

RECOGNIZED AS ONE OF THE TOP LAW FIRMS IN WISCONSIN BY SUPER LAWYERS

O'Neil, Cannon, Hollman, DeJong and Laing is pleased to be selected for inclusion in the 2015 *Super Lawyers Business Edition*. The Top firms were chosen based on the number of attorneys within the firm who were selected to the 2014 or 2015 Super Lawyers list in business practice areas, as well as a combination of metrics indicating the quality of those attorneys. Quality factors that were considered included the number of years selected to the list, inclusion on a top list, and their average blue ribbon panel scores.

The following attorneys recognized by Super Lawyers and featured in the *2015 Annual Directory* of the nation's top attorneys in business and transactions practice areas include:

- James G. DeJong - Mergers and Acquisitions
- Seth E. Dizard - Creditor Debtor Rights
- Peter J. Faust - Mergers and Acquisitions
- John G. Gehringer - Real Estate
- Joseph E. Gumina - Employment and Labor
- Gregory W. Lyons - Business Litigation
- Patrick G. McBride - Business Litigation
- Joseph D. Newbold - Business Litigation
- Chad J. Richter - Business/Corporate
- John R. Schreiber - Creditor Debtor Rights
- Jason R. Scoby - Mergers and Acquisitions



TWENTY ATTORNEYS ELECTED TO THE WISCONSIN SUPER LAWYERS LISTS

O'Neil Cannon is proud to announce that the following sixteen attorneys were selected for inclusion on the Super Lawyers list, which is limited to 5% of all Wisconsin attorneys, as published in the December 2015 Edition of *Milwaukee Magazine* and the *Wisconsin Super Lawyers Magazine*:

- Douglas P. Dehler
- James G. DeJong
- Seth E. Dizard
- Peter J. Faust

- John G. Gehringer
- Joseph E. Gumina
- Dean P. Laing
- Gregory W. Lyons
- Gregory S. Mager
- Patrick G. McBride
- Joseph D. Newbold
- Chad J. Richter
- John R. Schreiber
- Jason R. Scoby

In addition, the following four attorneys were selected for inclusion on the Super Lawyers “Rising Stars” list, which “recognize[s] the top up-and-coming attorneys in the state—those who are 40 years old or younger, or who have been practicing for 10 years or less:”

- Melissa S. Blair
- Megan O. Harried
- Erica N. Reib
- Timothy M. Van de Kamp

The Firm is proud to further announce that Dean Laing, Seth Dizard, and Peter Faust were selected by Super Lawyers as “Top 50 Attorneys” in Wisconsin and “Top 25 Attorneys” in the Milwaukee Area. Dean is one of only 10 attorneys out of over 15,000 attorneys in Wisconsin—and the only commercial litigator—to be selected to The Top 50 list for all 10 years.

Super Lawyers is a national rating service that rates attorneys in all 50 states. The selection process is multi-phased and includes independent research, peer nominations, and peer evaluations. As part of its process, Super Lawyers surveyed more than 15,000 attorneys and judges in Wisconsin, looking for the best attorneys in the State.

The New Jersey Supreme Court recently upheld the findings of a Special Master who made the following determinations about Super Lawyers:

“[T]he selection procedures employed by [Super Lawyers] are very sophisticated, comprehensive and complex.

It is absolutely clear... that [Super Lawyers does] not permit a lawyer to buy one’s way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the evaluation and listing of an attorney or in the subsequent advertising of one’s inclusion in the lists.”

THE WILAW CONNECTION QUARTERLY NEWSLETTER

- Trusts as Parties to Business Agreements
- New Changes to Obtaining Discovery in Wisconsin for Use in Other States
- Limitation of Liability
- Time for the Income Tax Tail to Start Wagging the Estate Planning Dog
- Can Employees Use FMLA to Avoid Overtime?
- Welcome
 - Samantha M. Amore
- Pleased to Announce
 - Congratulations to Our Attorneys Listed in *The Best Lawyers in America*® 2016
 - Attorneys Grant Killoran and Patrick McBride Selected to the 2015 Irish Legal 100



DIZARD SUCCESSFULLY CONCLUDES ANOTHER RECEIVERSHIP: WISCONSIN AVENUE OFFICE BUILDING SOLD TO LENDER AFTER COURT AUCTION

Through a court-ordered auction, a downtown Milwaukee office building that houses the Internal Revenue Service was sold to a lender this month. The previous owners were the target of a lawsuit filed in 2013 that resulted in an auction where the building was purchased for \$14 million. The IRS leases approximately 80 percent of the building, and it is located near The Shops of Grand Avenue. An article about the transaction recently ran in the *Milwaukee Business Journal*.

Attorney [Seth Dizard](#) was the receiver of this building leading up to the auction that attracted interest from national investors.

Read full article [here](#).

NEW CHANGES TO OBTAINING DISCOVERY IN WISCONSIN FOR USE IN OTHER STATES

Obtaining discovery in Wisconsin for cases pending outside the State will soon become a lot easier. Until the end of 2015, a party in out-of-state litigation will still need to obtain the appropriate commissions from the court handling the underlying litigation and then file those commissions along with the necessary petition materials in a Wisconsin court to have a subpoena issued for testimony or documentary evidence to be given or produced here. However, effective January 1, 2016, this process will become much more streamlined as Wisconsin finally adopted the provisions of the Uniform Interstate Depositions and Discovery Act (UIDDA).

The UIDDA is a uniform act that is patterned after Rule 45 of the Federal Rules of Civil Procedure. It sets forth an efficient and inexpensive procedure through which litigants can seek and obtain discovery from witnesses located outside the jurisdiction of the trial court. The UIDDA was promulgated in 2007 and has since, at the time of this writing, been enacted in 35 states plus the District of Columbia and the U.S. Virgin Islands.

Specific provisions of the proposed rule change and their interplay with current Wisconsin law were discussed at an open administrative rules conference on December 5, 2014, at which the court voted to return the petition to the Judicial Council for editing and refinements consistent with the court's discussions. On March 24, 2015, the Judicial Council filed an amended petition containing such changes. The matter was discussed further at an open rules conference on June 10, 2015, at which the court voted unanimously to adopt the amended petition, with certain changes to the language and comment regarding the issuance of a subpoena.

By an order dated July 7, 2015, the court ordered that, effective January 1, 2016, Wis. Stat. § 887.24 be repealed and recreated to incorporate the provisions of the UIDDA as modified to comport with Wisconsin law. A copy of the court's July 7th order can be found [here](#).

As recreated, the new Wis. Stat. § 887.24 will allow for subpoenas to be issued for discovery in Wisconsin by two methods:

- First, a party may have a subpoena issued by a clerk of circuit court by submitting a foreign subpoena to the clerk in the county in which the discovery is sought. When submitted, the foreign subpoena must be accompanied by an appropriate Wisconsin subpoena form that includes certain information that is specified in the statute. No filing fee will be required, and the clerk will not open a case file; however, the clerk may keep a record of the subpoenas issued.
- Second, a party may elect to retain an attorney authorized to practice law in Wisconsin to sign and issue a subpoena in his or her capacity as an officer of the court. Any

subpoenas issued by Wisconsin attorneys must contain the same statutorily required information as that required for subpoena forms submitted to a clerk of circuit court.

To avoid any conflicts with the rules relating to the unauthorized practice of law, Wis. Stat. § 887.24(3)(d), as recreated, specifically provides that requesting the issuance of a subpoena through either of the prescribed methods in § 887.24(3) will not constitute an appearance in Wisconsin courts. However, should the need for a protective order arise related to the subpoena or should there be a need to enforce, quash, or modify the subpoena, then a special proceeding will need to be started in the circuit court in the county in which the discovery is sought.

The full text of Wis. Stat. § 887.24, as repealed and recreated, can be found [here](#).

In closing, while Wisconsin lawyers will no longer be needed to serve as local counsel to petition a Wisconsin court to secure discovery for out-of-state parties, they should still understand the rule change to not only effectively counsel out-of-state lawyers and parties on how to obtain discovery in Wisconsin, but also because they may be called on directly to issue subpoenas for discovery from witnesses located in Wisconsin for use in litigation pending elsewhere.

DIZARD MENTIONED IN JOURNAL SENTINEL: OWNERS OF MILWAUKEE BUILDING DECLARED NUISANCE FACE COURT ORDER

In a recent article published by *The Journal Sentinel*, Dizard was mentioned for his court-appointed receivership of a local Milwaukee apartment building that has been declared a public nuisance.

Attorney [Seth E. Dizard](#) is the head of the firm's Banking and Creditors' Rights Practice Group. He has extensive experience serving as a court-appointed receiver throughout the State of Wisconsin for businesses, construction projects, real estate developments, marital and family estates, rental income properties, and high net worth individuals.

Read full article [here](#).

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING S.C. HOSTS CONTINUING LEGAL EDUCATION SEMINAR FOR SMALL FIRMS AND SOLO PRACTITIONERS

On October 7, 2015, O'Neil, Cannon, Hollman, DeJong and Laing S.C. hosted a Continuing Legal Education seminar entitled "Hot Legal Topics for Small Firms and Solo Practitioners" focusing on legal issues of interest to Wisconsin small firm and solo practice attorneys. Over 50 attorneys attended the event.

The firm's Managing Shareholder, Dean Laing, presided over the event.

Chad Baruch of Dallas, Texas was the keynote speaker for the seminar. Attorney Baruch spoke on effective legal writing. He also spoke on constitutional law issues.

A number of O'Neil, Cannon, Hollman, DeJong and Laing S.C. attorneys also spoke at the event:

- Patrick McBride, Joe Newbold, Melissa Blair, and Christa Wittenberg participated in a panel discussion on the role of judicial clerks and court staff in state and federal court proceedings.
- Tim Van de Kamp presented on commercial lease issues.
- Greg Mager presented on asset protection in divorce and family transfers.
- Seth Dizard presented on recent developments in receivership law.
- Grant Killoran and Greg Lyons presented on legal and practical issues related to commercial arbitration in the United States and abroad.

O'Neil, Cannon, Hollman, DeJong and Laing S.C. will hold this seminar again in the Fall of 2016.

If you would like any additional information regarding the seminar, including copies of the seminar materials, or if you would like to attend the 2016 seminar, please contact Grant Killoran at grant.killoran@wilaw.com or at 414.276.5000.

GRANT KILLORAN APPOINTED TO THE BOARD

OF DIRECTORS OF NORTH POINT LIGHTHOUSE FRIENDS, INC

Grant Killoran, Chair of the Litigation Practice Group at O'Neil, Cannon, Hollman, DeJong and Laing S.C., recently was appointed to the Board of Directors of North Point Lighthouse Friends, Inc.

North Point Lighthouse Friends is a non-profit organization committed to increasing public awareness of the history of North Point Lighthouse Station in Lake Park in Milwaukee, Wisconsin.

North Point Lighthouse Station is located at 2650 North Wahl Avenue in Milwaukee. The North Point Lighthouse began operating in 1885 and presently is comprised of 74-foot tower made of cast iron structural steel. North Point Lighthouse Station includes the North Point Lighthouse and a two-story Queen Anne-style wood frame dwelling known as the Keeper's Quarters, which was occupied from 1888 through 1994 by lighthouse keepers and their families and U.S. Coast Guard employees. North Point Lighthouse Station was decommissioned in 1994.

North Point Lighthouse Friends manages North Point Lighthouse Station for Milwaukee County following its transfer to the County from the U.S. Coast Guard. North Point Lighthouse Friends provides opportunities to adults and children to tour North Point Lighthouse Station and participate in special programming related to it and maritime issues.

North Point Lighthouse Station was placed on the National Register of Historic Lighthouses in 1980 and the National Register of Historic Places in 1984. It was designated as a Milwaukee County Landmark in 2005.

North Point Lighthouse Station is open to the public for tours from 1:00 p.m. to 4:00 p.m. on Saturday afternoons year round, as well as tours upon request with advance reservations.

For more information regarding North Point Lighthouse Station, please go to www.northpointlighthouse.org.

ATTORNEY SLAWINSKI QUOTED IN

COMMERCIAL OBSERVER: SEVENTH CIRCUIT SETS TITLE INSURANCE PRECEDENT

Steven J. Slawinski was interviewed by *Commercial Observer* recently regarding his role in the case *BB-Syndication Services, Inc. v. First American Title Insurance Co.*, 780 F.3d 825 (7th Cir. 2015). This case has set the precedent that a lender's title insurance policy does not cover construction liens that arise due to insufficient construction funding.

[Read full article here.](#)

EMPLOYMENT LAWSCENE ALERT: CAN EMPLOYEES USE FMLA TO AVOID OVERTIME?

The FMLA requires that covered employers grant eligible employees twelve weeks of unpaid leave for a serious health condition that prevents them from performing the functions of their job. FMLA leave can be taken on an intermittent basis if medically necessary. A recent case out of the United States District Court for the District of Connecticut shows the importance of correctly identifying your obligations under the FMLA and how they may differ from your obligations under other employment law statutes such as the Americans with Disabilities Act.

In *Santiago v. Department of Transportation, et al.*, the employee was diagnosed with "cluster headaches," which he said were "worse than migraines," "completely disabling," and "can last for hours to days depending on the episode." The employee and his doctor determined that his "excessive work schedule," which was essentially anything over eight hours a day or forty hours per week, was a main trigger of his headaches and suggested that his work schedule be limited. Because the employee's job required mandatory overtime, the employer stated that it could not accommodate him and that, if he could not find another job with the employer, he would either need to apply for disability retirement or be terminated. The employer stated that those were his only options if he could not perform overtime, even if he applied for FMLA leave. The employee submitted FMLA paperwork from his physician that outlined his serious health condition and stated that he could not work over eight hours per day. Because he could not perform overtime, he was placed on leave and eventually terminated.

Although the employer argued that the employee was only entitled to leave when he was actually incapacitated, the court found that "[t]he examples in the regulation specifically provide that an employee can take leave to avoid the onset of illness, noting that 'an

employee with asthma may be unable to report for work . . . because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level.'" (*citing* 29 C.F.R. § 825.115(f)).

Furthermore, the employer argued that what the employee was requesting was essentially a permanent accommodation that changed the essential functions of the job. The Court acknowledged that while the employee "might not be able to use the ADA to avoid overtime . . . employees can use their yearly allotment of 12 weeks of FMLA leave to significantly alter their schedules." The Court went on to point out that, unlike the ADA, the FMLA does not include an "undue hardship" defense and the employer is required to provide the mandated 12 weeks of leave.

Decisions like this can put employers between a rock and a hard place, where they need employees to be at work because overtime is an essential function of the job and where they have to comply with multiple laws. Employers also need to carefully evaluate their obligations to make sure that they are properly complying with all relevant employment laws.