

TRI-COUNTY BAR

Buffalo, Jackson, Pepin & Trempealeau

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TRICOUNTY BAR NEWS

Dick Ricci, 68, died Saturday, April 2, 2011 at his home. Dick practiced law in Durand for 18 years with the firm that ended up having the longest name in the history of the TriCounty Bar-Whelan, Morey, Ricci, Chambers and Oesterreicher. He left to become a founding partner of Weld, Riley, Prenn and Ricci in Eau Claire until his retirement in 2008. His former partner, Mike Chambers, shared these thoughts of Dick, some of which you may or may not know and which may or may not be true:

“In the years that I practiced with Dick his clothing style was more evocative of Mad Magazine than Esquire. The days that Pat did not dress him before he left for the office were evident. I seem to recall Dick offering some excuse about being color blind but I never knew whether this was fact. One interesting anecdote concerns a firm meeting with Randy Morey, Dane Morey, Dave Whelan, Bob Oesterreicher and me, whereat Dick announced that practicing law was no longer his cup of tea and that he would rather become a farmer. I believe

he took a brief stab at this notion until, much to the benefit of the agricultural community and the legal profession, he came to realize this folly. At the pinnacle of his career Dick granted the Pope an audience at the Vatican (or he was in the audience where the Pope appeared). I think it was either Pope John or Pope Paul, but it was probably Pope Leo II. The meeting was apparently arranged through some shady Italian connection such as a Cardinal. In any event, as a consequence we can be certain that he is now on some heavenly golf links sandbagging Pope after Pope. Cheers, Dick.”

Indeed. Cheers, Dick.

Having failed to pacify the teeming masses of protestors with pizza and beer (“Hey, try the pepperoni! I love thin crust!”), Mark Skolos resigned his TCB presidency and sought asylum at Cruisin’ Chubbies, located somewhere in a nondisclosed non-TCB jurisdiction. (“I am safe, even the cops don’t come in

here.”) After several minutes of political upheaval and cultural disruption at the Winter meeting, during which most of the TCB members filled their glasses, democracy prevailed and whelped the following slate of officers:

President: Roger Hillestad
Vice President: Don Hellrung
Secretary: Paul Millis
Treasurer: Nick Heike

President Hillestad prevailed over a crowded field of candidates, all chosen by their high score on the Love Test machine at the Third Base tavern. Hillestad immediately demanded a recount, apparently not realizing election winners can’t do that.

Cabin cleanup is set for Friday, May 6. Starting at 1:00 pm or whenever you get there. Jon “Simon Legree” Seifert is readying his whips and chains, awaiting the arrival of his slaves for a day. But the promised 70 degree sunshine, brats, burgers and beer will distract him before long.

The Summer meeting on August 25-27 should find us the sole occupants of the camp again.



Should we feel bad about this? Tell your mama, tell your pa, “Sorry, my calendar is marked off and I am out of here.” Trust me, they will be relieved.

While claiming he still loves the game, dwindling enthusiasm and a chance to go out on top caused LaVerne Michalak to announce his retirement as Trempealeau County Corporation Counsel. He is still practicing law in Independence, but there are confirmed reports that he is working out with the Independence High School Mock Trial team and is in talks with Minnesota.

Jewel Scharanback was reported to have left her position with the Jackson County PD’s office to take a SPD position in Manitowoc, but she is rumored to have resurfaced as a pirate on Lake Pepin. Taking advantage of the failed state government created by the Budget Repair Bill, her band of cutthroats operates with impunity, capturing barges with chains attached to a makeshift flotilla of YMCA canoes, including John Damon’s favorite, the Phat Beaver. Her business plan may be slightly flawed however. She is having difficulty paying her bar bill with contraband taconite pellets. Rrrrrrrrrrr!

CIVIL

SHAREHOLDER LOANS All loans by closely held corporations to shareholders must be documented

in the same manner as an arm’s length loan transaction. Approval of the transaction in the corporation director or shareholder minutes is not adequate according to the Tax Court. Where a couple accepted advances from their corporation but the advances were not evidenced by written notes or secured by any collateral, and interest was not charged or paid, the advances were treated as taxable dividends. TC Memo 2011-65.

PAY AND WALK An insurer discharges its duty to defend by paying policy limits regardless of the value of the case or whether that leaves the insurer exposed to an excess judgment. The insurer’s motives are not relevant. *Young v. Welytok*, 2009 AP 3015.

POLICY EXCLUSION The “Your Work” exclusion and the “Contract” exclusion removes coverage for a defective workmanship claim arising from a construction contract. The “Your Work” exclusion applied because the claim arose out of the insured work; (2) did not occur on the insured’s premises, and; (3) occurred after the insured’s work was completed. The “Contract” exclusion applies the claim asserted that the insured failed to perform the contract and damages arise out of that delay or failure, but may not bar other

types of claims, such as the breach of a common law duties of care to those with whom they contract. *General Casualty Company v. Rainbow Insulators Inc.*, 2010 AP 347.

SUMMARY JUDGMENT Affidavits in support of Summary Judgment are not required, a party can rely on the pleadings. However the moving party has the burden and “motions will typically require evidence beyond the pleadings.” *Tews v. NHI, LLC*, 2009 AP 828.

FINANCE CHARGE ON ATTY BILL The statement at the bottom of a law firm’s invoice indicating a finance charge will be assessed on all delinquent accounts violated the Rules of Professional Conduct absent a written agreement with the client clearly providing for that interest. *Ziolkowski Patent Solutions v. Great Lakes Dart Manufacturing*, 2010 AP 276.

DOG BITE LIABILITY A homeowner is liable for the bite of a dog owned by the homeowner’s daughter who lived with her. *Erdmann v. Progressive Northern Ins.*, 2009 AP 2457

UIM COVERAGE An umbrella policy that does not specifically exclude UIM coverage will cover personal injury to an insured to the extent insurance is provided by an underlying policy with UIM coverage. *Wadzinski v. Auto-Owners*, 2009 AP 2752.



CRIMINAL LAW

PROBABLE CAUSE TO STOP

Ignoring a *Road Closed- Local Traffic Only* sign is probable cause to stop a vehicle, affirming another way that a stupid decision while drinking can get you into trouble. *County of Sheboygan v. Bubolz*, 2010 AP 2995.

CONSECUTIVE PROSECUTIONS

Absent an explicit agreement (such as to read in charges) a defendant's guilty plea does not prevent the State from later bringing different charges arising from the same course of conduct. Equitable estoppel and due process arguments rejected. *State v. Drown*, 2010 AP 1303.

NO SANCTIONS FOR 18 YOA 17 year old persons are adults for criminal jurisdiction and are not "juveniles" for delinquency or truancy under Ch 938. However a 17 year old person may be under a juvenile dispositional order from a case begun before age 17. *McGinnis v. Jimenez*, 2010 AP 2208, held that the 17 yoa person under a Ch 938 Dispositional Order cannot be sanctioned for violating that order because the statute allows the sanctioning of "juveniles" and a 17 year old person no longer meets that definition.

INVOLUNTARY TPR PLEA

COLLOQUY The Supreme Court reviewed what the Court must advise a parent entering a no contest plea to an involuntary TPR petition before the plea is

accepted. *Brown County DHSS v. Brenda B*, 2010 AP 321

CONFRONTATION CLAUSE

Statements made by a shooting victim had the "primary purpose to enable police assistance to meet an ongoing emergency" and as such were nontestimonial and that their admission did not violate the Confrontation Clause. The primary purpose inquiry is objective; the existence on an ongoing emergency at the time of the encounter is among the most important circumstances. *Michigan v. Bryant*, No 09-150 (US Supreme Court, 2-28-11)

EVIDENCE

SEQUESTRATION ORDER A sequestration order prohibits witnesses from disclosing to each other the testimony of a prior witness. A court has the discretion to extend this to prohibit an attorney from discussing prior testimony with a sequestered witness. *State v. Copeland*, 2008 AP 2713.

FAMILY LAW

A life insurance policy provided as an employee benefit is regulated by ERISA rules, which provide that beneficiary status is determined by the plan documents, preempting a state court divorce decree requiring insurance proceeds to be paid to the children, rather than the

girlfriend. *Reliastar v Kendall*, No. 09-C-1195 (E.D. Wisconsin, 2011). So in representing the mother, one may wish to make sure the beneficiary designation is actually changed with the company records to comply with the divorce decree.

MUNICIPAL

PROPERTY TAX APPEALS 2007 Wis. Act 86, which allows municipalities to opt out of court de novo review of Board of Adjustment determinations of property tax assessment appeals struck down as unconstitutional. *Metropolitan Associates v. City of Milwaukee*, 2009 AP 524.

ORDINANCE INTERPRETATION

Where the language of a municipality's ordinance appears to be unique and does not track the language of a state statute, but was rather drafted by the municipality in an effort to address a local concern, the court should defer to the municipality's interpretation if it is reasonable. *Ottman v. Town of Primrose*, 2010 AP 3182.

REAL ESTATE

FORECLOSURE BUSINESS

RECORDS The payment history from the original mortgage lender is not a "regularly kept business record" of the mortgage assignee, making an affidavit of default from the assignee insufficient to prove the right to foreclose a mortgage. *PHH Mortgage Corp. v. Kolodziej*, 2010 AP 60



FORECLOSURE CONFIRMATION A homeowner who did not appear in a foreclosure is not entitled to notice of the application for confirmation. The judge signed the confirmation order based on a letter from the Plaintiff's attorney without hearing or notice to anyone. *Wells Fargo Bank v. Biba*, 2009 AP 2273

BOUNDARY LINE DISPUTE When two neighbors have observed the center of the road as the common boundary, but a recent survey of the recorded descriptions shows a different location, is the correct cause of action one of adverse

possession? Acquiescence? Mutual Agreement plus acquiescence? Survey/fence line of cases? In *Northrop v. Opperman*, No 2009 AP 1559, the Supreme Court surveyed lines of cases under different theories of recovery and after 24 pages of legal reasoning basically said the case wasn't about legal theories, just evidence. Everyone thought the line was the road, they did too.

But a good case to read before drafting a complaint for this type of dispute.

It is not the intent of this Newsletter to establish an attorney's standard of due care. Articles may make suggestions about conduct which may be well above the standard of due care. This publication is intended for general information purposes only. For legal questions, the reader should consult experienced legal counsel to determine how applicable laws relate to specific facts or situations. No warranty is offered as to accuracy.

Jaime Duvall, Editor.

Monday, January 12, 1959 WINONA DAILY NEWS



Blair Attorney Heads Tri-County Bar Association

A. V. A. Peterson, Blair, Wis., was elected president Saturday of the Tri-County Bar Association at a meeting at the Oaks.

He succeeds Burr Tarrant, Whitehall. The group represents Jackson, Trempealeau and Buffalo counties. G. L. Pattison, Alma, retired Buffalo County judge, was elected vice president, and Burton Sherman, Black River Falls attorney, was elected secretary. Edward Kulig, Independence attorney, was re-elected treasurer.

Court procedure was discussed by a panel Saturday afternoon. A dinner followed. Panel members were: Edward Larkin, Mondovi and Eau Claire; Clarence Fugina, Arcadia; John Whelan, Mondovi; Louis I. Drecktrah and Ralph Lund, Black River Falls, and Tarrant, Trempealeau County Judge A. L. Twesme was moderator. Some 50 persons attended.

BAR ASSOCIATION MEETS . . . The Tri-County Bar Association of Trempealeau, Jackson and Buffalo counties, Wis., held a panel discussion and elected officers at a meeting at the Oaks Saturday. Left to right, Trempealeau County

Judge A. L. Twesme, Galesville; retired Buffalo County Judge G. L. Pattison, Alma; Edward Kulig, Independence, and Burr Tarrant, Whitehall, retiring president of the association. (Daily News photo)