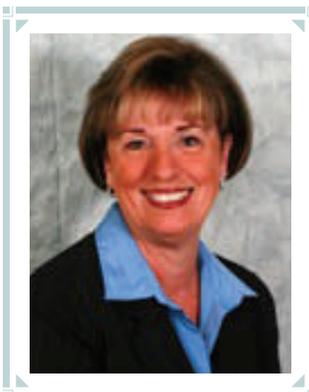


APRIL/MAY 2009

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## FROM THE PRESIDENT:



Dear Members:

The Board of Directors of the Nebraska Paralegal Association are very proud to announce that pursuant to the NePA 2009 Stimulus Package, our Mid Year Meeting and Seminar will be held at Mahoney State Park on April 24<sup>th</sup> and **will be free of charge for NePA members and student members.** We are very excited to be able to give back to the membership in this way and hope that the members will take advantage of this opportunity. Please see below the Agenda for the Mid Year Seminar – we are sure you will appreciate and enjoy this well organized seminar and the excellent speakers that have been scheduled. If you haven't signed up yet, please make your reservation by April 10 in order to be included in the free registration.

See you on April 24<sup>th</sup>!

Loretta Phillips, President

**SEE THE FLYER ON PAGES 14-15 FOR THE  
MID-YEAR MEETING AND SEMINAR—JUST IN  
CASE YOU MISSED IT!**

## DISTRICT I DIRECTOR—LAURIE S. VIK, CP



The January District 1 meeting of NePA was held on January 28, 2009 at the Holiday Inn Central. There were 43 members and 2 guests attending the meeting.

The Official Publications Committee was acknowledged for producing another impressive edition of the In Brief.

Christina Koch, NALA Liaison, asked all members who had passed the December CLA exam to stand and be recognized. Congratulations to all members who passed.

*(continued on page 2)*

## DISTRICT I (CON'T):

Lisa McEvoy and Monica Fuehrer of Celebrity Staff were speakers and gave a very useful and interesting presentation entitled "Making Yourself A HOT Candidate, Even In A COOL Economy". Lisa and Monica both gave excellent pointers on how to handle yourself in an interview and also led quite a lot of audience participation. Lisa has been with Celebrity Staff for one year and has a background in human resources management. Lisa is an active member of the Chamber's Young Professionals Council and has volunteered with the YWCA. Monica has been with Celebrity Staff for nearly 10 years and has recently taken on Celebrity's legal search division. Monica has been recognized by the Midlands Business journal as one of Omaha's "40 under 40" for her outstanding contributions to the community.

The February District 1 meeting of NePA was held on February 25, 2009 at the Holiday Inn Central. There were 29 members and 5 guests attending the meeting.

Pamela Dodson of Thomson Reuters was the speaker with her presentation being titled "Westlaw Business and SEC Filings". Pamela Dodson represented Westlaw Business and presented an overview of common SEC form types, the Securities Act of 1933, and the major securities forms filed under the Act. She provided information on WLB Centers (Westlaw Business M & A Center) which is a database available to corporate attorneys that provides relevant case law, expert West Analytical guidance and M&A related laws and regulations.

Our next District 1 meeting will be held on March 25, 2009.

Respectfully submitted,

Laurie S. Vik, District 1 Director



Connie Determan is the Vice President, Environmental, at Kiewit Corporation. Connie has more than 24 years experience with environmental strategy, negotiating with regulators, risk communication, environmental management systems, etc. Her experience also includes involvement with the full RI/FS process for CERCLA sites and preventing project sites from falling under the Superfund designation. Connie earned a master's degree in Civil Engineering from South Dakota School of Mines & Technology in 1984 and a bachelor's degree in Civil Engineering in 1983.

March 25 Luncheon Speaker Connie Determan

## NEPA LUNCHEON MEETING SCHEDULE

### DISTRICT 1

May 27, 2009

Joint District 1 and District 2 Luncheon

June 24, 2009.

July 29, 2009

### DISTRICT 2

Joint Mid-Year Meeting — April 24, 2009

May 19, 2009

Joint District 1 and District 2 Luncheon

June 24, 2009.

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Stephanie Henson, ACP, Dial Companies

***Board of Directors Meeting Dates***

May 12, 2009—The Dial Companies

July 14, 2009—Adesta

September 8, 2009—Peter Kiewit

**2008 - 2009 COMMITTEES*****Mid-Year/Annual Meeting and Seminar***

Kim Hansen-Chair, Angel Engman, Elece Raglin, Sanchali Patil, Stephanie Henson, and Laurie Montag

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Kalisha Reed, Chantelle Hope, Caryn Redding and Laurie Nading

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Ann Atkinson and Linda Hess

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Christina Koch and Kay Benak

***Ad Hoc Committee—Treasury***

Teresa Barnes, Judy Heiserman and Sara Christianson

## DISTRICT II DIRECTOR —CARLA LARSON

Our second quarterly networking luncheon meeting was held on 2/17/09 at the Green Gateau restaurant, with 17 participants. The agenda included a brief District I update by NePA President Loretta Phillips, a District II update by myself, a NALA presentation by Christi Koch (our Nebraska liaison representative to the national organization), and an introduction to Celebrity Staffing services by Lincoln area representative Angie Smathers. NALA materials were distributed courtesy of Christi, enrollment in NALA Campus and NALA Campus Live courses was encouraged, and attendees received new NePA promotional materials (emery board and compact mirror imprinted with the organization name). Kim Brown graciously took photographs of attendees wearing nametags, to help me learn people's names for future events!

In February I also had the privilege and pleasure of introducing NePA to Central Community College paralegal students and instructors via distance learning monitors to campuses in Kearney, Grand Island and Columbus. The presentation included a visual walk-through of the NePA website info-tabs, encouragement to apply for the student scholarship and to apply for student membership, as well as encouragement to apply post-graduation for the position of District III Director. Hand-out packets that were distributed to each student and instructor included a NePA district map (Hall County is in the middle of District III), an emery board, hard copy of the last In Brief issue, and the beautiful NePA tri-fold flyer. CCC's paralegal instructor, Erin Urbom (yes, she is related to U.S. District Court Judge Warren Urbom) indicated plans to arrange a field trip for interested CCC paralegal students to attend the Spring Seminar at Mahoney.

My vision continues to be one of District I and II members linking arms to build a cohesive paralegal community across metro lines that will help all of us to grow both personally and professionally. We can accomplish this through regular networking, education, and sharing our individual capabilities for all members' mutual benefit. This is an exciting time to be part of NePA!

### Upcoming events involving District II:

\*4/24/09 Mid-Year Meeting and Seminar at Mahoney State Park

\*5/19/09 third quarterly networking meeting in Lincoln

\*6/24/09 joint Districts I and II luncheon meeting at Ferguson House, Lincoln. Topic: crafting billable time entries to maximize clients' reimbursements for paralegal tasks.

Please e-mail any suggestions, ideas, potential member contacts, or questions to me at [clarson@clnewilliams.com](mailto:clarson@clnewilliams.com). I welcome all creative input to continue forging strong links among paralegals within District 2, District 1 and the rest of the state of Nebraska.



Carla Larson, ACP



Life should NOT be a journey to the grave with the intention of arriving safely in an attractive and well preserved body, but rather to skid in sideways, chocolate in one hand, beer in the other, body thoroughly used up, totally worn out and screaming 'WOO HOO what a ride!'



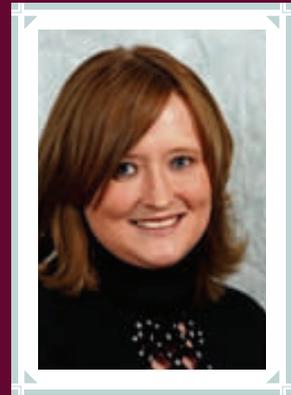
## NALA CONNECTION–LEAP: A PRIMER TO NATIONAL LEADERSHIP BY CHRISTINA L. KOCH, ACP

The National Association of Legal Assistants has always promoted and encouraged active state and national leadership as a career tool for its members. In 2008, NALA introduced a new pilot program called LEAP, an acronym meaning "Leadership Enhancement and Preparation", designed to build upon the experience and leadership abilities of those interested in serving in national leadership positions. The basic concepts of the class build upon the leadership qualities discussed and highlighted in the book, "The 21 Indispensable Qualities of a Leader" by John C. Maxwell, as well as utilization of the experience and knowledge of the current NALA leadership.

As part of the 2009 class of LEAP, I have had the opportunity learn about new concepts and challenges associated with national leadership, while building upon the current experience I have gained while serving on the Nebraska Paralegal Association Board of Directors. One of the biggest and certainly most important lessons I have learned during my first half of the LEAP program is how much of leadership is service: service to your association and service to others. Although involvement with LEAP is a true honor, it is also a responsibility. The LEAP program is designed to not only build upon your leadership attributes, but also to teach and prepare NALA's future leaders about the structure and organization of NALA, including their staff, the Board of Directors, committee structure, products and services, and the functions of the NALA Certifying Boards.

LEAP is focused on the team prospect and NALA is able to evaluate the service future of LEAP participants through the training provided, inclusive but not limited to, the discussions held via web conference on a monthly basis. This 12-month program also includes teamwork outside of the web lectures, and teaches cooperation and hard work, with the opportunity to lead your group through specific tasks.

Participation in LEAP has been extremely fulfilling for me and I would encourage other members of our state association to get involved. Each year, NALA's Professional Development Committee chooses 12-15 paralegals to participate in the program from applications submitted. April will be my last web-conference, at which time I will begin to work with my team on our final presentation to be made to the membership of NALA at the Annual Convention in San Diego in July. Participation in LEAP has enhanced my career and personal development, as has my service to the Nebraska Paralegal Association and my anticipated future service to NALA. The prerequisites for the class include membership in NALA, attainment of the CLA/CP credential, and attendance at the annual NALA conventions for the year before your class participation and the year after. If you are interested in learning more about the program or would like to apply for next year's class, please visit [www.nala.org](http://www.nala.org).



Christina Koch, ACP  
NALA Liaison

# APRIL 2009

SUN	MON	TUE	WED	THU	FRI	SAT
			1 	2	3	4
5	6	7	8	9	10	11
12 	13	14	15	16	17	18
19	20	21	22	23	24 MID-YEAR MEETING	25
26	27	28	29	30		

# MAY 2009

SUN	MON	TUE	WED	THU	FRI	SAT
					1  LAW DAY	2
3	4	5	6	7		9
10	11	12	13	14	15	16
17	18	19 DIST 2 LUNCH	20	21	22	23
24 31	25 	26	27 DIST 1 LUNCH	28	29	30

Happy Birthday to all our April and May Babies!



## THE ECONOMIC STIMULUS PACKAGE OF 2009

BY JOYCE BULLER, CLA

Recently the American Recovery and Reinvestment Act or ARRA was passed by the U.S. Congress. President Obama signed it into law on February 17, 2009. This particular act is much larger than the [Economic Stimulus Act of 2008](#); the 2008 stimulus Act consisted primarily of [tax rebate](#) checks, whereas the American Recovery and Reinvestment Act of 2009 is a \$787 billion stimulus package. Stimulus funding is directed toward job creation. There is a significant component of the ARRA which focuses on financial relief to small businesses. The Act also has a section to lessen healthcare burdens for the newly unemployed, as well as funding for energy efficiency projects.

Let's examine the impact on small business. There is a total of \$51 billion in tax relief for small companies. The highlights of the tax relief portion include the following:

- \$15 billion: Allowing companies to use current losses to offset profits made in the previous five years, instead of two, making them eligible for tax refunds.
- \$13 billion: to extend tax credits for renewable energy production (until 2014).
- \$7 billion: Repeal bank credit/Treasury provision that allowed firms that buy money-losing banks to use more of the losses as tax credits to offset the profits of the merged banks for tax purposes.

Small businesses will also have opportunities to take advantage of these major provisions for their businesses:

**Increased expense deductions for business** Small businesses can expense or write off certain qualified plant and equipment purchases during a calendar year. This is called a "Section 179 deduction." Legislation approved in 2008 increased that deduction to \$250,000 from \$128,000 and increased the phase-out threshold to \$800,000. Both these increases have been extended through 2009 in the new act.

**Bonus depreciation** Small businesses can accelerate the costs of capital expenditures made in a certain year by allowing them to write off 50 percent of the cost of depreciable property acquired for use in the United States. The stimulus extends the 2008 allowance through 2009.

**Other tax deductions** Investors in publicly incorporated small businesses that hold their stock for more than five years will see their capital gains tax reduced by the stimulus bill, and businesses will enjoy a delay in paying the 3 percent withholding tax on goods and services sold to governments.

A key player in the implementation of the Recovery and Reinvestment Act is the SBA (Small Business Administration). The SBA has launched a Web site to help small business owners maneuver through the complex law. The page offers fact sheets, a depreciation calculator and an online seminar to ease the process of adopting the new incentives. For more please see <http://www.sba.gov/stimulus/>

The new 2009 stimulus act provides \$730 million to the SBA and makes changes to the agency's lending and investment programs so that they can reach more small businesses. Small Business owners can specifically inquire with lending institutions about new types of Recovery Act and SBA loans. Many of the provisions in the Act provide incentives to lenders to encourage them to get more dollars in the hands of small businesses. Banks will now have access to more funds and higher guarantees making it less risky and more attractive to lend to small businesses. This will free up badly needed capital for small businesses.

Small Businesses should feel the impact of the new legislative act through increased expenditures by consumers and businesses. These new opportunities for small business growth are bound to increase inquiries coming to Law Offices who service small corporate clients.

The ARRA will also impact Law Firms who advise clients in the area of green technologies or green building. The ARRA provides incentives to jump start a greener future. The act stipulates that \$3.1 billion in funds will go toward energy efficiency and renewable energy efforts at the state and local level. The act allows grants for states that intend to adopt strict building energy codes and intend to provide utility incentives for energy efficiency measures. (Continued on page 9)

## THE ECONOMIC STIMULUS PACKAGE OF 2009 (CON'T)

BY JOYCE BULLER, CLA

These efforts would be funded through the Energy Efficiency and Conservation Block Grant Program. Also, The Recovery Act contains billions of dollars in funding initiatives for green building including: \$4.5 billion allocated to make U.S. federal buildings more energy efficient and \$6.3 billion in grants to aid state and local governments in making investments that result in more energy efficient buildings.

Attorneys and paralegals working in the area of employment law need to be aware that the new Act changes COBRA coverage, as it pertains to the newly-unemployed. Recently unemployed workers are defined as those involuntarily terminated from employment from September 1, 2008 through December 31, 2009. COBRA which is short for the Consolidated Omnibus Budget Reconciliation Act of 1985 gives workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by the previous employer's plan. If the employer offers a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium is likely higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage. Eligible individuals will now pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. This relief of a 65% tax subsidy for the cost of health benefits can be used for up to nine months. Additionally, these recently laid off workers will be required to receive notice of their new COBRA continuation health insurance options. This notification is in addition to the previous notification requirements that the plan administrator must provide to affected employees. Please note more information is available at <http://www.dol.gov/COBRA>.

The ARRA is poised to keep legal professionals in demand, especially those who advise clients on issues such as: small business expansion, labor and employment law, and green energy.

## FROM THE EDITOR

Dear Members:

It has been my pleasure as Chairperson on behalf of the Official Publications Committee to accept your comments, suggestions and criticisms about the new format for the *In Brief*. We strive to publish a newsletter that is informative, instructional and fun—although we are still a “work in progress”. This has been a labor of love and so much easier than before going electronic; my predecessors were bound by the constraints of the costs of mailing and the difficulty in getting input without the benefit of electronic mail. I applaud their efforts.

NePA has come a long way in the last few years due to the continued efforts of the many dedicated professionals who gladly volunteer their time to this organization which in turn has made great strides in raising our level of professionalism, community service, visibility and strength. I commend all our members for their support of the Association and its goals. Please consider volunteering this coming year for a position on one of the committees or running for the Board of Directors. I can promise you it is a very fulfilling experience. You get so much more out of it than you contribute. It makes you feel as though you are making a difference, it gives you confidence, experience and a sense of accomplishment. Remember, you are a contributor to our organization and you have a voice in it. Please feel free to contact me or any of the Board members to discuss any issues or ideas you may have for the future of NePA.

Your grateful Editor,

Stephanie Henson, ACP

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**RELAY FOR LIFE TO BENEFIT THE  
AMERICAN CANCER SOCIETY**

Dear Members:

The Nebraska Paralegal Association is again sponsoring a team for the Relay for Life of Sarpy County. This event is being held Friday, June 5th from 7:00 p.m. to 7:00 a.m. Saturday, June 6th at Papillion-LaVista South High School located at 10799 Highway 370.

You may ask "What is Relay for Life?" It is a fun-filled, overnight experience you will never forget. Relay mobilizes communities across the country to celebrate survivors, remember loved ones, and raise money to support the mission of the American Cancer Society. At the event, the teams gather with tents and sleeping bags and take turns walking or running around the track. Each team is asked to have a member on the track at all times during the overnight event - because cancer never sleeps.

Relay welcomes all cancer survivors to take part in the Survivors' Victory lap. Their courage and strength help the community see that cancer survivorship is real - that we are making progress in the fight against cancer. When the sun goes down, hundreds of luminaries light the track to remember those lost to cancer, those fighting cancer, and those who have fought the battle and won. The luminaries light up the night as a symbol of the hope and perseverance to continue the fight. It is an incredibly moving sight!

Those of us who participated last year had a wonderful time. We were the top fundraising team last year and need to defend our title. We need to assemble a team of 15 members. I encourage you to consider joining our team as a participant, donor, fundraiser, or any other capacity that may work into your schedule. Our team goal is to raise \$2,000, but I hope we can raise much more. I believe with the number of members we have and the generous offices we all work in, this goal should be quite easy to meet. For those interested in participating in being a member of the team, please register on-line at [www.relayforlife.org/sarpycone](http://www.relayforlife.org/sarpycone) as soon as possible. Our team name is "Legal Beagles". If you have any questions, please contact Teri Gibbons at 343-3748 or via email: [teri.gibbons@koleyjessen.com](mailto:teri.gibbons@koleyjessen.com). Even a small donation from each of our members would raise a substantial sum. With your help, we can do our part to make a difference in the lives of those who are in the fight of their life.

Thank you,  
**Teri Gibbons**, Team Captain



AS IF YOU DON'T HAVE TO USE YOUR BRAIN ENOUGH — HERE ARE A FEW BRAIN TEASERS. THESE ARE NOT TRICK QUESTIONS — THEY ARE STRAIGHT QUESTIONS AND HAVE STRAIGHT ANSWERS.

1. Name the one sport in which neither the spectators nor the participants know the score or the leader until the contest ends.
2. What famous North American landmark is constantly moving backward?
3. Of all vegetables, only two can live to produce on their own for several growing seasons. All other vegetables must be replanted every year. What are the only two perennial vegetables?
4. What fruit has its seeds on the outside?
5. In many liquor stores, you can buy pear brandy, with a real pear inside the bottle. The pear is whole and ripe, and the bottle is genuine; it hasn't been cut in any way. How did the pear get inside the bottle?
6. Only three words in standard English begin with the letters 'dw' and they are all common words. Name two of them.
7. There are 14 punctuation marks in English grammar. Can you name at least half of them?
8. Name the only vegetable or fruit that is never sold frozen, canned, processed, cooked, or in any other form except fresh.
9. Name 6 or more things that you can wear on your feet beginning with the letter 'S.'



FOR THE ANSWERS—CHECK ON PAGE 13

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LAW DAY 2009

A LEGACY OF LIBERTY:
CELEBRATING LINCOLN'S BICENTENNIAL



Law Day 2009 Luncheon

FEATURED SPEAKER:
PRESIDENT ABRAHAM LINCOLN
a/k/a Mr. Lee Williams



Friday, May 1, 2009; Luncheon begins promptly at 11:45 a.m.
Holiday Inn Central, 3321 South 72 Street, Omaha, Nebraska
Room: Holiday B and C in Convention Center

The Omaha Bar Association, the Nebraska Paralegal Association, the Omaha Legal Professionals Association, the Omaha Law League and The Daily Record invite you to join us for the Law Day 2009 Luncheon.

Other Law Day 2009 Activities

The Lawyers in the Classroom Program, Law Day Poster Contest, Law Day Essay Contest, Public Service Award Presentations, Mock Trial, and other Law Day activities will be recognized and/or celebrated on May 1 at our luncheon.

LAW DAY TICKETS ARE ON SALE NOW - Ticket price is \$21 per person or \$168 per table of eight
RESERVATIONS AND PAYMENT FOR THE LAW DAY LUNCHEON MUST BE MADE IN ADVANCE
SEND BY APRIL 28 TO: Omaha Bar Association, 2133 California Street, Omaha NE 68178

GUESTS ARE WELCOME!!!

If you have any questions, please contact Cherie Sempek at 280-3607 or cheriesempek@creighton.edu.

Omaha Legal Community Websites : www.omahabarassociation.com - www.neap.org -- www.omahalawleague.org
www.omahadailyrecord.com - www.orgsites.com/ne/omahalegalprofessionalsassociation -- www.lawday.org

Please return this portion with your payment

LAW DAY 2009 LUNCHEON

Name: \_\_\_\_\_ Title: \_\_\_\_\_
Firm: \_\_\_\_\_ Phone: \_\_\_\_\_
Address: \_\_\_\_\_ E-mail: \_\_\_\_\_
City, State, Zip: \_\_\_\_\_

Single: \_\_\_\_\_ x \$21 = \$ \_\_\_\_\_ Table of 8: \_\_\_\_\_ x \$168 = \_\_\_\_\_

### Answers To Quiz:

1. The one sport in which neither the spectators nor the participants know the score or the leader until the contest ends.

#### Boxing

2. North American landmark constantly moving backward. **Niagara Falls** (The rim is worn down about two and a half feet each year because of the millions of gallons of water that rush over it every minute.)

3. Only two vegetables that can live to produce on their own for several growing seasons . . .  
**Asparagus and rhubarb.**

4. The fruit with its seeds on the outside. **Strawberry.**

5. How did the pear get inside the brandy bottle? It grew inside the bottle. **(The bottles are placed over pear buds when they are small, and are wired in place on the tree. The bottle is left in place for the entire growing season. When the pears are ripe, they are snipped off at the stems.)**

6. Three English words beginning with dw: **Dwarf, dwell and dwindle.**

7. Fourteen punctuation marks in English grammar. ..**Period, comma, colon, semicolon, dash, hyphen, apostrophe, question mark, exclamation point, quotation marks, brackets, parenthesis, braces, and ellipses.**

8. The only vegetable or fruit never sold frozen, canned, processed, cooked, or in any other form but fresh: **Lettuce.**

9. Six or more things you can wear on your feet beginning with 'S'. **Shoes, socks, sandals, sneakers, slippers, skis, skates, snowshoes, stockings, stilts.**



OR



YOU ARE CORDIALLY INVITED TO JOIN NEPA FOR  
ITS 2009 MID-YEAR MEETING AND SEMINAR



*NEBRASKA PARALEGAL*

*ASSOCIATION*

*2009*

*MID-YEAR MEETING AND*

*SEMINAR*

*APRIL 24, 2009*

# AGENDA

- 8:00-8:30 Registration**  
**Continental Breakfast Served**
- 8:30-8:45 Welcome & Announcements**
- 8:45-10:00 "Medical Records Privacy"**  
Jill Jensen, Esq.  
Cline Williams
- 10:00-10:15 Break**
- 10:15-11:30 "Ethics"**  
Dan Fischer, Esq.  
Koley Jessen
- 11:30-12:30 Membership Meeting**
- 12:30-1:30 Buffet Lunch**
- 1:30-2:45 "Paralegal Case Management in a Paperless Office"**  
Rick Jeffries, Esq.  
Cline Williams
- 2:45-3:00 Break**
- 3:00-4:15 "How Laws Are Made: A Lobbyists' Perspective of the Nebraska Legislature"**  
David Buntain, Esq.  
Cline Williams
- 4:15-4:30 Closing Remarks & Door Prizes**

This seminar meets the requirements of the Certifying Board for Legal Assistants of the National Association of Legal Assistants, for continuing legal assistant education credit required to maintain the CP (Certified Paralegal) credential.

Participants will receive credit for portions of the program attended, to a maximum of 5 hours (0.5 credits)

**Free registration\* is open to the first 90 members of NePA and to students enrolled in any paralegal program who register before April 10. After April 10, registration will be open to non-NePA members at the rates set forth below. The \$4.00 park entry fee will be paid by NePA for pre-registered attendees.** To register, mail the completed registration form (below) to: **Laurie Montag, Cline Williams, 233 South 13th Street, Suite 1900, Lincoln, NE 68508. Registrations must be received by April 17, 2008. No late or walk-in registrations accepted.**

(\* - Per the NePA Economic Stimulus Package)

## REGISTRATION FORM

Registration Fee (includes all seminar materials, continental breakfast, break refreshments and lunch on April 24th):

- \_\_\_\_\_ **FREE** NePA Member or Paralegal Student  
\_\_\_\_\_ \$35.00 Student Non-Member  
\_\_\_\_\_ \$55.00 Non-Member

**FOR THOSE ATTENDEES WHO ARE PRE-REGISTERED THE PARK ENTRY FEE OF \$4.00 WILL BE PAID BY NePA.**

\_\_\_\_\_  
NAME

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY/STATE/ZIP

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
FAX

\_\_\_\_\_  
E-MAIL ADDRESS

## DUST OFF YOUR HIPAA HATS: MAJOR CHANGES TO HIPAA PRIVACY AND SECURITY RULES ARE ON THE WAY

After a few years of relative calm after the "HIPAA storm," it appears that clouds are on the horizon for employers, plan administrators, and business associates. In addition to the [new COBRA subsidy requirements](#), another of the items included in the recent economic stimulus package (formally known as the American Recovery and Reinvestment Act, or "ARRA") was a significant expansion of the HIPAA privacy and security rules. While Congress has given covered entities and business associates a bit more time than it gave employers to comply with the new COBRA rules, they should still act quickly to review and digest the new HIPAA requirements.

### **Business Associates**

The most significant change in the new rules is the extension of certain HIPAA provisions to "business associates." Previously, the HIPAA rules made a clear distinction between "covered entities" (to which all of the HIPAA privacy and security rules apply) and "business associates" (which were not directly covered by the HIPAA rules, but with whom covered entities were required to obtain business associate agreements). Under ARRA, certain HIPAA security provisions now apply directly to business associates to the same extent that such provisions apply to covered entities, including the potential application of civil and criminal penalties for violations of HIPAA.

This is a major sea change for business associates such as third-party administrators and other vendors who previously thought that their sole legal obligation was to comply with the terms of the business associate agreement. These changes will require a major effort by business associates, including appointing a security officer, developing written security policies and procedures, and training their workforce on how to protect electronic protected health information ("PHI").

### **Notification in the Case of Breach**

Covered entities that hold, use or disclose "unsecured" PHI must now notify affected individuals in the event of a breach of the information. Under existing law, covered entities merely had an obligation to mitigate any breach, but not necessarily to notify the affected individual. The term "unsecured" is not yet defined but will ultimately be determined under guidance to be issued by the Secretary of Health and Human Services. Such guidance is expected to be issued within 60 days of ARRA's enactment (or by mid-April).

Furthermore, business associates, who already had an obligation to notify covered entities of an unauthorized disclosure of PHI in their possession, must now specifically include in their notice the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach. In both cases, notice must be provided without unreasonable delay and in no event later than 60 days after the discovery of the breach. Generally, the notice must be provided to each individual, in writing, by first-class mail. However, if the breach involves the unsecured PHI of more than 500 individuals in a particular state or jurisdiction, notice must also be provided to prominent media outlets serving that state or jurisdiction.

### **Requests for Restrictions**

Under the HIPAA Privacy Rule, individuals have the right to request restrictions on the disclosure of their PHI. Previously, covered entities were not necessarily required to agree to the requested restriction. Now, however, a covered entity must comply with the requested restriction if the disclosure is to a health plan for a payment or

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health care operations purpose (but not if it is for treatment purposes) and if the PHI pertains solely to a health care item or service for which the health care provider has been paid out-of-pocket in full. For example, it appears a covered dependent child can now specifically request that a health plan not disclose to the child's parent any PHI in its possession relating to health care services for which the child has paid in full.

### **Accounting of Disclosures for Use of Electronic Health Records**

ARRA creates a new term, "electronic health record" (or "EHR"), which is defined as an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. Under existing law, an individual has the right to an accounting of certain disclosures, but such right does not extend to disclosures that are otherwise permissible for treatment, payment, or health care operations purposes. To the extent that a covered entity makes such disclosures in connection with its use or maintenance of an electronic health record, such disclosure must now be accounted for even if it is for treatment, payment, or health care operations purposes. In contrast to the regular right to an accounting for up to six years, an individual has the right to request an accounting of EHR disclosures for up to only three years. While these rules appear to be targeted primarily at health care providers, it is not clear whether they will continue to apply when an EHR is transferred to a health plan, employer, or business associate.

### **Increase in Civil Monetary Penalties**

The civil monetary penalties for a violation of the HIPAA Privacy Rule or Security Rule have been significantly increased. In general, the penalty for violations due to reasonable cause and not to willful neglect has increased ten times, from \$100 per violation to \$1,000 per violation. Violations that are found to be due to willful neglect (even if corrected) are subject to a penalty of \$10,000 per violation. Additionally, although there is still no individual private cause of action under HIPAA, state attorneys general can now bring an enforcement action and obtain damages (including attorneys' fees) on behalf of residents of that state.

### **Effective Dates**

The general effective date for most of these changes, including the changes to the business associate rules, is one year after the date of ARRA's enactment, or February 17, 2010. However, the increase in civil monetary penalties is effective immediately, and the duty to notify individuals of security breaches will be effective 30 days after regulations are issued by the Department of Health and Human Services.

### **About the Author**



**Julia Vander Weele** is a partner in SFBB's Employee Benefits Group and a member of the ERISA Litigation Group. Julia's practice focuses on ERISA and other laws governing employee benefits, including matters affecting pension, profit sharing, 401(k), cafeteria plans, and welfare plans. She regularly advises clients -- including multiemployer "Taft-Hartley" funds, large publicly-traded corporations, insurance companies, small privately-held employers, and boards of directors -- on benefits issues such as plan design and administration, tax qualification, regulatory compliance, and fiduciary issues.