



THE PARAVIEW



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IN THIS ISSUE

Fall Fest Recap	3
Congratulations	4
Know Your Legal Terminology	5
Practice Area Spotlight: Workers' Compensation	6-9



North Carolina Legal News	10
The Specter of Civil Forfeiture	11-13
Upcoming CLE Opportunities	14
2014-2015 MPA Patrons	15
2014-2015 MPA Board and Executive Committee Members	16

"There is no shortage of lawyers in Washington, DC. In fact, there may be more lawyers than people." ~ Sandra Day O'Connor

FALL FEST RECAP

On Friday, October 3, the MPA hosted its umpteenth Fall Fest CLE seminar at the Omni Hotel in uptown Charlotte. The event was attended by over 100 area paralegals and many of the MPA's sponsors, and had five speakers on topics that included technology law, DWI law, education law, sports and entertainment law and, of course, ethics.



-Donald Brown of Brown & Associates presented an entertaining ethics segment on the perils of social media.

-Giovanni Masucci of National Digital Forensics gave a very timely presentation on data breaches.

-Robert Reeves of Reeves, Aiken & Hightower discussed North Carolina's DWI laws.

-Karen Vaughn and Patricia Riddick gave a very informative presentation on the basics of education law.

-Matt Efird of Robinson, Bradshaw & Hinson discussed sports and entertainment law using NASCAR cases as examples.



Unfortunately, a sixth planned speaker had to cancel unexpectedly. The MPA has arranged for a complimentary webcast available through December 31 to make up for the cancelled session.

The MPA's next CLE seminar will be held in February 2016. Please keep an eye out for announcements regarding same in January. As always, we hope to see you there!

CONGRATULATIONS



Congratulations to MPA member Alicia R. Mitchell-Mercer for successfully completing NALA's 2014 LEAP (Leadership Enhancement and Preparation) program!

The LEAP program is designed for prospective leaders and is based on the common-sense notion that it is better to acquaint volunteers with the concepts and challenges of association leadership before they are elected to leadership positions rather than to rely on "orientation" sessions after elected leaders take office. Early leadership training and support will reinforce the strength and progress of the association as new leaders assume their roles prepared to take charge right away.

The current focus is on serving state and local affiliated associations, and developing skills that support their goals and growth. Participation in LEAP will also enhance the personal leadership skills used by NALA members in business and work environments.

At the same time, paralegals today find themselves in leadership positions and in situations in which sound leadership skills are needed for career advancement - either in the association world, the corporate world or in the world of private law firms. LEAP focuses on working with others, studying and discussing current leadership trends and publications such as 7 Measures of Success of Remarkable Associations, and provides members with the experience of public speaking and presentations.

LEAP applications forms are available in early spring of each year, and due by May 15 for the ensuing year. LEAP class members are notified in June. To qualify, LEAP participants must meet each of the following criteria:

- be an active NALA member
- hold a current Certified Paralegal credential
- have experience volunteering in local or state paralegal associations and/or community non-profit organizations

The NALA Professional Development Committee has determined if more applications are received than desired class size, other criteria will be used to select the LEAP class members such as geographic location and areas of interest. The PDC will endeavor to ensure that the class makeup is representative of the membership of NALA which includes members of diverse interests and diverse geographic representation.


KNOW YOUR LEGAL TERMINOLOGY

Respondeat Superior [Latin, Let the master answer.] A common-law doctrine that makes an employer liable for the actions of an employee when the actions take place within the scope of employment.

The common-law doctrine of respondeat superior was established in seventeenth century England to define the legal liability of an employer for the actions of an employee. The doctrine was adopted in the United States and has been a fixture of agency law. It provides a better chance for an injured party to actually recover damages, because under respondeat superior the employer is liable for the injuries caused by an employee who is working within the scope of his employment relationship. The legal relationship between an employer and an employee is called agency. The employer is called the principal when engaging someone to act for him. The person who does the work for the employer is called the agent. The theory behind respondeat superior is that the principal controls the agent's behavior and must then assume some responsibility for the agent's actions.

An employee is an agent for her employer to the extent that the employee is authorized to act for the employer and is partially entrusted with the employer's business. The employer controls, or has a right to control, the time, place, and method of doing work. When the facts show that an employer-employee (principal-agent) relationship exists, the employer can be held responsible for the injuries caused by the employee in the course of employment.

Source: *thefreedictionary.com*



We Have a Better Way
You Can Take Part in NALA's National Utilization & Compensation Survey
ONLINE


The most extensive survey of the paralegal profession doesn't require filling in tiny circles with a soft-lead pencil. You can "click" your way through the survey and send your confidential responses quickly and conveniently on the Internet.

NALA has conducted this comprehensive survey of the nation's paralegals regularly since 1986. The questions cover educational backgrounds, work environments, duties, and responsibilities as well as billing and compensation levels for paralegals.

To Participate

To do your part in this important survey, go to www.nala.org/survey.htm and follow the simple instructions.

You must use the control number 729843 in order to access the survey and submit your responses. This control is to prevent Web surfers from finding the survey and spoiling it with bogus answers. The control number is the same for each person invited to participate in the survey. It cannot be used for identification purposes. All responses are anonymous.

 **THE ASSOCIATION OF
LEGAL ASSISTANTS
• PARALEGALS**

PRACTICE AREA SPOTLIGHT: WORKERS' COMPENSATION



Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence. The tradeoff between assured, limited coverage and lack of recourse outside the worker compensation system is known as "the compensation bargain".

While plans differ among jurisdictions, provision can be made for weekly payments in place of wages (functioning in this case as a form of disability insurance), compensation for economic loss (past and future), reimbursement or payment of medical and like expenses (functioning in this case as a form of health insurance), and benefits payable to the dependents of workers killed during employment (functioning in this case as a form of life insurance).

General damages for pain and suffering, and punitive damages for employer negligence, are generally not available in workers' compensation plans, and negligence is generally not an issue in the case. These laws were first enacted in Europe, with the United States following shortly thereafter.

Workers' compensation statutes are designed to ensure that employees who are injured or disabled on the job are not required to cover medical bills related to their on-the-job injury, and are provided with monetary awards to cover loss of wages directly related to the accident, as well as to compensate for permanent physical impairments. The intent of these statutes is to eliminate the need for litigation by having employees give up the potential for pain and suffering related awards in exchange for not being required to prove tort (legal fault) on the part of their employer.

These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of co-workers in most accidents. State statutes [in the United States] establish this framework for most employment. Federal statutes [in the United States] are limited to federal employees or those workers employed in some significant aspect of interstate commerce.

The fairness of workers' compensation statutes is highly controversial, with the claimants (injured workers) and claimant attorneys arguing the need for greater benefits, and the employer/insurance carrier side arguing that excessive fraud in the system causes unnecessary and inappropriate costs.

Fraud is a problem which plagues workers' compensation systems in every country, with billions of dollars being spent in unnecessary litigation, surveillance, legal fees, and settlements worldwide. Workers' compensation fraud is committed by doctors, lawyers, employers, insurance company employees and claimants, and occurs in both the private and public sectors.

The topic of workers' compensation fraud is highly controversial, with claimant supporters arguing that fraud by claimants is rare – as low as one-third of one percent, others focusing on the widely-reported National Insurance Crime Bureau statistic that workers' compensation fraud accounts for \$7.2 billion in unnecessary costs, and government entities acknowledging that "there is no generally accepted method or standard for measuring the extent of workers' compensation fraud ... as a consequence, there are widely divergent opinions about the size of the problem and the relative importance of the issue."

According to the Coalition Against Insurance Fraud, tens of billions of dollars in false claims and unpaid premiums are stolen in the U.S. alone every year. The most common forms of workers' compensation fraud by workers are:

Remote injury: Workers get injured away from work, but say they were hurt on the job so that their workers' compensation policy will cover the medical bills.

Inflating injuries: A worker has a fairly minor job injury, but lies about the magnitude of the injury in order to collect more workers' compensation money and stay away from work longer.

Faking injuries: Workers fabricate an injury that never took place, and claim it for workers' compensation benefits.

Old injury: A worker with an old injury that never quite healed claims it as a recent work injury in order to get medical care covered.

Malingering: A worker stays home by pretending the disability is ongoing when it is actually healed.

Failure to Disclose: A worker knowingly, or unknowingly, makes a false statement or representation about their injury.

The most common forms of workers' compensation fraud by employers are:

Underreporting payroll: An employer reports that workers are paid less than they actually are in order to lower their premiums.

Inflating experience: An employer claims workers are more experienced than they actually are in order to make them seem less risky and therefore less expensive to cover.

Evasion: An employer fails to obtain workers' compensation for their employees when it is required by law. Workers are often deceived into thinking they are covered when they are not.

In the United States, the first statewide worker's compensation law was passed in Maryland in 1902, and the first law covering federal employees was passed in 1906. By 1949, all states had enacted a workers' compensation program.

In the United States, most employees who are injured on the job receive medical care responsive to the work-place injury, and, in some cases, payment to compensate for resulting disabilities. Generally, an injury that occurs when an employee is on his or her way to or from work does not qualify for worker's compensation benefits; however, there are some exceptions if your responsibilities demand that you be in multiple locations, or stay in the course of your employment after work hours. The employee must demonstrate that employer negligence caused the injury; if the employer does not subscribe to workers' compensation, the employer loses their common law defense of contributory negligence, assumption of the risk, and the fellow employee doctrine. If successful, the employee can recover their full common law damages, which are more generous than workers' compensation benefits. In recent years, the Texas Supreme Court has been limiting employer duties to maintain employee safety, limiting the remedies received by injured workers.

In many states, there are public uninsured employer funds to pay benefits to workers employed by companies who illegally fail to purchase insurance. Insurance policies are available to employers through commercial insurance companies: if the employer is deemed an excessive risk to insure at market rates, it can obtain coverage through an assigned-risk program.

The workers' compensation system is administered on a state-by-state basis, with a state governing board overseeing varying public/private combinations of workers' compensation systems. The names of such governing boards, or "quasi-judicial agencies," vary from state to state, many being designated as "workers' compensation commissions". By contrast, in North Carolina, the state entity responsible for administering the workers' compensation system is referred to as the "North Carolina Industrial Commission."

The federal government has its own workers' compensation program, subject to its own requirements and statutory parameters for federal employees. In the vast majority of states, workers' compensation is solely provided by private insurance companies. 12 states operate a state fund (which serves as a model to private insurers and insures state employees), and a handful have state-owned monopolies. To keep the state funds from crowding out private insurers, they are generally required to act as assigned-risk programs or insurers of last resort, and they can only write workers' compensation policies. In contrast, private insurers can turn away the worst risks and can write comprehensive insurance packages covering general liability, natural disasters, and so on. Of the 12 state funds, the largest is California's State Compensation Insurance Fund. The federal government pays its workers' compensation obligations for its own employees through regular appropriations.

It is illegal in most states for an employer to terminate or refuse to hire an employee for having reported a workplace injury or filed a workers' compensation claim. However, it is often not easy to prove discrimination on the basis of the employee's claims history. To abate

discrimination of this type, some states have created a "subsequent injury trust fund" which will reimburse insurers for benefits paid to workers who suffer aggravation or recurrence of a compensable injury. It is also suggested that laws should be made to prohibit inclusion of claims history in databases or to make it anonymous.

Although workers' compensation statutes generally make the employer completely immune from any liability (such as for negligence) above the amount provided by the workers' compensation statutory framework, there are exceptions. In some states, like New Jersey, an employer can still be held liable for larger amounts if the employee proves the employer intentionally or recklessly caused the harm, while in other states, like Pennsylvania, the employer is immune in all circumstances, but other entities involved in causing the injury, like subcontractors or product manufacturers, can still be held liable.

Some employers vigorously contest employee claims for workers' compensation payments. In any contested case, or in any case involving serious injury, a lawyer with specific experience in handling workers' compensation claims on behalf of injured workers should be consulted. Laws in many states limit a claimant's legal expenses to a certain fraction of an award; such "contingency fees" are payable only if the recovery is successful. In some states this fee can be as high as 40% or as little as 11% of the monetary award recovered, if any.

In the vast majority of states, original jurisdiction over workers' compensation disputes has been transferred by statute from the trial courts to special administrative agencies. Within such agencies, disputes are usually handled informally by administrative law judges. Appeals may be taken to an appeals board and from there into the state court system. However, such appeals are difficult and are regarded skeptically by most state appellate courts, because the point of workers' compensation was to reduce litigation. A few states still allow the employee to initiate a lawsuit in a trial court against the employer. Ohio allows appeals to go before a jury.

Various organizations focus resources on providing education and guidance to workers' compensation administrators and adjudicators in various state and national workers' compensation systems. These include the American Bar Association (ABA), the International Association of Industrial Accident Boards and Commissions (IAIABC), the National Association of Workers' Compensation Judiciary (NAWCJ), and the Workers Compensation Research Institute (WCRI).



Source: Wikipedia

NORTH CAROLINA LEGAL NEWS



October 10, 2014

Same sex marriage legalized in North Carolina

Same-sex marriage became legal in North Carolina on Friday after a dizzying day of court filings that ended with a federal judge in the western part of the state nullifying the ban on such unions. U.S. District Judge Max Cogburn set off the rush to courthouses throughout the state with the stroke of his pen. At 5:32 p.m. Friday, he issued a ruling that is likely to become a part of the history books.

“The issue before this court is neither a political issue nor a moral issue,” Cogburn stated in his ruling. “It is a legal issue and it is clear as a matter of what is now settled law in the Fourth Circuit that North Carolina laws prohibiting same-sex marriage, refusing to recognize same-sex marriages originating elsewhere, and/or threatening to penalize those who would solemnize such marriages, are unconstitutional.”

Phil Berger, leader of the state Senate, and Thom Tillis, speaker of the state House, had attempted to enter the legal fray over North Carolina’s amendment. Cogburn’s ruling was issued without hearing from the two.

“While we recognize the tremendous passion on all sides of this issue, we promised to defend the will of North Carolina voters because they – not judges and not politicians – define marriage as between one man and one woman and placed that in our state constitution,” Berger and Tillis said in a joint statement. “It is disappointing this decision was made without North Carolina’s law receiving its day in court, and we will continue to work to ensure the voice of the voters is heard.”

The U.S. Supreme Court ignited the roller-coaster activity over the status of North Carolina’s gay-marriage ban by its inaction Monday. The justices decided not to take up appeals of lower court decisions that struck down gay marriage bans in five states.

November 4, 2014

Midterm elections have North Carolina seeing red again

In one of the most expensive Senate races in United States history (with ironically the lowest voter turnout since 1942), Republican candidate Thom Tillis unseated Democratic incumbent Kay Hagan for one of North Carolina’s two Senate seats. The victory was one of many for the Republican party, who managed to secure the majority vote in both the Senate and the House of Representatives. In 2012, North Carolina elected Republican Pat McCrory as Governor, replacing Democrat Bev Perdue.



THE SPECTER OF CIVIL FORFEITURE

THE LAW

The 1988 Anti-Drug Abuse Bill created new legal tools to handle the special enforcement problems presented by crack cocaine, gang-related violence, and domestic marijuana production, all of which appeared to be increasing steadily. The bill provided for additional allocation of resources for equipment and manpower, as well as stiffer legal penalties for drug law offenders. It also created an Asset Forfeiture Fund. This fund is modeled after the Racketeer-Influenced and Corrupt Organizations (RICO) and the Continuing Criminal Enterprise statutes as well as the Federal Criminal Forfeiture Act of 1984, which legalized seizing the fruits of criminal activities.

The Asset Forfeiture Fund was created with the intention of helping law enforcement agencies to combat drug lords whose wealth gave them refuge from traditional enforcement tactics. Proponents were optimistic that seizing assets would limit the amount of working capital available to drug dealers, thereby reducing their ability to facilitate criminal activity.



Traditionally, “the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense.” Despite this traditional rule, each of the three primary statutory forfeiture provisions under section 881 provide for an innocent owner defense, whereby an owner may defeat a forfeiture by establishing by a preponderance of the evidence that the alleged wrongful act was “committed or omitted without the knowledge or consent of that owner.”

THE POTENTIAL FOR ABUSE

Information has increasingly shown that seizing law enforcement departments are using seized assets as part of their budget. While much of the money has been used for legitimate purposes (equipment, training, etc.), there have been several high profile examples of the misuse of seized funds.

One of the reasons states like Nebraska do not allow forfeiture proceeds to go directly to police agencies is that legislators and citizens believe there should be some legislative oversight of the funds. To allow police agencies to be self-financing entities means that they do not have to justify their activities to the legislature through the budgetary process. Philadelphia city council member Joan Specter described it best when she said: “The happy result for the police is that every year they get what can only be called drug slush funds....”

Officers that abuse civil asset forfeiture laws can create perceptions of police corruption and self-interest, fueling public mistrust and suspicion. CAFRA has done little to address these concerns. First, minimal public oversight exists over asset forfeitures. Second, CAFRA did not address the perverse incentives civil asset forfeiture creates when police are permitted to keep forfeiture proceeds. As a result, many agencies operate independent of any legislative budgetary process and are ripe with the potential for corruption. Third, many agencies lack adequate internal controls to ensure forfeiture proceeds are spent appropriately. As a result, some forfeiture money is used on non-law-related purchases. Finally, the current economic crisis and budgetary shortfalls that accompany it will likely make agencies even more reliant on forfeiture proceeds, adding another incentive for police to focus their efforts on forfeitures. Unless the system is improved to address these problems, public mistrust in law enforcement, and the forfeiture program in particular, will continue to erode.

Percentage of seized funds kept by state

100%	95%	90%	85%	80%	75%	65%	60%	50%	0%
AL, AK, AZ, AR, DE, GA, HI, ID, IA, KS, KY, MA, MI, MT, NV, NJ, NM, OK, PA, SD, TN, UT, VA, WA, WV, WY	SC	IL, MN, NH, RI, TX	FL	LA, MS	NE	CA, OR	CT, NY	CO, WI	IN, ME, MD, MO, NC, OH, VT

REFORM

In 2000, Congress passed the Civil Asset Forfeiture Reform Act (CAFRA) in part to protect those property owners who have made reasonable efforts to stop the use of their property for activities involving illegal drugs and other felonies. The following reforms were enacted upon adoption of CAFRA:

- Burden of proof shifted from the property owner to the government by requiring law enforcement officials to show by a preponderance of evidence that they are justified in undertaking a property seizure.
- Property owners, who have taken reasonable steps to prevent illegal activities, cannot be subjected to forfeiture.
- The costly bond requirement was eliminated for owners who contest a property seizure.
- Time period in which a property owner has to contest forfeiture was extended.
- Innocent owners gained the right to file suit for negligence or loss of property due to forfeiture when the claimant is not convicted of a crime.
- Allows property to be returned to an owner pending final disposition when a court determines that a resulting hardship to the owner outweighs the government’s interest in the property.

CAFRA only applies in federal forfeiture cases, leaving the states to enact their own laws regarding asset forfeiture for property connected with criminal activity. Generally speaking:

- While the burden of proof for establishing cause for forfeiture is most often on the state, owners are often still burdened with establishing that ‘innocent owner’ exceptions apply.
- Many states still have ‘innocent owner’ provisions that make owners liable for criminal conduct about which they “reasonably should have known.”
- Time periods for contesting the forfeiture are between 15 and 90 days.

- Many states do not allow seized property to be repleaved (returned to owner pending judgment), while many others provide for this with bonds ranging from 10% to 200% the value of the property.
- Few states explicitly provide for owner lawsuits for negligence or loss of property due to forfeiture – check with your local legal counsel.

North Carolina Statistics

<p>Civil forfeiture essentially does not exist under North Carolina law. Property can only be forfeited if the property owner is actually convicted of a crime. If he is convicted, the burden is on him to show why the property cannot be forfeited. Moreover, law enforcement does not receive any percentage of forfeiture proceeds.</p> <p>Perhaps it should come as no surprise, then, that North Carolina participates extensively in equitable sharing, receiving more than \$96 million from 2000 to 2008.</p>		<p>EQUITABLE SHARING PROCEEDS from the ASSETS FORFEITURE FUND (AFF)</p>	
			Proceeds Returned to State
		FY 2000	\$7,125,291
		FY 2001	\$6,808,539
		FY 2002	\$4,581,800
		FY 2003	\$9,480,431
		FY 2004	\$8,536,628
		FY 2005	\$10,121,517
		FY 2006	\$10,817,405
		FY 2007	\$20,920,094
		FY 2008	\$17,964,512
		Total	\$96,356,217
		Average per Year	\$10,706,246
<p>FORFEITURES as REPORTED to LEMAS (Drug-related only)</p>			
	Total Assets Forfeited	Assets Forfeited per Law Enforcement Agency	
1993	\$9,213,280	\$69,634	
1997	\$28,063,380	\$49,920	
2000	\$19,284,039	\$39,180	
2003	\$34,007,124	\$68,065	

Source: *Policing for Profit: The Abuse of Civil Asset Forfeiture* (Institute of Justice, 2010)

NOTABLE CASES

A waitress from Houston, Texas, her boyfriend and her two children were pulled over by police while driving through Tenaha, Texas en route to Linden, Texas to buy a car. They had brought a large amount of cash with which to purchase the car. The police asked if they could search the car, during which they found the cash. The officers had the couple follow them to the police station, where they were told they fit the profile of drug couriers as they were traveling from “a known point for distribution of illegal narcotics” (Houston) to “a known place to receive illegal narcotics” (Linden). They met with the county’s district attorney an hour later and were told they could either face felony charges for money laundering and child endangerment or they could sign over their cash to the city of Tenaha and go on their way with no charges filed. The frightened couple took the deal. They later joined a class-action lawsuit challenging the practice.

A cleaning woman from Washington, D.C. had her car seized by police while her son was borrowing it. He was pulled over and found to have a hand gun, at which point he was arrested and the car seized. The woman had to pay a “penal sum”, which only bought her the right to a civil-forfeiture court case. The Public Defender Service for the District of Columbia was able to secure the release of the car almost a year later. The car sat in a city lot for the duration.

UPCOMING AND AVAILABLE CLE OPPORTUNITIES



Date(s)	Sponsor	Location	Topics	Cost
Flexible	Lexis	Online	Various – “On Demand Webinars”*	Free
Flexible	Westlaw	Online	Various	Depends (several are free)
February 2015	MPA	Charlotte, NC	Various – 6 credits	\$95 – members \$155 – non-members
March 18, 2015	NALA	Online	Marketing Yourself with the Professional Portfolio	\$80 – members \$105 – non-members
April 1, 2015	NALA	Online	Power Up! How to Boost Your Brain Power	\$80 – members \$105 – non-members
May 1, 2015	NALA	Online	Legal Research	\$80 – members \$105 – non-members
May 1 – 31, 2015	NALA	Various	CP Examination	\$250 – members \$275 – non-members

*Recorded webinars are not eligible for CLE credit, but Westlaw often offers Live Webinars that are.

LAWYER HUMOR

The lawyer was beginning to grasp at straws during his cross-examination. "You say, Mrs. Dawson, that this took exactly five minutes?" The witness replied that she was sure. "I am going to give you a test. I want you to tell me when exactly five minutes has passed--starting now." The lawyer was intently watching a stopwatch taken from his briefcase. At five minutes, to the second, the witness gave the signal. The lawyer told her, "That's quite remarkable. How did you gauge the time so accurately?" Mrs. Dawson replied, "I watched the clock on the wall behind you."

Two alligators are sitting on the edge of a swamp. The small one turns to the big one and says, "I don't understand how you can be so much bigger than I am. We're the same age, we were the same size as kids...I just don't get it." "Well," says the big alligator, "what have you been eating?" "Lawyers, same as you," replies the small alligator. "Hmm. Well, where do you catch 'em?" "Down at that law firm on the edge of the swamp." "Same here. Hmm. How do you catch 'em?" "Well, I crawl under a BMW and wait for someone to unlock the door. Then I jump out, bite 'em, shake the crap out of 'em, and eat 'em!" "Ah!" says the big alligator, "I think I see your problem. See, by the time you get done shakin' the crap out of a lawyer, there's nothing left but lips and a briefcase..."

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