The most striking effect of the pandemic on our workforce has been the significantly increased numbers of employees working at home, either entirely or on some part time basis. Remote work or telecommuting, unheard of scant decades ago, has seemingly become the rule more so than the exception.

It is therefore surprising to this practitioner how few Remote Working Agreements or Telecommuting Agreements that I have encountered. While such a document is unlikely to advantage an employee, it can be instrumental in clarifying the terms of employment and insulating the employer from liability.

Here we will address concerns of the “right” to work remotely; job expectations; equipment and supply concerns; work area as it relates both to safety and confidentiality; worker’s compensation and other liability issues; local ordinances; taxation; and confirming other broad corporate policies.

Absent a formal agreement that an employee’s work will take place remotely, there is no contractual right of an employee to work remotely. If remote working is part of a new employment, it would be worthwhile to clearly define where and how the work will occur. Employees may also assert that they have a “right” to work remotely if remote working is an accommodation, perhaps in light of a religious belief which forbids them to be vaccinated in offices where vaccinations are required, or, in the case of a disability, where medical or psychological circumstances suggest a need for such an accommodation. Generally, however, there is no right to remote working and, should an employer decide to discontinue the opportunity, the employee will be left without recourse.

As a preliminary matter, and it may go without saying, the Agreement should be appropriately titled and signed by at least the employee and countersigned by a manager or human resources professional. Recommended titles for the Agreement would include Remote Working Agreement, Remote Worker Agreement or Telecommuting Agreement. Title is always important for ease in managing the document and because some people don’t read past the title.

On behalf of an employer (and this should be the rule regardless of whether an agreement with an employee relates to compensation, confidentiality or telecommuting), their status as employee at will should be affirmed: the agreement should indicate that nothing herein changes the status of their employment from at will to otherwise. Obviously, if the employee in question has an actual employment contract (which does establish employment other than at will) or if the employee is a member of a union, these features must be considered.

It is important to state that the fact of the remote work arrangement will not change the duties, obligations, responsibilities and conditions of the employment, nor is it likely to alter the salary, benefits, paid time off, and the like. Work hours, overtime compensation, use of sick leave, and approval for use of PTO should be stated as conforming to present policies and procedures, unless specifically agreed otherwise.

Continued on Page 11
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Recently, I was out to dinner with a couple of fellow leaders of the bar association. We discussed the history of the NWSBA, where we are now and what lies ahead. I began to reflect upon the achievements of the generations before my presidency. I thought of our past presidents and the time and effort they sacrificed for the betterment of our legal community. I couldn’t help but to think of the rich history of our organization and how it has helped pave the way for me in my legal practice. As your president, one of my goals is to be able to help pave the way for current and future members to adapt in this new era of technology.

While the COVID shutdown in 2020 forced us to adapt the way we do business, it allowed us to find more creative and efficient ways to come together. Monthly in-person board meetings are now just a click away from joining a Zoom meeting. Ten years ago, if we had thought about attending virtual “Zoom Court” with a screen of colleagues looking at one another as if we were on an episode of the Brady Bunch, we would have laughed at the idea. Do I personally enjoy the changes? Yes. Do I think business can be conducted more efficiently in this way? Yes. Do I miss the interpersonal relationships and in-person human contact with my colleagues and friends? Absolutely! Now, let’s imagine how the legal practice may adapt ten years from now.

I wonder what technology will look like in ten years. How will we continue to adapt as a legal community? I’m venturing to believe that we may be in a metaverse meeting space discussing legal issues within a virtual world context. While this is beyond comprehension at this very moment, we are not too far away from these technological advancements. As legal practitioners, we have an opportunity to welcome the innovative ways of practicing law. Can it be frustrating sometimes? Sure. Will there be challenges along the way? Of course. Ultimately, as a bar association, we will have the opportunity to grow together and help our members adapt their practices by embracing technological innovation in the practice of law. Personally, I look to the future and am excited about the possibilities. What about you?
Once our courts open again, we hope that you will consider volunteering for one or more of the services listed below.

Court Facilitator
The Court Facilitator program is unique to the Third Municipal District. The NWSBA provides volunteers on Thursdays from 9:00 AM until 12:00 PM to assist the Domestic Relations judges. Dates are scheduled by the Association staff through use of a Sign Up Genius website.

Paternity Court Facilitator
Paternity Court Facilitators volunteer on Thursdays from 9:00 AM – 12:00 PM to assist the Paternity Call. Dates are scheduled by the Association staff through use of a Sign Up Genius website.

Pro Bono Desk
The Pro Bono Desk, located in Room 251 in the Rolling Meadows Courthouse, is a volunteer service provided by members of the Northwest Suburban Bar Association. It is a free service to members of our community.

Attorneys serving at the pro bono desk are available to answer legal questions members of the general public may have. While the attorneys serving at the pro bono desk will try to answer your questions to the best of their ability, understand the attorney(s) serving that day may not have expertise in the legal area for which you have a question. The attorney(s) serving the pro bono desk are there to provide legal advise, but are not there to represent the general public on a pro bono basis (free of charge) and therefore do not represent you in any way in the matter for which you may be seeking advice. However, since you are seeking legal advice, your communications with the attorney(s) are subject to attorney-client privilege. Those visiting the pro bono desk are limited to 5-15 minutes in length, depending on the number of others waiting.

Volunteers are needed at the Third District Courthouse every Friday from 1:00 PM – 3:00 PM. Volunteer dates are scheduled by the Association staff through use of a Sign Up Genius website.

LINK TO SIGN UP GENIUS:
A link to the volunteer sign up can be found on the Home Page of our website under the “Member Dashboard” tab. If you are a member and are not receiving volunteer emails from Sign Up Genius, please call the Association office at 847-621-2378.

Again, thank you for your service,
Pro Bono Committee
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### Newsbriefs

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### Need Help?

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Lawyers Assistance Program
Previously we discussed the topic of class action vs. mass tort and what the claims share in common and what is distinctive with respect to the different types of action. We had only touched on ways we commonly settle mass torts to avoid conflicts and attempt to have judicial economy.

One method of resolution involves bellwether trials. Bellwether trials are essentially a subset from a larger client pool of similarly situated claims. Typically a claim associated with a subset of the cases pending is chosen because the claims legal issues are determined to be a good representation of the particular subgroup as a whole.

Some mass tort cases have bellwether trials and some do not. The number of cases involved as well as if the matter is in federal or state court claim can impact if and when there are bellwether trials. Bellwether trials are a useful tool when there is a large case with many plaintiffs. Bellwether cases are also intended to help induce settlement. The corporations get to evaluate the legal costs of defense and the application of their defense. Also if the bellwether trials go well then it can appear futile for the defense to fight the cases. Essentially, bellwethers also can cause the plaintiffs and defendant to see their weaknesses and or to see their strengths for a dose of reality.

The trials provide information for those involved and can allow everyone to determine how the parties want to proceed with future cases within that subgroup. In addition to helping parties determine what facts have viable claims the bellwether process can improve efficiency within the court system by testing the strength of claims so that reasonable minds can evaluate and settle. Significantly, bellwether trials also require that lawyers organize and examine evidence, and tweak their questioning and techniques and arguments. The process allows for a blue print on how to win a case for the firms involved, correct strategy or exclude or include a subset of cases from any mass settlement.

The verdict in a bellwether trial only directly impacts that plaintiff and defendant in that trial. In fact the verdict is non-binding for everyone except those parties directly involved in the particular bellwether trial. A purpose of a bellwether is to be an indication of how future trials may play out, but it does not dictate future verdicts. For example, we have all heard about bellwether trials where the results have provided for a $100 million verdict in favor of the plaintiffs. The verdict can be binding as to that plaintiff but it does not mean any other plaintiff is entitled to that amount. The verdict is nonbinding precedent only for that subgroup of like kind claims. The strategy of the bellwether trial is to provide information to the plaintiffs and defendant as to what the court will allow into evidence and what a jury may do. Bellwether trials set a precedent as to the type of facts plaintiffs can prevail with or not. Sometimes it takes multiple trials to figure out a winning strategy.

**Why is one case or another a bellwether.**

Bellwether cases are chosen in a few different ways. Generally, plaintiff and defense lawyers and the judge overseeing the case through multi district litigation (MDL) categorize all of the cases based on common issues and legal questions into baskets. We will discuss what an MDL is more specifically in a future article.

Once the parties’ categorize the cases, a pool of representative cases or bellwethers are chosen and those are typically transferred to the jurisdiction of the MDL venue where pre-trial proceedings take place for most of the claims. Then the claims generally return to their original districts where they proceed to trial, are dismissed, or are settled before trial. An attorney can keep a case if he chooses by filing in state court generally if the option of state court exists as cases will be removed to the MDL generally if diversity jurisdiction is met.

Since the essence of a bellwether trial is a sample trial, the trial may help those involved determine how they want to proceed. Many mass torts resolve as most any other case will resolve. The parties try and negotiate and if they do not reach a settlement then they proceed to trial or arbitration or mediation. Often times it is best to be a part of a global settlement where the plaintiff subgroup is compensated the same as other people within the subgroup similar to a class action.
Matrimonial Law CLE
Co-Chairs: Anna Bush, Bob Boszko, Anthony Calzaretta, Nicholas Richardson & Rebecca Zeilenga

February 7, 2022
11:45 am - 5:00 pm
ZOOM

Free
to members in good standing.

$100 – Non-Members

The seminar will begin promptly at 11:45 am and will include digital materials.

To receive full credit attendees MUST be checked in by 11:45 AM.

Participants will receive 5 hours of General Credit as approval by the MCLE Board of the Supreme Court of Illinois.

This seminar is appropriate for ALL LEVELS

Mohammad Ahmad,
President of the NWSBA

Grey Divorce
Helena Trachtenberg, Law Offices of Miriam Cooper

Understanding Reunification Therapy
Dr. David Finn, Associates in Human Development Counseling

Understanding Cryptocurrency
Nelson M. Rosario, Smolinski Rosario Law P.C.

Dissipation
Gary Schlesinger, Schlesinger & Strauss, LLC

Case Law Update
Gloria Block, JD, Hoffenberg & Block

Judges Panel
Hon. Thomas Kelley, Hon. Colleen Daly, Hon. Rossana Fernandez, and Hon. Pamela Loza

Please register in advance for this meeting:
https://www.nwsba.org/events/EventDetails.aspx?id=1554891&group=

Sponsored by: Mitchell F. Asher, JD; Law Offices of Ann C. Brady; Law Office of Anna Markley Bush; Anthony Calzaretta; Law Offices of Miriam Cooper; Law Offices of Allen Gabe; Glasgow & Olsson; Hoffenberg & Block; Polachek & Polachek; Law Offices of Nicholas Richardson; Suburban Law Group; Rebecca Zeilenga.

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EVOLVING WORKPLACE TOPICS

**LGBTQIA+ Protections Under the Illinois Human Rights Act**
Tomas A. Ramirez
Illinois Department of Human Rights Staff Attorney

**Workplace Violence and Crisis Training: How Attorneys Can Help Their Business Clients Prepare for and Respond to a Dangerous Situation in the Workplace**
Joe Crimmins, Serve and Protect Law, LLC

**Employment Focused Covid-19 Rules & Regulations**
Thomas W. Hargrove, Pluymert MacDonald Hargrove & Lee, Ltd.

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https://www.nwsba.org/events/EventDetails.aspx?id=1553351&group=

After registering, you will receive a confirmation email containing information about joining the meeting.

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**Employment Law CLE**
Patricia Jochum & Thomas Hargrove, Co-Chairs

March 3, 2022
12:00 PM - 2:15 PM
NWSBA Zoom
Free
to Members in good standing
$100 - Non-Members

Seminar will begin promptly at 12:00 PM and will include digital materials.

To receive full credit, attendees MUST be checked in by 11:45 AM.

This program is appropriate for ALL LEVELS

Mohammad Ahmad,
President of the NWSBA

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Use of A Special Master

In numerous cases we obtain a pool of money especially if there is a finite amount and retain a special master to decide value and apportion to members of the pool according to the severity of the individual injury.

I have had presiding judges take on the role of special master but typically a retired judge or an attorney that is highly respected in the legal community will act as special master. A benefit of a special master is that the plaintiff’s attorney is not perceived to be in a conflict of interest if representing multiple parties in the litigation and recommending settlement when there may not be enough money in the settlement pool that can fully compensate. For example if there is a 10 million dollar policy tendered in the pool to be divided among 100 injured people and there are many degrees of illness and death and some problems are chronic and others have fully recovered the distribution of funds must be equitable hence an independent third party must determine what is equitable. As an attorney representing more than one party the special master allows for the division of the money to be impartial and final so the client can have closure in light of the circumstances.

Mass tort is complicated and there can be many conflicts and many challenges from a time management perspective and ethical perspective. There are many parties involved and it is important to have relationships because although an adversarial process exists we must get along professionally to advance the best interests of respective clients with defense counsel as well the plaintiffs’ bar.
NWSBA DIVERSITY & INCLUSION COMMITTEE MEETING


Cultural Competence: Understanding the Sikh faith, legal challenges faced by the community, and the wholistic approach a civil rights organization may take to combating that discrimination.

DATE: Monday, February 21, 2022            TIME: 5:15 pm – 6:30 pm(CST)

Presented by Amrith Kaur Aakre (link to bio), Legal Director of The Sikh Coalition

According to the FBI's 2020 Hate Crime statistics, Sikhs are the third most targeted religious group and violence and discrimination against this minority religious community is on the rise. This talk will focus on understanding the foundational practices of the Sikh faith, including the significant articles of faith, which often lead to misunderstanding and uninformed discrimination in the areas of hate crimes, school bullying, racial and religious profiling, public accommodations issues, and workplace discrimination. Learn about the challenges Sikhs and other minority groups face - especially with the general rise of anti-AAPI violence - and how the Sikh Coalition's legal team, housed within a broader civil rights organization, uses a holistic, cross-programmatic approach to combating this discrimination and achieving greater impact and outcomes for the clients.

Please register in advance here.

To receive full credit, attendees MUST be checked in by 5:15 P.M.

PLEASE REMEMBER: One CLE credit will be available to NWSBA members in good standing only. If you would like to become a member, please contact NWSBA, 847.621.2378, or visit our website, www.nwsba.org, to join. Participants will receive 1 MCLE Ethics Credit in Diversity/Inclusion pending approval by The MCLE Board of the Supreme Court of Illinois and The Illinois Supreme Court Commission on Professionalism and Civility.
One of the obvious consequences of remote working is that the employee can no longer walk to the supply closet to obtain pencils or to the IT department to fix his laptop. Unless the employer intends to deliver supplies to the employee (and some do), arrangements need to be made for reimbursement to employee for business related expenses, including basic supplies, maintenance and repairs of equipment, and potentially charges for phone and internet use. Such reimbursement may be governed and mandated by applicable law.

The employer may also wish to include in the agreement that the employee will not use their personal vehicle for employer business. While employer liability for automobile accidents caused by their employees probably stops and starts at the parking lot to the office facility; when an employee is not coming to that facility and chooses to travel “for business,” a broader spectrum of liability for the employer presents. Of course, some of this begs the questions: why does the work-at-home employee need to leave home for work anyway?

To the extent there are employer owned equipment and materials that are entrusted to the employee, the employee must agree to keep them safe and not permit others (presumably family) to use them. With respect to, for example, a company owned computer, such restriction will tie into issues of confidentiality discussed later. Provisions should also be made for the return of the company owned equipment and materials at the end of the employment and employer’s access during the employment to the equipment and materials.

It is generally presumed that the remote worker has a designated office area, separate and apart from the activities of the rest of his family. While this ideal may be seriously unrealistic, some measures of precaution do need to be taken to ensure that the work area is safe and secure in order to ensure an accident-free environment and one where confidentiality of business records can be maintained. An employer may reserve for themselves a right to inspect the remote work area. While it is unlikely that an employer will “rent” the space for its employee in its employee’s own home, some employers will reimburse the expense of phone and high-speed internet. Generally, those expenses are left to the employee, and it is highly unlikely that if an employee chooses to use his personal equipment that the employer will cover those costs as well.

The remote work area must also be secure so that the employer’s confidential information remains protected. If Grandma and the kids can wander into the remote working area, switch on the company laptop, and review customer’s sales records, there is a problem with security. If, on the other hand, a lock is installed on the study door, the computer is password protected, and the employee actually uses the lock and the password when out of the remote working environment, worries of confidentiality are considerably less. It is not uncommon, in evaluating whether information is subject to trade secret protection, to evaluate the efforts that were undertaken to maintain secrecy. In the first scenario above, it is easy to imagine statutory trade secret protection slipping away from the employer because of an outright failure to treat the information as confidential.

The work area should be safe to avoid any issues arising out of injury to the employee. As the remote working site has now become the place of employee’s business, he may suffer a “work related injury” or worker’s compensation-able injury in the employee’s own home! While an employer can control physical circumstances easily in its offices, it has virtually no control (absent that granted to it in a remote working agreement) over the physical circumstances in a remote employee’s environs.

Care must also be taken to ensure that the employer does not create any liability with third parties for itself due to employee’s conduct within the remote working environment. The remote employee should be forbidden from having co-employees, customers or vendors visit the remote location. The employee may have individual concerns about related liability as the employee’s home insurance policy may not cover the problematic business activities. Obviously, issues of
Continued From Page 9

professionalism also dictate not inviting business relations into one’s home. And let’s not forget that the setting of a home could create a nightmarish possibility in the context of claims of sexual harassment. The setting and the lack of any likely witnesses to rebut the harassment would create a precarious setting for sexual harassment liability and claims.

In the rare instance, working at home may be regulated by local or municipal ordinance. Some municipalities may strictly forbid business activities in a residential setting. In all likelihood, the remote activity would never be identified, much less prosecuted, but it is likely the employer would shift any responsibility on this issue to the employee, by requiring the employee to investigate and confirm that there are no local or municipal ordinances that restrict or forbid the remote work.

Remote workers should be especially careful on the issue of state income tax. Generally, one pays state income tax to the state of residence. A tax rate can swing markedly from state to state and a worker may be able to select a location with lower tax rates. Each state has its own tax code that will affect tax liability for remote workers and remote workers will need to involve their tax professionals and their employers to make sure that appropriate taxes are paid. The possibility even exists that a remote worker could be taxed in two states: both the state of the remote working location and the state of the company office. Generally, credit amounts are offered, but may not be a one-to-one credit. Employees should seek tax advise early and often.

Employees with remote working agreements should carefully review such documents to ensure their understanding of and compliance with the agreement. Based on the experience of this practitioner, employers would do well to institute more careful remote working policies, including the execution of appropriate written agreements. If ignored and undocumented, the simple circumstance of “working from home” can create a myriad of problems for the employee and/or the employer.

Submitted by:
Patrick Gorman
Principal, Favaro & Gorman, Ltd.
Rolling Meadows Courthouse
Coats for Clients

Attention: All Courthouse Departments

The Northwest Suburban Bar Association is partnering with Northwest Compass Inc to help all the clients who are cold this winter.

There are coats, hats, gloves and hats free and available for anyone who needs one to keep warm.

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The Letter of the Law. The Spirit of Service.
The NWSBA’s annual mock trial competition is back live this year! The event will take place on February 23, 2022 starting at 3:30 p.m. at the Rolling Meadows Courthouse. There are still openings for scoring judges for one of the Association’s signature events. Please contact the NWSBA for more information or to sign up as a scoring judge.

The NWSBA has continued to raise money for the Timothy Evans Scholarship for deserving law students and Harper College paralegal students. Applications for the scholarships are yet being accepted. If you know a deserving student, please direct them to contact the Association or to the NWSBA’s website, www.nwsba.org.

Congratulations to new members Iakha Tan and Dean Dalay.
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Employment Opportunities*

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*You must be a member of the NWSBA (Including Law Student/Student Status) in order to place an ad in the Employment Opportunities section. All ads are subject to approval by the Editor.

Favaro & Gorman, Ltd., an employment law firm, seeks client referrals. Referral and co-counsel fees are available. Please visit our website at www.favarogorman.com for information about the firm’s practice or contact Dennis R. Favaro at (847) 934-0060.

Miscellaneous

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CALENDAR

FEBRUARY 7  -  MATRIMONIAL LAW CLE
FEBRUARY 21 -  DIVERSITY & INCLUSION COMMITTEE MEETING
FEBRUARY 23 -  26TH ANNUAL MOCK TRIAL
MARCH 3    -  EMPLOYMENT LAW CLE