time that I have been Second Vice President, I have been extremely impressed by what I have seen of RRVPA, its officers, and its members. RRVPA is made up of well-informed, intelligent people, who are dedicated to improving their skills and contributing to their community, and I am very pleased to be a part of this team.

Currently, RRVPA has 60 voting members, 5 associate members, 1 sustaining member, and 1 student member, for a total of 67 members. I am excited to announce that 11 of that number are new members. To all of you who have joined us this year, welcome!

I also want to thank all of our existing members who have taken the time to introduce coworkers and friends to our organization, as many of our new members first heard about RRVPA through you. Please continue to spread the word, and if you know anyone who is interested in our organization, please have them contact me at [redrivervalley@paralegal.com](mailto:redrivervalley@paralegal.com).

# Treasurer's Report



It is officially Autumn, and we are starting out the 2019 – 2020 year with a great start. We can't thank our sponsors enough for their generous donations and look forward to what there is to come for all of us involved with the Red River Valley Paralegal Association. From our recent sponsorship drive there has been a total of eight platinum sponsors, six gold sponsors, eleven silver sponsors, and six bronze sponsors. We are beyond excited about these numbers. Also, a big thank you to our members for their time and efforts that made this past sponsorship drive a success! We will continue to take on sponsors throughout the year, please contact us if your business is interested in this great opportunity.

The RRVPA bank account balance as of October 1, 2019 was \$26,926.92.

## 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.

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## NALA Liaison Report

Hello RRVPA members!

It has been an exciting year and once again we hope 2019-2020 will be the same! I look forward to continuing to serve as your NALA Liaison.

I attended the 2019 NALA Conference in Scottsdale, AZ (it was only 115 degrees) and had a great time meeting new & fellow paralegals from across the country, networking, and attending as many seminars as I could get to in those 3 fun-filled days!

If you are not a member of NALA (18,000+ members) yet, I highly recommend you look into it – there are so many educational resources available to any paralegal at any level of their education and/or careers. From the Conference, I took away a lot of valuable news and ideas for the upcoming year. The hot button topic at the NALA Conference was most definitely was about Legal Technology – and NALA had the best speakers available to educate us on the growing industry of paralegals in a technology role and the positives and negatives involved with our daily use of technology. Technology is evolving every day and it is here to stay. I would not be surprised if we have more technology talks next summer.

Next year, the 2020 NALA Conference will be held in Atlantic City, NJ July 9<sup>th</sup> – 11<sup>th</sup> and it the 45<sup>th</sup> Anniversary of NALA – so expect big things!

We hope that you are enjoying the new & improved group page created on Facebook for all to follow. I hope all is well in everyone's careers and thanks for your continued support of RRVPA!

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### 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](#)

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*Sponsor Spotlight*

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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:

Oct.. 23, 2019: Introduction to Intellectual Property

Nov. 1, 2019: Appeals

Nov. 20, 2019: Persuasive Writing Technique

## Sponsor Spotlight

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# Prenuptial Agreements: They're Just for Rich People, Right?

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Prenuptial agreements have an image problem. We think they're unromantic and, on that score, it's hard to argue. However, other perceptions are not as accurate. Take these, for example:

"A prenuptial agreement gets couples off to a rocky, unhealthy start."

"Prenuptial agreements usually involve one party taking advantage of the other. Prenups are almost always unfair."

"Such agreements usually involve deception and hidden assets."

"Only rich people want or need prenuptial agreements."

These are misleading observations. To understand, meet some people who should consider having a prenuptial agreement...and why:

**1. People Who Like to Control Their Own Affairs.** You know the statistic, don't you? Approximately half of all marriages end in divorce. That means, when a couple marries, the odds of their marriage surviving are the same as a coin flip.

Most soon-to-marry couples might think not having a prenuptial agreement means there is no plan in place should they divorce. Not true. There is a plan in place. Unfortunately, it's the state's plan, based on the state's sense of what is fair.

As it turns out, in North Dakota, hardly anyone thinks the state's approach makes sense. For example, in North Dakota, the estate that you

inherited—or might someday inherit—is at risk of being distributed to your spouse (even if they are an ex-spouse).

**2. People Who Might Inherit Well.** I'll say it again. Though you may not have much now, maybe you stand to someday inherit a decent estate from your parents or other family members. Look out!

Without a prenuptial agreement in place, that inheritance could be divided in your divorce.

Unlike other states, North Dakota doesn't protect inheritances and doesn't require divorce courts to award those assets to the inheriting spouse. Minnesota does protect such assets, but not with 100 percent certainty.

Is your son or daughter getting married soon? Do you want to make certain their partner doesn't end up with all, or part of, the estate you leave behind? Then talk to them about the need for a prenuptial agreement.

**3. People With Kids.** Along those same lines, maybe this is your second marriage, and you have children from your first. Whether or not you're "rich," you probably want your kids to end up with whatever it is you've accumulated.

Without an agreement in place, if you divorce your second spouse, those assets might well end up going to him or her. Then, in time, your assets will make their way to your new spouse's children, not yours.

Even if your second spouse has no desire to claim any portion of your premarital estate, your kids might still suspect it. Resentments might brew

## Prenuptial Agreements, cont.

and fester. A prenuptial agreement might help keep family peace.

**4. *People Who Earn More Than Their Partner.*** Maybe you aren't rich just yet. But it's possible you have worked hard to be rich someday. If you are about to acquire a degree, or make a deal, or buy the next big thing, maybe you'd like to keep the fruits of your own labors should your marriage fail.

**5. *People Who Earn Less Than Their Partner.*** Do you intend to be a stay-at-home parent? Well, if your marriage fails in middle age, your partner will have spent all those years climbing corporate rungs and reaching upper income levels. In the meantime, you may have little more than an entry-level earning capacity.

All those years you spend at home frees your spouse to increase his or her earning capacity. If the marital partnership ends, should only one partner end up with 100 percent of that "asset"? If so, your partner's post-divorce net income will continue its upward arc. Yours may flat-line...or worse.

A prenuptial agreement can provide essential protection.

**6. *People Who Own a Business.*** Without a prenuptial agreement, not only will your spouse likely be awarded half of what your income brought to the marital estate, but half of your ownership interest in the business, too (or its value).

For example, do you make your living from the farmland and implements you own? Do you make money from any kind of self-employment assets? Well, if you divorce, you may need to "buy" those assets again. This time, though, your payments will be to your ex.

**7. *People Whose Partners Have Debts.*** Does your fiancé have student loans? High credit card balances? Outstanding 401K loans? Medical debts? Well, beware! In the event of a divorce, you might end up being responsible for those liabilities, too, in one way or another. A prenuptial agreement can help.

**8. *People Who Want Protection From Their Partner's Unhealthy Behaviors.*** A surprising number of marriages fail due to mental health issues, often related to compulsive or addictive behaviors. Addictions can cost tens of thousands—for the habit itself, treatments, attorney's fees, lost wages, criminal fines, and fees.

A prenuptial agreement can keep your money safe if your partner engages in such unhealthy behaviors.

**9. *People Who Like to Go Into Things With Their Head Up.*** You have never entered into a relationship as important as this one. Shouldn't it be preceded with some conversation—even agreement—about financial goals, obligations, and expectations?



Will all of your income, and his, be deposited in one account? Or will you keep your respective earnings in separate accounts?

## **Prenuptial Agreements, cont.**

Will your income be devoted to payment of household expenses, while hers is saved and invested? Do you have the same standard of living expectations? Have you talked about your monthly budget? Do you have net worth goals? Savings goals? Charitable giving desires? Does your partner share them?

Even though having the “prenup talk” might be hard, it might well be one of the wisest, healthiest conversations you ever have.

**10. *People With Heirlooms.*** A prenuptial agreement invariably lists treasured assets and assures they remain with the person who brought them into the marriage. Make sure Grandma’s treasures, Mom’s jewelry, and Dad’s shotgun all stay with you.

**11. *People Who Don’t Like to Give Their Money to Lawyers.*** Divorces can be more expensive than you’d imagine. In this region, a middle-class couple’s divorce often involves \$5,000 to \$15,000 in fees, even when the case settles. If the couple can’t reach an agreement, and they press on to trial, those fees can exceed \$50,000—sometimes for each spouse. Even their divorce lawyers often shake their heads, incredulously, at the parties’ stubborn folly.

Well, here’s a secret. Cases whose outcomes are predictable do not go to trial! After all, who would spend tens of thousands of dollars to find out how a judge will divide their estate when they already know the answer?

In other words, prenuptial agreements can go a long way to making divorce more peaceful, more predictable, and more affordable.

**12. *Rich People.*** OK, OK. Yes. If you are wealthier than your partner, you should

definitely have a prenuptial agreement. You like your money and other assets, don’t you? You want to keep them, right? Enough said.

### **What Can’t a Prenuptial Agreement Do?**

Prenuptial agreements anticipate, essentially, two concerns: (1) How to contend with financial issues as part of a divorce; and (2) How to distribute assets in the event of a spouse’s death.

There are, however, issues that are beyond the influence of a prenuptial agreement, things it cannot do.

For example, spouses-to-be cannot pre-decide who will take custody of children in the event of divorce. Likewise, they can’t decide the shape, scope, and conditions of the other’s visitation. The Court retains authority to make final decisions about such matters, and a marrying couple cannot, by agreement, remove it.

Likewise, a couple can’t use their prenuptial agreement to establish child support amounts in advance or to waive that obligation entirely. Our law requires child support to be set according to specific guidelines and to change to specific amounts when the parties’ income changes. Parties cannot agree to terms different than the state’s.

### **Basic Requirements**

Here are the basic requirements:

1. The agreement must be in writing, appropriately signed by both parties.
2. The parties must enter the agreement voluntarily. For example, the agreement should

## Prenuptial Agreements, cont.

be signed well before the wedding to avoid the appearance of a coerced last-minute signing (leveraged by the possible embarrassment of a cancelled ceremony).

3. The agreement cannot be “unconscionable” (lawyer lingo for really, really unfair).

4. The parties must make full disclosure of their assets, debts, and income.

5. The parties should be represented and advised by separate lawyers.

6. The parties should then follow the terms of their agreement during their marriage. For example, if the agreement says they’ll deposit their income in separate accounts, describes bill-paying methods, and investment or saving approaches, the parties should follow their agreement.

Again, this is pretty important stuff—too important to leave to a one-size-fits-all online form, or to any old lawyer. You want your agreement to contend properly with your circumstances. That means working with a qualified family law attorney, familiar with divorce and estate-planning considerations.

Congratulations and best wishes for a long and happy marriage! But consider a prenuptial agreement...just in case.



*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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# Brain Break: Part 1

\$250 an hour?!  
Interesting. What is  
your paralegal's rate?  
After all, SHE will be  
the one working on  
my case.



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## WOULD YOU RATHER

-IMPOSSIBLE EDITION-

ALWAYS HAVE TO TELL  
THE TRUTH

ALWAYS HAVE  
TO LIE

NEVER BE ABLE TO  
SPEAK AGAIN

HAVE TO SAY EVERYTHING  
ON YOUR MIND

BE ALLOWED TO WASH  
YOUR HAIR ONLY  
ONCE A YEAR

BE FORCED TO WEAR WET  
SOCKS FOR THE REST OF  
YOUR LIFE

BE IN THE REAL-LIFE VERSION  
OF "THE WALKING DEAD"

BE IN THE REAL-LIFE VERSION OF  
"AMERICAN HORROR STORY"

RUN YOUR TONGUE DOWN  
A NEW YORK CITY SIDEWALK

PRESS YOUR TONGUE INTO A  
STRANGER'S NOSTRIL

HAVE THE HICCUPS FOR  
THE REST OF YOUR LIFE

ALWAYS FEEL LIKE YOU'RE ABOUT  
TO SNEEZE BUT YOU CAN'T

USE SANDPAPER AS  
TOILET PAPER

USE HOT SAUCE AS  
EYE DROPS

BE STICKY FOR THE  
REST OF YOUR LIFE

BE ITCHY OF THE  
REST OF YOUR LIFE

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Face it, \_\_\_\_\_(your name), you are  
about the greatest thing since  
\_\_\_\_\_(favorite food). No one else can  
\_\_\_\_\_(verb) like you can. Your best  
friend says you are the  
\_\_\_\_\_(adjective)-est person in the  
world. Sure, you once  
\_\_\_\_\_ (embarrassing thing  
you did), but you also  
\_\_\_\_\_ (honorable thing you  
did). So, \_\_\_\_\_(favorite endearment),  
today is the day you're going to stop  
beating up on yourself for being  
\_\_\_\_\_(negative adjective) and start  
loving yourself for being  
\_\_\_\_\_(positive adjective),  
\_\_\_\_\_(positive adjective) and  
\_\_\_\_\_(positive adjective). And if people  
give you a \_\_\_\_\_(adjective) time, just  
tell 'em they can take their  
\_\_\_\_\_(noun) and \_\_\_\_\_(verb) it  
up their \_\_\_\_\_(body part)!

**DON'T MAKE  
ME USE MY  
PARALEGAL  
VOICE**



## **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.

*If you provide your own article of clothing, logo printing is just \$12.  
If you choose to purchase an article of clothing from their in-house shop, logo printing is just \$6.*



# The Road to Becoming a Successful Paralegal

---

From time to time people have asked me what the road is to becoming a successful paralegal. This begs the question - what exactly is a paralegal? Is it defined by experience, education, coworkers, a title on your door, or something completely different? To start, let's break it down in the most simple form and identify what a paralegal is. The word para means alongside. As a prefix to the word legal, the implication is that a paralegal is someone who works alongside an attorney. Not below or above them. Right alongside. We, as paralegals, are one half of the attorney/paralegal team working to make sure we are providing competent legal services to the clients who walk through our door.

Many paralegals in today's workforce have received some type of formal education, while others simply learn on the job. State and national certifying exams are also trending, as they seek to legitimize and create industry standards. In our local market, it is quite common for paralegals to obtain a four-year degree from the local university. In other markets, an associates or even a masters is customary. Whatever type of educational background you have, I think the unanimous opinion remains that a successful paralegal is coachable, flexible, and constantly seeks new opportunities to expand his or her skillset.

According to the Bureau of Labor Statistics, there were approximately 309,940 working paralegals as of May 2018, which equates to almost one paralegal for every two attorneys. We are a force to be reckoned with, especially with growth projections for the

industry over the next decade. The paralegal profession has greatly evolved over the past few decades as offices seek to streamline their workflow and increase their client list. A skilled paralegal is responsible for producing substantive legal work and maintaining an extensive knowledge bank of legal procedures. It goes without saying that many law firms could not run as efficiently as they do without the help of a competent paralegal.

## PARALEGAL

noun. [par-uh-lee-guh l]

Someone who solves a problem you did not know you had in way you do not understand.

See also **wizard, magician.**

So what makes a good paralegal? A good paralegal is someone who is invested in the firm they work for, the attorney they work with, and the work product they put out. Being a good paralegal comes down to having pride in your work and compassion for your clients and/or their situations. It is maintaining a professional, unbiased opinion, day in and day out.

A good paralegal is someone who works to make sure that when the attorney steps foot into the courtroom or the conference room they have every single tool necessary to do what they are there to do - and look good while doing it. We are fixers, finishers, therapists, writers, and researchers.

## The Road to Becoming a Successful Paralegal, cont.

Our job is a very important one. We are often the point of contact for individuals who are going through what could be the worst time in their life. When they hire an attorney they are trusting that person implicitly to make things “better” for them. Paralegals play an integral role in helping the attorney balance everything from client communication to deadlines to digging deep into complex legal issues. No day is the same and some hours are spent reassuring someone that you are doing everything you can, while other hours are spent preparing trial binders or proofreading pleadings.

As you can see, there is no clear road to becoming a paralegal and success depends on a number of different things. Being a paralegal is so much more than experience,

education, or a title. A few weeks ago I took a minute to ask an attorney in my office what a successful paralegal is. He pondered my question for a minute, provided his explanation of the profession, and then said in summation, “You da real MVP.” I think he’s right. Whether you are thinking of joining the paralegal profession, or you are a seasoned legal ninja, one thing is for sure - paralegals wear many hats and the most successful ones are changing the world, one brief at a time.



*Rachel Martin is a paralegal in Fargo, ND focusing primarily in family law litigation and probating estates. She has previously worked in the areas of real estate, estate planning, personal injury, and workman's compensation.*

## RRVPA Mentor Program



### *Mentor*

- *Meet new individuals who share the same passion as you*
- *Be a supportive and positive role model*
- *Learning new ideas or points of view*
- *Share your knowledge and experiences*
- *Motivate others to learn and grow*

### *Mentee*

- *One-on-one meetings with experienced paralegals*
- *Receive valuable practical advice*
- *Gain real life exposure*
- *Learn about the local legal community*
- *Networking*

The Mentor program is designed to connect experienced paralegals with up and coming paralegals. Mentors will exchange information with their mentee in order to enrich practical aspects and knowledge of the paralegal profession.

Want more information? Visit the mentor page at [www.rrvpa.org](http://www.rrvpa.org).

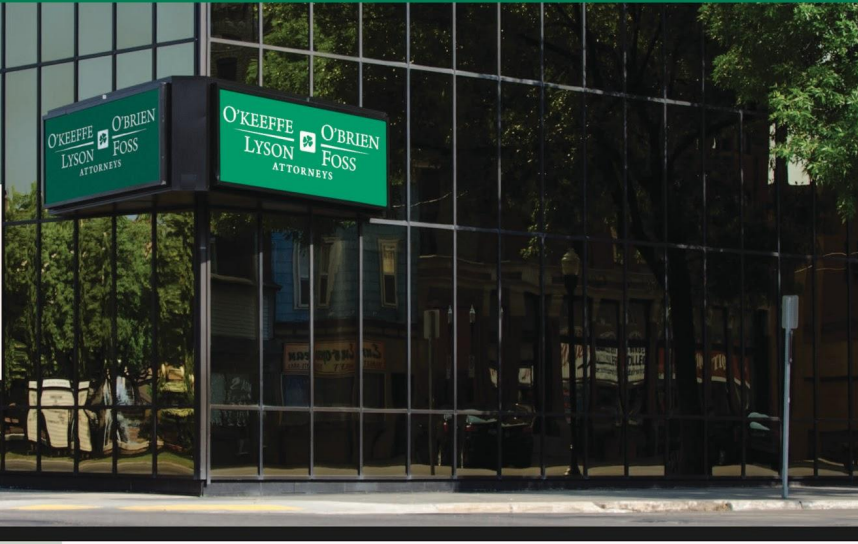
## CP EXAM UPDATES

- ACP COURSES ARE BEING UPDATED/REVAMPED (20 HOURS OF COURSES AVAILABLE).
- NEW BENEFITS FOR PARALEGAL STUDENTS - THEY CAN APPLY TO TAKE THE CP EXAM DURING THEIR LAST SEMESTER/QUARTER OF SCHOOL AND THEIR APPLICATION FEES HAVE BEEN DISCOUNTED; IF NALA MEMBER, DISCOUNT IS EVEN MORE.
- THERE ARE MORE LOCATIONS AVAILABLE TO TAKE THE EXAMS - THEY ARE CALLED NON-PSI TESTING CENTERS, WHICH INCLUDES COLLEGES, MILITARY BASES, AND CONFERENCE ROOMS (THE CONSIDERATION FOR THIS CHANGE WAS THE INCREASE IN "TESTING ANXIETY"); THERE ARE FORMS TO FILL OUT TO HAVE YOUR LOCATION CONSIDERED TO BE A TESTING SITE.
- CLE HOURS, ABOVE AND BEYOND THE REQUIRED 50 HOURS PER REPORTING PERIOD, ARE NO LONGER ALLOWED TO CARRY OVER INTO THE NEXT REPORTING PERIOD.
- CLE HOURS - VERIFIED SESSIONS NO LONGER HAVE TO BE A MINIMUM OF 50 MINUTES LONG TO BE EQUAL TO 1 CREDIT HOUR.
- RETIREMENT STATUS = CP RETIRED - YOU CAN REACTIVATE IF YOU END UP GOING BACK TO WORK + YOU WILL GET NEW REPORTING YEARS/TERM AND WILL HAVE YOUR REGULAR ACTIVE MEMBERSHIP BACK.
- IF YOU HAVE QUESTIONS ABOUT TESTING/EXAMS, CONTACT [TESTING@NALA.ORG](mailto:TESTING@NALA.ORG)
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# Upcoming Events

---

It's getting to be that time of year  
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it's joy we'll be making.

A holiday party is also being planned  
Food, games, and prizes, trust me, it'll be grand!

Stay tuned for details, we hope you can come,  
We'll spend time together and have so much fun!

## Board of Directors' Meetings

**October 15, 2019**

**Board of Directors Meeting**

11:30 a.m. - 1:00 p.m.

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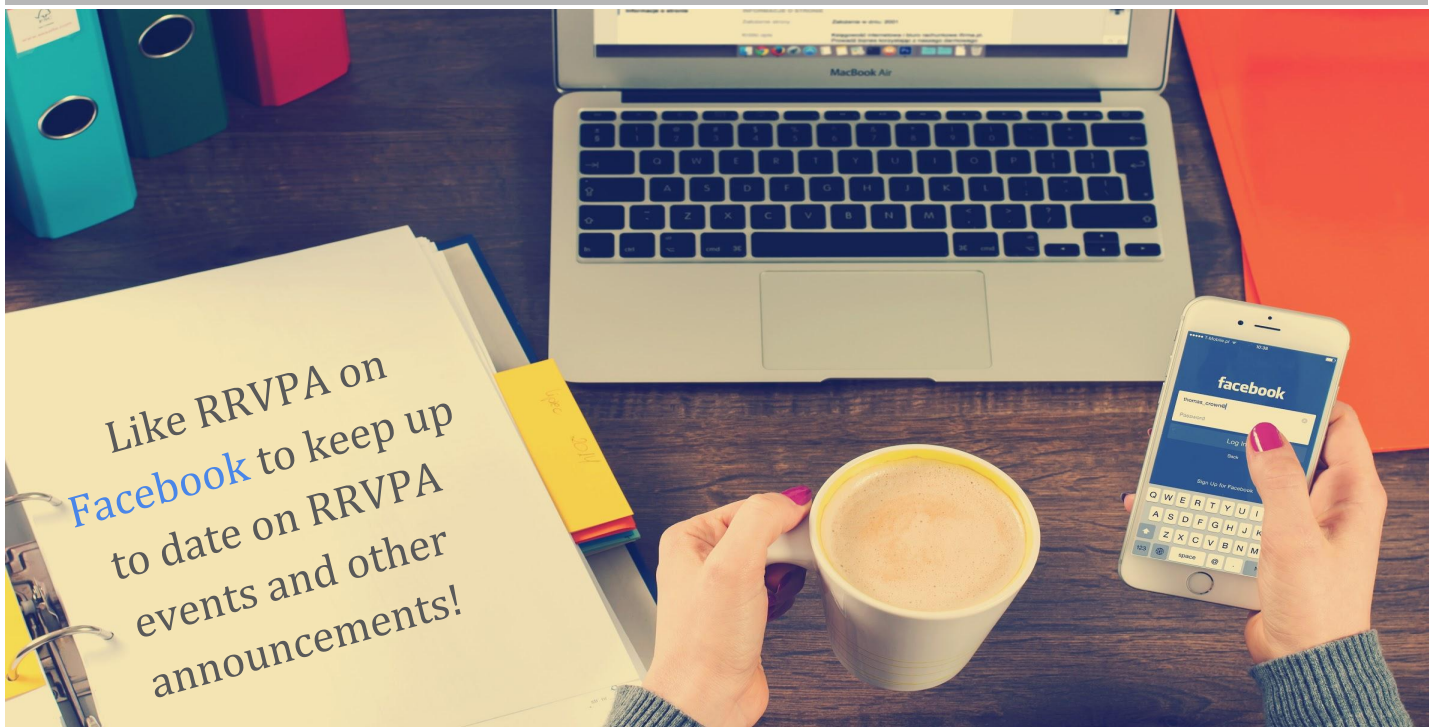
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# The Maze of Child Custody Jurisdiction: “But I live here now...isn’t that good enough?”

---

“Jurisdiction” is one of those trigger words in child custody law. It means the court’s power to make a legal decision on a particular issue. In the child custody realm, it means which state’s court system is authorized to act for a given family.

We live in a fluid society, and people relocate often. Sometimes, the move is across the country. Other times, it may just be across a river. But in either case, if there are children involved and court action is necessary, an important question needs to be asked:

Where should I file my custody or parenting time action?

This is not a matter of minor importance. In fact, if a party chooses the wrong state in which to litigate, the result may be a void (thus, unenforceable) judgment. To help guide parents through the process, nearly every state in the country, including North Dakota and Minnesota, has adopted an act to address this problem, entitled the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It’s essential that you get it right. Here are some basic rules:



1. Six months is a somewhat magic timeframe in the world of child custody law. The state that can make an initial child custody determination is the “home state” of the minor child, defined as the place where a child has lived with a parental figure for at least six consecutive months immediately preceding the start of the action. However, six months may not matter if it is a modification of custody, because...

2. ...A court loses its jurisdiction when it determines that neither the child, nor any parental figure, continues to reside in the state. So, if North Dakota entered a judgment dealing with minor children, and then the parents and children move to a different state (or states), North Dakota no longer has jurisdiction, unless...

3. ...One parent, or a person acting as a parent, still resides in the initial state. The initial state then retains jurisdiction, regardless of whether the other party has been somewhere else for six months.

Confused yet? If so, the easiest way to remember the system is this: if there is no court action, six months matters. If there is a judgment or other court order in place, always defer to the state where it was entered, unless no one lives there.

But there are other issues to tackle as well. For example, what does “reside” mean? Maybe a parent temporarily moves out of state with a child, but then returns. Maybe both parents move from the initial “home state” and end up in two different states. Maybe the child has spent

## The Maze of Child Custody Jurisdiction, cont.

exactly 50% of his or her time in two different states for the past six months. Maybe one parent remains in the initial state, one parent moves away with the child for three months, then relocates again to a completely different state.

The list of examples could go on and on. The UCCJEA contains multi-step analyses to determine where jurisdiction should properly be in these more complex scenarios. Sometimes, it means preliminary litigation in more than one state to answer the jurisdictional question. However, if you remember that the state where the matter was initially decided is going to be the default state, you will save yourself many headaches (and frustrated clients.) However, the most important point of all—and we cannot stress this enough—is parties cannot agree to waive subject matter jurisdiction. The Court either has it, or it doesn't. If your client wants to start a case in Minnesota, but the child has been in North Dakota for more than six months, **DON'T START THE CASE IN MINNESOTA.** If your client wants to modify a Wisconsin judgment in North Dakota, because your client lives here, but his daughter is still in Wisconsin, **DON'T BRING A MOTION IN NORTH DAKOTA.** Failure to bring your action in the right place could result in significant unnecessary costs, a dismissal of the action, or a void order for your client.

This jurisdictional analysis is used not only in parentage/custody cases, but also in divorces. Because divorces are sometimes “divisible”

(e.g., not all divorce-related issues can be heard in the same state), a Court may not be able to address the child-related matters, but may still be able to address issues related to the actual divorce or property division. States generally require the initiating party to meet a residency requirement before bringing an action, but some, like Minnesota, only require either of the parties to be a resident for a set period of time. Such flexibility may allow you to bring the action in the proper state under the UCCJEA, even if your client is not living there with the children.

Jurisdictional questions may look difficult, but they are not as complicated as they may seem, as long as you're careful about your analysis at the outset. Remember that: (1) six months generally only matters in the beginning, (2) initial states maintain jurisdiction, as long as one person remains there, and (3) parties cannot waive subject matter jurisdiction. With that information, the maze can become a straight line.



*Shannon Parvey and Jason McLean are two of the partners at Parvey, Larson, and McLean, PLLC, located in Fargo, North Dakota. Founded in 2018, Parvey, Larson, and McLean handles all types of cases involving family law and domestic relations in North Dakota and Minnesota.*



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# Brain Break: Part 2

| <b>B</b>                      | <b>I</b>  | <b>N</b>                          | <b>G</b>                              | <b>O</b>                                  |
|-------------------------------|---|-----------------------------------|---------------------------------------|---|
| Computer problems             | Assist co-worker that doesn't understand technology | Client freak out!                 | "This will only take a minute."       | Remind attorney of upcoming deadlines     |
| Inner-office swearing         | Conduct social media research                       | Call from a crazy person          | "I can't find the _____"              | You have 4 or more rush projects in a day |
| "Did we ever get that out?"   | Paralegal freak out!                                | <i>PARALEGAL NINJA FREE SPACE</i> | Discover and correct problem or error | Calendar meltdown                         |
| 5 or more Post-Its on desk    | Answer overdue discovery                            | 5:00 p.m. EMERGENCY               | Find out that case settled            | "Are you busy?"                           |
| Esquire has left the building | "I thought I sent that to you?"                     | Copier problems...again           | Skipped lunch                         | A meeting that could have been an email   |



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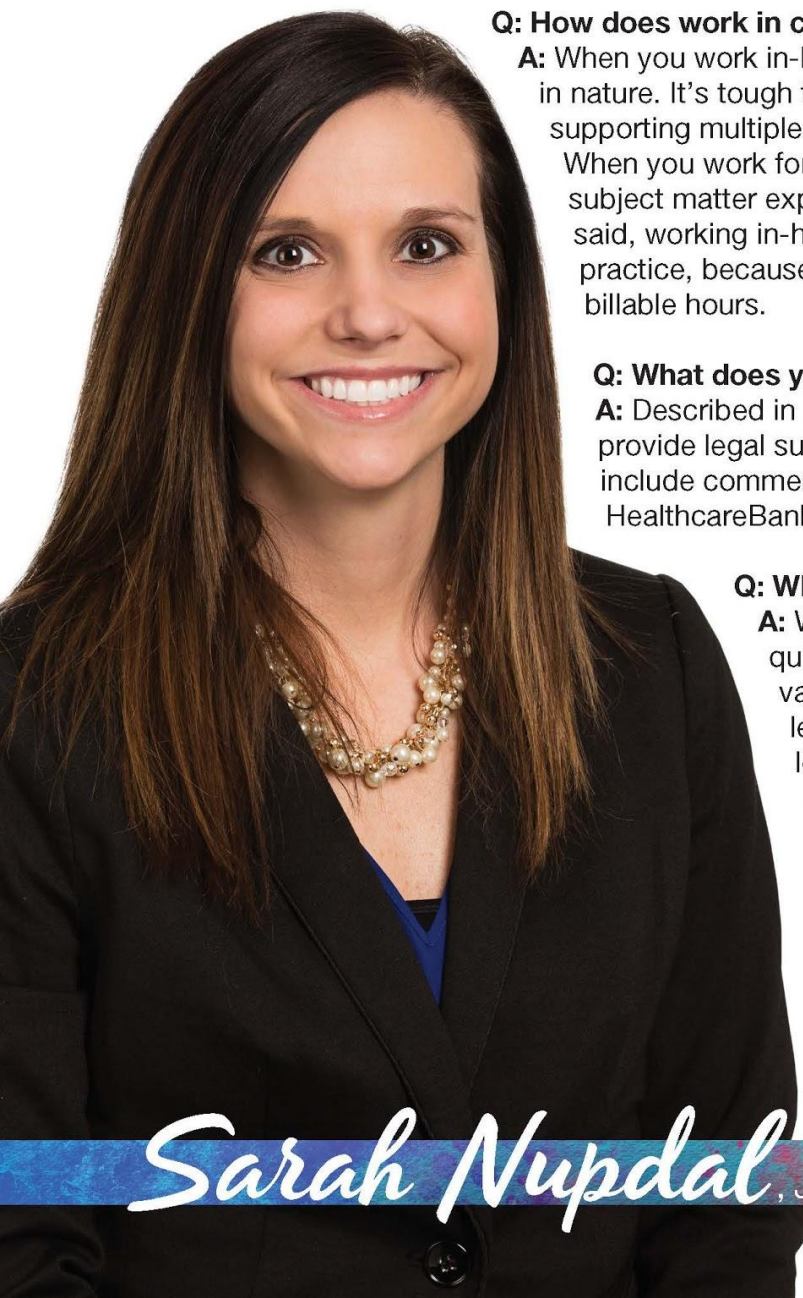
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# LEGAL MEETS BANKING

## *Insight into In-House Law*

For as long as she can remember, Sarah Nupdal has aspired to practice corporate law. But after moving back to Fargo, she landed a job at a mid-sized law firm looking to grow their presence in the F-M area. While she loved the fast-paced environment, Sarah's passion tied into having a bigger impact at the enterprise level. So when a position on Bell Bank's legal team opened up, she applied and got the job. Having now worked in private practice and in-house legal, Sarah provides insight into what each looks like.



**Q: How does work in corporate legal differ from that of firm legal?**

**A:** When you work in-house, the type of work you do is more general in nature. It's tough to become a subject matter expert when you're supporting multiple business lines with differing goals and objectives. When you work for a law firm, you're typically able to possess greater subject matter expertise (e.g., estate planning or family law). That said, working in-house typically provides more flexibility than private practice, because you don't have to adhere to court deadlines or billable hours.

**Q: What does your role entail in the legal department of a bank?**

**A:** Described in two words, my role is risk management. I provide legal support to the core banking business lines, which include commercial lending, deposit operations, compliance, HealthcareBank, special assets and mortgage.

**Q: What other legal roles exist within the bank?**

**A:** What many people don't realize is that we have quite a few attorneys and paralegals who work in various roles throughout the company. We have legal representation at the corporate enterprise level, supporting our employee stock ownership plan (ESOP), our holding company, mergers and acquisitions and the human resources department. Legal is also heavily represented on the fiduciary side in the trust and wealth management divisions. We also have attorneys at the bank who don't work in a legal capacity, but support the bank in other ways, such as market development.

*Sarah Nupdal*, J.D., Bell Bank

*“ I couldn’t have hand-picked a better group of paralegals to represent the bank, and I’m grateful to work alongside them. ”*

**Q: How do Bell’s paralegals assist you in your work?**

**A:** Our paralegals are heavily integrated into various areas of the bank and provide support by being the initial line of defense on legal questions, operationally overseeing assigned areas (e.g., legal process or contracts) and taking on project work as appropriate. I couldn’t have hand-picked a better group of paralegals to represent the bank, and I’m grateful to work alongside them.

**Q: What are the challenges of working in a corporate work environment?**

**A:** The biggest challenge is juggling many hats on a daily basis. I thrive in this fast-paced, growth-oriented environment, but it also presents challenges. Our company growth forces me to be effective at time management and prioritization, maintaining the ability to transition from one task to another in a short time frame.

**Q: What do you love most about your job?**

**A:** At the top of this list is the people. I love working with our internal “clients.” It’s rewarding to find ways to make their jobs easier, provide viable options to solve an issue and create new processes and efficiencies to support the organization as a whole. I also love the variety of the work I do; I never know what the next day will bring, and that’s exciting!

**Q: What advice would you give paralegals who are considering careers in corporate legal?**

**A:** When looking into corporate work, don’t limit yourself. Research jobs that interest to you, whether or not they have the “paralegal” title in the description. In doing so, you might find an opportunity at a great company or organization where your expertise and experiences as a paralegal can benefit the company in a unique capacity.

Sarah Nupdal earned her Juris Doctor (J.D.) degree from the University of North Dakota School of Law in 2013 and is licensed to practice in both North Dakota and Minnesota. Sarah joined Bell Bank in 2016 and holds the title of VP/legal counsel of banking. She supports several divisions of the bank to drive efficiency and growth. Sarah is married with two children and lives in Fargo.



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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.

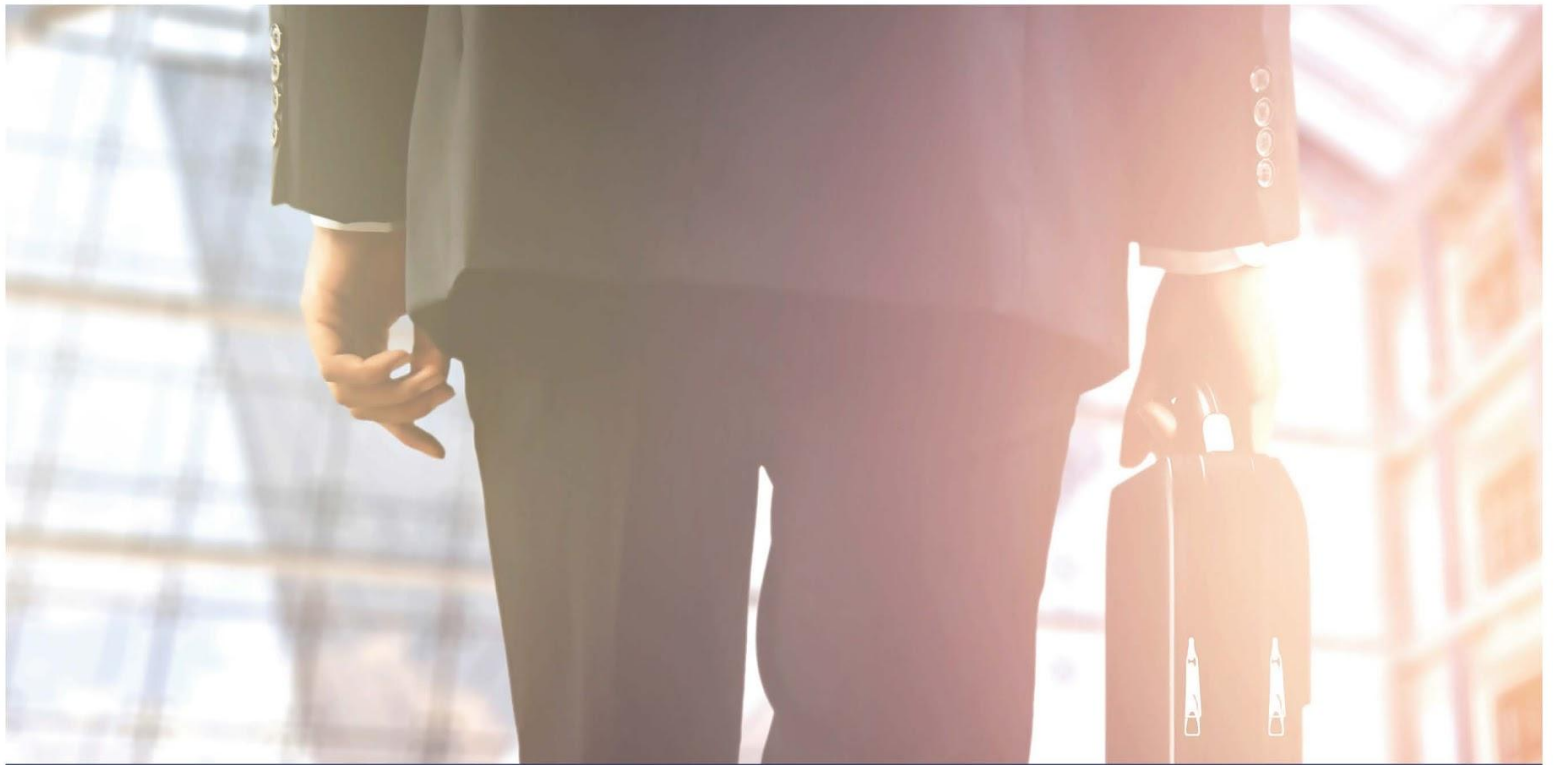
## ***Outreach – Regional Directors***

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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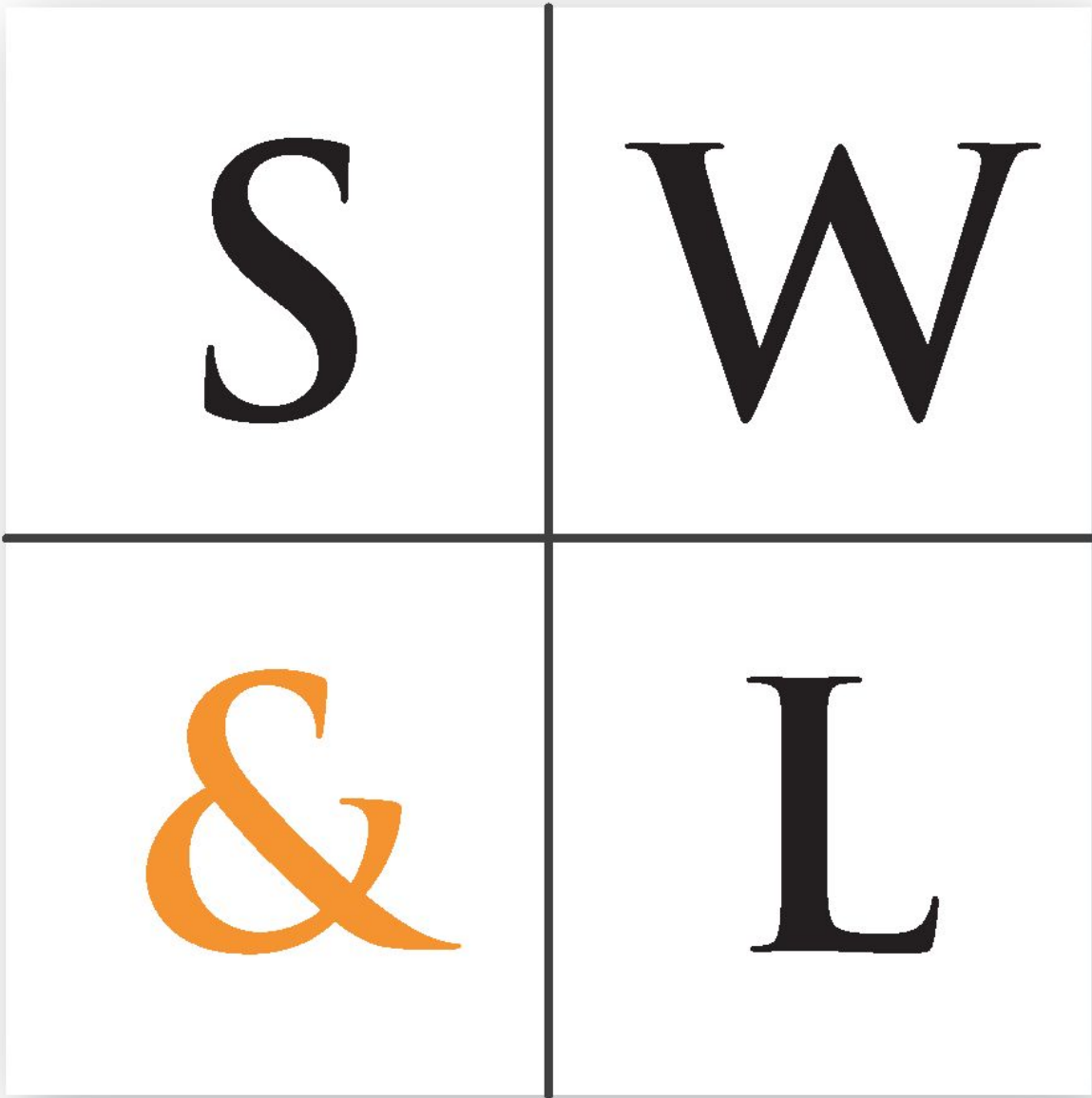


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# What We've Been Up To



Below: RRVPA members join Minnesota State Paralegal Association of Moorhead (MSPAM) members for a back-to-school picnic at Memorial Park in Moorhead.



Above: NALA Liaison, Stacy Brekke, and RRVPA member, Courtney Guenther, represented our organization at the 2019 NALA Conference in sunny Scottsdale, Arizona.

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# While You Were Sleeping

---

Remember that 1995 Sandra Bullock movie? Shy, lonely Lucy saves handsome Peter's life and is mistaken as his fiancée. She visits him at the hospital, meets his family and falls in love with his brother, Jack. (Sorry – spoiler alert!) It was cute and sweet and now that privacy laws have changed, it will NEVER happen to you. In fact, if you have a fiancée, it is possible they will not even be able to visit you in the hospital.

What would happen while YOU are sleeping? Whom would the hospital call? Who would be making important and potentially life changing medical decisions? Who would pay your bills and take care of your assets? If you have completed a Health Care Directive and a Power of Attorney, then you have answers to these questions. If not, I'm here to tell you – you need these, you need them now, and you can get them for free.

A Health Care Directive is a document in which you set out who will make health care decisions for you if you are incapacitated. It also allows you to set out your end-of-life wishes, rather than leaving those hard decisions to hurting loved ones. It can be obtained and completed free at hospitals, clinics, and the links below. Without this document, your loved ones will likely be forced to spend thousands of dollars getting a Court to appoint a guardian to make these decisions. Even in the best of circumstances, the Court action is expensive, time consuming, and usually causes hurt feelings.

A Power of Attorney is a document in which you set out who will take care of your assets and finances if you are incapacitated.

It can be completed free from the links below. Without it, your loved ones will likely be forced to spend thousands of dollars getting a Court to appoint a conservator to make these decisions. So, if you have completed only one of these two documents, your family might still end up spending thousands seeking a Court appointment because of a missing document. Did I mention these documents can be completed for free?

If you have these documents and never use them, great! The alternative, the failure to complete these, can end relationships between family members and friends. It is expensive and messy during a time that your loved ones are hurting. Some of you are thinking, "I'm married so my spouse would take care of it," but life is not a feel good movie and things are rarely that simple. What if your spouse is incapacitated, or your family fights them on decisions, or you are separated? If you are single and over 18, the Court will probably lean toward appointing a parent or sibling. What if you are estranged from your family, or your legally defined family isn't your chosen family, or your beliefs don't align with your family? What if you are engaged, or committed to someone your family dislikes, would your loved one even be able to visit? You could end up with a pushy, argumentative family member making your decisions and excluding your loved ones from even visiting. ***In the uncommon situation where a person who has these documents still requires a guardianship or conservatorship, the decisions expressed in the documents provide guidance to the Court.***

## While You Were Sleeping, cont.

Who do you want to have control over your body and money while YOU are sleeping? Look at the forms, download the one most applicable to you and follow the instructions. Notaries are available at banks and law offices.

### MINNESOTA:

Both: <https://www.ag.state.mn.us/Consumer/Handbooks/Probate/default.asp>

Health Care in several languages: <https://www.honoringchoices.org/health-care-directives>

### NORTH DAKOTA:

Health Care Directive:

<https://www.honoringchoicesnd.org/directives/>

Power of Attorney:

<https://www.ndcourts.gov/legal-self-help/power-of-attorney>

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*Attorney Valeska Hermanson practices in the areas of estate planning and probate at Vogel Law Firm. She handles all aspects of the planning and preservation of clients' estates, including wills, power of attorney documents, trust creation and administration, business planning, farm succession planning, complex estate planning, planning for protection of minors, Medicaid planning, guardianships and conservatorships.*



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# STATE OF NORTH DAKOTA

## PROCLAMATION

### LEGAL ASSISTANT/PARALEGAL DAY JUNE 27, 2019

**WHEREAS**, legal assistants, also known as paralegals, use their skills and expertise to make vital contributions to the quality of legal services offered to North Dakota's citizens; and

**WHEREAS**, with a wide variety of roles and responsibilities, legal assistants/paralegals improve the efficiency and capacity of their organizations in both the public and private sectors; and

**WHEREAS**, there are currently two professional legal assistant/paralegal associations in North Dakota: the Western Dakota Association of Legal Assistants and the Red River Valley Paralegal Association; and

**WHEREAS**, both associations are affiliates of the National Association of Legal Assistants – NALA – the Paralegal Association, which is celebrating 44 years of service to legal assistants/paralegals and the legal community nationwide; and

**WHEREAS**, legal assistants/paralegals are making important contributions to their profession and workplace, and North Dakotans are encouraged to recognize the significant role they play in the legal process of our state and nation.

**NOW, THEREFORE**, as Governor of the State of North Dakota, I do hereby proclaim June 27, 2019, **LEGAL ASSISTANT/PARALEGAL DAY** in the State of North Dakota.



  
Doug Burgum  
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# Economic Damages: Three Critical Elements

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Economic damages arise in the context of civil litigation. Unlike criminal litigation, which is brought against an individual by the government, civil litigation involves individual parties. In these matters, one party (the “plaintiff”) initiates a case alleging harm stemming from wrongful acts of another party (the “defendant”). Plaintiffs in civil litigation matters seek remedies from the defendants, which often take the form of damages. Economic damages are designed to compensate the plaintiff for economic losses associated with the allegedly bad acts of the defendant. According to the *Litigation Services Handbook* (5<sup>th</sup> edition), “the optimal compensation award should put an injured party in the same economic position it would have been but for the act.” The purpose of economic damages is to make the harmed party whole.

Any calculation of damages inherently assumes that liability is found in favor of the plaintiff. If the defendant were not found liable, then the plaintiff could not have incurred economic damages arising from the allegations. But an assumption of liability is not sufficient. There is also a critical link between liability and damages known as “causation,” which conceptually refers to the relationship between the alleged misconduct and the damages that were incurred. Causation is not coincidence and is more than correlation. In some cases, causation is quite clear. In others, it is much more ambiguous. For damages to be awarded, there must be a causal link between the economic damages suffered by the plaintiff and the alleged bad acts of the defendant.

Economic damages often take the form of lost profits in commercial litigation, which generally includes disputes between companies in a business context. They can also take the form of lost earnings in tort litigation, such as personal injury, wrongful death or wrongful termination matters. In either case, the damage calculation requires at least three overarching elements: (1) the damage period, (2) the lost profits/earnings analysis and (3) the time value of money. There are often other nuances in each matter, but these three elements are critical in most economic damage calculations.

The damage period reflects the time over which the plaintiff has incurred a negative economic impact from the alleged bad acts of the defendant. Straightforward in concept, the damage period is not always easy to determine. For instance, consider a breach of contract matter, where the contract term is five years from the execution of the contract with no options to extend the contract for either party. On the surface, it might be argued that the damage period should begin on the date of the breach and end on the contract termination date (i.e., five years from the contract execution date). However, the nature and timing of the harmful acts might arguably cause a negative economic impact on the plaintiff well beyond the term of the contract due to other issues, such as the longer-term loss of customers or orders.

The lost profits/earnings analysis is obviously critical as well. When the measure of damages is lost profits, care must be taken to analyze profitability in the correct context. For instance,



## Economic Damages, cont.

should the calculation reflect lost gross profits or lost net profits? In fact, the answer to this question is neither. The Litigation Services Handbook (5<sup>th</sup> edition) states that “[d]amages typically reflect the incremental revenue less the incremental cost the plaintiff would have realized but for the defendant’s alleged conduct.” Lost profit damages, therefore, are the incremental revenues the plaintiff was unable to earn (i.e., lost revenues) less the incremental costs the plaintiff would have incurred to generate those incremental revenues. If an entire business was destroyed, the damage analysis may instead require a business valuation rather than a lost profits calculation. When the measure of economic damages is an individual’s lost earnings (instead of a company’s lost profits), the concept is the same even if the incremental profit may be irrelevant. For instance, if an individual is injured and is unable to work and earn any income, s/he may be entitled to lost earnings (e.g., wages, benefits, etc.). In this case, the lost earnings calculation would reflect the earnings the plaintiff would have experienced but for the allegations less the earnings received given the allegations (and such actual earnings may, in fact, be zero). The overall concept is the same.

The third critical element of an economic damages calculation requires that the damages be reduced or increased to present value by adjusting undiscounted lost profits or earnings for the time value of money. To do so correctly, appropriate discount and interest rates must be determined. Unless something different is required by the Court, the discount rate should reflect the riskiness of the lost profits (or cash flows) and various methods are available to the

practitioner for calculating an appropriate risk-adjusted discount rate. Similarly, if a specific interest rate is not required by the Court, various sources are available for determining the appropriate rate to apply. Care must also be taken with respect to the discounting approach. An *ex ante* approach discounts the economic damages back to the date of harm and brings that lump sum forward to the date of the analysis. Alternatively, an *ex post* approach discounts future economic damages back to the date of the analysis and brings past economic damages forward to the same date. Regardless of the approach selected, in the end, the damage calculation should estimate the present value of the difference between the incremental profits or earnings that the plaintiff would have received but for the harmful acts of the defendant and plaintiff’s actual profits or earnings given those acts.

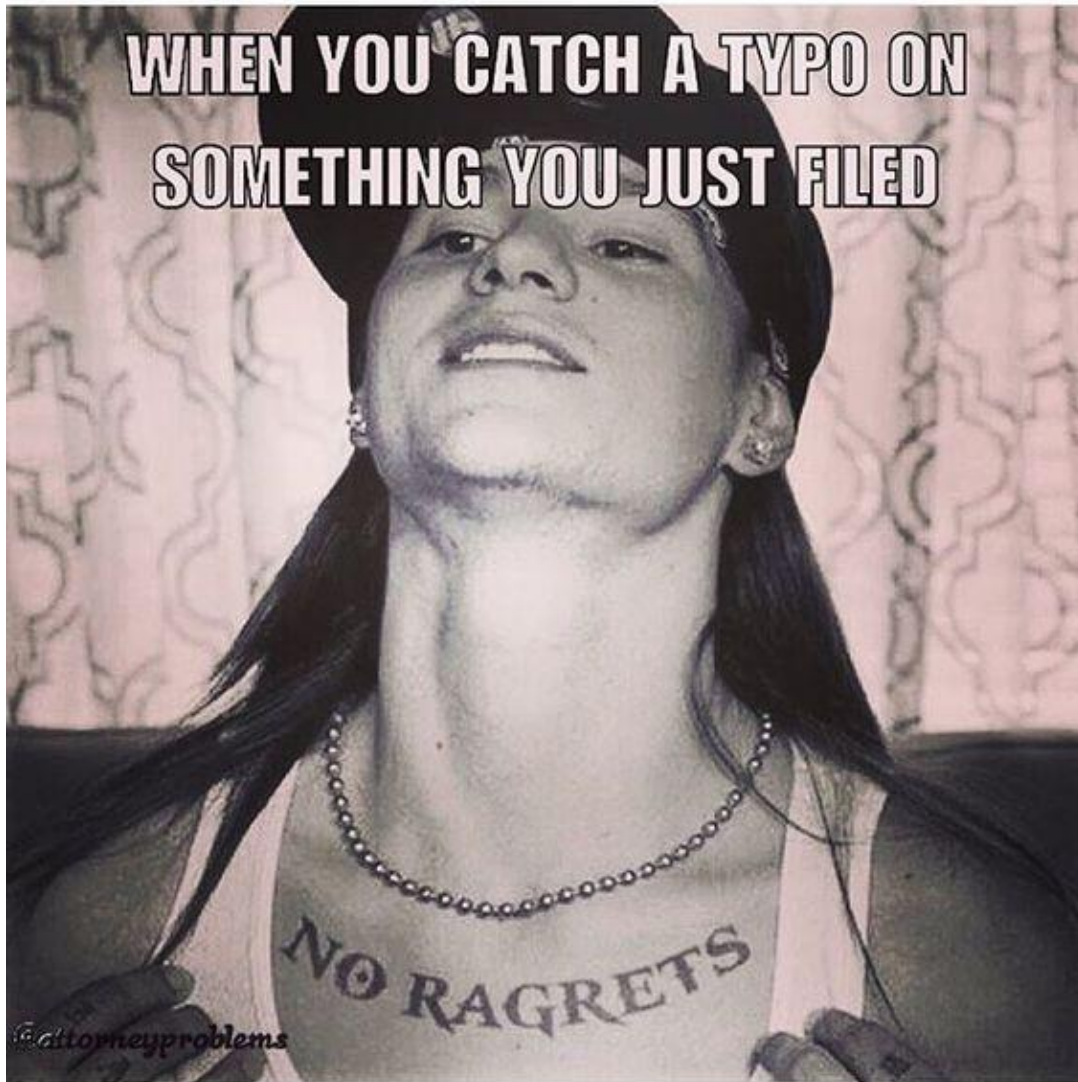
Economic damages calculations are often complex and require extensive analysis. This is due largely to the fact that these calculations involve estimating financial results assuming a fictitious world where certain allegedly wrongful acts did not actually occur. Though the process can be complicated, a strong understanding the basic elements of an economic damages calculation can be very helpful to individuals and organizations involved in civil litigation.

To learn more about Eide Bailly’s Litigation & Dispute Advisory practice, [click here](#).

*Norman Kur, CFE, CMA, AM is the Director of Litigation & Dispute Advisory at Eide Bailly, LLP.*



# Brain Break: Part 3



**WARNING:**  
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*Angie Ballman Punton*  
*Account Manager*



# Type of Breathalyzers in North Dakota and Minnesota



## Introduction

It's prom night. You're seventeen years old and about to head into the dance with your date and a few close friends. As you are about to enter the dance, you see your local law enforcement officer waiting outside with a funky looking device. As you approach, he asks if you're willing to take a breathalyzer. You agree and he tells you to take a deep breath and blow until he tells you to stop. For many, this was probably the first time you have heard of or taken a breathalyzer.

The term "breathalyzer" is often thrown around very loosely in conversations. Generally, the term breathalyzer is brought up when someone has been charged with or convicted of a crime. However, in today's day and age, even private individuals can obtain a breathalyzer with **ease**. So, are all breathalyzers the same? The short answer is no. There are several different kinds of breathalyzers.

## Preliminary Breath Tests

One type of breathalyzer is known as the preliminary breath test (PBT). A PBT is an on-site breathalyzer that is utilized by law enforcement **to determine probable cause to arrest**. A PBT is generally administered as a **field sobriety test** to determine an individual's blood alcohol concentration (BAC) to support

an arrest. However, the results of the PBT are generally inadmissible in DUI/DWI cases in both North Dakota and Minnesota. But, they may be relevant in other cases, such as minor in possession/consumption. One of the reasons the PBT results are generally inadmissible, especially in DUI/DWI cases, is because they are far less reliable than a chemical test.

A PBT is a small handheld device. The PBT requires an officer to place a small mouthpiece into the machine before administering the test. Then, the officer has the individual blow a steady flow of air into the machine until it registers the individual's BAC. The machine then calculates the BAC results within minutes. In North Dakota, the most common PBT used by law enforcement officers is the **Alco-Sensor FST**. In Minnesota, there are **several** different PBT's that are utilized by law enforcement officers. Now, the question you have all been wondering, do I have to take the PBT? The answer to that is no. It is not a crime in North Dakota or Minnesota to refuse to take the PBT. However, in North Dakota, you may face certain administrative penalties for refusing to take the PBT if you are being investigated for a DUI and refuse the chemical test. You can read more about that **here**.

## Chemical Breath Tests

## Types of Breathalyzers in North Dakota and Minnesota, cont.

Another type of breathalyzer is a chemical breath test. A chemical breath test is supposed to be more accurate than the PBT. In a DUI/DWI case, the chemical breath test results can be admitted at trial to prove an individual's BAC, so long as certain evidentiary standards are met. However, there are still many different arguments defense attorneys can use to exclude the results of the chemical test or to attack the reliability of the test. The most common chemical device used in North Dakota is the **Intoxilyzer 8000**. On the other hand, Minnesota generally uses the **Datamaster DMT**.

A chemical breath testing device is much larger than a PBT and is usually located at a correction center or law enforcement building. Without getting into any of the scientific specifics, the reason that a chemical test is more reliable than a PBT is because the environment is more controlled. The machine uses different cylinders and chambers to purge the air inside of the machine prior to the test. This is in an attempt to avoid any contamination with the individual's breath sample. To provide a sample, an individual must blow a steady stream of air into a mouthpiece that is connected to a hose. The machine will then calculate the individual's BAC based on the breath sample.

Unlike the PBT, refusal to take the chemical test is a crime. In North Dakota, if any individual refuses to take a chemical test, they can be charged with a class B misdemeanor for a first offense. In Minnesota, if an individual refuses a chemical test for a first offense DWI (without any aggravating factors) it will increase the charge from a misdemeanor to a gross misdemeanor. Further, if you refuse a

chemical test in either North Dakota or Minnesota, you will face more severe administrative penalties as they pertain to your driving privileges.

### Ignition Interlock

The last breathalyzer this blog will focus on is an **ignition interlock**. An ignition interlock is a device that is installed inside of your vehicle. The device requires a driver to blow into a handheld breathalyzer in order to start/drive their vehicle. Generally, these types of breathalyzers are required when an individual obtains multiple convictions for DUI/DWI.

### In Conclusion

If you are in a situation where a law enforcement officer is requesting you to submit to a breathalyzer, it may be in your best interest to request to contact an attorney prior to submitting to the test. DUI/DWI's and other criminal matters involving breathalyzers are complex and seeking **legal representation** may be in your best interest. If you have a **criminal issue** in North Dakota or Minnesota, please do not hesitate to call Adam Justinger at SW&L Attorneys in Fargo at 701-297-2890. This article is only meant to provide general information and does not constitute legal advice.

*Adam Justinger is an associate attorney with Severson, Wogsland & Liebl, P.C., focusing his time on criminal defense.*



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