RED RIVER REVIEW

OFFICIAL PUBLICATION OF THE

Red River Valley PARALEGAL Association

SPRING 2019

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THANK YOU to our Sponsors! --39

Words from the President

Change is hard! We all experience change on a regular basis. It takes time, planning, and careful execution. Recently the RRVPA Board of Directors realized we need to make some changes to better serve our organization and to better prepare our incoming leadership. Essentially we needed to re-work the timeline of our fiscal year. Our goal was to make sure we are in compliance with the IRS (an important issue!) and to make sure our incoming board of directors is a well equipped as they can be. Previously our fiscal year did not allow for much of a transition from the outgoing board to the incoming board, our fiscal year did not match what the IRS had on file, and there was a period of time each year where we were running an organization without a budget. This seems like a lot of "fine print", but stay with me. In order to remedy these issues, we have made some minor changes to the RRVPA timeline, and one major change. The biggest, and most important, change we have made is to move the Annual Meeting to coincide with Legal Assistants Day. Rather than falling in line with our Fall Seminar, the Annual Meeting will now take place the end of June each year. This will allow for the outgoing board to train in the incoming board, *before* they actually have to take over. It also allows the Treasurer time to put together a budget, and the membership to vote on it, *prior* to the start of the new fiscal year (rather than months later). As a Board, we feel these changes will help improve our organization as a whole and also alleviate some of the growing pains experienced when new leadership steps up! Please reach out to a board member if you have any questions about these changes or if you are interested in learning more about joining the 2019/2020 Board of Directors!

Rachel Martin

Save the Date

Who: All RRVPA members
What: Annual Meeting & Legal Assistants Day Celebration
When: Thursday, June 27, 2019 at 12:00 p.m.
Where: North Region: Morley Law Firm, Grand Forks
Where: South Region: NDSU Memorial Union, Room of Nations, Fargo
Bonus: WE are buying YOU lunch in recognition of all of your hard work!

The 2019 Annual Meeting will take place in conjunction with our Legal Assistants Day Celebration. Join fellow RRVPA members for a fun networking luncheon, celebration of our profession, and an brief annual meeting. *Please submit a proxy form in advance if you are a voting member and unable to make it.*

Treasurer's Report

Spring is finally here and I know I am beyond excited for it! We had a great year in terms of sponsors, our best in some time. We had a total of twenty-two sponsors with six of them being Platinum sponsors. That is AMAZING! Thank you to everyone who helped out with the sponsorship drive. I look forward to another successful drive this fall.

The RRVPA bank account balance as of March 31, 2019 was **$18,721.96**.

Angie Bossert

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, fundraisers, and volunteering events, all of which are a great way to get to know other paralegals in the industry.

Scholarship: RRVPA offers an annual scholarship for members who are interested in taking the Certified Paralegal or Advanced Certified Paralegal exam.

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

First Vice President's Report

It has been another very busy year! We have had multiple Lunch & Learns over the past few months on a variety of topics. These Lunch & Learns continue to be well attended and a great asset to all members and non-members of RRVPA. This past fall we hosted our annual seminar. I would like to thank members of the F5 Project, Justice Crothers, Attorney Krista Andrews, Lindsey Froehlich, Linda Brooks, Lindsey Hallsten, Recovery Reinvented, and Tom Dunlap for their participation in our 2018 annual seminar! Without you all, it would not have been so successful. Additionally I would like to thank all of our members who have taken time out of their schedules to help with the education committee. I am looking forward to more successful Lunch and Learns and another exciting annual seminar this fall!

Brooke Raser

Second Vice President's Report

Herman Cain said "Success is not the key to happiness. Happiness is the key to success. If you love what you are doing, you will be successful." This year has been a success for RRVPA as membership has continued to increase. Most of our new members are referred to RRVPA by existing members, and I want to extend a thank you to all our members who have encouraged other paralegals to join our organization. Our members are able to take advantage of multiple benefits including networking opportunities, scholarships, mentorship program, continuing education, and advertisement of job openings.

We currently have 63 voting members, 6 student members, 5 associate members, and 1 sustaining member for a total of 75 members. Our organization has had a lot of exciting changes this year and I am so proud of the work that the RRVPA board has accomplished. If you know anyone who would be interested in joining RRVPA or would like information about our organization, please have them contact me at katy.tellinghuisen@swlattorneys.com.

Katy Tellinghuisen

NALA Liaison's Report

Hello! My name is Stacy Brekke, and I am the new NALA liaison for RRVPA this year. I'm excited because I've never held this position before and I have heard so many great things about other's experiences along the way. I will be attending the NALA Conference this year in Scottsdale, AZ from July 11th – 13th. I'm hoping to do a lot of networking with folks from across the country, and attend as many CLE's as I am able; I've been told there is a lot to see and do while at the conference!

Stacy Brekke

NALA | THE PARALEGAL ASSOCIATION

NEWS

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:

The Grandma Hustle: A Look at Physical and Financial Abuse of Elders
April 25, 2019 at 11:00 a.m.

Utilizing Revocable Trusts in Estate Planning
May 21, 2019 at 11:00 a.m.

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OFFICIAL NALA MATERIAL

COURT REPORTING

with Jan Ballman, FAPR, RPR, CMRS

Q: How exactly does the court reporter's machine work?

A: Court reporters use the art of stenography to capture the spoken word. It's more like playing the piano than typing on a keyboard. It is its own language! We use high-frequency phrases such as "will you please," "about how many times," "I can't recall," and "to a reasonable degree of medical certainty" to catch up and give us time to phonetically write out words that aren't in our dictionary.

Q: Is it hard to learn?

A: Only one out of every approximately ten people entering school will master the art and graduate with the necessary speed and accuracy. So it actually requires a very unique skill set.

Q: How fast do you need to write to graduate?

A: The minimum speed and accuracy requirements to graduate are 225 words per minute with 98% accuracy.

Q: How long does it take to learn the trade?

A: It greatly varies. It takes some longer than others. Some students speed out of school. It's similar to being a swimmer where you are constantly trying to cut time off your personal best and move to another lane. Some just do this faster than others based on natural ability and hours spent practicing. The same holds true for learning stenography. The typical time to get out of school is somewhere between 1.5 and 3.5 years.

Q: It seems like voice recognition technology is getting better and better. Are court reporters worried it will take over their jobs?

A: That is an often-asked question! Court reporters have long embraced new technology to become more efficient, to be more proficient, and to bring more value to the Bar. Some examples include collaborating with videographers to provide videosynched deposition transcripts, providing testimony/the spoken word in realtime, and delivering transcripts and exhibits in electronic form versus paper, just to name a few. We all use voice recognition in our everyday lives and we know it has come a long way… but it still makes all kinds of mistakes. Court reporting is the gold standard in voice-to- text because there is a human being with a brain behind the product that has the ability to discern things like accents, homophones, and technical terms. When I started court reporting, we used carbon paper between onion-skin paper to create certified copies. Now our transcripts contain links to exhibits and can be searched for keywords. We tend to advance right along with technology, and it will remain important for us to continue to keep pace with new technologies…but, fortunately, this is something we have a bona fide track record of doing.

Q: I have heard there is a shortage of court reporters in some parts of the country. Is there any truth to that?

A: Yes, it's true. California, Texas, Florida and Illinois are states that seem to be suffering the most from the shortage at the moment. Currently, retiring court reporters are outpacing students going into and graduating from court reporting schools. This is something the National Court Reporters Association predicted back in 2013 using statistical data analysis. The good news is, the NCRA has created a program called "A to Z" that appears to be very promising in identifying individuals who have a natural inclination to be successful at stenography. It's a program that allows potential students to try out the machine by putting their hands on the stenographic keyboard and learn the basic theory behind machine shorthand. This test drive has proven to be quite beneficial in flushing out those who seem to have the knack for this skill.

Q: Where is the nearest court reporting school?

A: Probably the closest and unquestionably the best in the region is Anoka Technical College located in a suburb of Minneapolis. It's quite successful, posting some of the best graduation rates in the nation.

See what legal professionals are praising as the new ***"super easy"*** and ***"totally time saving"*** way to book a reporter . . .

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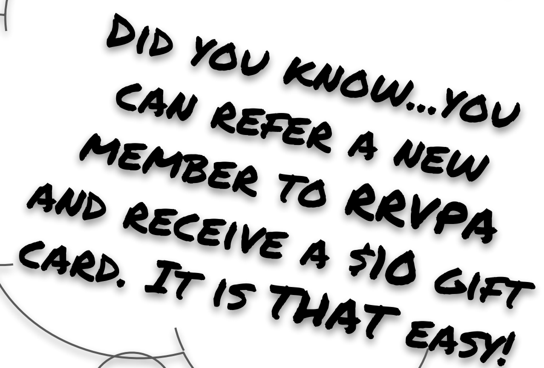

Snapping, Posting, and Sexting: Oh My! The Legal Risks for Youth in Today's Technological World.

There is no shortage of news stories and warnings dedicated to cautioning parents about the risks of juveniles using a cell phone and/or social media. Warnings are good, but information is even better. The intersection between technology and the law is a moving target.

Technology evolves and the law does its best to "catch up." Staying informed could prevent a youth from finding him or herself in the criminal justice system marred by a conviction/adjudication or label that follows him or her into adulthood. While 86% of teens say that they have received general advice around online use from their parents, researchers at Common Sense Media found 30% of teens who are online believe their parents know "a little" or "nothing" about the social media apps and sites they use. Here is a smidgen of what you ought to know:

1. What goes online STAYS online: Anything and everything online is there forever. Our children, teenagers, and young adults need to be told over and over again that every tweet, "like", and photograph becomes an endless "record" that as of today cannot be erased. Just one post, message, photograph, "like" or tweet can derail a career, an education, and/or relationships. Just last year, at least 10 students accepted to Harvard had their offers rescinded after the administration discovered offensive Facebook meme posts in a "private" group. A "private" group may seek to limit who can see posts and messages, but in reality many "private" groups often are managed by one person who allows access to hundreds of unknown and unidentified individuals. There are endless stories of students suspended from high school as a result of social media use. While many of those suspensions were later overturned in lawsuits contending that the social media was protected speech under the First Amendment, these students endured a suspension from school, a disruption to their education, and media attention that no vindication in court will ever erase. This topic would not be complete without the mention of the infamous screenshot. Your child may believe that a post or photograph has been removed, but in all likelihood someone took a screenshot. A "joking" threat posted online and removed within minutes can still result in law enforcement at your front door.

2. I'll show you mine if you show me yours: One of the most dangerous behaviors by young folk today is the sending and receiving of sexually explicit photographs and videos (i.e. "sexting"). The current research suggests that 1 out of every 5 seventeen-year-olds has sent an explicit image of themselves to someone else during their lifetime. Should your child send such a photograph or video, it could be considered dissemination of child pornography. And if your child should receive such a photograph or video, it could be considered possession of child pornography. There are serious criminal consequences, including sex offender registration, if a prosecutor decides to

prosecute a juvenile for distributing a sexually explicit image or video of him or herself or another person. And, it is not a defense to possession/distribution of child pornography that the juvenile consented to the activity. Sexting and other online activity can lead to cyberbullying and/or harassment. There are criminal penalties, as well as educational consequences for bullying and/or harassing.

3. Monkey see monkey do: Cell phones and driving do NOT mix, but all too often our children have witnessed adults using cell phones while driving. In both North Dakota and Minnesota, drivers under the age of 18 are prohibited from using any electronic communications devices, including cell phones, while driving a motor vehicle. A juvenile cannot use a cell phone to talk, compose, read, or send an electronic message when a vehicle is in motion or a part of traffic unless the sole purpose is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger. According to Minnesotan for Safe Driving, distracted driving accounts for 20% of crashes a year – resulting in 70 deaths and over 350 injuries in Minnesota alone. The message is simple – put down the phone.

4. Beware of apps: There are hundreds of apps that are downright dangerous for juveniles. The app Yubo (formerly Yellow) is called the "Tinder for kids" because it is marketed to 13 to 17 year-olds as a way to make friends, but it allows kids to swipe left or right to "hook-up." Law enforcement departments have even issued warnings regarding this app. The app Sarahah, while not available from Apple and Google stores, allows users to send anonymous direct messages to friends through other apps such as Snapchat. This app has been dubbed the "number one cyberbullying app."

In summary, have continuing dialogues with your children about social media and their cell phone use. Keep yourself informed, know what your children are doing online, and be a good example for your children.

Attorney Jade Rosenfeldt is a member of the Criminal Defense and Family Law practice groups at Vogel Law Firm. She provides a wide range of services to clients in both criminal and domestic matters. For more information call 218.236.6462 or visit vogellaw.com.

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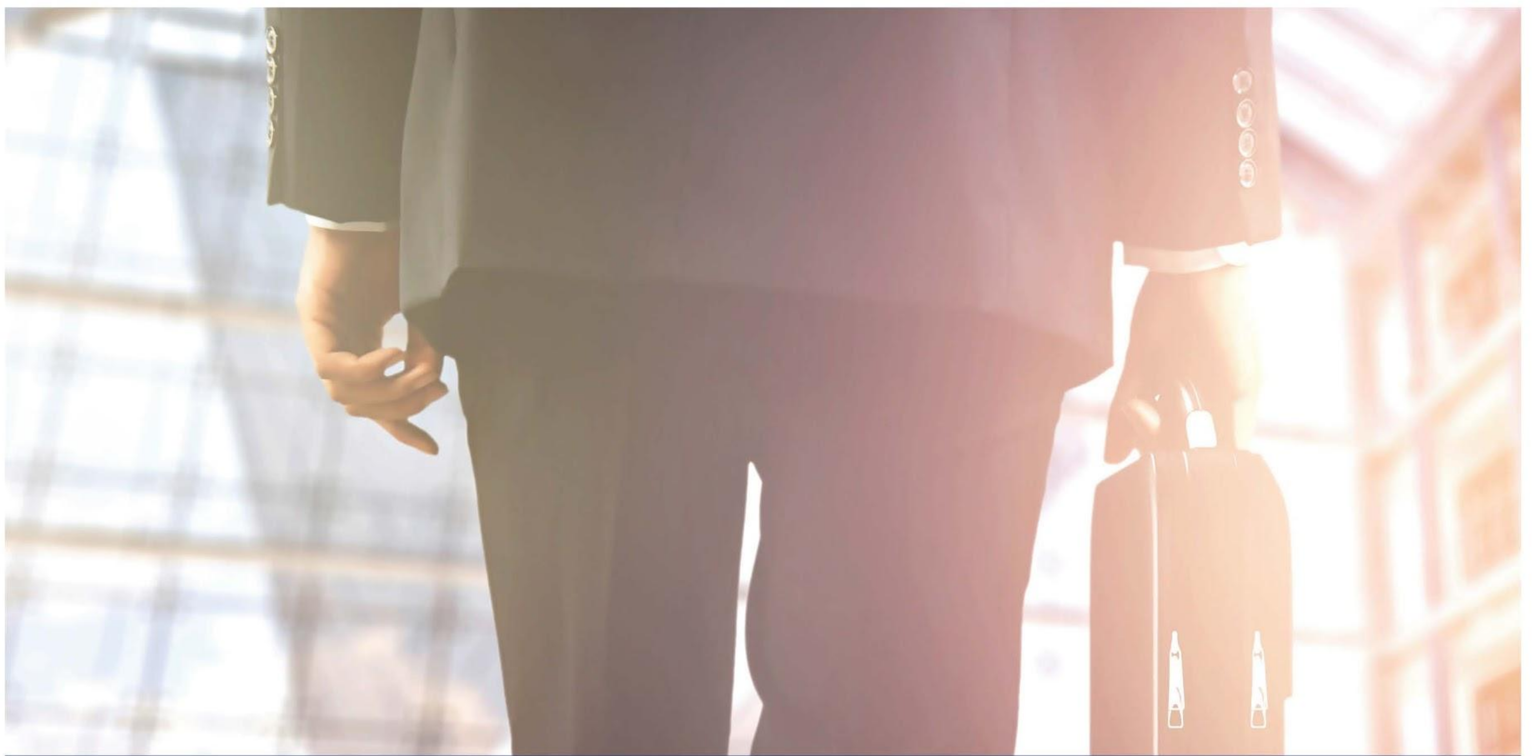

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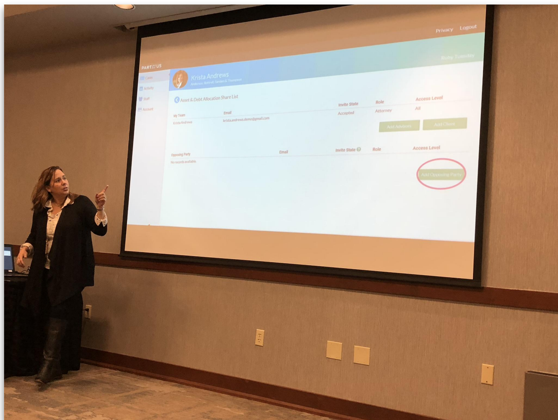
If you provide your own article of clothing, logo printing is just $12. If you choose to purchase an article of clothing from their in-house shop, logo printing is just $6.

What We've Been Up To

RIGHT: Members of the South Region celebrating the holidays with fun games and appetizers at Brewtus Brickhouse in Fargo on December 14, 2018 (from left to right): Eileen Tronnes Nelson, Rachel Meske, Katy Tellinghuisen, Brooke Raser, Ali Peterson, Andrea Roman, Winter Brekhus, and Courtney Guenther.

2018 Fall Seminar Highlights



Positive Mind.
Positive Vibes.
Positive Life.

LEFT: RRVPA Members pitched in on March 26, 2019 at Sandbag Central to fill sandbags and stack pallets. (from left to right): Rachel Dewald, Rachel Martin, Brooke Raser, and Katy Tellinghuisen.

REGISTRATION NOW OPEN

NALA

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Increase the return on your education investment and make the most of your time at NALA's Conference & Expo in Scottsdale, AZ by adding this additional track of technology education to your agenda. These sessions will not be recorded. *Limited space available, additional registration fee applies.*

> *"This was an excellent learning and networking event. I am still talking about it with my co-workers and cannot wait to attend again next year."*

> *"I have always heard how great NALA is, I am thankful you were in my area, so I could attend."*

> *"I loved the conference app! Very well done, easy to use, great tool for interacting with other conference attendees. Excellent idea and execution! Well Done!"*

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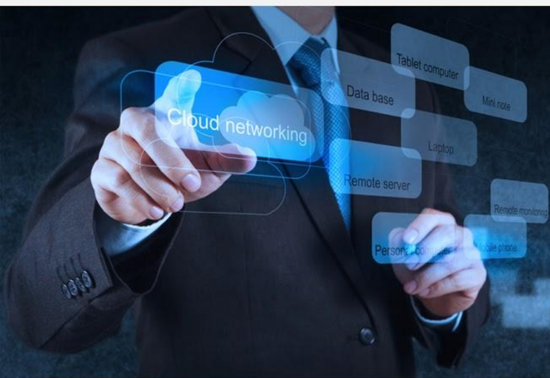

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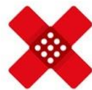

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Proof Beyond a Reasonable Doubt: *What Does That Mean?*

Scott Patrick Brand of Brudvik Law Office, P.C.

Thanks to crime-related TV series, movies, and literature, most people know that in order to convict someone of a crime in the United States a jury must find that person guilty "beyond a reasonable doubt." But many people are unsure about what exactly proof beyond a reasonable doubt means. I find the best way to understand that burden is by explaining some of the other burdens of proof in the United States. In criminal law, there are a variety of different burdens. Each one applies to different situations and each one carries a different weight. I will go through some of the burdens of proof in criminal law, explain what they mean, and hopefully provide insight into their relation to proof beyond a reasonable doubt.

Reasonable and Articulable Suspicion

The first major burden in criminal law is known as "reasonable and articulable suspicion." This is a relatively low burden of proof. In order for law enforcement to perform an investigative stop of an individual, they must have specific, articulable, and an individualized suspicion that crime is afoot.[1] The North Dakota Supreme Court has stated that "mere curiosity, suspicion, vague hunches, or other non-objective facts[2]" do not meet the reasonable and articulable suspicion burden. In other words, law enforcement must act on something more than a "mere hunch" if they want to stop someone. This burden of proof is only enough to initiate a stop of an individual, and is not enough to initiate an arrest or to convict someone of a crime.

Probable Cause

A slightly higher burden, known as "Probable Cause," is the burden of proof that is used to determine whether the search of an individual or an arrest of an individual is appropriate. This is also the burden used when a judge must decide whether to issue a search warrant.[3] The United States Supreme Court has stated that Probable Cause is "more than bare suspicion."[4] The Court has also stated Probable Cause exists when the facts and circumstances are sufficient in themselves to warrant someone of reasonable caution to believe that an offense has been or is being committed.[5] Although there may be enough evidence to meet a Probable Cause standard that allows for the arrest of a person, it is not enough to convict someone beyond a reasonable doubt.

[1] State v. Torkelsen, 2006 ND 152, ¶ 8, 718 N.W.2d 22.
[2] Salter v. North Dakota Dept. of Transp., 505 N.W.2d 111, 114 (N.D. 1993).
[3] U.S. Const. amend. IV.
[4] Brinegar v. United States, 338 U.S. 160, 175 (1949).
[5] Id.

Preponderance of the Evidence

Another burden, which is often used to determine whether an individual violated the conditions of his/her probation[6], is known as the "Preponderance of the Evidence" standard. This standard is also used sometimes as the burden put upon a defendant to show an affirmative defense for certain crimes.[7] A legal dictionary defines Preponderance of the Evidence like this: "[T]hough not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. Essentially this standard is satisfied if the party can show that something is more likely than not to have happened."[8] I like to break down a Preponderance of the Evidence Standard like this: there must be a greater than 50% chance that the disputed fact is true in order to win. If a jury in a criminal trial thinks there is a greater than 50% chance that a crime was committed, but still has reasonable doubts, then that jury must return a verdict of "Not Guilty."

Clear and Convincing Evidence

The highest burden of proof before getting to Beyond a Reasonable Doubt, is known as "Clear and Convincing Evidence." The Clear and Convincing Evidence standard is used in mental health proceedings to determine whether an individual should be civilly committed because he/she is a sexually dangerous individual. In order to meet the clear and convincing evidence standard, a party must provide a "firm belief or conviction that the allegations are true."[9] Although this burden is high, it is not as high as beyond a reasonable doubt.

[6] State v. Causer, 2004 ND 75, ¶ 29, 678 N.W.2d 552.
[7] State v. Pfister, 264 N.W.2d 694, 699 (N.D. 1978).
[8] Black's Law Dictionary 1373 (10th ed. 2014).
[9] In re Corman, 2014 ND 88, ¶ 7, 845 N.W.2d 335.

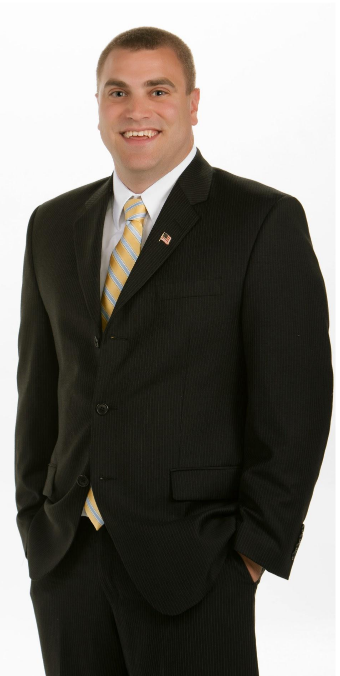
Beyond a Reasonable Doubt

Now we have come to the standard that the Government must fulfill in order for a jury to find an accused citizen of being guilty: Beyond a Reasonable Doubt. Although many of the burdens discussed above provide us with actual definitions, we do not have such a luxury with the beyond a Reasonable Doubt standard. In fact, the North Dakota Supreme Court "has long recognized the difficulty in defining reasonable doubt and has neither required nor prohibited such a definition."[10] The Eighth Circuit Court of Appeals, which covers federal appeals from North Dakota and six other states, describes Beyond a Reasonable Doubt like this: "'[R]easonable doubt' is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence received in [a] trial. It is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it."[11]

Keeping that description in the back of your mind, let's put our understanding of Beyond a Reasonable Doubt against some of the other burdens to understand how convinced a jury must be to find someone guilty. A jury certainly cannot convict on a hunch; cannot convict if they think it is probable that someone committed the charged offense; cannot convict if they only think it is more likely than not that someone committed a crime; and cannot convict even if they think it is highly probable that someone committed the charged offense, but still has reasonable doubt. A jury can only convict if they have NO reasonable doubt in their minds that someone committed the charged offense. This does not mean that the government needs to prove its case beyond all possible doubt, but when compared to the burdens articulated above, the government has a heavy burden to carry when asking a jury to find someone guilty beyond a reasonable doubt.[12]

I hope this helped shed light on the concept of Beyond a Reasonable Doubt. If you are put in the unfortunate position of facing a criminal charges, you are presumed innocent until proven guilty. Contact an attorney to discuss your options to ensure that your Constitutional Rights are protected.

[10] State v. Schneider, 550 N.W.2d 405, 408 (N.D. 1996).
[11] Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit, No. 12.02 (2014).
[12] State v. Blunt, 2010 ND 144, ¶¶ 22-26, 78 N.W.2d 909.



Scott Patrick Brand earned his Juris Doctor from the University of North Dakota School of Law in 2012, graduating magna cum laude. While at UND, Scott participated in Moot Court, Law Review, and was instrumental in the re-founding of the Environmental Law Society.
Scott joined Brudvik Law Office in 2013 and specializes in criminal defense. He handles complex cases in both North Dakota and Minnesota.

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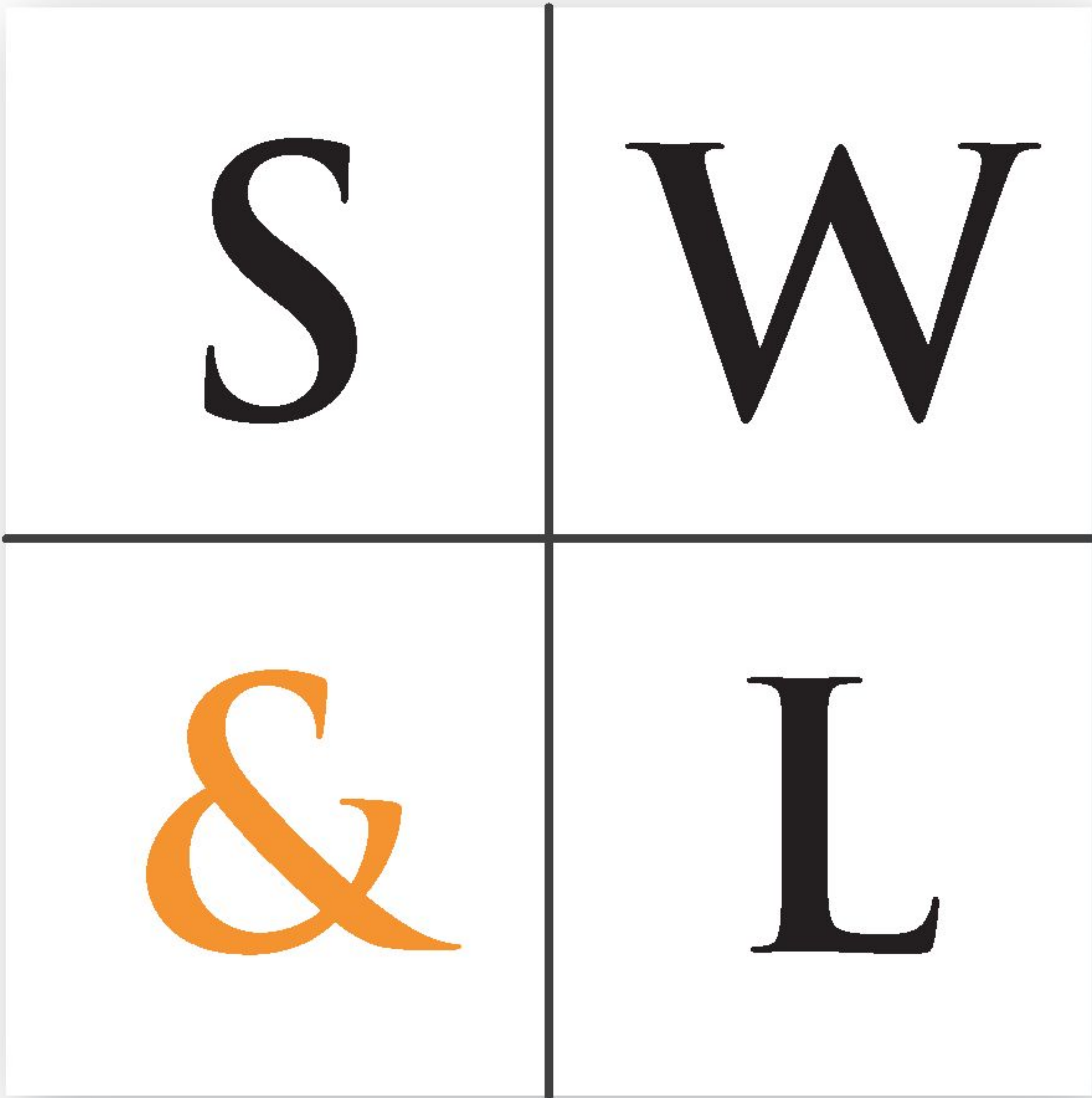

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Take the Bull by the Horns:
Make Yourself Indispensable

Bradley J. Beehler of Morley Law Firm, Ltd.

When I was a Certified Legal Assistant, I worked for an attorney who embraced the use of paralegals in litigation practice. Leonard Bucklin, *Esq.,* believed that it was the paralegals who were responsible for moving cases along. He also believed that paralegals could, and should, do much of the work traditionally ascribed to lawyers-always mindful of ethical rules against practicing law without a license. Having been mentored under this philosophy, I have tried to follow it in my years of practice as a litigator.

Move the Case

The most important suggestion I can make to paralegals to make them indispensable in litigation is to be assertive with the files-do not wait to be told what to do. As an experienced paralegal, you already know what to do, so go ahead and do it. Paralegals at my firm have the authority to do what they believe needs to be done on a file, so long as it does not consume a lot of time and cost the clients a lot of money.

Think outside the box and don't be afraid to follow a hunch or unusual approach. An unconventional approach might lead to the "smoking gun" that could win the case. Even if you strike out, you are demonstrating a thorough course of action in handling the case. My experience has been that paralegals seldom get into trouble for doing too much on a case as opposed to not doing what is expected.

In aggressively handling a litigation case, checklists can be most useful. These can include a list of procedures on how to handle a file, or making checklists for interviewing witnesses, working with experts, and numerous other duties.

Remember that checklists are simply guides and typically are not all-inclusive. Think outside the box.

Client Contact

As both a former paralegal and an attorney, I have seen that paralegals generally have more contact with clients. It has also been my experience that clients tend to relate better to a paralegal than to an attorney. Whether this is because lawyers intimidate clients, or because paralegals are simply more approachable is immaterial. Use this situation to your advantage.

By being in frequent contact and keeping clients informed, you will be able to better monitor their expectations and to foster better cooperation. Clients, whether plaintiff or defendant, can be your biggest source of information. They may be able to identify witnesses and tell whether they are liability witnesses or damages witnesses.

Clients also may have important documentation that the paralegal should obtain, and they may have or know of other evidence that should be preserved. For example, does the client still have that furnace which caused the claimed injuries or damages? If so, that furnace must be obtained and preserved.

It is not unusual for my clients to tell me that they are impressed with the paralegal working with them. This obviously helps the paralegal's status at the firm.

Investigation

Unless your firm has an investigator on staff, investigation can be the most vital task a paralegal has in a litigation case.

Thorough investigation of a case is imperative to the success of the case. Thorough investigation includes such things as interviewing witnesses, gathering and preserving evidence, and gathering documentation. For the most part, experienced paralegals should not wait to be told what witnesses to interview and what information to gather. Checklists can be invaluable in these tasks.

There is nothing to prohibit paralegals from interviewing witnesses, provided the paralegal discloses that he or she is not an attorney, and identifies the party being represented. Witnesses may be identified from accident reports, discovery responses, and depositions, among other sources.

Witnesses tend to side with the party that contacts them first. It is surprising how many times in defending cases I have found that the plaintiff's attorney has not contacted witnesses or the investigating officers identified in an accident report. One would think the plaintiff's attorney would like to know what the witnesses and investigating officers' testimony will be before the case is sued.

In gathering records, the sky is the limit. Paralegals should gather and thoroughly review all records pertaining to liability and damages. A careful review could lead the way to other records and information which could make or break a case. Be excruciatingly detailed in gathering records. If a client or adverse party indicates that he or she lived in a small

community for a time but never sought medical treatment there, send a records release authorization to the medical facilities in that community. You may be surprised how often clients or adverse parties do not remember seeking treatment in that community.

clients tend to relate better to a paralegal

Many times the records are insignificant, but occasionally they are, and can lead to additional information. It is vastly better to know about those records right away rather than finding out about them at trial.

In some instances you may be required to obtain information without a release from a non-party, and a subpoena may be required. Rules regarding subpoenaing a non-party vary from jurisdiction to jurisdiction, so be sure to consult the rules applicable to your jurisdiction if you are required to subpoena documents from a non-party.

When physical evidence can be vial to a case, it is paramount that this evidence be preserved. Nothing amuses me more as a defence attorney than to find out that the plaintiff allowed critical evidence to be destroyed or altered. If physical evidence is obtained, be sure to document the chain of custody so the other side cannot claim tampering with the evidence. If photographs have been taken, you need to obtain them and document who took the photographs and when. Paralegals should obtain photographs of any significant *situs* to prepare for the possibility of changes to the *situs*. Photographs of the *situs* as it existed at the time could be crucial to the outcome of the case.

Pleadings

Paralegals can draft a summons and complaint in any case, they can draft an answer to any complaint. Most jurisdiction are "notice pleading" jurisdictions, which means a party simply needs to put the other party on notice of the claims or defenses being asserted.

Most firms have form pleadings, so why not prepare a draft summons and complaint or an answer to the complaint? Use documents drafted by the attorney in a previous case as a guide. The attorney cannot be too critical of the documents you draft if it is modeled after his or her previous work. Also be prepared to advise the lawyer as to how service of process will be made on the defendant.

From a defense standpoint, how the answer is served on the plaintiff is not significant, but how the defendant/client is served is definitely significant. Paralegals can contact clients to see how they were served, or contact the other side and request proof of service to advise the attorney whether service was proper. Improper service can lead to dismissal of the case.

Discovery

Most firms have forms for written discovery, but you must be sure to make the written discovery specific to your case. If is outright humorous at our firm when we are served with interrogatories on a slip-and-fall case, and we are asked whether our client was wearing a seatbelt. Not only are such failures on a form embarrassing, the also speak to the competency of the other side and how seriously the case is being taken.

Rules pertaining to discovery vary by jurisdiction, and paralegals must be aware of any limitations the jurisdiction may have with respect to any discovery. Consult the *Rules of Civil Procedure* and any local rules that apply.

Paralegals at our firm play vital roles in responding to discovery. In most cases, the lawyers do not see discovery requests until a paralegal has drafted the discovery responses . Include objections you believe appropriate, and err on the side of including too much information rather than not enough. It is much easier for an attorney to cross out extraneous information or documents than to have to dig through the file to find information that should have been included. Paralegals must work closely with clients in preparing discovery responses.

In my opinion, depositions should not be taken until thorough investigation is complete. Paralegal play vital roles in scheduling depositions, which may include arranging a court reporter and a location. It also may require subpoenaing witnesses. Remember that most jurisdictions require witnesses be paid witness fees and mileage when subpoenaed for depositions, and consult the rules for subpoenaing witnesses in the particular jurisdiction.

You may be asked to assist in preparing a client for a deposition, so be ready to address issues such as how the client should dress, what to bring, and the mechanics and procedures of what occurs. This is another situation where a checklist can be invaluable.

There are several reasons for paralegals to attend depositions, foremost among which is to take notes, as it can be difficult for the attorney to ask questions, listen to answers, and take notes simultaneously. Paralegals also provide the attorney

with needed facts or documents, and they may need to remind the attorney of any questions that may have been overlooked.

Paralegals should also evaluate witnesses. Does the witness answer questions directly? Does he or she appear credible and honest? Will the jury like the witness? Many cases hinge on whether the jury likes or dislikes a particular witness.

It was my practice as a paralegal to have two notepads during depositions , one to keep my notes and my evaluation, and the second to write questions to suggest to the attorney.

Requests for admissions, in my opinion, are often an overlooked discovery device. Many foundational problems can be avoided at trial through the use of a request for admissions. The other side may be willing to admit to certain facts to avoid calling witnesses at trial, so suggest to the attorney to serve requests for admissions.

Expert Witnesses

The paralegal's role with expert witnesses depends upon how knowledgeable the paralegal is regarding expert witnesses, and the individual preferences of the attorney. Obviously, there can be expert witnesses with respect to liability issues and as to damage issues. Some attorneys prefer to contact expert witnesses themselves, while others look to the paralegal for assistance in retaining an expert witness.

When working with experts, be mindful that any information supplied to the expert may be discoverable, and that information sent to the expert should be reviewed and approved by the attorney. It is my practice to advise experts not to provide written reports until I received an oral report-I do not want to disclose a report from my expert that could be adverse to my case. Paralegals should be certain to check with their attorneys to see if an oral report is required prior to a written report.

When required to find experts, the most efficient way is often through contacting peers. Paralegals who have developed peer networks through participation in paralegal associations have a definite advantage. Attorneys contact their peers for information, so why shouldn't paralegals do the same?

Settlement Negotiations

Paralegals can play vital roles in settlement negotiations, and are valuable resources in preparing demand letters or mediation statements. A paralegal is generally more familiar with the facts of the case than the attorney, and typically has a better working relationship and realistic understanding of the client's expectations.

Before drafting document demand letters or mediation statements, paralegals must dig through the files to mine pertinent information to be included (again, err on the side of too much information rather than too little). This thorough review gives the paralegal a perspective that provides another valuable evaluation of the file.

The paralegal's assessment of liability and dollar amounts should be included in this process, along with an estimation of a potential verdict range or settlement value. Be ready to have documentation to accompany the demand letter or mediation statement.

Trial Preparation

Paralegals can be helpful to attorneys in preparing pretrial documents such as witness lists, exhibit lists, pretrial statements, jury instructions, and special verdict forms. Consult local jurisdiction rules regarding what documents are to be filed with the court, and review any orders issued by the court regarding pretrial documents.

In preparing witness and exhibit lists, thoroughly review the file and include all potential witnesses and exhibits. Be prepared to discuss with the attorney any foundation required to get the exhibit into evidence. Will a witness have to be called to lay foundation for having the exhibit admitted, or has the other side admitted to foundation?

Most jurisdictions have pattern jury instructions. Review these pattern instructions to ensure that no instructions are omitted. Some jurisdictions allow non-pattern instructions if warranted by the case. Review the legal research file for the case to see if there are unusual points of law that require a non-pattern instruction. Draft non-pattern instructions for the attorney's review.

Most jurisdictions have pattern special verdict forms, but keep in mind that in most jurisdictions, pattern jury instructions and pattern special verdict forms are simply patterns. Consult local rules and statutes regarding jury instructions and special verdict forms.

Some jurisdictions or judges require parties to file pretrial statements. Review pretrial or scheduling orders regarding pre trial statements to see what information must be included in the statements. Even if the court or judge does not require pre trial statements, it is often wise to submit one anyway.

This demonstrates that your side is ready and willing to try the case, and it gives the judge an idea as to your side's view of the facts and law applicable to the case. If the other side does not file a statement, it works to your advantage for the judge

to have only your side's view before trial begins.

The paralegal should *suggest* to the attorney any motions *in limine* that may be applicable to the case. Is a motion *in limine* required to include a video at trial of an expert's opinion on the case? Should a motion *in limine* be filed to exclude from evidence the fact that the family dog died in the accident? With motions *in limine*, consider whether to include or exclude certain evidence at trial. Be prepared to draft the motion.

Trial

Paralegals are typically responsible for communicating with clients regarding when to appear at trial and when to meet to discuss trial preparation. They also determine whether witnesses need to be subpoenaed, or will appear voluntarily. This may include meeting with witnesses to prepare them for trial. The same applies to trial experts, and paralegals sometimes assist with travel arrangements for experts.

All exhibits should be prepared for trial, including redacting certain information (*e.g.,* insurance information, personal identification such as date of birth, social security numbers, etc.). Some attorneys prefer exhibits to be pre-numbered before trial, and the lawyer should be consulted to determine how many copies of the exhibits are required at trial.

Discuss equipment needs for trial (*e.g.,* CD players, television, overhead projector, screen, etc.). If equipment is required, the paralegal should make arrangements for the equipment at trial.

The jury panel list should be obtained from the court as soon as possible. The list should be circulated around the firm for review by all staffers. Ask if the list should be sent to and reviewed by another firm-this could be important if the case is being tried someplace other than where your firm is located. When comments have been obtained about prospective jurors, the comments should be summarized.

The most significant role for paralegals in jury trials is assisting with jury selection. Having tried 25 jury trials over the past 10 years, I can attest that it is difficult for an attorney to take notes during jury selection while trying to have a conversation with a juror.

It is also difficult to have a conversation with a potential juror and watch other potential jurors to see how they respond to questions and answers. Paralegals are in the best position to make such observations and note them. Paralegals should be candid with comments to their attorneys about potential jurors.

Finally, paralegals should take copious notes during trial and observe the jury for reactions to particular facts. It is difficult for an attorney to examine or cross-exam ine witnesses, list answers to questions, and watch how jurors react to questions. Jury observations by the paralegal can be valuable in closing arguments. A paralegal should also be prepared to assist with exhibits, deposition transcripts, and equipment required at trial.

Conclusion

Most attorneys would rather not to have to tell a paralegal what to do on a case and then wait for results. Grabbing the bull by the horns and taking responsibility for moving the case along will go far toward making you indispensable and promoting your job security. Your attorney should have to hustle to catch up to the work you have accomplished on a case.

Bradley J. Beehler, Attorney at Law ~ Morley Law Firm, Ltd.
Brad is the managing shareholder at Morley Law Firm, Ltd. in Grand Forks. He practices primarily in the area of insurance defense litigation including civil trial practice, products liability law, negligence law, insurance law, and commercial litigation in state and federal courts in North Dakota and Minnesota.

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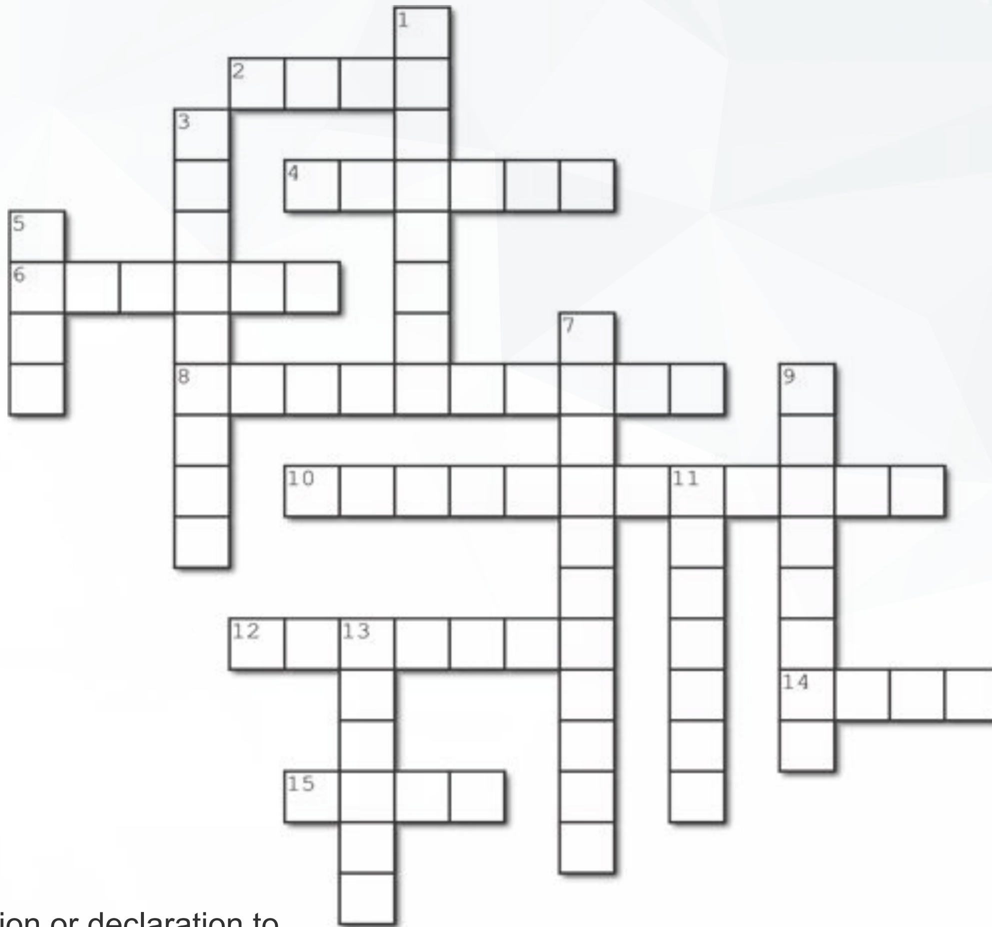

Across

2. A pledge, affirmation or declaration to provide true information
4. To send back, an Appellate Court may send a case back to the Trial Court for retrial or other action
6. A Court having jurisdiction (authority) to hear appeals
8. Official, verbatim record of Court proceedings
10. The legal authority of a court to hear and decide cases
12. Law enacted by the legislature
14. Lawsuit, suit or action being resolved through the use of the Court System
15. The group of persons called to decide the facts and render a verdict at the trial

Down

1. Private office of the Judge
3. A formal attestation or declaration of disapproval of point of law or procedure during trial
5. Monetary sum which can be assessed by a Judge to insure that a criminal defendant appears in Court
7. A classification of offenses which are less serious than felonies 9. A fact presented in court through the testimony of a witness, an object or written documents
11. An attorney or lawyer. Then giving of advice and guidance concerning a legal matter
13. To find a criminal defendant not guilty of the charges against him or her

THE NICE THING ABOUT DOING A CROSSWORD PUZZLE IS, YOU KNOW THERE IS A SOLUTION.
–STEPHEN SONDHEIM

Collaborative Divorce: Leaving in Peace.

By: Michael L. Gjesdahl

St Paul resident, Bonnie P., had every reason to think her divorce would be an all-out war. She and her surgeon husband had three children and complicated finances. Throughout the marriage, Bonnie had been a homemaker: To become self-sufficient, she'd need substantial maintenance to meet her living expenses and attend college. Her circumstances were the usual powder keg that, more often than not, explode into a mushroom cloud of litigation.

But that's not what happened. Thankfully---for Bonnie, for her husband, and for their children---no one lit the fuse (by serving papers and starting a formal divorce action).

Luckily, Bonnie was involved with a counselor who told her about "collaborative practice," a "no litigation" method of helping families pass through the divorce gauntlet in peace.

Equipped with that information, Bonnie and her husband travelled a different divorce path. With the help of neutral professionals, they worked out their own parenting schedule and financial solutions. They worked through hard topics, while continuing to respect one another. By avoiding litigation, they saved tens of thousands of dollars.

So, what is "collaborative practice"?

Well, the collaborative approach began approximately twenty years ago in the Twin Cities. Divorce attorney, Stu Webb, burned out by scorched earth litigation tactics, wanted to quit practicing law. Instead, he searched out colleagues who felt the same way...and they weren't hard to find. In time, together, they developed and honed a new and useful method of helping families through hard times.

What did they do? Well, they abandoned the traditional divorce process altogether.

Traditionally, divorces play themselves out through two separate, but related, processes that unfold at the same time. One party usually starts a legal action: The dispute then involves a judge, trial lawyers, and a courtroom (the litigation process). Somewhere along the line, before that case reaches its trial, the dickering begins, often in a mediation setting (the negotiation process).

In other words, divorce negotiations usually occur under the threatening shadow of looming litigation. There, negotiations can be hampered by: (1) the negative emotion spawned by hardball litigation tactics; (2) a reluctance to share information that might be used against one in the litigation environment; or (3) an unwillingness to school the other in the weaknesses of his or her case.

The key premise of collaborative law is to *disconnect the two processes*, to sever the negotiation of a family dispute from the litigation process.

By severing the negotiating from the litigating, collaborative law:

- ★ replaces an adversarial process with a problem-solving approach;
- ★ prevents, rather than promotes, litigation;
- ★ preserves family assets;
- ★ places children at the center of the dialogue, rather than the middle of the fight; and
- ★ Achieves more durable, lasting, agreements.

The collaborative approach creates these improvements in a simple, but radical, way. It requires all involved—the husband and his lawyer, and the wife and her lawyer—to sign an amazing contract: All four must agree, in writing, that *neither party will serve and file the divorce action!*

There will be ***no litigation***. Instead, ***all*** of the parties' and their lawyers' resources and energies will be devoted to negotiating. Exactly ***none*** of their resources and energies will be devoted to litigating. Freed from the dynamics of hostile litigating, the parties' negotiations are liberated, less guarded. They are less adversarial and more... well...collaborative.

There is a special term in the parties' collaborative agreement that goes far to assure these goals: If either party chooses to abandon the collaborative approach—by serving and filing the divorce

action—*both attorneys must withdraw*. In other words, the collaborative lawyers are prohibited from also serving as the parties' trial lawyers. They must be replaced.

Likewise, any experts (eg. accountants, counselors, psychologists) the parties have jointly retained to help them during the collaborative negotiations are barred from becoming involved as witnesses in the divorce litigation.

Thus, the deeper the parties progress in their collaborative negotiations, the greater their stake in continuing, rather than abandoning, the process. The same is true for the lawyers. In a traditional divorce, a lawyer ***gains*** when negotiations stall and the parties choose to try their case: Trials are time-consuming and expensive, so the lawyer's fees skyrocket. With the collaborative approach, when parties choose to litigate, lawyers ***lose*** their clients and, with them, their source of income.

People interested in resolving their divorce through the collaborative method, will follow these seven steps:

Step 1: Find and hire a collaborative attorney. You don't become an astronaut by simply calling yourself one. Likewise, you don't become a collaborative lawyer by self-anointment. Instead, a "collaborative attorney" is one formally trained in the collaborative process, then committed to its use.

If you are looking for a collaborative lawyer, ask about his or her training and experience with the process. Likewise, in this area, a collaborative lawyer will likely be a member of both the Collaborative Law Institute of Minnesota and the International Academy of Collaborate Professionals.

The first collaborative attorney contacted provides the client the identity and contact information of other collaborative lawyers. The client shares the list with his or her spouse, who then selects one of the other listed attorneys.

Step 2: Start the process. Once collaborative lawyers are hired, the next step is a four-way conference, involving the parties and the two attorneys. During this meeting, the ground rules of the collaborative process are established. Everyone then commits to those ground rules by signing a Participation Agreement.

Step 3: Take care of immediate problems. The beginning of most divorces is an anxious time, often fraught with emergencies, both real and perceived: *Will we remain under the same roof or separate while the divorce is processed? How will we share time with the children? Who will have use of which assets and property items? Who will pay which bills? Will she gut our accounts? Will he run up balances on our joint credit cards?* In the collaborative process, the parties will focus, first, on issues like these.

Step 4: Gather information. No one should enter an agreement without being fully informed. Accordingly, most litigated divorces begin with months of formal "discovery," a process where the attorneys send one another lengthy requests for information and documents. Responses, tailored for litigation purposes, are often evasive and uninformative. To the contrary, the collaborative process requires a commitment to transparency. Both parties promptly share required financial and other information. The process plays out more quickly, more cheaply, more thoroughly.

Step 5: Share Experts. Divorcing parties often need the assistance of experts: Appraisers or auctioneers may be hired to value assets; Accountants may be hired to appraise businesses or assess tax effects; Psychologists or counselors may be hired to help determine the shape of parenting schedules. In a litigated divorce, both parties hire their own experts, thus doubling expenses. In the collaborative process, the parties employ experts jointly, the experts remain neutral, and the parties save dollars.

Step 6: Negotiate the Settlement. In a litigated divorce, the parties do not interact with one another. Proposals are communicated between the lawyers. When they negotiate under one roof, the parties are situated in separate rooms. In the collaborative process, the parties and their attorneys negotiate face-to-face, at a single table.

In addition, the attorneys are trained to move past "positional" negotiating in favor of "interest based" bargaining.

Positional bargaining is a trading of offers where there is often a "winner" and a "loser" (imagine buying a used car). Interest-based negotiation drills deeper: It is a method of solving common problems together, to generate win-win solutions.

Step 7: Obtain the Final Decree. Only once the parties have settled their case and signed an agreement is a formal divorce action commenced. A court file needs to be opened to file the agreement, gain the court's approval, and receive a final divorce judgment and decree.

These are the steps that Bonnie and her husband followed to avoid what might have been a self-inflicted blood bath. Instead, she describes her relationship with her ex as "healthy" and "spectacular." "We went through an awful time for our family…without being hurtful to each other." Because of the collaborative approach, their divorce was about problem-solving, not retribution and retaliation.

Since Stu Webb conceived the collaborative method, it has traveled to no fewer than 46 states. What's more, it has found its way to Europe, to Asia, to Africa, and to Australia. Now, at long last, it has finally made its way a few short hours up Interstate 94 to Fargo-Moorhead.

In time, as it has everywhere else, the collaborative approach will reduce the need in this area for families to resolve their disputes in a trial setting. More disputes will be resolved by agreement. Families will save more dollars. More children will avoid the scars inflicted by warring parents.

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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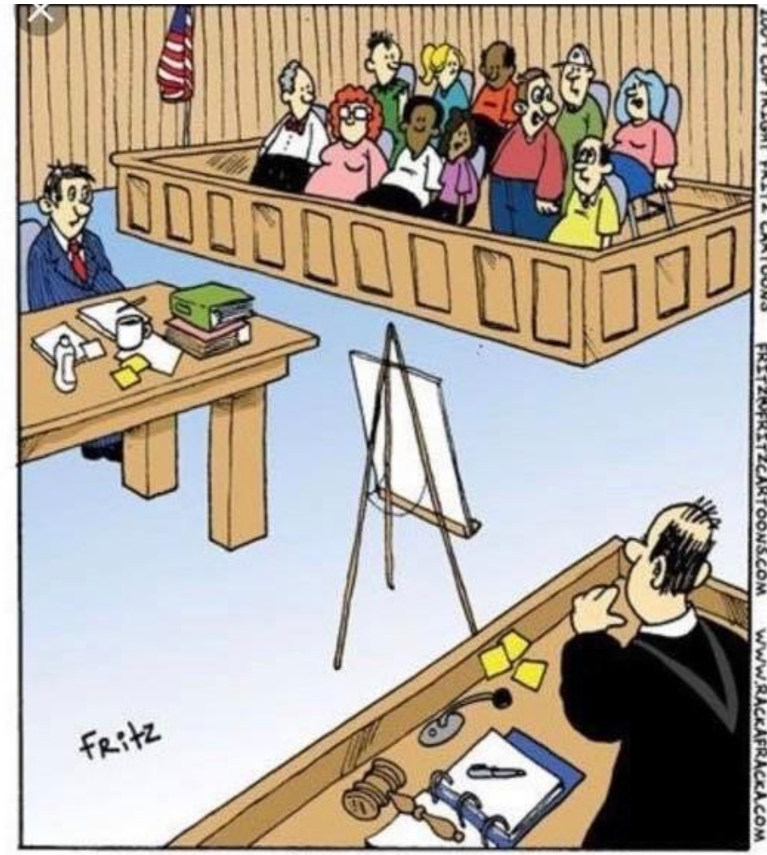
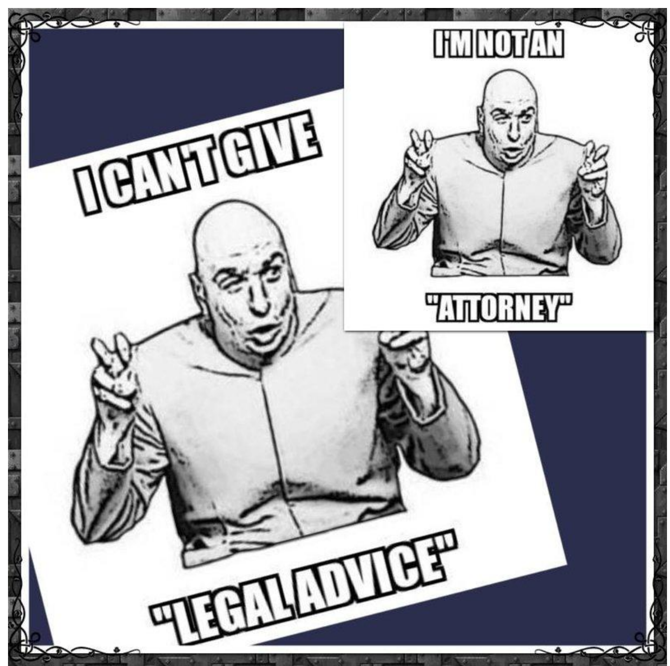
COMICS

"No, I said 'paralegals'."

"Enough with all this bickering! Let's just do it alphabetically."



YOUR HONOR? IF IT PLEASE THE COURT, I WOULD LIKE TO REQUEST THAT WE BEGIN BY SINGING THE "LAW & ORDER" THEME SONG.



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