

SNAP SHOT



President's Note

This is my final article as your SNAP President. I have been honored to serve for the last two years.

SNAP has grown since I first joined in 1998. Yes I've been around that long! We have a fantastic organization and phenomenal group of people. I cherish the friendship of everyone.

I'm encouraging each and every one of you to continue to be involved in SNAP and volunteer for positions on the Executive Committee and/or an appointed position. Visit the snapreno.com website and look at the bylaws to view the various committees to volunteer for.

I especially want to thank the members of the EC that worked with me for the last two years. They have been especially helpful and have a lot of knowledge and resources.

I will continue to be a member of SNAP and look forward to seeing everyone at meetings and functions.

To all of you,

THANK YOU

Anna M. Buchner
SNAP President
2009 - 2011

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SNAP Calendar 2011

SNAP General Meetings Every Third Tuesday at Noon (see flyer)

ZoZo's Restaurant @ 3446 Lakeside Drive

June 21:

Elections

July 19:

Officers and Chairpersons

President: Anna Buchner

1st VP/Education: Jeannie Dieffenbach

2nd Vice President/Membership/Job Bank:

Amy Hodgson, ACP

Treasurer: Susan Sunday, ACP

Parliamentarian: Susan Davis, CLA, PLS

Student Liaison: April Solomon

Secretary: Linda Palmer

NALA Liaison: Kate Cline, ACP

Newsletter & Web Site Editor: Lynda Traves

JOB OPPORTUNITIES

This section is designated for those job opportunities in the legal field.

SNAP welcomes all firms and businesses employing paralegals to list their opening(s) in the SNAPShot or on our website (www.snapreno.com) free of charge.

Advertisements will run for one month on the website and appear in a single issue of the newsletter, or until the position is filled. If you would like the ad to continue for an additional month, or the position has been filled, please let us know.

If you are interested in receiving email notifications of Job Bank opportunities, please email Amy Hodgson (see Officers page on the website: www.snapreno.com)

NO JOB
LISTINGS
AT THIS
TIME



Bios for those on the Slate for 2011/2012 Board

Susan Sunday, ACP

I obtained my paralegal associates decree from Reno Business College in 1989. I have been a paralegal at Silverman, Decaria & Kattelman, Chtd. since 1999. Prior to working in family law, I was a paralegal for nine years at an insurance defense firm in Reno. I have been a member of the Sierra Nevada Association of Paralegals since 1994 and a member of the National Association of Legal Assistants (NALA) since 1999. I was the Second Vice President of the Sierra Nevada Association of Paralegals from 1998 to 2000, the Treasurer from 1996 to 1998 and again from 2009 to the present. In 2006 I obtained the designations of Certified Paralegal and Advanced Certified Paralegal from NALA.

Amy S. Hodgson

I have worked in the legal field since 1994, and exclusively in family law since 2001, when I returned to Reno from Florida, and accepted a position with Silverman, Decaria & Kattelman Chtd.

I was born and raised in Sparks, Nevada. I graduated from Reed High School in 1991. I attended Morrison University from 1994-1996, where I graduated with honors with an Associate of Science - Paralegal degree.

I was elected secretary of Sierra Nevada Association of Paralegals (SNAP) for the 2005-2006 fiscal year, and was elected to be National Association of Legal Assistants (NALA) Liaison in the 2006-2007 fiscal year. I resigned from the executive board to spend time with my daughter who was born in April, 2007.

In 2007, I received the nationally recognized Certified Paralegal certificate through NALA, and in 2008, I received my advanced paralegal certification in Trial Practice through NALA.

In 2009 my husband and I welcomed our second daughter to our family. Now that my children are no longer infants, I returned to the executive board as Second Vice President. I have held the position during the 2010-2011 fiscal year, and hope to retain the position for the 2011-2012 year.

Washoe County Law Library

75 Court Street, Room 101, Reno, NV

(775) 328-3250

<http://www.co.washoe.nv.us/lawlib/hoursloc.htm>

Nevada Legal Resources

Class at Washoe County Law Library

http://www.co.washoe.nv.us/index/display_outreach.html~details=8895

Washoe Legal Services

299 South Arlington Avenue
Reno, NV 89501

Telephone: (775) 329-2727

Fax: (775) 324-5509

Free legal services in Washoe County, Nevada

<http://washoelegalservices.com/>

State of Nevada Bar

<http://www.nvbar.org/>

Erin Tieslau

I am 26 years old and I was born and raised in Reno, Nevada. I graduated in May of 2007 from the University of Nevada, Reno with a Bachelor's degree in Political Science. I started working for Lemons, Grundy and Eisenberg 6 years ago as a runner. After I graduated from UNR I moved to Sacramento for a year to work for attorney who practiced Estate Planning and Business Formation. After a year I moved back to Reno where I was fortunate to get a position as a paralegal at Lemons, Grundy and Eisenberg. I have been in this position now for almost 3 years. In January of 2011 I took the CLA exam and was very excited when I received my Certified Paralegal certification in March of 2011.

Melissa M. Paschal, CP

I am running for First Vice President of SNAP. I am originally from Glendale, California.

I moved to Reno in 1992 and am married to James S. Paschal, DDS. I have been in the legal field since 1984, and became a Certified Paralegal in 2003. ACP is my next goal, which should be accomplished soon.

I have been a member of SNAP since 1999. I was the Secretary of SNAP for the 2006-2007 Fiscal Year, and I really enjoyed it. It was a great opportunity to meet and network with local paralegals and to share ideas. It was also my first real opportunity at public speaking and I gained confidence speaking at SNAP meetings and at the annual seminar.

One of the First Vice President's duties is to find speakers for SNAP's monthly meetings and to arrange and schedule SNAP's annual seminar. I believe that my mock trial in 2007 was a success and earned significant funds towards SNAP's scholarship program.

I have new ideas for SNAP for 2011-2012, but am not ready to share those ideas just yet, as I have to be elected first and there are still several details to work out. I want to keep SNAP interesting and informative, and reach out to those former members and renew their interest. I also want to get SNAP's name out there in the Reno community and attract new members.

So, I hope you will vote for me as your new First Vice President. Thank you!

Linda Palmer

I am seeking the position of Secretary. I currently hold this position and that of Social Chair. I have previously held the position of Parliamentarian and Social Chair.

As Secretary, it is my responsibility to take the minutes at the Executive Committee and the General Membership meetings and then submit them to the each entity for approval and inclusion in the SNAP records.

I have an Associate's Degree in General Studies with an emphasis on pre-nursing studies. I have worked primarily in the medical field and this prepared me for my job as an adjudicator writing decisions on Social Security disability claims. I worked for the Disability Determination Services working on Social Security Disability claims for more than 20 years working up through the ranks from a clerical to a senior adjudicator working on the most complex of Social Security disability claims.

Currently, I work for Shook and Stone, Chtd. as a Social Security Claims Representative utilizing my skills and knowledge to assist people with the filing of their disability claims and with obtaining their disability benefits. Free legal services in Washoe County, Nevada

Hello SNAP Members!

Attached is the 2011/2012 slate of officers for the upcoming elections to be held at the SNAP general meeting on Tuesday, June 21, 2011. If you would like to run for a board position, your time to do so is winding down. Pursuant to our bylaws, we will need to present the slate of officers to the members 30 days before election. So I will need to know by the first part of May if you want to run for a board position.

In addition, if you have been nominated for an office or are thinking about running for an office, **you must** attend the SNAP general meeting on **June 21, 2011**.

Please contact me as soon as possible if you would like to hold a SNAP EC position, or if you have any further questions.

Susan Davis, CLA, PLS
(775) 786-6868

ELECTION OF OFFICERS

Sierra Nevada Association of Paralegals (SNAP) will be holding the annual election of its officers at the Annual Meeting, **June 21, 2011** at a restaurant in Reno, Nevada.

Nominations will also be taken from the floor of those in attendance.

In accordance with Article 9 of SNAP's Bylaws, we are sending out this notice accompanied by the Proxy and Proxy Ballot. If you are unable to attend the June 21 General Meeting, but wish to exercise your right to vote, please complete Proxy and Proxy Ballot as instructed by **June 14, 2011**.

If you are planning on attending the **June 21, 2011** Annual Meeting, please bring the regular Ballot with you to the meeting. That regular ballot is attached herewith as well. **Remember**, if you have been nominated for an SNAP office, you must attend the **June 21, 2011** Annual Meeting.

Respectfully:

Anna Buchner
SNAP President 2009-2011

2011/2012 BALLOT

SNAP

President

Susan Sunday, ACP

First Vice President

Melissa Paschal, CP

Second Vice President

Amy Hodgson, ACP

Treasurer

Erin Tieslau, CP

Secretary

Linda Palmer, MWP

NALA Liaison

Anna Buchner, AAS²

APPOINTED POSITIONS:

The Parliamentarian to be voted by the newly elected board.

Sierra Nevada Association of Paralegals

PROXY

The undersigned, _____, a SNAP member entitled to vote, hereby appoints _____ as his/her Proxy, with the power to appoint his/her substitute, and hereby authorizes such Proxy to represent and vote his/her membership share of the Sierra Nevada Association of Paralegals, a Nevada nonprofit corporation ("SNAP"), as of the date of this Proxy.

The foregoing appointment shall be effective with respect to all matters brought forward for voting at the SNAP Annual Meeting to be held on **June 21, 2011** and all matters for which the consent of the membership is sought.

The foregoing appointment is revocable by the undersigned at any time, with or without notice and with or without cause. Unless sooner revoked by the undersigned, the foregoing appointment shall be effective to and including **June 21, 2011**.

Dated this ____ day of _____, 2011.

By _____

*[Instructions for Proxy: If you are unable to attend the Sierra Nevada Association of Paralegals Annual Meeting to be held **June 21, 2011**, please complete this proxy and the proxy ballot, and give it to a voting member of SNAP who is attending the meeting. You must tell the SNAP member how you want your vote to be cast. The SNAP member must bring this signed Proxy to the Annual Meeting and acknowledge to the Credentials Chair that he/she is voting in your stead. If you would like, you may mail this Proxy to SNAP, P.O. Box 2832, Reno, NV 89505 or emailed to Anna Buchner at snapprez@cranevada.com to be received **no later than Tuesday, June 14, 2011**.]*

SNAP PROXY BALLOT

Ballots must be received no later than **June 14, 2011** in order to be counted.

Please mail your proxy and proxy ballot to SNAP, P.O. Box 2832, Reno, NV 89505 or email your proxy and proxy ballot to Anna Buchner at snapprez@cranevada.com.

☒ Please mark votes as in this example.

THIS BALLOT WILL BE VOTED AS DIRECTED ON THE FOLLOWING MATTERS:

I, _____, a member of the Sierra Nevada Association of Paralegals entitled to vote, hereby direct my proxy vote as follows:

Candidates for Office 2011-2012
Nominations from the Floor

President <input type="checkbox"/> <i>Susan Sunday, ACP</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____	Secretary <input type="checkbox"/> <i>Linda Palmer, MWP</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____
First Vice-President <input type="checkbox"/> <i>Melissa Paschal, CP</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____	Treasurer <input type="checkbox"/> <i>Erin Tieslau, CP</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____
Second Vice-President <input type="checkbox"/> <i>Amy Hodgson, ACP</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____	NALA Liaison <input type="checkbox"/> <i>Anna Buchner</i> <input type="checkbox"/> _____ <input type="checkbox"/> _____

Signature: _____

Date: _____, 2011.

REMINDER TO ALL SNAP MEMBERS:

Just a gentle reminder about the upcoming SNAP annual meeting/elections to be held on Tuesday, June 21, 2011. If you are planning on attending, Great!

If you are not planning on attending the annual meeting on June 21, please **mail your proxy to Susan Davis at Lemons, Grundy & Eisenberg, 6005 Plumas Street, Suite 300, Reno, Nevada 89519.**

If you have any questions in the meantime, please give Susan Davis a call at 786-6868.

SNAP BOARD POSITION DESCRIPTIONS**President**

The President is responsible for SNAP. The president puts in on average about six to eight hours a month. The president sets up the agendas for the monthly executive committee meetings and the general membership meetings. The president oversees all committee work but is a nonvoting member of the committees.

First Vice President

The By-Laws State:

Article 10.1.A EDUCATIONAL PROGRAMS COMMITTEE (First Vice President is chairperson): This committee shall coordinate and organize educational events for the benefit of the membership, such as CLA preparatory courses for SNAP, panel discussions, legal education seminars, and any other educational-related activities. The chairperson shall appoint the members of this standing committee.

This position requires attendance at two monthly meetings, the Executive Committee Meeting and the SNAP Luncheon. Arranging for monthly speakers at the luncheons requires calling and e-mailing people of interest, coordinating their availability with the monthly luncheons, and obtaining their personal information and background for the newsletter. The months where there are no luncheon meetings, there are other activities, such as the annual seminar, elections, and the Christmas party.

This position is also responsible for arranging the SNAP Annual Seminar. This involves working with the President to secure a location for the seminar, arranging for qualified speakers, submitting the paperwork to obtain the CLE credits, and catering.

The amount of time spent each month can vary from 3-6 hours.

Second Vice President

The position in a nutshell: MEMBERSHIP. The second vice president has created a spreadsheet which has all of our current membership information, including if the member wishes to be in our job bank. As applications come in, the second vice president reviews them to see if they meet the qualifications as specified in our bylaws. If they qualify for membership, the second vice president prepares and mails their membership card with a letter welcoming them to SNAP. The second vice president then adds their information to our member database, and e-mail the updated database to our newsletter editor and website manager, so they receive all notifications of upcoming meetings and events.

Additionally, the second vice president is in charge of the job bank. As the second vice president is notified of positions available, the second vice president, in turn, notifies the members who are in the job bank. The second vice president also e-mails our newsletter editor with the opening, so it can be added to our newsletter.

The average time spent doing the duties for the Second Vice President position is approximately 2 hours per month, except at the beginning of the fiscal year, when the second vice president creates the member database, and is responsible for creating and mailing the new membership cards to our renewing members.*

Treasurer

The treasurer's duties entail the following:

1. Attend the general meeting and pay the restaurant bill
2. Attend the executive committee meeting
3. Pay bills and mail payments (usually average one or less per month)

4. Balance the checkbooks (general account and scholarship account)
5. Prepare the monthly treasurer's report and e-mail to newsletter editor
6. Make deposits at the bank (once to twice a month)
7. Review and respond to e-mails from board members

Not including attending meetings and going to the bank, on the average, the treasurer spends about 1 hour to 1.5 hours doing the treasurer's duties.

Recording Secretary

The recording secretary is responsible for attending the monthly Executive Committee meeting and the monthly General Membership meeting. Both meetings generally last about an hour and the secretary is responsible for recording what is discussed at the meetings. Any motions that are made will be recorded, as well as the vote on the motion. The minutes will be typed and presented to the Executive Committee members for approval and recommended corrections will be made. The Executive Committee will approve the minutes from the Executive Committee meetings. Minutes from the General Membership meetings are presented to the General Membership at the monthly meeting for approval. (It takes about 45-60 minutes altogether for each set of meeting minutes to be prepared, emails to be sent to Executive Committee members, corrections to be made, and the final set of minutes to be prepared for approval.)

The recording secretary is also responsible for responding to e-mail confirmations for the General Membership meeting and preparing a sign-in sheet for the General Membership meeting from either these confirmations or mail confirmations that have been received in the mail. The checks and/or money that have been received as payment need to be copied with each payment annotated with whom the payment is for. Checks, cash, and a copy of the sign-in sheet will be given to the Treasurer. The sign-in sheet is given to the NALA Liaison. (This takes about 45 minutes all together.)

NALS Liaison

In conjunction with the duties outlined in the Bylaws, estimated time spent each month on those duties is as follows:

- Reporting on a quarterly basis SNAP's activities – This entails attending Executive Committee and General Meetings so the liaison is familiar with what our Association is doing. Time spent at meetings and preparing the report equals about 2.5 hours monthly.
- Represent SNAP at the NALA Annual Convention – This is a once a year event and typically entails five days (including travel but not including networking and socializing).
- The NALA liaison is the recipient of NALA news for SNAP, and that information is typically assembled in the liaison's report for the *SNAPShot*. The time for preparing a monthly report is typically less than 30 minutes.
- The duties as listed in the Bylaws are a fair description of the requirements of the position. One can devote more or less time to the position as desired.

Overall, the time devoted to the position is approximately three hours per month, including responding to emails and messages.

Parliamentarian (Appointed by President)

Advise the president and board of parliamentary procedures. The parliamentarian does not vote. Spends about two hours a month.

* **Note from Amy Hodgson:** As I have only served in this position for one year, I can be re-elected to the position of Second Vice President. I hope to retain my current position for the 2011-2012 fiscal year.

Need affordable attorney CLE credits or affordable paralegal (C.P.) credits?

The Nevada Paralegal Association (NPA) is proud to announce they are conducting their annual seminar in conjunction with The Legal Assistant's Division of the State Bar of Nevada (LAD) on Saturday, June 18, 2011 at Harrah's Las Vegas from 8:00 a.m. to 4:00 p.m.

This seminar has been approved by NALA for 4 Paralegal CLAE credits and 1 ethics credit, and the NV and CA state bars for attorney credits: 4 CLE hours, including 1.0 ethics credit.

This event promises to be an exciting opportunity for you to network with other working paralegals and attorneys in the Las Vegas legal community, event speakers, vendors, and sponsors, as well as drawings for prizes.

Speakers and tentative schedule as follows:

FROM	TO	EVENT/SPEAKER	Credits
7:30 a.m.	8:30 a.m.	Registration; Vendor Fair; Continental Breakfast	N/A
8:30 a.m.	8:45 a.m.	Welcome Remarks; Introductions	N/A
8:45 a.m.	9:45 a.m.	1 st Speaker – Dr. Lewis M. Etcoff: Working as a Team in Torts of Emotional Distress or Brain Injury: Attorney, Paralegal and Forensic Psychologist	1.00
9:45 a.m.	10:00 a.m.	Break – Vendor Fair	N/A
10:00 a.m.	11:00 a.m.	2 nd Speaker(s) – Dennis Haney, Esq. & Shemilly Briscoe, Esq.: Changes in Mechanic's Liens Case law in Nevada	1.00
11:00 a.m.	12:00 p.m.	3 rd Speaker – Lawrence Rouse, Esq.: Types of Entities Under Nevada law, Tax Elections, and Documentation	1.00
12:00 p.m.	1:15 p.m.	Lunch on your own	N/A
12:00 p.m.	1:15 p.m.	Vendor Fair; Drawing for Prizes	N/A
1:15 p.m.	2:15 p.m.	4 th Speaker – Shawn Miller, Esq.: An Overview of Foreclosure, Collection and Bankruptcy	1.00
2:15 p.m.	2:30 p.m.	Break – NPA drawing	N/A
2:30 p.m.	3:30 p.m.	5 th Speaker – Dennis L. Kennedy, Esq. – UPL: Attorney supervision of paralegals and non-attorney staff	1.00
TOTAL REGULAR HOURS			4.00
TOTAL ETHIC CREDITS			1.00
			5.00

Please distribute the Seminar Flyer to any attorneys and/or paralegals that you know may be interested in attending.

For further information regarding this event and other NPA activities, please go to www.nevadaparalegal.org. Thank you for your support of NPA!



NEVADA PARALEGAL ASSOCIATION

In Conjunction With

THE LEGAL ASSISTANT DIVISION OF THE STATE BAR OF NEVADA

ANNUAL SEMINAR

SATURDAY, JUNE 18, 2011 – 8:00 a.m. – 4:00 p.m.

HARRAH'S LAS VEGAS

3475 Las Vegas Blvd., Las Vegas, Nevada

REGISTRATION FORM:

Name _____ Firm: _____ Daytime Phone _____

Address _____ E-mail _____

City _____ State _____ Zip _____

NPA will not sell or distribute your contact information to any third party; it will be used strictly by NPA only.

NPA will rely upon e-mail to communicate with you regarding the conference. ☐ Check here if this is NOT acceptable.

Please check all that apply to you:

☐ NPA-LAD Member ☐ CLA/CP ☐ ACP ☐ Attorney ☐ Student ☐ Other _____

☐ Special Accommodations Required (list) _____

SEMINAR SPEAKERS:

**Dr. Lewis M. Etcoff - Working as a Team in Torts of Emotional Distress
or Brain Injury: Attorney, Paralegal and Forensic Psychologist**
**Dennis R. Haney, Esq. & Shemilly Briscoe, Esq. – Changes in Mechanic's
Liens Case law in Nevada**

**Lawrence D. Rouse, Esq. - Types of Entities Under Nevada law,
Tax Elections, and Documentation**

Shawn W. Miller, Esq. - An Overview of Foreclosure, Collection and Bankruptcy
Dennis L. Kennedy, Esq. – UPL: Attorney supervision of paralegals and non-attorney staff

NPA reserves the right to change speakers or modify program content

**Registration, Continental Breakfast, and Vendor Fair beginning from:
7:30 – 8:30 a.m.; Registration Fees include the Vendor Fair, Continental Breakfast (Lunch on Your
Own), drawing for prizes, 4 hours of CLE; 1 hour of Ethics,* and MUCH MORE!**

<u>NPA & LAD Members</u>	<u>Non-Members</u>	<u>Attorneys</u>	<u>Students</u>
\$50.00	\$75.00	\$115.00	\$35.00

PLEASE RETURN COMPLETED FORM WITH PAYMENT (Check or Money Order) TO:

NPA-LAD 2011 SEMINAR - P.O. Box 12003, Las Vegas, NV 89112

Please submit any questions to: www.nevadaparalegal.org (In subject Line: Question NPA-LAD Seminar 2011)

* NALA CLAE: 4.0 Hours; 1.0 Ethics

* NV State Bar & CA State Bar – Approval
Pending Accreditation for 4.0 Hours; 1.0 Ethics

Payment must accompany the Registration Form.

A \$25.00 handling charge will be assessed for returned checks.

Refunds (minus a \$25.00 processing fee) will be

given for cancellations RECEIVED before June 1, 2011.

NO REFUNDS WILL BE GIVEN FOR CANCELLATIONS AFTER JUNE 1st.

Melissa M. Paschal, CP submitted a super interesting and informative article from *Side Bar*, mediator/arbitrator Charles L. Burcham's Spring 2011 newsletter. Mr. Burcham has granted us permission to use his article in the next SNAP Shot. Please be sure to give him credit for the

Vol. II

SPRING 2011

No. 2

OUT OF THE BLUE

On April 14, 2011, the Nevada Supreme Court decided the case of *BMW v. Roth*, 117 Nev. Adv. Op. 11. This is an important case to anyone who is contemplating trial, preparing for trial, preparing motions in limine before trial, in trial or figuring out what to do after trial. In other words, it is required reading for all trial lawyers.

The case involved a rollover accident which resulted in the plaintiff, Allison Roth, being rendered a paraplegic. Ms. Roth was riding as a passenger in a BMW which was owned by Roth, and driven by Jennifer Stapleton. While traveling through Clark County at a speed of between 75 and 90 mph, Roth was sleeping in the front passenger seat. Stapleton somehow lost control of the vehicle and after swerving the BMW, flipped two and a half times, and rolled into the desert. During the rollover, Roth was ejected and received injuries that rendered her a paraplegic.

These unfortunate facts are simple. Since I believe that everyone should read and study the decision, I will only hit a few of the highlights of the decision.

Prior to trial, the Court issued an order in limine regarding evidence concerning Roth's use or non-use of a seatbelt. As everyone is probably aware, the "seatbelt defense" is not normally available to a defendant pursuant to NRS 484D.495(4). The district court ruled that since Roth was making a "crash worthiness" argument concerning the BMW which involved, among other things, the seatbelt system, BMW was permitted to present evidence regarding non-use of the seatbelt. As the case went forward, the court gave a limiting instruction was given regarding the seatbelt evidence.

On several occasions during trial, including opening and closing arguments, BMW's attorney made reference to the seatbelt issue. On some occasions, these comments were not objected to, but at other times objections were made, some of which were sustained. At the conclusion of the case, the jury returned a verdict in favor of BMW. Roth filed a motion for new trial based upon attorney misconduct, and the district court ordered a new trial. That order was appealed to the Nevada Supreme Court, which reversed the district court's new trial order.

Some of the lessons to be learned from the *Roth* case include the following:

Orders in limine must be both definite and clear. Additionally, if a party seeks a new trial based upon misconduct associated with an alleged violation of an order in limine, then the moving party must have objected to the misconduct during trial, even when the order in limine is clear. Thus, when an order in limine is entered on an issue, the prevailing attorney cannot simply sit back and ignore what goes on at trial and then after trial claim that the opposing attorney engaged in misconduct worthy of a new trial by violating the limine order. "The objection need not be elaborate, but it needs to be made."

One of the other important aspects of *BMW v. Roth*, is found in footnote eight. That footnote states in its entirety as follows: "As the authorities discussed in this section suggest, once a plaintiff makes an affirmative claim that a vehicle's safety restraint system was used and failed, court-imposed limits on a manufacturer's ability to rebut such claims with proof that an integral part of the safety restraint system—the seatbelts—were not used will rarely, if ever, be appropriate."

This comment by the court stands for the basic proposition that if the party raises a particular issue, either by way of an affirmative claim or even an affirmative defense, the opponent cannot be unduly handicapped in defending against that claim or defense. There are several examples that come to mind in this scenario such as the so-called "advice of attorney" defense in an insurance bad faith case. Without delving too deeply into the issue, the general proposition is that if the insurer makes an advice of counsel defense, then the insured is entitled access to the attorney's files which would otherwise be privileged in order to rebut the defense. Similarly, if a plaintiff makes a claim for emotional distress injuries, then the defendant is usually entitled to discovery concerning the plaintiff's present and past mental health history. A loss of consortium claim similarly raises the possible spectre of embarrassing discovery requests.

The case of *BMW v. Roth* is an important piece of reading for all trial lawyers, whether they be defense or plaintiff's counsel.

facebook

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Social media and discovery what we can't
and won't do

Electronic Communication Privacy Act

The law says we can't

- Statute control what can be disclosed to law enforcement (LE) and others, including civil litigants
- ECPA (18 U.S.C. § 2510) aural stuff like pen registers, trap and trace, wire intercepts
- The Stored Communications Act (18 U.S.C. § 2701) added to ECPA in 1986 to cover communications and customer records held by providers

ECPA/SCA - prohibitions

Stored Communications Act - 18 U.S.C. § 2702(a):

- “a [covered provider] shall not knowingly divulge to any person or entity the contents of a [covered] communication [or any customer records]”

Covers providers of:

- “remote computing” services
- “electronic communication” services

We spend a lot of time educating folks about this

- Law enforcement generally aware of the law,
- Courts and civil litigants often not aware of SCA

ECPA/SCA – exceptions

Communications: 18 U.S.C. § 2702 (b) Customer Records: 18 U.S.C. § 2702(c)

- | | |
|---|--|
| <ul style="list-style-type: none"> • (1) to the addressee or intended recipient • (2) if covered by intercept or court order • (3) with the LAWFUL CONSENT of the originator or addressee • (4) to third parties as necessary to transmit • (5) to protect the provider's systems • (6) to NCMEC • (7) to LE if inadvertently obtained by the provider and appears to pertain to crime • (8) to LE on a good faith belief of an emergency involving death or serious personal injury | <ul style="list-style-type: none"> • (1) with the lawful consent of the customer • (2) to comply with a warrant/court order • (3) to third parties as necessary to provide the services or to protect the provider • (4) in an “emergency” • (5) to NCMEC • (6) to any person other than a governmental entity |
|---|--|

The VA workers compensation case

- Subpoena to FB
- FB objects
- Defendant's counsel claims consent forthcoming but it isn't
- WCAB Sanctions FB for failure to produce
- FB Threatens TRO to stop violation of ECPA
- WCAB backs off
- Employee refuses to consent

Politics and Law

September 14, 2009 4:34 PM PDT

Facebook fights Virginia's demand for user data, photos

by Declan McGullagh

119 newest | f Share

The state of Virginia has backed away from its attempts to force Facebook to divulge the complete contents of a user's account to settle a dispute over workers' compensation, narrowly avoiding what promised to be a high-profile privacy battle in federal court.

On Monday, the **Virginia's Workers Compensation Commission** said it was no longer going to levy a \$200-a-day fine on the social-networking site for refusing to comply with a subpoena from an airline that previously employed a flight attendant named Shana Hensley.

Facebook had objected to the June 4 subpoena from **Colgan Air**—the Manassas, Va.-based company that operates under the names United Express, US Airways Express, and Continental Connection—on privacy grounds. It said federal law prohibits divulging user data in response to a subpoena, and promised to “further litigate this issue by seeking, among other things, an injunction from the federal courts.”

In principle, this isn't a novel concept: employers and insurance companies have long used private investigators to ferret out fraud and show that someone who claims to be a virtual cripple actually participates in waterskiing competitions.

http://news.cnet.com/8301-13578_3-10352587-38.html

Is compelled consent lawful consent?

They don't call it "consent" in the criminal context

- Parolees - *U.S. v. Kincade*, 379 F.3d 813 (9th Cir. 2004) (holding forced extraction of blood from parolees for DNA profiling is constitutional)
- Students - *Bd. of Educ. v. Earls*, 536 U.S. 822 (2002) (holding random drug tests for students involved in extracurricular activities constitutional)

Civil litigation

- Generally, no Fourth Amendment concerns
- Threat of discovery sanctions seems pretty coercive

Employees' compelled consent

- Montana – the obviously unwise approach
- Houston's – even worse approach (ordering employee to turn over chat password = willful SCA violation/supports punies. *Pietrylo v. Hillstone*, No. 06-5754 (D. N.J. Sept. 25, 2009) unpub.)
- Wrongful termination in violation of public policy... CA example

Horizons
Montana job seekers asked for Facebook, MySpace logins



<http://features.csmonitor.com/innovation/2009/06/19/montana-job-seekers-asked-for-facebook-myspace-logins/>

Melissa attended the Washoe County Bar Association's luncheon May 12, 2011 and the topic was Social Media/Facebook and the speaker was Facebook's Deputy General Counsel, Mark Howitson. WCBA approved reproduction in SNAP Newsletter in order to share the information .

The above was PowerPoint Presentation that Mr. Howtison used.

SNAP General Meeting Luncheon Tuesday, June 21 at Noon

SPEAKER: President

TOPIC: Annual Elections

PLACE: ZoZo's Restaurant
3446 Lakeside Drive
775.829.9449

COST: \$18.00 – Members & Guests \$15.00 – Student Members

Name: _____

Office: _____

Phone/Email: _____

Member

Student

Guest

Menu - Italian Buffet

Mushroom ravioli
Chicken Caesar Salad

Please mail your reservation form and payment to:

SNAP, P.O. Box 2832, Reno, NV 89505-2832

ALL RESERVATIONS WITH PAYMENT MUST BE RECEIVED
BY MONDAY, June 17, 2011

Email reservations accepted at: l.palmer1@live.com