MILWAUKEE JUSTICE CENTER VOLUNTEERS RECOGNIZED ON THE STATE BAR OF WISCONSIN PRO BONO HONOR ROLL

The Milwaukee Justice Center, organized by Milwaukee County, the Milwaukee Bar Association and the Marquette University School of Law, provides civil legal assistance to people who cannot afford an attorney. In 2012, the volunteers of the Center provided nearly 9,000 hours of *pro bono*service to 10,659 unrepresented litigants.

Fifteen attorneys from the law firm of O'Neil, Cannon, Hollman, DeJong and Laing contributed the success of the Milwaukee Justice Center in 2012 to include:

- Doug Dehler
- Megan Eisch
- Miles Goodwin
- Grant Killoran
- Justinian Koenings
- Claude Krawczyk
- Gregory Lyons
- Sarah Matt
- Joseph Newbold
- Laura Now
- Jason Scoby
- Steven Slawinski
- Steven Strye
- Timothy Van de Kamp
- Peter Walsh

KILLORAN NAMED OUTSTANDING SUBCOMMITTEE CHAIR BY THE AMERICAN BAR ASSOCIATION

Grant Killoran, the Chair of O'Neil, Cannon, Hollman, DeJong and Laing S.C.'s Litigation Practice Group, has been selected by the American Bar Association Section of Litigation as an Outstanding Subcommittee Chair for the 2013-2014 ABA year.

Grant serves as the Co-Editor of the ABA Section of Litigation's *Health Law Litigation Newsletter* and is being honored for his work on that publication.

Grant has served as a Co-Editor of the ABA *Health Law Litigation Newsletter* for a number of years. He previously served as the Co-Chair of the ABA Section of Litigation's Health Law Litigation Committee.

Grant's practice focuses on complex business disputes, including those involving the health care industry.

AN UPDATE ON DEVELOPMENTS REGARDING THE WISCONSIN AND FEDERAL RULES GOVERNING E-DISCOVERY

It has been estimated that more than 90% of all information created today is stored electronically. This electronically stored information, or ESI, is crucial information in most business disputes.

The Federal Rules of Civil Procedure were amended in 2006 to address ESI, and additional amendments to these federal e-discovery rules have been proposed that could go into effect in late 2015. The Wisconsin Rules of Civil Procedures were amended in January, 2011, and again in January, 2013, to address ESI too. The state and federal e-discovery rules significantly broaden the concept of what constitutes a "document" for purposes of discovery and confirm that discovery of ESI in civil lawsuits stands on equal footing with discovery of paper documents.

The Wisconsin e-discovery rules for the most part parallel the federal e-discovery rules, making it easier for federal authority to be used in discovery disputes in the Wisconsin courts. But the Wisconsin rules differ slightly from the federal rules. For example, unlike Fed. R. Civ. P. 26(a), Wisconsin documents have a rule requiring mandatory initial disclosures. The drafters of the Wisconsin rules decided that certain portions of the federal e-discovery rules would be better addressed by substantive law rather than procedural rules changes.

Highlights of the January 2013 amendments to the Wisconsin e-discovery rules include:

• Wis. Stat. § 804.01(2)(c), which provides that the trial materials privilege is not automatically forfeited because of the inadvertent disclosure of ESI and that claims of forfeiture of this privilege must be considered under Wis. Stat. § 905.03(5) as if they involved privileged attorney-client communications.
• Wis. Stat. § 804.01(7), which creates a Wisconsin "clawback" rule allowing for the recovery of privileged ESI inadvertently produced in discovery and establishes the procedure to be

followed in order to recover such information.
• Wis. Stat. § 805.07(2)(d), which adds ESI to the materials which may be discovered by subpoena and permits subpoenas for inspection, copying, testing or sampling of ESI.
Highlights of the proposed amendments to the federal e-discovery rules include:
• A proposed amendment to Fed. R. Civ. P. 1 which would encourage cooperation by the parties as to the efficient determination of a case, including e-discovery issues.
• A proposed amendment to Fed. R. Civ. P. 26 which would add a new "proportionality" test to the scope of allowable discovery.
• A proposed amendment to Fed. R. Civ. P. 30 which would reduce the limit on the number of depositions in a case from 10 to 5 and would reduce the maximum length of a deposition from 7 hours to 6 hours.
• A proposed amendment to Fed. R. Civ. P. 33 which would reduce the limit on the number of written interrogatories from 25 to 15.
• A proposed amendment to Fed. R. Civ. P. 36 which would limit the number of requests to admit to 25.
• A proposed amendment to Fed. R. Civ. P. 37 which would provide a uniform national standard for evaluating discovery preservation efforts and for the imposition of sanctions for failures to preserve discovery.

The public comment period for the proposed federal amendments runs until February 15, 2014. If approved, the federal amendments currently are expected to go into effect on December 1, 2015.

For more information about the state and federal e-discovery rules or ESI issues, please contact Grant Killoran at 414.276.5000, or at grant.killoran@wilaw.com.

BARUCH, GOUSHA, AND SPIVAK HIGHLIGHT OCHDL'S ETHICS SEMINAR

On October 10, 2013, O'Neil, Cannon, Hollman, DeJong and Laing held its annual Continuing Legal Education seminar in Milwaukee, Wisconsin on a number of legal ethics issues of interest to in-house counsel.

Chad Baruch of Texas, a recognized national speaker on legal issues, presented a lecture entitled "Back to the Beginning: *Marberry v. Madison* and the Roots of Judicial Review" and made a presentation on the ethics of legal writing.

Pete Faust, Chair of O'Neil, Cannon, Hollman, DeJong and Laing's Corporate Practice Group,

moderated a panel discussion between professional journalists and attorneys entitled “Legal Ethics Issues Relating to the Media and Dealing with the Media.” The panel was comprised of two media representatives, Mike Gousha, a television broadcaster and Distinguished Fellow in Law and Public Policy at Marquette University Law School, and Cary Spivak, an investigative reporter with the *Milwaukee Journal-Sentinel*, and O’Neil, Cannon, Hollman, DeJong and Laing attorneys Dean Laing and Steve Slawinski.

Grant Killoran, Chair of O’Neil, Cannon, Hollman, DeJong and Laing’s Litigation Practice Group, presented a lecture entitled “Ethical (and Practical) Considerations for Managing E-Discovery and Electronically Stored Information” focusing on legal ethics issues relating to electronic data.

O’Neil, Cannon, Hollman, DeJong and Laing will hold this seminar again in the Fall of 2014. If you would like copies of the materials from our recent seminar, or if you would like to attend the 2014 seminar, please contact O’Neil, Cannon, Hollman, DeJong and Laing at 414.276.5000. This seminar is limited to in-house counsel.

KILLORAN NAMED FELLOW OF THE WISCONSIN LAW FOUNDATION

Grant Killoran, Chair of O’Neil, Cannon, Hollman, DeJong and Laing’s Litigation Practice Group, recently was named a Fellow of the Wisconsin Law Foundation.

The Fellows organization was created in 1999 to honor members of the State Bar of Wisconsin who have achieved significant accomplishments in their careers and contributed leadership and service to their communities. Membership in the Fellows is limited to 2.5% of the State Bar of Wisconsin’s members.

The Fellows aims to energize its members to continue their efforts in the promotion of justice, advancement of the legal profession and improvement of legal education. For more information on the Fellows click here.

O’NEIL, CANNON, HOLLMAN, DEJONG AND

LAING S.C.'S MILWAUKEE JUSTICE CENTER ATTORNEY VOLUNTEERS AMONG THOSE NAMED MILWAUKEE BAR ASSOCIATION'S "LAWYERS OF THE YEAR"

At its Annual Meeting on June 11, 2013, the Milwaukee Bar Association collectively honored as its 2013 "Attorneys of the Year" those area attorneys, including the attorneys of O'Neil, Cannon, Hollman, DeJong and Laing S.C., who serve as volunteers at the Milwaukee Justice Center.

The MBA, in conjunction with the Marquette University Law School, the Milwaukee County Circuit Courts and other organizations, established the Milwaukee Justice Center in 2009. The Milwaukee Justice Center is a free limited legal advice clinic held at the Milwaukee County Courthouse. It uses transformative collaborative partnerships to provide free legal assistance to Milwaukee County's unrepresented litigants through court-based self help desks and legal resources.

Recognizing the importance of this project, O'Neil, Cannon, Hollman, DeJong and Laing became a founding member of the consortium of area law firms that agreed to provide attorney volunteers to the staff the Milwaukee Justice Center. O'Neil, Cannon, Hollman, DeJong and Laing's attorneys have been volunteering at the Milwaukee Justice Center since the inception of its formal program in 2009. Grant Killoran, the Chair of O'Neil, Cannon, Hollman, DeJong and Laing's Litigation Practice Group, also serves as a member of the MBA Steering Committee overseeing the Milwaukee Justice Center program.

THE SUMMER 2013 EDITION OF THE ABA SECTION OF LITIGATION'S HEALTH LAW LITIGATION NEWSLETTER IS PUBLISHED BY CO-EDITOR GRANT KILLORAN

The American Bar Association Section of Litigation has published its Summer 2013 Edition of the *Health Law Litigation Newsletter*. This edition contains articles on a number of topics, including recent developments of interest to practitioners who handle health care disputes, including articles on the False Claims Act, HIPAA, life sciences training and health care

compliance issues. An electronic version of this edition of the *Health Law Litigation Newsletter* can be found at https://www.americanbar.org/groups/litigation.

Grant Killoran, the Chair of O'Neil, Cannon, Hollman, DeJong and Laing's Litigation Practice Group, is a former Co-Chair of the American Bar Association Section of Litigation's Health Law Litigation Committee and currently serves as the Co-Editor of its *Health Law Litigation Newslett*er.

STATE BAR OF WISCONSIN RECOGNIZES MILWAUKEE JUSTICE CENTER VOLUNTEERS ON 2012 HONOR ROLL

The Milwaukee Justice Center, organized by Milwaukee County, Milwaukee Bar Association, and Marquette University School of Law provides legal assistance to individuals who cannot afford legal representation. In 2012, the volunteers of the Center served nearly 9,000 hours of *pro bono* service to 10,659 unrepresented civil litigants.

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- Peter Walsh

ATTORNEY GRANT KILLORAN ELECTED TO THE BOARD OF DIRECTORS OF THE MILWAUKEE DEBATE LEAGUE

Grant Killoran has been elected to serve on the Board of Directors of the Milwaukee Debate League.

The Milwaukee Debate League works in partnership with Milwaukee-area high schools to support academic debate teams. Created in 2007, the Milwaukee Debate League provides unique youth development programming targeting high school students, blending competition and rigorous work in academic high school debate with fun. Through this spirited competition, students have the opportunity to become articulate and informed leaders in their schools and effective advocates for themselves, their families and their community. For more information on the Milwaukee Debate League, visit www.debatemilwaukee.org.

Grant Killoran is the Chair of the Litigation Practice Group at O'Neil, Cannon, Hollman, DeJong and Laing. He previously was involved with academic debate at both the high school and collegiate levels, both as a debater and debate coach. He continues to benefit in his legal practice from the skills gained during his involvement with academic debate and is honored to serve on the Board of the Milwaukee Debate League.

Grant Killoran has significant and diverse trial experience representing clients in Wisconsin State and Federal Courts, and courts around the country, focusing on complex business and health care disputes. Mr. Killoran devotes a portion of his practice to arts and entertainment law, with an emphasis on the music and film industries. He is a Fellow with the American Bar Foundation, has served as one of the State Bar of Wisconsin's five Delegates to the American Bar Association's House Delegates and is a Co-Editor of the ABA Section of Litigation's *Health Law Litigation Newsletter*.

NEW WISCONSIN RULES OF CIVIL PROCEDURE GOVERNING E-DISCOVERY AND ELECTRONICALLY STORED INFORMATION

It is estimated that more than 90% of all information created today is stored electronically.

The Federal Rules of Civil Procedure were amended in 2006 to address such electronically

stored information, or “ESI”. Effective January 1, 2011, the Wisconsin Rules of Civil Procedures also are being amended to address ESI and confirm that discovery of ESI stands on equal footing with discovery of paper documents.

The Wisconsin rules have been changed to parallel the federal e-discovery rules and make it easier to utilize existing federal authority in discovery disputes in the Wisconsin courts. But Wisconsin did not adopt the 2006 federal amendments in their entirety. The new Wisconsin rules take a slightly different approach than the federal amendments in two ways: First, some federal rules do not have Wisconsin counterparts. For example, unlike FRCP Rule 26(a), Wisconsin’s new rules make no provision for mandatory disclosure. Second, the drafters of the new Wisconsin rules thought some portions of the federal amendments should be addressed by substantive Wisconsin law, rather than by a procedural rules change.

The new Wisconsin ESI rules are:

- Wis. Stat. § 802.10(3)(jm) (the Wisconsin counterpart to FRCP 16)

This rule is being enacted to encourage courts to be more active in managing electronic discovery. It adds the need for discovery of electronically stored information to the issues that a trial court may address in issuing a scheduling order.

- Wis. Stat. § 804.01(2)(e) (the Wisconsin counterpart to FRCP 26)

This rule is being enacted to help manage the costs of discovery of ESI. It creates a “meet and confer” obligation, and states that no requests for production or inspection of ESI under Wis. Stat. § 804.09 (or responses to interrogatories by production of ESI under Wis. Stat. § 804.08(3)) can be issued until after the parties confer on a number of discovery issues. However, it does not require parties to confer before commencing other types of discovery.

- Wis. Stat. § 804.08(3) (the Wisconsin counterpart to FRCP 33(d))

This rule gives parties the option to produce electronic business records in lieu of an answer to an interrogatory. It specifies that ESI is among the types of business records that a business may provide in response to an interrogatory. But, this is an option; it is not mandatory.

- Wis. Stat. §§ 804.09(1) and (2) (the Wisconsin counterpart to FRCP 34)

These rules are the heart of the new electronic discovery rules. They govern the formulation of electronic discovery requests and responses and establish the scope and procedures regarding the discovery of ESI. They treat ESI the same as paper documents.

- Wis. Stat. § 804.12(4m) (the Wisconsin counterpart to FRCP 37)

This rule provides a “safe harbor” for the good faith, routine deletion of ESI and gives limited “immunity” from certain spoliation sanctions.

- Wis. Stat. § 805.06 (the Wisconsin counterpart to FRCP 53)

This is not a new rule, but rather its use in ESI matters is suggested by the comments to the new Wisconsin rules. It allows for the use of discovery referees or “special masters” to handle complex and/or expensive discovery issues, including those involving ESI.

- Wis. Stat. § 805.07 (the Wisconsin counterpart to FRCP 45)

This rule adds ESI to the types of materials which may be discovered by subpoena.

For more information about these new amendments to the Wisconsin Rules of Civil Procedure, contact Grant Killoran at O’Neil Cannon at 414.291.4733 or grant.killoran@www.wilaw.com.