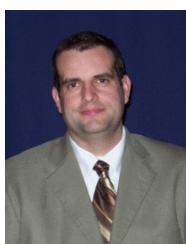


## S U M M E R 2 0 1 1

### Message from the President...

Corey J. Wiggins



I appreciate the opportunity to serve as your President for the 2011-2012 year. This fiscal year we face some of the same challenges as last and some new ones. As your past Treasurer, I am aware of the financial issues that the Bar Association is facing, as well as the desire of the membership to continue to financially assist the Legal Aid Clinic.

This past year has afforded me the opportunity to view a side of the Association that I had never thought about. Until I became Treasurer, I was not aware that the Executive Director was billing the Association hourly for work performed on behalf of the Association. While this did not surprise me, I was shocked to see the amount of time that she expensed for items that, in my opinion, should have been taken care of by the respective committee members. By way of illustration, when fax or e-mail reminders were sent out to remind members of an event it cost the Association \$25.00 per hour. The same was true when she was asked to run errands for an event. It is my goal to be able to reduce this cost by requesting committee members do more of the work associated with their events.

The committees are not the only part of the Association that devoured a lot of Jill's time. This past year the Board of Governor's had a very difficult time getting a quorum at a lot of its meetings. I realize that everybody's schedules are full and every now and then things happen

that are out of our control. However, the Board has pre-scheduled meetings the third Wednesday of the month beginning at 4:30 p.m. All of the board members are aware of this. Again this is time and money that is wasted by assembling the monthly reports, emailing them to the members of the Board of Governors, making sure that there are hard copies available at the meeting, and then one hour before the meeting having to cancel due to a lack of quorum. I would like to see the Executive Director spending more time making money for the Association rather than wasting her time on functions that will only end up costing us money.

While the Association does have a long road ahead of us financially, the Finance Committee is working diligently to find creative ways to raise money for the Association. Some of the recommendations coming out of the Finance Committee will be able to be implemented right away, while others may take a vote of the membership and not take place until the 2012-2013 fiscal year. In order for the Bar Association to come out on top, it will take all of us working together. It is important to remember that, while not popular, the Board will be making very tough financial decisions that will be necessary for the Associations survival. We as your Board of Governors will strive to keep you advised as to our decisions and the reasons behind them. Also, all of you have a standing invitation to attend any of our monthly meetings in the Law Library to advise

*Cont'd on pg. 3*

#### IN THIS ISSUE:

	LAW DAY 2011	3
	MESSAGE FROM THE STATE BAR OF MICHIGAN	4
MARKETING – DEVELOP A MARKETING OPPORTUNITY CHECKLIST BY URSULA ROZANSKI		5
	HEARD IN THE HALLS	7

Dear Members:

I have heard that the message contained in my recent Newsletter Article is being misconstrued by a few members of the Association as an attack on Jill Porter, our past Executive Director. In the event that this view is more widely shared, and if not, to prevent it from gaining broader currency, I want to make absolutely clear that nothing written in my article was meant to attack Jill. Jill did a tremendous job for the Association, and I personally believe that she was not compensated enough. The intent of my article was to iterate the fact that money was being spent that didn't need to be spent if board and committee members took on a little more responsibility. I was attempting to show that every time the Executive Director is asked to do something it costs the Association money because she is compensated by the hour and not by salary.

Again, I want to make absolutely certain that the membership is clear that I was not trying to attack or discredit Jill in anyway; to the contrary, I commend her on the job that she did for the Association. She gave the Association 110% and went over and above the call of duty.

If you would like to discuss this issue, please contact me directly at (231) 946-8630 or at [cwig-gins@zbwlaw.com](mailto:cwig-gins@zbwlaw.com).

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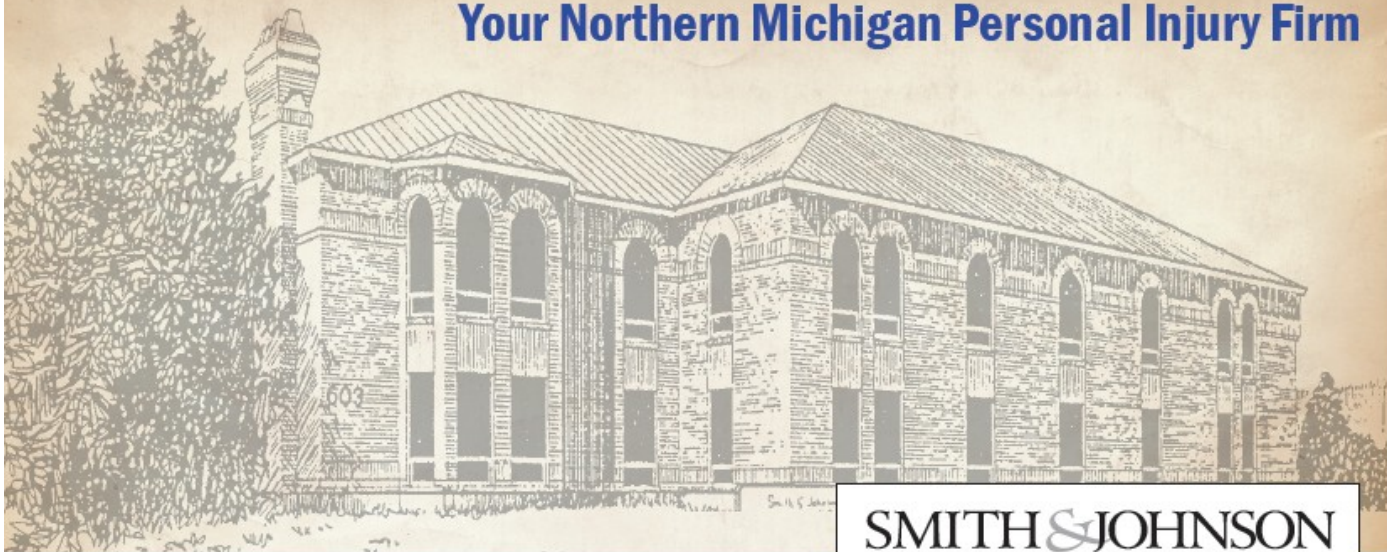
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(cont'd from cover) us as to what is on your mind. Communication will be our greatest ally during the decision making process. Additionally, I encourage you to join or even chair a committee. Again, I thank you and look forward to serving you this coming year.

### GRAND TRAVERSE COUNTY PROBATE COURT SEEKING MEDIATOR APPLICATIONS

Contested Probate cases, and in particular, cases involving trusts, have significantly increased. The Grand Traverse County Probate Court has benefitted from the success realized in informal resolution through mediation of these matters. This has led to the development and approval of Local Administrative Order 2011-1 authorizing Grand Traverse County Probate Court to submit all Probate case to ADR processes pursuant to MCR 2.410, 2.411, and 5.413.

The Court is seeking applicants for approval as Probate mediators at this time. Please contact Ms. Shar Fay, Probate Registrar, the Court's ADR clerk at sfay@grandtraverse.org or 280 Washington St., Suite 223, Traverse City, MI 49684 for a copy of Administrative Order 2011-1, the Grand Traverse County Probate Mediator Application, and/or a copy of the Court's Guide to Probate Mediation.



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 Marketing: Become Known for What You Do

By Elizabeth Jolliffe



People do business with people they know, like and trust. The first step is getting known. If you tell me you want more clients, I will ask who knows what you do? How would someone or a company in your target market even know that you exist? How do you expect work to come

to you?

*If you don't like your answers to these questions, you need to write a marketing plan to become known for what you do as a lawyer.*

Use the outline below to write a simple plan. The bullet points are merely suggestions to get you thinking. There are more questions you could consider about where your current business comes from, commonalities among your seemingly disparate clients, etc.

If you are way past Marketing 101, think again about who you want as clients and ask yourself how you can sharpen your focus. Take a fresh look at your tactics and your tools. Think about how you can make your marketing more effective.

### I. Your Target Market - Who Do You Want To Reach?

- What is your niche?
- Who needs your services?
- What kinds of people or situations do you like to

service?

- Who do you want calling you?

Where do you already have opportunities, connections, a knowledge base, a reputation?

### II. Your Marketing Tactics - How Will You Reach Your Market?

•Direct networking, relationship building through personal contacts, associations, etc. related to your target market.

•Referral sources. (list them by name and/or by occupation)

•Online technology & networking. (website, blog, email, e-newsletters, LinkedIn, Facebook)

•Writing and/or public speaking to your target market.

- Advertising, sponsorships.

No tech no cost placement & distribution of marketing material.

### III. Your Marketing Tools - What Do You Need?

- Business cards that specify what you do.

- Website with your photo.
- Create a Google profile. List your address so that a map pops up.
- Create a LinkedIn profile -a simple, no cost way to establish a professional presence on the web.
- Prepare, practice and use a 30 second elevator speech.
- Blog.
- Brochure.

The bottom line: identify your target market, choose a few, simple, repeatable tactics that fit you, and get the tools in place that you will need. Then start and stick with your tactics to reach your market. Do them consistently. Do them over and over again. Simplicity and persistence. Those are the keys.

You will become known for what you do. You will develop more business.

*Elizabeth Jolliffe is a certified career management and business development coach for lawyers. She practiced for 19 years as a business litigator and partner at Clark Hill PLC in Detroit. Elizabeth helps her clients build their practice, take charge of their career and reach their full professional potential. (734) 663-7905 or Elizabeth@YourBenchmarkCoach.com.*

#### Bar Association Newsletter

Editors & Committee Co-Chairs: Aaron Bowron and Corey Wiggins. Published Quarterly. Kindly mail articles and information to GTLABA by **Sept. 19, 2011**, for publication in the Fall issue. Questions or comments should be directed to Aaron Bowron at legaloil@aol.com or Corey Wiggins at coreyjwiggins@gmail.com.

#### APPEALS

Maurice Borden and Mike Newman are accepting civil action appeal referrals. Maurice has successfully represented clients in the Michigan Court of Appeals and Supreme Court and in the Sixth Circuit Court of Appeals. Mike has a track record of success at the Massachusetts Court of Appeals and the First Circuit Court of Appeals. They may be reached at:

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## Supreme Court “Cat’s Paw” Theory Decision

By Lee Hornberger



*Staub v Proctor Hospital*, 562 US \_\_\_ (2011), considered the circumstances under which an employer may be liable for employment discrimination based on the discriminatory animus of an employee who influenced, but did not make, the ultimate employment decision. This is called the “cat’s paw” theory. The “cat’s paw” theory comes from an Aesop’s fable, in which a monkey induces a cat by flattery to extract roasting chestnuts from the fire. After the cat has done so, burning its paws in the process, the monkey makes off with the chestnuts and leaves the cat with nothing except burnt paws. In the employment law context, the cat is the ultimate decision maker and the monkey is the discriminatory supervisor who influenced the ultimate decision maker.

An employee sued under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 4301 et seq. The employee claimed that his discharge was motivated by hostility to his military obligations. His contention was not that the ultimate decision maker had military hostility but that lower level supervisors did, and the lower level supervisors’ actions influenced the higher level supervisor’s ultimate employment decision. A jury found that the employee’s military status was a motivating factor in the decision to discharge him.

The Seventh Circuit reversed. The Seventh Circuit held that the employer was entitled to judgment as a matter of law because the undisputed evidence established that the ultimate decision maker was not wholly dependent on the advice of the lower level supervisors. 560 F3d 647 (7th Cir 2009). The Supreme Court granted certiorari. 559 US \_\_\_ (2010).

The Supreme Court reversed. According to Justice Scalia, joined by five other Justices, the issue concerned the phrase “motivating factor in the employer’s action.” When the ultimate decision maker is personally acting out of hostility to the employee’s military service, a motivating factor obviously exists. The problem the Court confronted arises when the decision maker has no discriminatory animus but is influenced by prior employer action that is the product of someone else’s discriminatory animus.


Justice Scalia indicated that animus and responsibility for the adverse action can be attributed to the lower level discriminatory supervisors if the adverse action is the in-

tended consequence of that earlier discriminatory conduct. So long as the lower level supervisors intend, for discriminatory reasons, that the adverse action occur, they have the scienter required for the employer to be liable. The judgment exercised by the ultimate decision maker does not prevent the earlier agent’s action and animus from being the proximate cause of the harm. Proximate cause requires only some direct relation between the asserted injury and the alleged injurious conduct, and excludes only those links that are too remote, contingent, or indirect.

A supervisor is an agent of the employer. When the supervisor causes an adverse employment action, the employer causes it. When discrimination is a motivating factor in the supervisor’s act, it is a motivating factor in the employer’s action.

The Supreme Court held that, if a supervisor performs an act motivated by discriminatory animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable. The Court expressed no view as to whether the employer would be liable if a co-employee, rather than a supervisor, committed a discriminatory act that influenced the ultimate decision.

*Lee Hornberger is a Traverse City arbitrator and mediator.*



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## COMMENTS SOUGHT

Thirteenth Circuit Court-Family Division (Judge Stowe) is developing a local court rule and is looking for comments from bar members. The purposed of the local court rule is to require notice to volunteer Court Appointed Special Advocates (CASA) of adoption hearings. Pursuant to MCL 710.24a(6), "In the interest of justice, the Court may require additional parties to be served" in adoption hearings. CASA workers are vital to children involved in abuse and neglect cases and as such have an interest in effecting permanency including, where appropriate, the adoption of those children. The proposed local court rule reads:

**RULE 3.800 NOTICE FOR COURT APPOINTED  
SPECIAL ADVOCATES**

"In the interest of justice," the CASA appointed to work for a child in any abuse and neglect case shall be afforded notice of any adoption hearing that may occur on behalf of that child.

Comments may be submitted within the next 30 days to Greg Brainard, Family Division Administrator, at [gbrainar@co.grand-traverse.mi.us](mailto:gbrainar@co.grand-traverse.mi.us) or 280 Washington St., Suite 202 Traverse City, MI 49684

## LAW DAY 2011

This year's Law Day Celebration was again a success, attracting more student participants than ever before. Its theme, proposed by the American Bar Association, was "The Legacy of John Adams, from Boston to Guantanamo." The annual luncheon was held at Traverse City's Government Center, where approximately 100 students, parents, and guests enjoyed salad, pizza, and desert prepared by Traverse City's *That's a Pizza*.

Eighth graders from Kingsley, Glen Lake, and Traverse City East Middle Schools, as well as ninth graders from Traverse City Central High School submitted essays this year. The winning essays were:

8<sup>th</sup> Grade

First Place (tie): Skylar Gleason, Glen Lake M.S., Melissa Okerlund, teacher and Hanna Simmons, Traverse City East M.S., Brandi Reynolds, teacher; Third Place: McKenna Turill, Glen Lake Middle School, Melissa Okerlund, teacher

9<sup>th</sup> Grade

First Place: Josiah Lopez-Wild, T.C. Central H.S., Sherry Stoltz, teacher; Second Place: Noah Mitchell-Ward, T.C. Central H.S., Sherry Stolz, teacher; Third Place: Carolyn Williams, T.C. Central H.S., Brenda Meindertsma, teacher

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## Heard in the Halls

Following the Essay Contest and Liberty Bell awards presentations, longtime attorney and civil rights advocate Dean A. Robb spoke pointedly and eloquently about his experiences of the past fifty years and their connection to the substance of the students' essays.

The Law Day Committee wishes to express its thanks to all those who assisted in making sure that this year's celebration was a success, in particular those who helped arrange for the luncheon, the essay graders, attorneys who staffed "Ask the Lawyer," and all those who submitted nominations for the Liberty Bell Award.

Roy Jay Montney, Jr.  
Law Day Chair

William A. Rossbach  
Essay Contest Chair



NMC librarian and Liberty Bell recipient, Ann Swaney, with GLTLBA Past-President, Shelley Kester



Keynote speaker, Dean Robb, and Law Day Essay Contestants



Smith Haughey Rice & Roegge is pleased to announce that **Janis L. Adams** has joined the firm's Traverse City office as a shareholder practicing in the areas of labor and employment law.

Janis joins the firm after previously practicing in Detroit, Michigan and Denver, Colorado. She received a Bachelor of Science degree in Biology from Central Michigan University and a Juris Doctor with honors from the University of Denver College of Law. She is licensed to practice in Michigan and Colorado.



Jennifer Berry received the Pro Bono Award at the bar association's annual dinner in May. She is the Past President of GTLA Bar Association, Past President of Women Lawyers Association, Volunteer for the Free Legal Aid Clinic, Divorce Clinic and the Women's Resource Center, Volunteer for Big Brothers/Big Sisters and the League of Women Voters.



Cortney Danbrook has joined the firm of Stephen & Anderson, P.L.C. as an Associate Attorney, where she will focus on estate planning and administration, as well as general business and real estate law. Cortney brings over ten years of experience in the legal and financial arenas. She comes to the firm after working for a full service investment firm, a regional banking institution and in private practice. She will serve clients in Grand Traverse, Leelanau, Benzie, Antrim and Kalkaska Counties. Cortney can be reached at 231-947-4050 or [csd@stephen-andersonlaw.com](mailto:csd@stephen-andersonlaw.com).



The Jay Zelenock Law Firm PLC is pleased to announce that Mrs. Kathryn Halbert has become an associate attorney with the Firm. Mrs. Halbert was born and raised in Traverse City and is a graduate of Michigan State University, where she received her B.A. in Social Relations, and The George Washington University Law School, where she was awarded the prestigious Presidential Merit Scholarship.



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