

JANUARY/FEBRUARY 2009

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## FROM THE PRESIDENT:

Dear Members:

One of the most important goals of my Presidency has already taken wings and become a reality! Thanks to the excellent organizational skills and dedication of our new District 2 Director, Carla Larson, District 2 successfully hosted its first "networking luncheon" in Lincoln, Nebraska, on November 18, 2008.

The luncheon was held at the lovely Green Gateau restaurant, where we enjoyed lunch and "paralegal talk" with an excellent representation of Lincoln paralegals! Thank you to Connie Fenton, Laurie Montag, Judy Miller, Patti Dittmann, Deborah Reichert, Janice Wigodsky, Joyce Pardee, Tammy Sock, Jill Grueber, Misty Cowen & Carla Larson for attending this wonderful get together. District 1 Director, Laurie Vik attended the luncheon with me and we both came away very impressed by the enthusiasm and camaraderie of the Lincoln members and guests.

Carla will be hosting luncheons in Lincoln on 2/17/09 and 6/24/09 and will be enhancing future luncheons to include informative, law related speakers from the



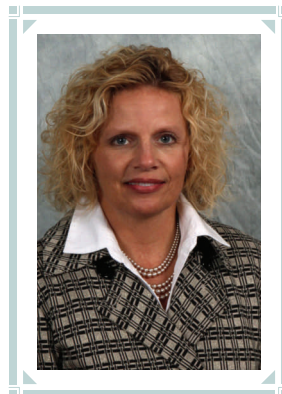
Lincoln area. Carla invites all Omaha members to also attend the luncheons, and we hope District 1 members will participate to further prove to our Lincoln members that they

are very important to NePA and to District 1!

In another effort to reach out to District 2, our NePA Spring Seminar is scheduled to be held at Mahoney State Park on May 24, 2009, to enable our Lincoln members closer proximity. We hope District 2 will take advantage of this change of venue and their participation will help create a new tradition/site for future spring seminars.

The potential for growth and involvement with District 2 would not be happening without Carla's vision and pro-active spirit. (continued on page 2)

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



The October District 1 meeting of NePA was held on October 29, 2008 at the Holiday Inn Central. There were 40 attendees at the meeting.

Olivia Gerroll from Focus Solutions in Omaha

gave a very useful presentation about litigation support products as well as tips and information with regard to eDiscovery. Olivia has 16 years of extensive background in litigation technology support and practice support management and has an in-depth knowledge of the litigation process and attorney requirements. Olivia previously served as the Director of Litigation Services for Baker Robbins & Company, which was recently acquired by Thomson Corporation. Joining

## FROM THE PRESIDENT (CON'T):

Thank you for that strong determination! Carla is actively recruiting new members and interest in NePA through her networking and we are so grateful for her dedication!

Again, thank you to everyone who made this luncheon such a success. We are sincerely looking forward to future events with you - - - NePA can't help but grow even stronger with District 2 on board!

Sincerely,

Loretta Phillips, President

## DISTRICT I (CON'T):

Olivia at the luncheon were four other representatives of Focus Solutions.

We accepted food donations at the October meeting for the Open Door Mission/Lydia House which was be continued into November's meeting.

## NOVEMBER

The November District 1 meeting of NePA was held on November 19, 2008 at the Holiday Inn Central. There were 40 attendees at the meeting.

Prior to the speaker, NePA honored our guest for the luncheon, Virginia Koerselman, for her years of dedicated service to NePA and being instrumental in advancing the education and reputation of paralegals. Virginia is retiring after 20 plus years. Loretta Phillips, President, purchased a beautiful clock and had it engraved as a gift from NePA. Loretta also arranged to have flowers at the luncheon for Virginia. Stephanie Henson baked a delicious carrot cake which was served to all in attendance. Ann Atkinson and Connie Kretchmer gave talks about their associations with Virginia.

Damon Benning with the Open Door Mission was the speaker and gave a very interesting and eye-opening talk about the Open Door Mission and its various ministries such as the Lydia House, Family Ministries, Men's Ministries, Community Services, Preventative Measures and the Timberlake Outreach Center. The Mission as a whole, and through these ministries, offers so much more assistance to individuals and families in need than any of us realized. Damon was a wonderful speaker and revealed that he was a husband of 1 and father of 1. Damon had played football with the University of Nebraska-Lincoln from 1992 – 1996.

Our next District 1 meeting will be held on January 28, 2009.

*Respectfully submitted,*

*Laurie S. Vik, District 1 Director*

## NEPA LUNCHEON MEETING SCHEDULE

### DISTRICT 1

February 25, 2009

March 25, 2009

May 27, 2009

July 29, 2009

### DISTRICT 2

February 27, 2009

Joint Mid-Year Meeting — April 24, 2009

May 19, 2009

Joint District 1 and District 2 Luncheon

June 24, 2009.

**2008 - 2009 BOARD OF DIRECTORS*****President***

Loretta Phillips, City of Omaha, Law Department

***Past President***

Kaye Benak, Koley Jessen

***Vice President***

Alison Barthel, Gross & Welch

***Secretary***

Jaci O'Brien, ACP, Adesta, LLC

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Teresa Barnes, CP, Gross & Welch

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Janie Boswell, ACP, Mutual of Omaha

***NALA Liaison***

Christina L. Koch, ACP, Inserra & Kelley

***District 1 Director***

Laurie S. Vik, CP, Kiewit Corporation

***District 2 Director***

Carla Larson, Cline Williams

***Web Administrator***

Kim Brown, Spencer Fane

***Publications Editor***

Stephanie Henson, ACP, Dial Companies

***Board of Directors Meeting Dates***

March 10, 2009—Cline Williams

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 Lori Montag

***Audit Committee***

Kris McMahon, Mary Jo Schettler, Barb Schmidt

***Continuing Legal Education Committee***

Kalisha Reed, Chantelle Hope, Caryn Redding and Laurie Nading

***Library Committee***

Ann Atkinson and Linda Hess

***Membership Committee***

Alison Barthel, Chair, Jaci O'Brien

***Official Publications***

Stephanie Henson, Chair, Barb Schmidt, Joyce Buller and Jennifer Tomanek

***Nominations/Elections Committee***

Kris McMahon, Chair, Stephanie Henson

***Student Services & Mentoring Committee***

Janie Boswell, Chair, Caryn Redding, Terri Perez, and MJ Skrdland

***Student Scholarship Committee***

Teri Gibbons, Chair, Laurie Vik

***CLA Scholarship Committee***

Kim Brown, Chair, Alison Barthel and Kalisha Reed

***Website Committee***

Kim Brown, Chair, Tiffany Beatty and Misty Cowan

***Public Relations/NSBA Liaison/Law Day***

Christina Koch and Kay Benak

***Ad Hoc Committee—Treasury***

Teresa Barnes, Judy Heiserman and Sara Christianson

## DISTRICT II DIRECTOR —CARLA LARSON

**Upcoming events:**

**2/17/09**, 11:30 a.m. What: Paralegal networking luncheon. Where: Green Gateau, 330 South 10<sup>th</sup> Street, Lincoln Cost: Attendees will order individually from the menu. (Tentative agenda includes recognition of new NePA members, and presentation by national liaison Christi Koch)

**04/24/09**, all day What: joint Districts 1 and 2 Spring Seminar Where: Mahoney Cost: Free tuition to first 90 NePA members who register (Speaker topics: Medical Records Privacy, The Paperless Office, Nebraska Legislative Process/Current Session Updates, Ethics)

**05/19/09**, 11:30 a.m. What: Paralegal networking luncheon Where: TBD (Lincoln) Cost: Attendees will order individually from the menu.

**06/24/09**, 11:30 a.m. What: Joint Districts 1 and 2 Lunch-and-Learn meeting Where: Ferguson House, 700 South 16<sup>th</sup> Street, Lincoln Cost: \$10 per member; non-member cost TBD (Speaker topic: word crafting on billable time entries to maximize client reimbursement)

Nebraska's student paralegal population is an under-developed resource: I believe they need what NePA offers as much as NePA needs their fresh ideas and energy. Accordingly, I have been working with NePA membership chair Alison Barthel to contact paralegal programs throughout Nebraska for purposes of (1) updating NePA directory information and (2) offering live info-sessions to students who will be entering the paralegal workforce. NePA flyers and logo-freebies will be distributed to attending students.

Kaplan University's paralegal chair Warren Wilson requested selected downloads from the NePA website, and we are invited to make presentations to both the daytime and evening student sections on Kaplan's Lincoln campus. Central Community College (Grand Island) has also invited a NePA presentation on February 12, and Doane College is pleased to distribute NePA materials to its paralegal students.

Please e-mail any suggestions, ideas, potential member contacts, or questions to me at [clarson@clinewilliams.com](mailto:clarson@clinewilliams.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



*Remember . . . take some  
time to stop and smell  
the roses.*

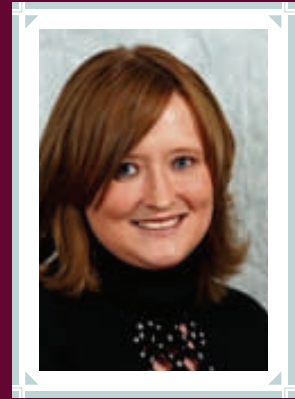


## NALA LIAISON REPORT

The Nebraska Paralegal Association is in the process of preparing for the 2009 NALA Convention to be held in San Diego, California from July 8-11, 2009. Last year was an exciting and energizing experience for me, as it was my first national paralegal convention. This is an excellent opportunity to complete CLE hours, obtain lasting friendships, meet with vendors, and build memories with other paralegals. It is also a great way to learn what other state associations are doing to further our profession. Last year our association booth highlighted our name change, as well as all the wonderful charity work we do throughout the year. This year, our booth will highlight our education and other opportunities offered through our association, including a special highlight on our work with the CLA Review Course through Metropolitan Community College.

This will also be the first year that the Nebraska Paralegal Association will designate a recipient for a 2009 Affiliated Association Award. NALA will recognize the recipient by presenting a framed award during the membership award presentations. You must be a NALA member, in good standing, to be considered. Nominations and voting for the award will take place at the spring membership meeting, so if you are not a member of NALA, now is an excellent time to join!!! Membership in NALA also provides you with discounted CLE and a subscription to *Facts and Findings*, a paralegal magazine published by NALA. Additionally, the winner of the 2009 Affiliated Association Award will automatically be nominated for the NALA Affiliated Associations Outstanding Contribution Award, the pinnacle award of the NALA Affiliated Associations. This award recognizes exceptional achievement among recipients of the NALA Affiliate Awards.

Our association also will be making a nomination for the National Affiliated Associations Achievement Award for the first time this year. This award is designed to recognize achievements and contributions of an individual affiliate member, a committee of an affiliated association or of an affiliated association itself which has a national and long-lasting impact. Examples of national contributions may include development or participation in a community service program which results in a positive public image for the paralegal profession on a national basis; contributions to paralegal education such as publishing a book; or development of a nationally recognized professional development or career enhancement program. Candidates for this award are selected by the NALA Affiliated Associations Award Committee, appointed by the NALA Board of Directors, and chaired by the Affiliated Associations Director. Nebraska's nominee will be chosen at our spring membership meeting through a nomination and voting process. Nebraska currently has 72 paralegals who are members of NALA, as well as 100 paralegals who have gained certification through NALA, with 18 members holding advanced certifications. We are very proud of all of our members. Remember, if you have any questions regarding NALA or their activities, please give me a call. If I don't know the answer, I will find someone who does!!! See you at the Nebraska Paralegal Association spring seminar in April and the National Association of Legal Assistants Convention in San Diego in July!!!!






Christina Koch, ACP  
NALA Liaison

*“Life is a great big canvas, and you should  
throw all the paint on it you can.”*

*Danny Kaye*

# FEBRUARY 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	25 	26	27	28

**February Dates to Note:**


**February 14—  
Valentine's Day**

**February 17—  
District 2 Luncheon**

**February 25—  
District 1 Luncheon**

Happy  
Birthday  
to all our  
February  
and March  
Babies!

# MARCH 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	25 	26	27	28
29	30	31				



**March Dates to Note:**

**March 25-  
District 1 Luncheon**

## NALA CONNECTION—JANIE BOSWELL, ACP



### SERVICE TO NALA ENHANCES PROFESSIONAL DEVELOPMENT

I serve as Region VI Director of the National Association of Legal Assistants ("NALA"). Even though Region VI covers the states of Nebraska, Iowa, Kansas, Missouri, Minnesota, South Dakota and North Dakota, as a member of NALA's Board of Directors, I serve and represent all NALA members.

Prior to serving as Region VI Director, I had the privilege of serving a three-year term on NALA's Certifying Board. That was a truly rewarding experience, and it gave me a greater appreciation of NALA's commitment to its certification program. Many paralegals, educators and attorneys invest significant amounts of time and skill to ensure the certification program remains what I believe is the gold standard of our profession.

My participation in NALA has enriched my career and professional development in numerous ways, and I have reaped benefits from NALA for many years. Furthermore, being involved in NALA has given me leadership skills and networking tools that make me a better NePA member. The benefits I have received from participating in NALA far outweigh the time I have invested.

By joining and participating in NePA, you have demonstrated the importance of professional development to a paralegal's career. I encourage you to take professional development a step further and become active at the national level. There are numerous ways to get involved.

A great way to serve NePA and get involved in NALA at the same time would be to run for NePA's NALA Liaison position. NePA's NALA Liaison represents NePA at NALA's annual convention and has opportuni-

ties to network with NALA members and NALA affiliated organizations throughout the year. Another great vehicle is NALA's LEAP program, a training program designed to explore the various facets of leadership and prepare volunteers for the challenges of leadership roles in paralegal associations. Our Christina Koch, ACP, is a member of this year's LEAP class. I know NePA will benefit tremendously from the leadership training and education Christina receives this year. Information about the LEAP program is available at [nala.org](http://nala.org).

Board and committee service are other outstanding opportunities to actively participate in NALA. Each year NALA's president makes numerous board and committee appointments to the Certifying Board, the Advanced Paralegal Certification Board ("APC"), the Continuing Education Council ("CEC"), the Professional Development Committee ("PDC") and other NALA committees. Among their duties, the Certifying Board is responsible for the content, standards and administration of the CLA/CP examination, and the APC is responsible for the development, content, standards and administration of the APC curricula.

The CEC responsibilities include organization of annual workshops, educational development, publication of *Facts and Findings* and serving as seminar and convention coordinator. Among its duties, the PDC maintains NALA's Code of Ethics and Professional Responsibility; plans and develops the annual Career Chronicle edition of *Facts and Findings*, conducts research and recommends updates to the National Utilization and Compensation Survey.

As you can see, there are many exciting opportunities to volunteer to serve on a NALA board or committee. Any position for which you volunteer will produce personal and professional rewards. You will make new friends, travel occasionally to Tulsa or other locations, gain valuable leadership tools for NePA and enrich your own professional development. If you are interested in learning more about opportunities to get involved in NALA, please feel free to contact Linda Hess, ACP, Certifying Board Chair, Ann Atkinson, NALA Treasurer or me.

## ANNOUNCING THE 2009 NEPA ECONOMIC STIMULUS PACKAGE



Upon the recommendation of the NePA Ad Hoc Committee on Finances, the Board of Directors of the Nebraska Paralegal Association is pleased to announce that by unanimous vote, the BOD has voted to offer all NePA members and qualified paralegal students the opportunity to benefit from the "NePA Economic Stimulus Package."

The following benefits will take effect immediately:

On April 24, 2009, the NePA Mid Year Meeting and Seminar scheduled at Mahoney State Park will be offered at no cost to the first ninety (90) NePA members and paralegal students who register (there is a limit of 90 attendees). Complimentary lunch and break snacks will also be provided to attendees. Please mark your calendars and watch for the Seminar Flyer in early March, 2009 - also check the NePA web site in March for more details.

The second benefit of the NePA "Stimulus Package" is the reduction of the monthly luncheon price to \$10.00 for all attendees. You will still be able to make a selection from three menu items, however, none of them will be priced over \$10.00. We hope this will not only benefit paralegals and/or their firms, but will also help to encourage more student participation.

We hope the offering of these new benefits and opportunities will demonstrate our appreciation to the membership for their support and dedication. This organization has been very successful thanks to the talent and efficiency of its past and present Officers and Board - this success now allows us to give back to the membership in this way. We hope you will take advantage of this package and in turn, by your participation, make it advantageous to NePA to expand and increase these types of benefits in the future.

*The Nebraska Paralegal Association Board of Directors*

## WEBSITES OF INTEREST

Federal Government Resources:

[www.governmentguide.com/main.adp](http://www.governmentguide.com/main.adp)

Legislative Information:

[thomas.loc.gov](http://thomas.loc.gov)

US Government Blue Pages:

[www.usbluepages.gov/gsablupepages/default.aspx](http://www.usbluepages.gov/gsablupepages/default.aspx)

Request Military Records:

[www.archives.gov/research\\_room/vetrecs](http://www.archives.gov/research_room/vetrecs)

Confidential Documents:

[www.thesmokinggun.com](http://www.thesmokinggun.com)

National Sex Offender Registry:

[www.fbi.gov/hq/cid/cac/states.htm](http://www.fbi.gov/hq/cid/cac/states.htm)

Filing a Government Tort:

[www.sf95.com](http://www.sf95.com)

Federal Stats:

[www.fedstats.gov](http://www.fedstats.gov)

Cyber cemetery: Defunct Government Agencies:

<http://govinfo.library.unt.edu/default.htm>

EXTRA! EXTRA!

READ ALL ABOUT IT!

NePA now  
has brochures  
for distribu-  
tion to schools,  
employers, job  
fairs, etc.



## LEGAL RESEARCH 101: Tips and Tricks

By: Christina L. Koch, ACP

Over twenty years ago, I took my first steps into a law library. At the age of seventeen, my first impression was of awe as I was confronted by rows and rows of legal authorities, most of which would lead me to yet another legal authority. The biggest question in my mind on that first day was how I would determine not only where to start my research, but also the path I would follow to lead me to the absolute answer to my legal issue. I was doing research at that time for a legal research class I was taking and of course, my final fear was where my research would end. It was difficult as a beginning researcher to determine whether my research was complete. Had I done everything possible to reach the proper conclusion? Twenty years later, I am convinced that the end result of legal research is often a little like trying to find the end of the internet. You're never quite sure if there's more out there.

Legal research can be as simple as finding the correct government agency in an administrative law case or so complicated you may not come to a clear conclusion until the case litigation has concluded. These days I find legal research to be a relaxing hobby and intellectually stimulating as a paralegal. Once you have determined that legal research is necessary on a case, you must explore your factual analysis to isolate your primary legal issue. Often there is more than one legal issue in a case and research is best done when it is focused on the primary issue. This entails examining the parties, the nature of the dispute, the legal basis that gives rise to the cause of action, any defenses to that legal basis, and what relief is sought. These facts will assist you in identifying your legal issues. Once you have determined how the law applies to the facts of your case, you are ready to begin your research.

Whether you learned to research through the IRAC method (Issue, Rule, Analysis, Conclusion) or the old CARTWHEEL method (word association surrounding the legal issue by using the index and/or table of contents of law books), your goal will be to find primary and secondary authority which the Court may rely upon in coming to a conclusion on its case. Primary authority is law (i.e., statutes, regulations, ordinances, or treaties) and secondary authority is non-law (i.e., legal periodicals or treatises). Mandatory authority is information the Court must rely on (primary authority only), however secondary authority is also referred to as persuasive authority because it is most likely a prior opinion the Court is not required to rely on, but may still find convincing or "persuasive". For a Court opinion to be considered mandatory authority, the case must be "on point" or analogous and the opinion

must have been written by a Court superior to the Court considering the opinion.

In determining your primary authority, you should also consider the court jurisdiction, your regional area and your subject matter. You should use cases that are similar factually to your present case. Don't forget to "shepardize" or "key cite" your cases to make sure the case is still "good law". If you are performing your legal research through Westlaw, you can shepardize through their Key-Cite system. Lexis-Nexis provides Shepard's online or via CD-Rom. If the case has been overruled, excessively criticized, or modified, you should not cite it as authority. Shepard's will allow you to shepardize state or federal statutes, cases, Attorney General Opinions, Law Reviews, ALR Annotations, or legal texts. Make sure to check your case citations against the Uniform System of Citation "Bluebook" or ALWD Citation Manual (Association of Legal Writing Directors). You can also check citations online at <http://legalcitation.net/> or <http://www.law.cornell.edu/citation/>. Incorrect citation is a common mistake in legal briefs and a very important part of a paralegal's job in the legal briefing process.

Once you master the basics of legal research, you may want to expand your knowledge base to non-traditional means of research. There is an extensive list of legal research websites on the internet. Resources extend from your subscription services such as Westlaw or Lexis to the free websites such as [Findlaw](http://www.findlaw.com) (www.findlaw.com) or [Internet Legal Research Group](http://www.ilrg.com) (http://www.ilrg.com). There are other fee-based services available such as [LoisLaw](http://www.loislaw.com) (http://www.loislaw.com) and [VersusLaw](http://www.versuslaw.com) (http://www.versuslaw.com); however, these services are not as comprehensive as Westlaw and Lexis. They will, however, be much more economical to a paralegal or sole practitioner.

If you know your citation, both Westlaw and Lexis provide avenues to retrieve the case directly without searching terms. Additionally, they both use a search system based upon connectors to link related ideas. In either program, the asterisk (\*) can be placed in the middle or at the end of a word to represent a variable letter or number. For instance, if you are searching for a case that relates to a certain statute subpart, you can list the number of the statute with an asterisk (\*) behind it to retrieve cases which relate to that statute subpart. (continued on page 11)

## LEGAL RESEARCH 101: Tips and Tricks (continued)

Likewise, the exclamation point (!) in both programs is used as a root expander placed at the end of a word to retrieve all versions of that word. Westlaw offers search options for a citation, natural language, terms and connectors or by title. Choose important terms to form your issue as well as alternatives. Lexis offers search options for a citation, party name, case brief, or formulation of words and alternatives to search your issue.

Keep searching and you will find many avenues for your research. One of the best places to start your internet research is [American Law Sources Online](http://www.lawsource.com/also/) (ALSO) (<http://www.lawsource.com/also/>), as it is a well-organized list of references and links to legal research websites available on the internet. Another great site which offers bill search, resolutions, the Congressional Record, activity in Congress, Committee information, treaties and other valuable government resources is [Thomas](http://www.thomas.gov) (<http://www.thomas.gov>). Thomas has set up its search on the home page so it is extremely easy to use and contains detailed information.

If you become familiar with the websites available, you will be able to do extensive legal research on the internet more efficiently and effectively. Most legal websites arrange information by subject, type of document or source. If you are looking for public information, start with your favorite search engine, such as [Google](http://www.google.com) ([www.google.com](http://www.google.com)) or its energy-efficient equivalent [Blackle](http://www.blackle.com) ([www.blackle.com](http://www.blackle.com)). Courts, regulations and legislation are often online and can be accessed through this type of word association. Law Review articles are available on the internet through <http://www.lawreview.org>. You can even access the House of Representatives Law Library at <http://www.house.gov> or the Senate Law Library at <http://www.senate.gov>. State and federal opinions can be located through <http://www.lexisone.com/legalresearch/lrfreecaselaw.html>. [LexisOne](http://www.lexisone.com) (<http://www.lexisone.com>) requires registration, but is free and is intended for small firms and solo practitioners. It provides the full text of all U.S. Supreme Court cases, as well as the last five years of federal and state appellate court cases, selected legal forms, and even an Internet Research Guide.

Another great resource on the internet is [www.nolo.com](http://www.nolo.com), where you can access a legal encyclopedia, legal dictionary, caselaw, statutes, and even calculators for number-crunching. The World Wide Virtual Library for Law can be found at <http://www.law.indiana.edu/v-lib/index.html>. Many law schools also have helpful links on their websites. Some of the most useful and easiest to use are

[Cornell University Law School](http://www.law.cornell.edu/) (<http://www.law.cornell.edu/>),

[Emory University Law School](http://www.law.emory.edu/LAW/refdesk/toc.html) (<http://www.law.emory.edu/LAW/refdesk/toc.html>),

[University of Chicago Law School](http://www.lib.uchicago.edu/e/law/) (<http://www.lib.uchicago.edu/e/law/>), and

[Washburn University Law School](http://www.washlaw.edu/) (<http://www.washlaw.edu/>). Drafts of Uniform and Model Acts can be found on the University of Pennsylvania Law School website (<http://www.law.upenn.edu/bll/ulc/ulc.htm>).

State or local bar association websites and the American Bar Association (<http://mail.abanet.org/archives/index.html>) website are also excellent resources. The American Bar Association website also includes "LAWlink: ABA Legal Research Starting Points" (<http://www.lawtechnology.org/lawlink/home.html>), which will lead you to various other helpful links. The Library of Congress (<http://loc.gov/>) can assist you in a guide to Federal, State, and United States Territories Law. Looking for a federal or state government agency? Try FirstGov ([http://www.firstgov.gov/Topics/Reference\\_Shelf.shtml#Laws](http://www.firstgov.gov/Topics/Reference_Shelf.shtml#Laws)) or FedLaw (<http://www.thecre.com/fedlaw/default.htm>). Interested in a high-profile criminal case? You are likely to find information regarding the case at <http://www.courtstv.com/archive/legaldocs/>.

You can find other lists at "Lyo's Law Lists" (<http://www2.lib.uchicago.edu/~llou/>) or through Yahoo Groups (<http://groups.yahoo.com/>) by searching "paralegal". Your biggest asset in research is your legal network, whether it is other paralegals, attorneys, court reporters, bailiffs, court staff, or vendors.

(continued on page 12)

## LEGAL RESEARCH 101: Tips and Tricks (continued)

Once you find that your research keeps leading you back to the same cases, and you have shepardized these cases and checked their citations, you can be reasonably sure you have done a thorough job researching the primary issue. The next step is to organize your Memorandum of Law and produce it to the attorney for review. A good format to use is Heading, Issue, Brief Answer, Facts, Discussion and Conclusion. You should format your Issue as a question and verify the issue with the attorney before beginning your research to avoid framing the wrong issue. The discussion should include an explanation of how the law relates to the facts of your case. Ultimately, the legal conclusion is something the attorney will determine and you should never share your Memorandum with the client as it could constitute legal advice. The purpose of the Memorandum is to provide information to your attorney. You should keep your Memorandum short and to the point. The attorney needs the answer to the question, but does not need to know the facts of every case that led you to that answer.

In conclusion, legal research and writing is not complicated, but it does take practice, and the more you research and evaluate your conclusions, the better you will be at it. The best way to learn is to dig in and begin researching!

*Christina L. Koch, ACP received her Paralegal degree in 1991. She is a trial paralegal, specializing in personal injury litigation. She also holds a Bachelor of Science degree in Management and is a National Dean's List Scholar. Christi is an Advanced Certified Paralegal in Trial Practice and joined the firm of Inserra & Kelley in 2002. She is a member of the National Association of Legal Assistants, the Nebraska Association of Legal Assistants, and a paralegal affiliate of the American Association for Justice (formerly the Association of Trial Lawyers of America). She currently sits on the AAJ Advisory Task Force for Paralegals and the Nebraska Paralegal Association Board of Directors. She has been a frequent contributor of paralegal articles and CLE presentations locally and nationally and has been working in the legal field for over 20 years. She is originally from Orchard, Nebraska and currently resides in Omaha, Nebraska, with her husband, Allen.*

## COMMUNITY ACTION



Please remember to be generous  
to those less fortunate.

Alison Barthel is willing to accept donations of food or  
clothing at any of the luncheons or NePA will make  
arrangements to pick up any large donations if necessary.

Thank you for your generosity.

## SUMMARY OF KEY PROVISIONS OF THE REVISED FMLA REGULATIONS THAT TAKE EFFECT JANUARY 16

*By Baker Donelson (From the HR Resource Newsletter—January 19, 2009)*

On November 17, 2008, the U.S. Department of Labor published final regulations implementing the 2008 amendments to the Family and Medical Leave Act. Employers should act quickly to update their FMLA policies before these regulations take effect on January 16, 2009. Below is a summary of the most significant changes to the FMLA that will take effect early this year.

### **New Military Family Leave Entitlements**

#### **Military Caregiver Leave**

This new leave entitlement allows eligible employees to take up to 26 weeks of job-protected military caregiver leave during a single 12 month period. This leave must be used to care for a covered family member with a serious illness or injury that was incurred in the line of duty while on active duty in the armed forces, National Guard or Reserves. In this context, a covered family member means a spouse, child, parent or next of kin who is a covered servicemember. A covered servicemember is a person who is a member of the armed forces, National Guard or Reserves and is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank or rating. Former members of the armed forces, National Guard, or Reserves do not fall within the definition of covered servicemembers. Only current members of the armed forces, National Guard or Reserves, or individuals who are on the temporary disability retired list, are included. Employers may request that an employee seeking to take military caregiver leave provide an appropriate certification from the Department of Defense that the covered servicemember's serious injury or illness was incurred in the line of duty while on active duty. An employee's entitlement to military caregiver leave is limited to 26 work weeks of leave within each 12 month period, per covered servicemember, per injury. Thus, an eligible employee may take 26 work weeks of military caregiver leave in different 12 month periods to care for multiple servicemembers or to care for the same service member with a subsequent serious injury or illness. 29 C.F.R § 825.127.

#### **Qualifying Exigency Leave**

The second of the new military family leave entitlements allows eligible employees to take up to 12 weeks of job-protected leave for a qualifying exigency arising from

the employee's spouse, child or parent who is in the National Guard or Reserves being notified of an impending federal call or order to active duty in the armed forces in support of a contingency operation. The final regulations provide a list of eight situations when qualifying exigency leave may be taken:

In short-notice deployment situations, where a covered military member is notified of an impending call or order to active duty seven or fewer days from the date of deployment, in which case an eligible employee may take military exigency leave for a period of seven days beginning on the date when the covered military member is notified of the impending deployment;

To attend military events, ceremonies or programs sponsored by the military that are related to the active duty or the call to active duty of a covered military member, or to attend similarly related family support or assistance programs or informational briefings sponsored or promoted by the military;

For certain childcare and school activities necessitated by active duty or the call to active duty status of a covered military member, including to arrange for alternative childcare, to provide childcare on an urgent, emergency need (but not routine, regular or everyday) basis, to enroll or transfer a child in a new school or day care facility, or to attend meetings with school or day care staff;

To make or update financial or legal arrangements to address a covered military member's absence while on active duty;

To attend certain counseling arising from active duty or the call to active duty status of a covered military member;

To spend time with a covered military member who is on a short-term, temporary rest and recuperation leave during a period of deployment;

To attend certain post-deployment activities, such as arrival ceremonies and reintegration briefings, and to address issues arising from the death of a covered military member while on active duty status; and

For certain additional activities arising out of a covered military member's active duty or call to active duty where (continued on page 14)

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the employer and employee both agree on the timing and duration of the leave.

Qualifying exigency military leave is not available to family members of soldiers in the regular armed forces, or in cases where the call to active duty comes from a state rather than the federal government. 29 C.F.R § 825.126.

### **Key Revisions and Additions to Existing FMLA Rules**

#### **Employer Notice Requirements**

The new regulations state that electronic posting of the FMLA notices that covered employers are required to post on their premises may be sufficient to satisfy the FMLA posting requirements in certain circumstances. 29 C.F.R § 825.300(a)(1). Additionally, the new regulations require that where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general FMLA notice in a language in which the employees are literate. 29 C.F.R § 825.300(a)(4). Employers will be required to notify employees who request FMLA leave of their eligibility for leave within five business days, absent extenuating circumstances. 29 C.F.R § 825.300(b)(1). Instead of providing a preliminary or provisional designation of FMLA leave, employers will be required to provide a written Rights and Responsibilities notice to each employee taking FMLA leave that details the specific expectations and obligations of the employee and the consequences of not meeting those terms. 29 C.F.R § 825.300(c). The DOL has issued a new prototype Notice of Eligibility and Rights & Responsibilities form (Form WH 381) that may be used for this purpose. Once the employer has received a completed certification or other information sufficient for it to determine whether leave is being taken or requested for an FMLA-qualifying reason, the employer will have five business days, instead of two, to designate leave as FMLA leave. 29 C.F.R § 825.300(d). The DOL has issued a new prototype Designation Notice form (Form WH 381) that may be used for this purpose.

#### **Employee Notice Requirement**

Noting the disruption caused by the lack of advance notice of an employee's absence, the revised regulations place an increased burden on employees to provide notice of their need for FMLA leave. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the new regulations specify that the employee's obligation to provide the employer with notice as soon as practicable will normally require the employee to provide notice either the same day or the next business day. 29 C.F.R § 825.302. The new regulations also give employers the option of requesting that employees explain why it was not practicable for them to give the full 30 days notice. 29 C.F.R § 825.302(a). When the need for leave is not foreseeable, the new regulations clarify that employees must follow the employer's usual and customary notice and procedural requirements for requesting leave, absent extenuating circumstances. 29 C.F.R § 825.303(a). (continued on page 15)

A truly happy person is someone who can enjoy  
the scenery on a detour.

Most good judgment comes from experience.  
Most experience comes from bad judgment.

Don't let your victories go to your head, or  
your failures go to your heart.

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### **New Medical Certification Requirements**

In a significant departure from the current rule, the new regulations will allow certain employer representatives, including human resources professionals, leave administrators and management officials (but not an employee's direct supervisor) to contact an employee's health care provider to clarify and authenticate a medical certification presented in connection with an FMLA leave request. 29 C.F.R § 825.307(a). The new regulations specify that in most cases, if employers want employees to provide a certification from a health care provider of their need for FMLA leave, employers should request such certification within five business days after the employee gives notice of the need for leave, or within five business days after the leave commences. 29 C.F.R § 825.305(b). Once a certification is received, employers must provide written notice of any deficiencies by stating what additional information is necessary and give the employee seven days to supplement the certification. 29 C.F.R § 825.305(b). The new regulations also strengthen employers' rights to obtain medical certifications and recertifications. They clarify that employers may request a new medical certification each leave year for medical conditions that last longer than a single leave year. 29 C.F.R § 825.305(e). In addition, employers will be able to request recertification for ongoing conditions at least every six months in conjunction with an absence, and more frequently in some instances. 29 C.F.R § 825.308(b).

### **Fitness-for-Duty Certification**

The new regulations make two principal changes to the fitness-for-duty certification process. First, employers may now require that fitness-for-duty certifications specifically address the employee's ability to perform the essential functions of the job, as long as they provide the employee with a list of those essential job functions no later than when they provide the employee with the FMLA designation notice described above. 29 C.F.R § 825.312(b). This will create an added incentive for employers to have well drafted, up to date job descriptions in place. Second, where reasonable job safety concerns exist, up to once every 30 days, employers may now request a fitness-for-duty certification before allowing an employee to return to work from intermittent leave. 29 C.F.R § 825.312(f).

### **Clarification of the Definition of Serious Health Condition**

The new regulations retain the six definitions of serious health condition that were already in effect, and they clarify three issues related to those definitions. First, if an employee is taking leave under the "three consecutive calendar days of incapacity plus two visits to a healthcare provider" definition, the two visits must occur within 30 days of the period of initial incapacity, absent extenuating circumstances. Second, if an employee is taking leave under the "three consecutive calendar days of incapacity plus a regimen of continuing treatment" definition, then the first visit to a health care professional must occur within 7 days of the initial incapacity. 29 C.F.R. § 825.115(a). Finally, the new regulations clarify that periodic visits to a healthcare provider for chronic serious health conditions means at least two visits to a healthcare provider per year. 29 C.F.R. § 825.115(c)(1).

### **Intermittent Leave**

The new regulations clarify that employees who take intermittent leave for planned medical treatment that is medically necessary have a statutory obligation to make a reasonable effort to schedule the treatment so that it will not unduly disrupt the employer's operations unnecessarily. 29 C.F.R. § 825.203. They also clarify the rule requiring employers to account for intermittent or reduced schedule leave under the FMLA using an increment no greater than the shortest period of time the employer uses to account for other forms of leave, provided it is not greater than one hour. Specifically, the new regulations clarify that, while an employer may account for FMLA leave using shorter time increments than it uses to account for other forms of leave, it may not account for FMLA leave using longer increments than it uses to record other forms of leave. 29 C.F.R. § 825.205(a).

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### **Breaks in Service and FMLA Eligibility**

To be eligible for FMLA leave, employees must have been employed by the employer for at least 12 months and have at least 1,250 hours of service in the 12 month period preceding the leave. The new regulations clarify that, although the 12 months of employment do not have to be consecutive, employers are not required to count employment prior to a continuous break in service of seven years or more, unless the break in service was occasioned by the employee's fulfillment of military service obligations in the National Guard or Reserves, or unless a collective bargaining agreement affirmed the employer's intention to rehire the employee after the break in service. 29 C.F.R. § 825.110(b).

### **Light Duty**

The new regulations clarify that employees who accept light duty assignments while recovering from a serious health condition are not considered to be on FMLA leave. Thus, the time eligible employees spend working light duty assignments may not be counted against their 12 weeks of annual job protected FMLA leave or their FMLA reinstatement rights. In a modification of the previous rule, the new regulations state that employees who voluntarily accept light duty assignments that are offered by their employers in lieu of taking FMLA leave will lose their FMLA-based right to reinstatement to their original or an equivalent job if they remain in a light duty assignment at the end of the 12-month leave year period that the employer uses to calculate FMLA leave. 29 C.F.R. § 825.220(d). In its summary of comments on the new regulations, the DOL presents the following example: Where an employer uses a calendar year to calculate FMLA leave, and an employee takes four weeks of FMLA leave and returns in September to a light duty assignment that is not limited in duration and that neither the employer nor the employee chooses to end, the employee has a right to restoration that extends through the end of that calendar year, but no further.

### **Substitution of Paid Leave**

The new regulations allow employers to apply their normal policies for taking paid leave when an employee substitutes paid leave for unpaid FMLA, regardless of the type of paid leave being substituted. Employees who seek to substitute accrued paid leave of any kind for unpaid FMLA leave must comply with the terms and conditions of the employer's normal leave policies. While employers must allow substitution of paid vacation, personal leave, or paid time off for any situation covered by the FMLA, employees can be required to follow normal procedures. 29 C.F.R. § 825.207. In its summary of comments on the new regulations, the DOL presents the following example: If an employer's paid personal leave policy requires two days notice for the use of paid personal leave, an employee seeking to substitute paid personal leave for unpaid FMLA leave would need to provide two days notice. This differs significantly from the current regulations, which prohibit employers from imposing any limits on the substitution of paid vacation or personal leave for unpaid FMLA leave.

### **Relief for Employers Who Fail to Properly Designate FMLA Leave**

The new regulations eliminate the previous rule that had required employers who failed to designate FMLA leave properly to offer affected employees an additional 12 weeks of FMLA-protected leave. In the wake of the U.S. Supreme Court's decision in *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002), which found the regulation to be inconsistent with the FMLA's statutory intent, the new regulations eliminate this categorical penalty and clarify that where an employee suffers individualized harm because the employer failed to follow the FMLA notice requirements, the employer may be liable. 29 C.F.R. § 825.300(e).

### **Perfect Attendance Awards**

The new regulations change how perfect attendance awards are treated. Employers will now be allowed to deny a perfect attendance bonus or other award to an employee who does not have perfect attendance because he or she took FMLA leave. However, for this rule to apply, the employer must treat employees who take non-FMLA leave in the same manner. 29 C.F.R. § 825.215(c)(2).

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### Rules Specific to Professional Employer Organizations

The regulation discussing the application of the FMLA to joint employers has been modified include a specific reference to Professional Employer Organizations, which are companies that contract with employers to perform administrative functions such as payroll, benefits and maintaining employment policies. The revised regulations recognize that PEOs do not enter into joint employment relationships with the employees of client companies when they merely perform administrative functions. However, when PEOs have the right to hire, fire, assign, direct and control their client's employees, depending on the circumstances, this can lead to a determination that the PEO and the client employer are joint employers. The average PEO client has just 17 employees, which is well below the threshold for FMLA coverage, so this new regulation ensures that small companies are not automatically covered by the FMLA simply because they partner with a PEO. 29 C.F.R. § 825.106(b)(2).

### New FMLA Forms

The DOL also issued several new prototype forms that employers may use to comply with the FMLA, including a "Certification of Serious Health Condition – Employee's Own Condition" (Form WH-380-E), a "Certification of Serious Health Condition – Employee's Family Member's Condition" (Form WH-380-F), a "Certification of Qualifying Exigency" (Form WH-384), a "Certification for Serious Injury or Illness of Covered Servicemember" (Form WH-385), a Notice of FMLA Eligibility and Rights and Responsibilities (Form WH-381), and a "Notice to Employee of FMLA Designation" (Form WH-382).

In addition to these highlighted provisions, the new FMLA regulations contain numerous technical revisions aimed at clarifying current policy. To assist employers with this transition, Baker Donelson's Labor & Employment Department will be presenting a series of informative seminars on this and other topics throughout our footprint.

## GETTING TO KNOW LAURIE S. VIK, CP BY JOYCE BULLER, CLA

The current NePA District I Director is Laurie S. Vik, CP. Laurie earned her Associate in Applied Science Degree – Paralegal Studies from Metropolitan Community College in 1995. Additionally, she earned the designation of Certified Paralegal in May of 2000. Laurie has been a member of NePA for a number of years. Prior to becoming District I Director, she volunteered for the seminar committee. Laurie decided to pursue the District I Director position upon the encouragement of our current NePA President Loretta Philips.

Laurie has a total of 29 years legal experience beginning as a Legal Secretary. Her area of focus is corporate law and she has been employed with the Kiewit Corporation for the last 19 years, working as a paralegal since 1995. Laurie primarily supports two corporate attorneys and during peak times handles overflow work from the ten construction law at-

torneys. She focuses on in-house legal audits, contract bids, mergers and acquisitions, corporate power of attorney documents, and monitoring laws in the 50 states as well as Canada and Mexico. What she enjoys most about the area of corporate law is the exposure to the diversity of corporate structures, as well as numerous learning opportunities to delve into the regulations which apply to corporate entities. Kiewit Corporation is an Omaha-headquartered Fortune 500 Company and one of North America's largest construction and mining organizations. Kiewit has approximately ninety subsidiaries and has been in business for over 120 years.

Laurie most enjoys the camaraderie among the members, interacting with paralegals working in a wide range of legal practice areas, the opportunities to network and the ability to expand one's knowledge through educational events.