

**PRESIDENT’S MESSAGE**

*April Wentz, U.S. Trustee Office Legal Clerk*

The Madison Area Paralegal Association will be celebrating our **20<sup>th</sup> Anniversary this year**. Look for a **survey** in your email box to decide between four different ways to commemorate the anniversary: 1) Betty Lou Cruise; 2) Noah’s Ark in the Dells; 3) Mallard’s Game, 4) Happy Hour at Local Bar. Please look for the survey in your email box and respond promptly so the Executive Committee can reflect the interests of MAPA Members.

**EDUCATION COMMITTEE**

*Karen McKenzie, Winner, Wixson & Pernitz, LLC*

**56 Attendees at Lunch & Learn**

The March Lunch & Learn was a huge success!!! We had 56 attendees. We broke the lunch & learn attendance record. Thanks to our speakers: Attorney Kate Harrell, Paralegal Sherrie Lindgren, Deputy Clerk to the Supreme Court Bobbi Bushey and Special Guest, newly appointed clerk to the Supreme Court: Diane Fremgen. Look for the summary of the presentations in this issue. We will also, thanks to the feedback received, be planning the half-day seminar from 3:30 pm to 7pm this year. Many attendees voiced concern over the inability to travel on the lunch hour. Look for more information in the next issue.

**Upcoming Events:**

**Lunch & Learn Date:** 5/16/2012

**Topic:** Criminal Law & the Paralegal

**Location** Hilton Downtown

**Speakers:** Dean Strang Attorney, Hurley, Burish & Stanton. Attorney Strang has co-authored a brief submitted to the United States Supreme Court regarding mandatory federal sentencing guidelines. CLE applied for. Look for your invite in your email in box.

Everyone is welcome. Send ideas, questions and comments to [kmckenzie@wwplaw.net](mailto:kmckenzie@wwplaw.net)

**MARCH/APRIL SPRING BREAK 2012**

**JUMBO EDITION**

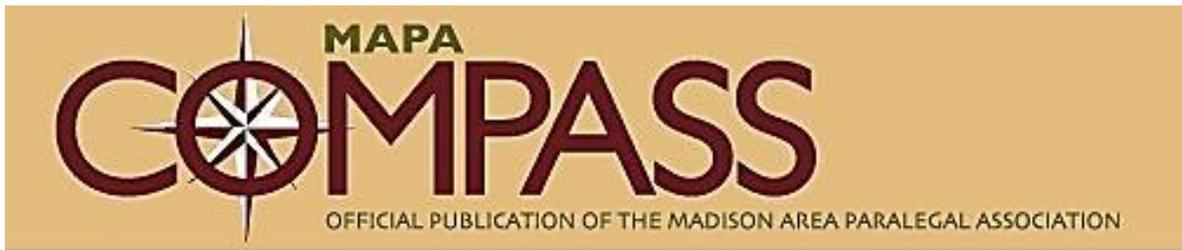
**TECHNOLOGY & PARALEGALS**

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Student Reception (see page 8)



## **ETHICS & TECHNOLOGY**

*Summary by Attorney Nerino Petro- Practice Management Advisor, Wisconsin State Bar Association*

### **Ethics and Technology**

Reliance on technology by law firms and their staff continues to increase with no anticipated diminution in the foreseeable future. With the continued pressure to generate more revenue with less time and staff, client demands to reduce legal expenses and outside pressures from non-traditional legal providers such as Legal Zoom, technology is the one tool that can help keep law firms competitive. However, technology can be a help as well as a hindrance to the ethical practice of law; for law firms and staff that do not understand the potential ethical pitfalls, technology can cause serious problems with clients and disciplinary authorities.

Where do the ethical obligations come from?

For Wisconsin lawyers, the Supreme Court Rules establish the ethical obligations that impact lawyers. In fact, there here are several rules of professional conduct, which combine to require that lawyers exercise great care in protecting their electronic information.

#### **Rule**

The following Rules are those that can have the most direct impact on lawyers' use of technology: Rule 1.1 Competence, Rule 1.3 Diligence, Rule 1.6 Confidentiality of Information, and Rule 5.1 Responsibilities of Partners, Managers, and Supervisory lawyers Rule 5.2 Responsibilities of a Subordinate Lawyer, Rule 5.3 Responsibilities Regarding Non-lawyer Assistant, Rule 7.1

Communications concerning a lawyer's services, Rule 7.2 Advertising

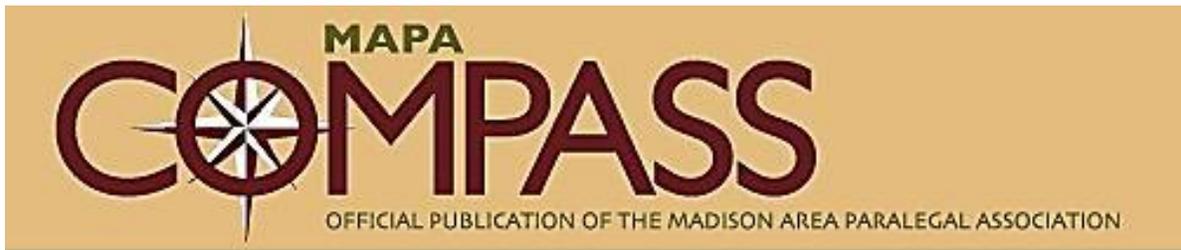
#### **How can technology cause a breach of the ethics rules?**

Inadvertent disclosure of confidential or privileged information is a concern for any firm

that sends documents outside of the office in electronic format. The key issue is the disclosure of this information by inclusion of harmful metadata in the document.

### **Metadata**

Metadata is the information hidden behind your words; it includes the name of the author, the date created and last edited tracked changes, comments and more. Metadata resides in every type of electronic document or file created in a law office—especially files created using the Microsoft Office suite. Therefore, when you send the settlement proposal as a Word document, the receiving party may be able to see your edited changes or whether the document is original to that client or a form created for someone else. Clients and others may be able to easily view some of the data to see if any changes you made—say to the final top-dollar offer contained in your letter created in MS Word. The disclosure of the metadata could be a breach of confidentiality, not to mention highly embarrassing. The ABA has issued ABA Formal Opinion 06-442 on Review and Use of Metadata and the Maryland State Bar issued MD Ethics Docket No. 2007-09. These opinions generally state that it is the sending attorney's responsibility to remove metadata they do not wish to expose to the recipient. These opinions differ from the New York State Bar, Florida Bar, Alabama Bar and DC Bar opinions on metadata, which also warn attorneys to be aware of what they are sending out via metadata, but also warn recipients that it is unethical to review or mine documents for metadata. To avoid problems with metadata, consider converting a document or file to PDF format to eliminate much of the metadata, or use a metadata removal tool. Office 2007 and Office 2010 finally include useable metadata redaction capabilities although they require a higher level of user interaction to invoke them than the dedicated metadata



removal tools. Dedicated tools include Workshare Protect and Metadact.

### **Electronic Redaction**

Electronic Redaction is another problem area which has hit not only law firms, but courts and businesses as well. When a PDF is created from a word processing document such as a Word or WordPerfect file, not only is an image of the document created, but an invisible layer of text is also created. To properly redact a PDF, you must not only excise the image of the words on the page, but you need to eliminate the hidden text layer as well. Many users think that making the text white in Word or WordPerfect before creating the PDF or drawing a black box over the text is sufficient; but it isn't. The text still remains whether it is white or in a layer below the black box, it must be fully removed to be properly redacted. Adobe Acrobat 9 and other similar tools contain Redaction tools that will remove not only the image but the underlying text as well. These are fine for occasional redaction needs, but if the firm does a lot of redaction, a dedicated redaction tool is the better option such as Redact-IT.

### **Requirements on Law firms**

Law firms also have a requirement to protect their files and data including electronic files. There is nothing more important than the regular back-up of information stored on the firms computers. Generally, there are at least four components to a good back-up system: Automatic back-up software, a large and reliable local storage device, an off-site recipient storage device, and a competent person to make sure it runs correctly. With the growing availability of broadband internet access, online storage for your critical data is also an option. Online backup services vary from low cost/little support products such as Mozy ([www.mozy.com](http://www.mozy.com)) and Carbonite ([www.carbonite.com](http://www.carbonite.com)), to more full featured/full support offerings from Corevault ([www.corevault.com](http://www.corevault.com)), EVault ([www.evault.com](http://www.evault.com))

and others that provide a wide range of support and services. Where can your firm turn for help? Practice411™ the State Bar of Wisconsin Law Office Management Assistance Program is a benefit open to all members of the State Bar of Wisconsin offering no charge telephone and email consultations and assistance.

### **Case Law Citations:**

*St. Clair v Johnny's Oyster & Shrimp, Inc.*, 76 F.Supp. 2d 773 (S.D.Tex.)

*Munster v. Groce* 829 NE 2d 52 (Ind. App. 2005).

*Fernandez v. Tax Claim Bureau*, 925 A.2d 207, 211 2007

*Gates v. N.M. Taxation & Revenue Dept.* 176 P.3d 1178 (N.M.App.,2007)

*General Video Corp. v. Kertesz* 2008 WL 509816, 3 (Del.Ch.) (Del.Ch.,2008).

<http://www.foxnews.com/story/0,2933,325285,00.html>

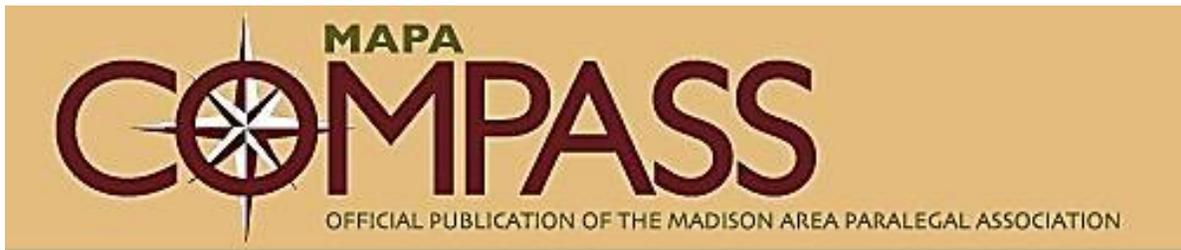
### **INTERVIEW WITH FOUNDER OF MIDWEST LEGAL AND E-DATA SERVICES, LLC**

#### **SHAWN OLLEY**

*Karen McKenzie, Paralegal at Winner, Wixson & Pernitz, LLC*

**KM:** I see that the name of your business has changed from Midwest Paralegal. When did that happen? What was the impetus?

**SO:** The company name was changed in the fall of 2011. The work that Midwest has done over the past ten years has changed. In adapting to market demands, our services have expanded beyond the traditional contract paralegal work. The new name, Midwest Legal and eData



Services, Inc. more accurately reflects the technology direction that our services have taken. It also better expresses the expertise of the paralegals and IT staff.

**KM:** You offer a variety of services that law firms don't all have access to. What is the most popular service that you are providing at the present?

**SO:** Popularity can change with just a few phone calls. The biggest change we have seen is a more deliberate move by corporate clients to work directly with our team. Law firms that have not kept current on how to manage projects efficiently have lost out on having the competitive edge. We have had a 30% swing from the amount of work we did for law firms to corporate legal departments. Data Collections and forensic work has been the subject of many inquiries. Midwest positioned itself six years ago to move in this direction, based on what we were witnessing from the East and West coast. So, we were prepared for the demand.

**KM:** You started out by offering temporary staffing service for law firms in need of paralegals. This was your bread and butter, correct? What was the biggest challenge in placing so many people in so many different law firms?

**SO:** Midwest was incorporated in 1989 and temporary staffing of paralegals was the core business. We grew slowly and were careful not to commit to additions to the staff until we knew we could provide the forty hour work week. The client base was steady and, for the most part, tried to provide reasonable notice of their requirements. However, when cases settled with no notice, paralegals returned to the office to work on projects until another off-site opportunity presented itself. Those projects were educational or marketing related if no billable work was available.

**KM:** I see that you expanded from the Milwaukee area into the Madison area. When did you open up that office in Madison? How are Madison law firms different than the Milwaukee ones? Are there any unique challenges for your firm in the Madison Market?

**SO:** The Madison office opened in 2005. Midwest does a great deal of work with Madison law firms. Many of them are satellite offices of clients we serve in Milwaukee, but they work very independently of their "mother ship," so to speak. There is likely to be less red-tape involved in getting approvals through the Madison offices. The decision-makers may be closer to the work and the needs of the firm infrastructure. Madison lawyers are also inclined to think of themselves as coming from a smaller market. However, with the use of technology, law firms have the ability to manage cases of any size across large regional areas, which contradicts that attitude. I don't see any unique challenges for our firm in the Madison market.

**KM:** Do you have plans to take your company regional, or to franchise?

**SO:** Midwest works in all areas of the country with regard to the eData environment. There is no need for us to consider a regional office, when the logistics are already handled by the investments the Milwaukee office has made.

Since Midwest is unique in that we have staffed paralegals working on all projects, we have a special niche. The length of time I personally have been in the area, has allowed me to bring together a top notch team of paralegals that support the brand that has been created.

It takes about eighteen months to train someone to work efficiently with ediscovery and data collections. The employees that are trained in this area must have an aptitude for the field. Franchising would be difficult to manage while maintaining service quality at current levels so



as not to diminish the reputation Midwest has earned since the late 80's.

**KM:** You place people in law firms under the auspices of a lawyer. Still, some people might be confused about UPL?

**SO:** This is Midwest's statement of work:

- 1) The paralegals and IT staff employed by Midwest Legal and eData Services, Inc. have been trained in the many areas of law. Midwest does not provide services to the general public.
- 2) Our Services require the direction and supervision of an attorney licensed to practice law in the state the services are provided.
- 3) Midwest provides assistance that compliments the law firm or corporate legal department setting and was not formed to be a replacement for it.

**KM:** For your corporation, do you have an in-house attorney to handle your contracts and legal agreements?

**SO:** Since 1989, Midwest has used the firm of McNally, Maloney and Peterson, S.C. to handle its legal services. The McNally firm has also been a client's of Midwest's over the past twenty plus years.

**KM:** I am not sure about you, but I find it hard to take time off. My "in-box" is always full or in the process of getting fuller. Are you able to take time off now that the company has been firmly established for so many years?

**SO:** The managers and staff of Midwest are capable of managing the day-to-day client workload. That has been the case for well over a decade. I am completely confident that the clients of Midwest are well served. The employees at Midwest take ownership of their work product and are very protective of their, often times, repetitive client base. I would not be doing my job as an owner if I positioned the company in such a way that it could only survive if I was on premises or even in contact. Projects

come into the office directly to those employees that have the specific expertise needed, the managers are authorized to sign off on contracts and monitor/handle all areas of the work assignment. I provide my support, give counsel when needed and provide state of the art equipment and software to support them doing their job well.

**KM:** Are you currently placing people in federal, district, or any government offices? What legal practice areas are you looking to expand into?

**SO:** Midwest works with different government office on an as needed basis. Since we are nationally certified as a minority-owned business (WBE) we can provide a minority spend for some agencies that factor that into their contract awards. There are no plans at the current time to add a particular legal practice to the basics of what is currently provided.

**KM:** Thank you for your time. Congratulations on all of your success!

### **SUMMARY OF APPEALS: Electronic PROCESS & PROCEDURE**

By Popular Demand a Summary of the Presentations at March 21, 2012 Lunch & Learn:

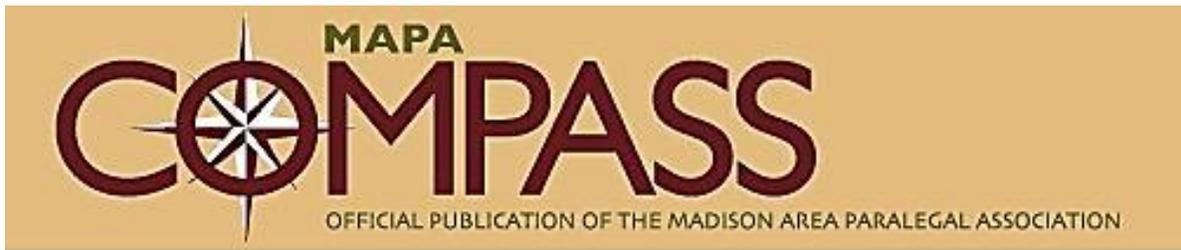
#### **Basic Reminders of Online Submissions by Attorney Kate Harrell-McKnight**

Seven Days Checklist before the deadline:

- 1) Registration online: a) Firm registered, b) Go into the site in advance.
- 2) Attorney of Record: a) Attorney of Record registered, b) Attorney of Record's Calendar, c) Attorney of Record's password.

Day of the Submission Logistics: a) Who is there, b) Who knows the format.

Technical Aspects: a) Uploading, b) Combining Formats and PDFs, c) citation changes as the case moves forward- site checking is important.



Paralegals that learn to site check a brief can be more valuable to their lead attorney. Become the 'go to person.' Try to stay calm and work together.

### **Reference Tools & Reminders**

#### **Sherry Lindgren, Paralegal**

Cheat Sheet Reviewed for Formatting, Binding, and Rules reviewed for PDF, formatting uploading issues, Calculating Deadlines, Calendaring, Pleading/Documents to Prepare, How to file an Appeal (Court of Appeals), Petition for Review (Supreme Court), Formatting Rules, Filing Fees / Helpful Links,

### **Calculating Deadlines**

Filing an Appeal: There are two possible numbers of days you can use to calculate the deadline to file an appeal-45 and 90 days. This is dependent on whether or not a Notice of Entry was filed with the circuit court. If a Notice was filed, you have 45 days from the date it was filed to file your Notice of Appeal and Docketing Statement. If Notice was not filed, you have 90 days from the date of the final Order to file your Notice of Appeal and Docketing Statement.

### **Statement on Transcript**

A Statement on Transcript must be filed with the Court of Appeals no later than 14 days after the Notice of Appeal and Docketing Statement have been filed.

### **Briefs**

Court of Appeals Brief: The Appellant Brief is due 40 days after the circuit court record has been filed; Respondent Brief is due 30 days after the Appellant Brief has been filed; Appellant Reply Brief is due 15 days after the Respondent Brief has been filed.

### **Petition for Review to Supreme Court**

A Petition for Review must be filed with the Supreme Court within 30 days of the date of the Court of Appeals' decision. Supreme Court

Brief. Petitioner must file a brief within 30 days after the date the Petition for Review is granted; Respondent brief is due 20 days after the initial brief is filed; Reply brief is due within 10 days after the respondent brief has been filed.

### **Pleadings/Documents to Prepare:**

Notice of Appeal, Docketing Statement, Statement on Transcript, Briefs, Petition for Review to the Supreme Court, Certification of Mailing, Third Party Commercial Delivery

### **Notice of Appeal**

Original Notice of Appeal is filed with the Clerk of Circuit Court along with \$195 filing fee, plus \$15 transmittal fee. A copy of the Notice of Appeal is filed with the Court of Appeals.

### **Docketing Statement**

The original Docketing Statement is filed with the Court of Appeals; a copy is filed with the Clerk of Circuit Court.

### **Statement on Transcript**

14 days after the Notice of Appeal is filed, a Statement on Transcript is filed with the Court of Appeals. A copy is also sent to the circuit court and all other parties to the appeal. The Statement on Transcript informs the Court of Appeals whether or not a transcript will be needed in the appeal. If a transcript is needed, you must contact the court reporter in advance notifying of the appeal and arrange for filing and payment for the transcript. You must also send the Statement on Transcript to the reporter to complete and return to you for filing. The reporter must return the form within 5 days of receiving it. (§809.11(7))

### **Brief and Appendix**

Court of Appeals Brief must contain: Table of Contents, Table of Authorities, Statement of the Issue, Statement on Oral Argument and Publication, Statement of the Case (Include reference to the Record): Argument, Conclusion, and Certification page.



### **Appendix**

An appendix must contain, whether bound with brief, or separate: a) Table of Contents; b) Certification that the appendix meets certain content requirements; c) If appendix is separate, it must contain a cover.

### **Petition for Review**

Petition for Review to the Supreme Court Brief must contain: a) Statement of the Issue; b) Table of Contents; c) Description of Nature of Case; d) Argument; and e) Appendix.

### **Appendix**

Appendix should contain: a) The decision and opinion of the Court of Appeals; b) Judgments, orders, findings of fact, case law and memorandum decisions of the circuit; c) Court and administrative agencies necessary for an understanding of the petition; and d) Any other portions of the record necessary for an understanding of the petition

### **Supreme Court Brief-**

Your brief must contain: a) Table of Contents; b) Table of Authorities; c) Statement of the Issue; d) Statement on Oral Argument and Publication; e) Statement of the Case (Include reference to the Record) Argument, Conclusion, Certification and Appendix.

An appendix must contain, whether bound with brief, or separate: Table of Content; Certification that the appendix meets certain content requirements. If appendix is separate, it must contain a cover.

### **Filing Fees and Helpful Links**

Notice of Appeal - \$195; Transmittal Fee - \$15; Petition for Review - \$195

### **Helpful Links**

Court of Appeals:

<http://www.wicourts.gov/publications/guides/docs/proseappealsguide.pdf>

Petition for Review:

<http://www.wicourts.gov/publications/guides/docs/seekingreviewbooklet.pdf>

### **Top Ten Reasons an Appeal Brief is Rejected, by Roberta “Bobbi” Bushey, Deputy Clerk of District II**

#### **(Common Briefing Questions)**

#### **Most Common Briefing Questions**

Allowed binding methods?

Appendix bound separately?

Number of copies required?

Do I need to put transcripts in appendix?

Where to put unpublished opinions?

Does brief have to be in office by due date?

Add 3 days to due date for service by mail?

#### **Reasons Briefs Rejected**

Incorrect form and length certification.

Missing e-filing certification.

Missing appendix table of contents.

Missing appendix certification.

Missing required section.

Improper cross appeal briefs.

Confidentiality broken.

No signature.

#### **Reasons E-files Rejected**

Caption incorrect.

Incomplete.

Parts e-filed separately.

Brief and appendix combined.

Pagination off.

### **MEMBERSHIP COMMITTEE**

*Patti Mackesey, Boardman & Clark Law Firm*

There are currently 82 active members, 9 associate members, 17 student members and 6 sustaining members for a total of 114 MAPA members. Any students or paralegals wishing to join the organization were able to join for half the annual fee at the Social and Student Reception event that was held at the Edgewater on April 19, 2012 from 5 to 7 p.m. This year the food drive will also be combined with a clothing drive. More info to come in the next issue.

## **NALA LIASON COMMITTEE**

*Tiffany Pelanek, Boardman & Clark*

Attention all LEXISNEXIS users. Did you know: Lexis Nexis offers a Paralegal Certificate of Mastery Program for free! Go to Google and type in LexisNexis Paralegal Certificate of Mastery. This will bring up the LexisNexis page with the training course schedule and the explanation of each Module of training offered.

## **PUBLIC RELATIONS**

*Amy Newell & Tiffany Pelanek*

The student reception was well attended. Twenty-nine attendees joined together at the Edgewater Hotel Captain's room for networking and discussion of areas of practice. With a view of Lake Mendota individuals discussed school work and course content versus the real world experiences of the everyday life of a paralegal. Nearly every member of the MAPA Executive Committee was in attendance. New member, Kate Essex, volunteered to co-chair the Public Relations committee with Tiffany. Four new members signed up: Michelle Moe, Stephanie Schanke, Jocelyn Turner and Patrick O'Leary. Students from Globe and MATC were in attendance. Resumes were exchanged; beverages and hors d'oeuvres were consumed.



## **STATUTORY UPDATE**

*Brenda Konkel, Executive Director Tenant Resource Center*

A new landlord tenant bill was signed into law, with significant changes and some confusion.

### **Lease Contracts**

The new law (Landlord's Omnibus Senate Bill 466) allows for severability of the rental agreement provisions such that any part can be declared unenforceable, and yet the remaining provisions may be enforced. There was confusion on this point since another change calls for any part of the lease that has prohibited provisions, would be void (ATCP 134.08).

**Disposal of Property Act 143** makes it easier to dispose of abandoned property. Yet, this is only applicable if it is written into the lease.

### **Disclosure of Code Violations**

The landlord now is required to notify of code violations prior to entering the lease agreement.

**Check in and Check out, Hold-over damages and Security Deposit** rules have also changed.

Most interesting is the **unfair trade provision** of Wis. Stat. § 704 linking it to Section 100.20 under which a tenant can sue for double damages and attorney's fees for any violation of c.704. For more information, contact the Tenant Resource Center at 257-0143 or online at [www.tenantresourcecenter.org](http://www.tenantresourcecenter.org). Housing Help Desk at 242-7406. Housing Mediation Service at 257-2799. Dane County Legal Resource Center at 266-4669, or the State Bar of Wisconsin at [www.wisbar.org](http://www.wisbar.org).

## **NEWSLETTER UPDATE**

*Karen McKenzie, Winner, Wixson & Pernitz*

This issue has been on **Technology & the Paralegal**. The next issue will feature interviews of the founding members of the MAPA, results the survey. Comments, questions, or if you would like to be interviewed please email me at [kmckenzie@wvplaw.net](mailto:kmckenzie@wvplaw.net)