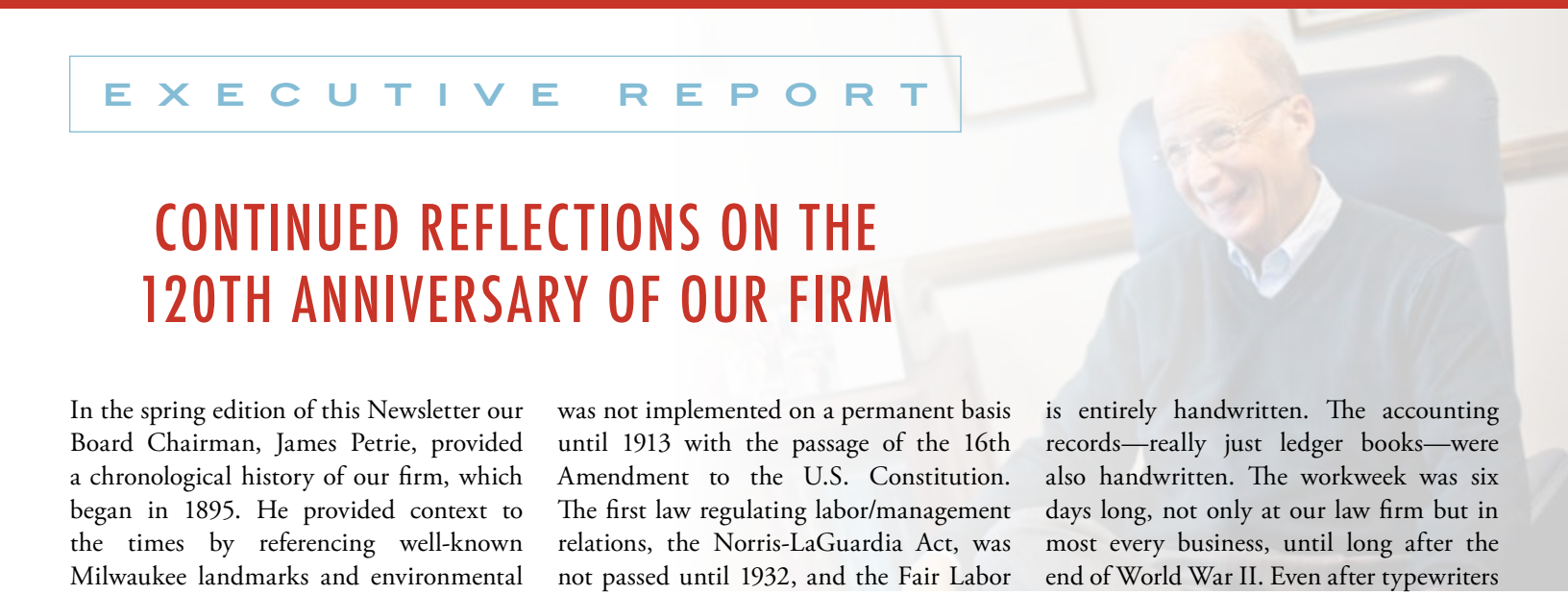
EXECUTIVE REPORT



CONTINUED REFLECTIONS ON THE 120TH ANNIVERSARY OF OUR FIRM

In the spring edition of this Newsletter our Board Chairman, James Petrie, provided a chronological history of our firm, which began in 1895. He provided context to the times by referencing well-known Milwaukee landmarks and environmental conditions long past.

The practice of law in the late 19th and early 20th centuries also differed markedly in many respects. Both the nature of the law practice and the way in which it is practiced have changed throughout the years of our firm's existence.

Several laws important to our society today did not exist when the Nohl brothers began practicing law. The first long-term federal bankruptcy legislation was enacted in 1898, three years after Max W. Nohl started his practice. The United States income tax was not implemented on a permanent basis until 1913 with the passage of the 16th Amendment to the U.S. Constitution. The first law regulating labor/management relations, the Norris-LaGuardia Act, was not passed until 1932, and the Fair Labor Standards Act, which sets laws regulating the payment of wages and the hours of work, was not passed until 1938.

A review of the firm's historical records indicates that a good deal of work for clients involved examining abstracts of title and providing title opinions—a function that is today largely irrelevant due to the widespread use of title insurance. In the area of estate planning, early trusts were uniformly testamentary trusts included within wills rather than the stand-alone trusts that exist today. Business organizations were either sole proprietorships, traditional partnerships, or in the event of a large enough enterprise, statutory corporations that issued stock to its investors. It would be many years until the development of S corporations, service corporations, LLCs and LLPs.

The way in which law is practiced has also changed dramatically over the years. One can imagine that the pace of the workday was much slower in the early days, and consequently client expectations for completion of work were correspondingly slower.

The use of the typewriter had not been universally accepted until the early 20th century. The initial partnership agreement between Max and Leo Nohl, for example, is entirely handwritten. The accounting records—really just ledger books—were also handwritten. The workweek was six days long, not only at our law firm but in most every business, until long after the end of World War II. Even after typewriters became fixtures in the law office, dictation was taken in shorthand by staff members who were referred to as stenographers rather than secretaries. The first evidence of widespread usage of recorded dictation (the firm used "Ediphones") was in 1949.

Fast-forward to today's work environment. Computers, Internet research, emails and smartphones have allowed our firm to provide top quality legal services in a fraction of the time that was the norm even 20 years ago.

Throughout our entire 120-year history, whether it took a week or an hour, Petrie & Stocking has been dedicated to delivering quality legal services to our clients. As the laws have multiplied and the regulatory agencies have metastasized into every facet of our lives, our firm has been proud to provide our clients with the necessary tools to navigate the modern landscape—differing only by degree from the same services we have offered throughout the last 100-plus years. We look forward to continued success in balancing traditional values with a modern approach.

Roger Pettit
PRESIDENT

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FALL 2015 ANNOUNCEMENTS

PETRIE + STOCKING'S 2015 FIVE STAR AWARD WINNERS

Congratulations to Petrie + Stocking shareholders *Laura Petrie* and *James Petrie* on being named *"2015 Milwaukee Five Star Estate Planning Attorneys."* Five Star award winners are selected annually through an independent survey of both clients and financial service professionals in the Milwaukee area. Jim and Laura were featured in a special section of the July, 2015 edition of Milwaukee Magazine, along with firm associate *Sumeeta Krishnaney* and senior paralegal *Sarah Adjemian*.

PETRIE + STOCKING'S 2015 LEADING LAWYERS

We are proud to announce that Petrie + Stocking attorneys *Lindsey King* and *Laura Petrie* were both named in M Magazine's *"Milwaukee's Leading Lawyers 2015"* list. M Magazine selected its 2015 Leading Lawyers from attorneys ranked in the top 2-5% in their areas of expertise by Avvo *(www.Avvo.com)*, a Seattle-based company which rates and profiles legal, medical and dental professionals. According to M Magazine, Avvo's proprietary algorithm rates attorneys on a 10 point scale, factoring in peer endorsements, experience, education, training, speaking, publishing and awards. Lindsey King was featured in employment law (employer side); and Laura Petrie was featured in estate planning.

THE NLRB CONTINUES TO ADVANCE UNION INTERESTS

Given congressional opposition to President Obama's labor agenda, most of the administration's labor initiatives have been advanced through the Nation Labor Relations Board ("NLRB" or "Board"). Employers should be aware of two significant actions taken by the NLRB at the end of 2014: 1) reissuance of the "Quickie Election Rule"; and 2) the holding in *Purple Communications, Inc.* that employees have a "presumptive right" to use the employer's email system to engage in union organizing activities and communicate about wages, hours and working conditions.

THE QUICKIE ELECTION RULE

The "Quickie Election Rule" was first issued in 2012, but was invalidated by a federal court in 2013 because a quorum of the Board had not participated in the vote approving the rule. The re-issued Rule was approved by the full Board in December 2014, and became effective on April 14, 2015. Under these new Rules:

1. Elections to determine if workers want to be represented by a union may now occur in as little as 10 to 15 days after the employer receives notice that a petition for election has been filed – a significant change from the typical 40 to 50 days available for employers to respond to a union campaign under previous rules;
2. Employers must submit contact information for all employees in the proposed bargaining unit to the union within 2 days of receiving the election notice from the NLRB's Regional Director; and
3. Hearings on voter eligibility issues, including whether "working supervisors" should be included in the bargaining unit, are deferred until ***after*** the election, unless the disputed employees make up more than 20% of the total number of employees in the bargaining unit. This means that if a union asserts that an employer's working supervisors should be included with the unit, the employer will likely not be able to use those supervisors as it "eyes and ears" on the floor without drawing an unfair labor practice charge.

These changes will make it much more difficult for employers opposing unionization to effectively get their message out to employees before an election is conducted. Non-union employers who believe they may be the target of organizing activities should take steps in advance of a notice of election to prepare for a union organizing campaign. Employers will need to focus on arguments other than the employees' reluctance to pay dues to convince employees to vote against the union now that Wisconsin has become a "Right to Work" state, meaning that employees voting for the union will ***not be required*** to pay union dues if the union wins the election.

THE PURPLE COMMUNICATIONS DECISION

In a direct reversal of long standing precedents established by earlier Boards, the recent NLRB decision in *Purple Communications, Inc.*, is highly controversial. The Board declared that both union and non-union employees have a "presumptive right" to use their employers' email systems during non-working time to engage in communications protected by Section 7 of the National Labor Relations Act. These include discussions pertaining to wages, hours, conditions of work ***and union organizing activities***.

The decision does place two limits on the employees' right to use their employer's email system for such communications. First, the right extends only to use of the system during non-work time. However, because meal periods and work breaks are traditionally not considered "work time" this limitation will not be very restrictive. Further, it will be very difficult to enforce – especially for those employees who are opening and reading emails during work time.

The second restriction arises from the fact that the "presumptive right" to use the employer's email system for such communications applies only to those employees who already have access to the employer's email system. The Board did not impose an affirmative obligation on employers to extend email access to all employees. Consequently, employers may wish to review their email policies to ensure that only those employees who have a legitimate business interest requiring access to the employer's email system are allowed that access.

Finally, it is important to note that the *Purple Communications* decision does not change the fact that employees have no reasonable expectation of privacy in connection with their use of the employer's email system. Employers may lawfully monitor employees' use of employer provided email so long as such monitoring is consistently applied, is not increased during union organizing activities, and does not target employees engaged in protected activities.

David A. McClurg

When a child turns 18, he or she is legally considered an adult. While this milestone birthday is an exciting time for young adults, the fact that parents are no longer legal guardians of their now-adult child is easily overlooked. This means that a parent no longer has legal authority to get involved, or even be informed, if their adult child is unable to make healthcare, financial or legal decisions.

CRITICAL PLANNING FOR YOUNG ADULTS

Every young adult should consider putting advance directives in place, authorizing a parent or other designated agent to act on their behalf in the event that they are incapacitated. If a college student is involved in a car accident, for example, HIPAA privacy laws prevent medical professionals from sharing information with unauthorized persons. If a parent is not identified as authorized person, they will not be able to acquire information about the status of their child. In the same situation, a parent would need to be appointed as agent (or "attorney-in-fact") in a Healthcare Power of Attorney in order to make healthcare decisions on behalf of their child.

In lieu of advance directives, a guardianship may be necessary for a young adult with special needs who is unable to make financial, healthcare and/or life choices without assistance. After a child who is disabled reaches the age of majority, a parent or other competent adult can become a guardian to assist with those decisions. Guardianships of the person and guardianships of the estate both range in the amount of control a person can retain, and each situation is assessed individually. Additionally, depending on an individual's capacity, it is possible to have a combination of advance directives and guardianship.

The importance of advance directives cannot be overstated. Young adults can find themselves in a myriad of situations in which they would benefit from having a parent act on their behalf. The future is unpredictable, and having powers of attorney in place will give everyone peace of mind.

THE FOLLOWING THREE DOCUMENTS FORMALIZE ONE'S WISHES REGARDING FINANCES, HEALTHCARE AND SHARING OF MEDICAL INFORMATION DURING INCAPACITY:

- A **Durable General Power of Attorney (DGPOA)** appoints an "attorney-in-fact" who can make financial decisions when an individual is incapacitated. For example, if an individual is in a temporary coma due to an accident, his/her agent can pay their rent to avoid legal problems.
- A **Healthcare Power of Attorney (HCPOA)** with Living Will (Declaration to Physicians) is critical for ensuring that one's healthcare wishes are carried out at a time when they may be unable to express these wishes independently. After the age of 18, if a person does not have a spouse or have an agent appointed through this document, an emergency guardianship may be required to have someone appointed to make healthcare decisions. This is a very costly process which is easily avoided by creating a HCPOA.
- **HIPAA Authorization** waives Health Insurance Portability and Accountability Act privacy rules, allowing for the release of an individual's protected health information to designated persons. Documenting this information allows information to be shared with loved ones during a medical emergency.

Sumeeta A. Krishnaney

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LANDLORD-TENANT CORNER

ATTY. PETTIT RECENTLY PRESENTED THE FOLLOWING SEMINARS:

- "Landlord Boot Camp: The ABC's of Landlord Tenant Law in Wisconsin" for the Apartment Association of Southeastern Wisconsin.
- "Legal Issues Related to Bedbugs & How Landlords Can Protect Themselves" as part of Batzner Pest Control's 5th Annual Bed Bug Seminar.
- "Act 76: Wisconsin's New Landlord Tenant Law & How It Is Being Applied" for the Waukesha Police Department's Landlord Training and the Washington Park Landlord Association.

Mr. Pettit also spoke on issues affecting Self-Service Storage Landlords at the Wisconsin Self Storage Association's 2015 Spring Symposium.

For more information about upcoming seminars please visit Tristan's blog which can be accessed through our website at petriestocking.com/blog/landlord-tenant.