

**Publications and Website Advisory Committee Meeting  
January 26, 2009**

1. I reported further on our editor, Linda Novak, and our good fortune in retaining her services for the near term. Linda has agreed to remain with us until her move to Northville and thereafter she will be allowed to telecommute. This is good news indeed, as it means we can retain her indefinitely if we all treat her very nicely.
2. I reported on a suggestion for the publication of short story contest winners received from Hon. Valdemar Washington (see following):

December 1, 2008

To whom it may concern: I noticed that you are only seeking the "First Publication Rights" from each author submitting their stories to you for the Short Story Contest. While I understand your thinking the following suggestion might work well to augment what you are already doing. Instead of just publishing a few of the stories why not compile a group of the stories for recording and publication as an audio book compilation? I suspect that most authors would be tickled to have their stories included in such a compilation and would gladly give the State Bar the Rights to pursue such a venture. The compilation could be used as a fund raiser for the SBM and marketed through "Of Counsel" or other law related retailers. Brilliance Audio is located in the State in Grand Haven, Michigan and may well work with you to bring about the compilation. I know that you have worked hard to put the contest into place in its current structure, but the thought hit me that you might be able to expand the contest and benefit the SBM at the same time. Thank you for any consideration that you may give to this suggestion. I plan to submit my short story before the deadline. Val Washington P27165

Val Washington  
Michigan Department of Treasury  
Deputy State Treasurer, Local Government Services

We will modify the copyright release so that in future contests we will also have the right to publish stories submitted in a compilation volume.

3. We received the following theme issue requests:

Probate and Estate Planning (proposal follows, as forwarded by Linda):

Here's something for our January PWAC agenda: a very thorough theme issue request! Seems like the currently open March 2010 issue is in great demand! These folks seem to have a pretty good argument for getting it.

~ L

>>> On 12/17/2008 at 4:48 PM, in message  
<[0A5B8991A2801142BFEDDCE1BDAFF6C1E8480@ADEX.westerman.local](mailto:0A5B8991A2801142BFEDDCE1BDAFF6C1E8480@ADEX.westerman.local)>, "Amy  
Morrissey" <[amorrissey@westermanpc.com](mailto:amorrissey@westermanpc.com)> wrote:

Dear Linda,

The Council of the Probate & Estate Planning Section of the State Bar met on Saturday, Dec. 13 for its monthly meeting.

The Section would like to request that the March 2010 issue be dedicated to a Probate & Estate Planning topic. The likely topic will be the Michigan Trust Code, which although not yet adopted by the Michigan Legislature, is approaching that status.

The Section, under a committee led by attorney Mark Harder, has been working for the past five years to develop a trust code that would be adopted in Michigan, a substantial undertaking which would affect not only probate and estate planning attorneys, but many other practitioners as well.

This legislative session, there was legislation introduced to amend the Estates and Protected Individuals Code to adopt such a trust code. We are anticipating that within the next year, the Michigan Legislature will adopt a version of the Michigan Trust Code.

The Section is also anticipating that such legislation would likely be effective by April 1, 2010, which is why we feel that the March 2010 issue would be appropriate and very timely. The Michigan Trust Code Committee has several members who would be able to submit articles for publication.

Another possible topic for the March 2010 issue is the Federal estate tax. President-elect Obama has indicated that there would likely be changes in 2009 to this tax. Again, this is a topic that will affect many, and the Section would be prepared to address the possible issues.

I ask that you please pass this request along to the PWAC for consideration at its next meeting. I appreciate your time and consideration of our request.

Please feel free to call or write me with any questions. Thank you and enjoy your holidays.

Regards,

Amy N. Morrissey  
Chair, State Bar Journal Committee of the  
Probate & Estate Planning Section

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This proposal was approved and scheduled for May 2010 , as the Michigan Trust Code theme, with Beth Baergen to serve as theme issue editor.

4. Theme issue request: Alternative Dispute Resolution Section:

"Vlasic, James" <[JVLASIC@BODMANLLP.COM](mailto:JVLASIC@BODMANLLP.COM)> wrote:

Linda,

At its last meeting on December 12, 2008, the ADR Section Council's Executive Committee authorized me to request that the Michigan State Bar Journal schedule an Alternative Dispute Resolution theme issue in 2010. The Council is prepared to take responsibility for supplying the necessary articles. I would appreciate your passing this along to the State Bar Publications and Website Advisory Committee for consideration.

Thanks.

Jim  
1/4/08

James J. Vlasic  
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This issue was approved, scheduled for June 2010, as the Alternative Dispute Resolution theme issue, with John Runyan serving as theme editor.

5. An Indian Law theme issue proposal was received and accepted, subject to any objections by the committee. It was approved, set for February 2010, as the American Indian Law theme issue, with Fred Baker and John Runyan as co-issue editors.

6. Plagiarism. accusation

An instance of alleged plagiarism was brought to the editor's attention, and the Chair reported that investigation appears to confirm it. The chair will inquire what satisfaction the offended party requires, after first affording the author an opportunity to respond to the charge, subject to the following:

This was the procedure followed in the past, but in that instance the accused could hardly deny the charge, whereas here the situation is more difficult because the accused took steps to obscure the plagiarism by rewording and reorganizing the original article.

Before the meeting, we performed an investigation. John Juroszek and Francine pointed out, when the complaint was received, that software for detecting plagiarism is now available. I found some on the internet and John Juroszek found several instances of plagiarism. The original author/accuser also provided his own detailed analysis showing a large number of correlations between his article and the article we published.

We decided that it would be better to do confront the accused after securing a result from the plagiarism software. If that came back positive, our inquiry would be more likely to prompt him to admit it, and if it comes back negative, we can decide how to proceed from there. To run the test we needed a non-pdf version of each article to input.

Linda obtained the article from the accuser and, using electronic text supplied by the original author/accuser and the electronic version of the article, and found that the software produced a positive result. See the following, and the accusing author's chart, attached.]

After running the program, Linda wrote:

I tried one of the few free programs that allows you to compare one document against another (rather than against everything out in cyberspace), and it found 109 "basic matches" between the accuser's and the accused's articles. The program's instructions and resulting report were a little obtuse. However, the accuser created his own handy little comparison chart, which I've attached to this email; much like John Juroszek's earlier assessment, it seems pretty incriminating. Here's the accuser's explanation of his chart as well as some other thoughts:

Linda, I completely understand and let me assure you that I consulted with several colleagues at the ABA and my firm for other opinions before presenting this issue to you, because I understand the seriousness of the allegation. I don't have a word copy of the final published article, only a word copy of the original submission that I sent in. However, I don't believe the ABA edited much (if anything) of the article, so this should work for your purposes.

Also, I'm attaching a chart that I created that shows some of the similarities between my article and his article, in case this helps. The similarities are mostly confined to sections [B], [I], and [J] (which are near verbatim copies) in the article, but there are other instances of identical (or near identical) language as well (particularly in the headings). Also, in many places where words are only slightly changed or paraphrased, it is obvious to me and others from the similar structure, order, and citations that he is taking the idea from my article.

In addition, while not relevant for my purposes, I'd would also point out that, in looking closer at the article and the accused's prior ABA article, there are even more similarities--on page 25, half of the intro and section [A] are direct copies from the prior ABA article, all of page 26 is a direct copy, and page 27 through the end of section [G] is a direct copy. In the end, I believe that (between the sections taken from his prior ABA article and my work) there are less than a couple paragraphs of original content in this article.

I'd appreciate if you can try to get back to me as soon as possible, because I've been holding off sending a letter to the accused to await your response. Again, thank you for your careful attention to this matter, and I greatly appreciate your assistance.

Best,

the accuser [Note -- names have been omitted and the accused and the accuser substituted throughout the minutes]

Francine observed that it's even worse to disguise. It's easier to say you missed a cite for a direct quote. Says something unpleasant about the author when it is obvious there was an attempt to disguise. I am dealing with a student on the very issue as we write.

The chair agreed, because it cannot be ascribed to inadvertence or some other blameless/understandable form of oversight when it is obvious that an attempt has been made to disguise the deed. And from Linda's recent missive with the attached chart from the accuser and the hits from the program Linda ran, it looks like we have pretty solid indications that the accused is a bad actor.

We also considered another issue, whether, ethically, we have an obligation to inform the Attorney Grievance Commission? So we requested guidance from Bar counsel on this, and informed the Executive Director, requesting that Bar counsel address whether we can/should contact the accused, because Member Cullari had a similar experience at the local bar level and the AGC rather quickly and in no uncertain terms said we could only refer the complainant to AGC if the CPR was implicated, and could NOT INFORM THE ATTORNEY of the complaint. Therefore we had to determine if we could inform the accused or give him an opportunity to explain, or if are we required to let AGC deal with it exclusively?

The chair expressed the view that Journal is a stakeholder, too, because we have a stake in policing our publication that allows us to pursue this with the accused.

John Juroszek observed that the whole question about reporting boils down to whether this is a "significant violation" that raises a "substantial question" about honesty, trustworthiness, or fitness.

It looks to me like MRPC 8.3 and 8.4 apply in this situation, but I can't find anything in chapter 9 of the MCRs that prohibits giving the accused a chance to explain his side before reporting. At the meeting we discussed:

One, whether we have an obligation to pass on allegations to appropriate grievance body/ies.

Two, whether we should modify our copyright letter in any way to include some representation by authors that the article they submit is theirs to submit.

The discussion was thorough, and the Committee agreed that we need to follow up with Bar counsel and see this matter concluded in accordance with applicable ethical rules and procedures in such a way as to provide the author/accuser with satisfaction, consistent with affording the accused an opportunity to respond, and with maintaining the Journal's integrity.

Fred Baker, Jr  
Chair