

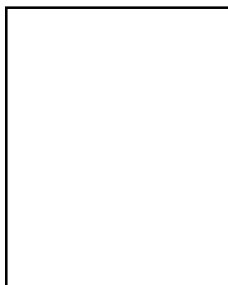
## LAW WATCH

BUSINESS & EMPLOYMENT EDITION

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### CONSUMER PRIVACY: FACT OR FICTION?

By Richard J. Fuller



Supplying information about consumers is a big business. The data is used by lenders, retailers, insurance companies, employers, and others to minimize the risks of dealing with borrowers, insurance applicants, prospective employees, etc. The information is also used by telemarketers to create lists for targeted solicitations. Chances are, you are on dozens, if not hundreds, of such lists. Insurance companies have even been known to use credit reports to profile classes of customers likely to commit insurance fraud, thereby triggering investigations where no evidence of fraud otherwise exists.

There are currently three large bureaus that keep computerized records on consumers throughout the nation, and innumerable smaller agencies. The "Big Three," Equifax, TransUnion, and Experian (formerly TRW), purport to keep

files on over 180,000,000 Americans.

Moreover, nearly every company you have ever dealt with has your name on a customer list, along with more personal information than you might imagine. The use and, in some cases, misuse of the records compiled by various banks, retailers, and credit reporting agencies has become a matter of increasing concern.

#### Legal Limitations

Consumer credit reporting is currently governed by the Federal Fair Credit Reporting Act ("FCRA"). The law places limits on what sort of information can be gathered and divulged. FCRA deals only with consumer credit reports, which are generally defined as any report compiled from third-party resources involving an individual's credit worthiness, credit capacity, character, general reputation, or mode of living and is intended to be used to establish the person's eligibility for credit, employment, insurance, or a government license, in connection with a transaction initiated by the consumer, or to review an account to see if the customer continues to meet its terms.

FCRA regulates the activities of consumer reporting agencies, the users of these reports, and those who furnish information to reporting agencies. FCRA attempts to protect consumers from invasion of their privacy in the dissemination of private information and/or the dissemination of false, outdated, or misleading information. It places certain obligations on persons who collect, furnish, or receive credit information about consumers. Consumer reporting agencies must adopt reasonable procedures to ensure both that the information they report is

accurate and current and that it is furnished only to users with certain permissible purposes.

But consumer reporting agencies are not necessarily the guarantors of accuracy. If an agency has taken reasonable steps to ensure that the information it reports is accurate and up-to-date, it will not necessarily be liable under the Act if the information turns out to be incorrect. Reporting agencies have an obligation to reinvestigate information which consumers dispute and to inform those who use the report that the consumer disputes the information. Those who furnish information to consumer reporting agencies are required to participate in the agency's reinvestigation.

Upon a consumer's request and proper identification, the reporting agency must clearly and accurately disclose to the consumer all information in their file, except for credit scores and certain other "predictors." A consumer may request disclosure of the contents of their file at any time. Although major reporting agencies claim to respond within a week or two to requests for credit reports, getting a response may take as long as a month. The reporting

#### Consumer Privacy... (continued on page 4)

#### Law Watch Fact

##### Consumer Privacy Tips

- Don't assume that credit reports are accurate.
- File "Statement of Dispute" for contested charges.
- Be aware of pending privacy litigations.
- Learn how to stay off unwanted lists.

#### ON THE INSIDE

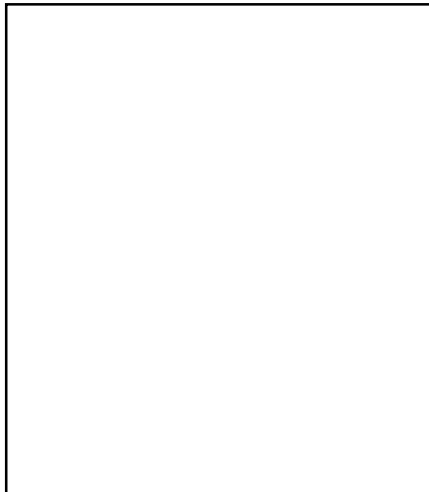
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## ATTORNEY BIBER COMPLETING TERM AS BAR PRESIDENT

**Aaron Biber**, an attorney with the law firm of **MANSFIELD, TANICK & COHEN, P.A.**, is in the process of completing his one-year term as President of the Hennepin County Bar Association ("HCBA").

**Mr. Biber**, who has been with the law firm since 1999, will be handing the gavel over to his successor in the organization, which represents more than 8,000 Minnesota attorneys making it the largest bar association in the state and the ninth largest in the country, when his terms ends June 30, 2001.

**Mr. Biber** reflected on his presidency, outlining some of his accomplishments and his hopes for the organization's future. He noted his desire to "leave the organization stronger after my term than when I started." To achieve this goal, the HCBA, under Mr. Biber's direction, hired a new membership director, Joy Hamilton, formerly of the Ramsey County Bar Association. Also during Mr. Biber's term, the HCBA created a new position, Director of Continuing Legal Education, hiring Carol Berg for that position. She joins the HCBA from



### **Aaron Biber Completes His Bar Presidency**

Minnesota Continuing Legal Education, a subsidiary of the Minnesota State Bar Association. The HCBA also registered its Executive Director, Laurence Buxbaum, as a lobbyist. Mr. Buxbaum is the former Executive Director of the New York State Trial Lawyers Association.

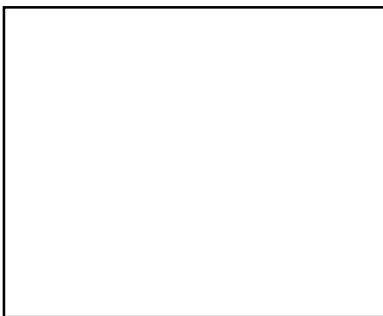
A large part of the HCBA's business is directed at providing members with continuing educational opportunities; a voice to the legislature, public and courts; social interaction amongst

members; a forum to address and respond to issues facing the profession; a framework to educate the public concerning the legal system; and opportunities to assist in assuring equal access to justice. While the HCBA's work in these areas is never done, the association has made tremendous progress in all of these areas during Mr. Biber's tenure as president.

Since the profession's work in these areas is not complete, **Mr. Biber** intends to remain active in Bar Association-related events, while he continues his practice with **MANSFIELD, TANICK & COHEN, P.A.** His work consists of general, civil, class action, and commercial litigation, as well as corporate matters and subrogation of insurance interests. He lives in Excelsior with his wife, Nancy (commonly referred to as "The First Lady"), and his sons, Jacob and Joshua. Mr. Biber is pleased to announce that he will grant no pardons during his presidency, and that his wife does not intend to seek a senate seat.

Aaron can be reached at (612) 339-4295 or by e-mail at [bibera@mansfieldtanick.com](mailto:bibera@mansfieldtanick.com).

### **Attorney Steven Silton Joins Law Firm**



Attorney **Steven Silton** has joined the law firm of **MANSFIELD TANICK & COHEN, P.A.**, bringing the number of attorneys in the firm to 15.

**Mr. Silton** was raised in Appleton, Wisconsin, graduated from the University of Wisconsin-

Milwaukee, and received his law degree from William Mitchell College of Law. He has worked in private practice with emphasis on business and corporate matters, bankruptcy and creditor-debtor relations, and general civil litigation.

"We are pleased to have Steve join us, especially because of our increasing work in business and corporate matters," said **Earl H. Cohen**, Chief Executive Officer of the law firm. "He brings substantial experience, a good client base, and broad insight into business and corporate issues."

**Mr. Silton** welcomes the new opportunity. "I look forward to having increased resources available for my clients, as well as the opportunity to work on other matters within the law firm," he said.

**Mr. Silton** lives with his family, wife Heidi Drewes-Silton and baby daughter Madeline, in St. Louis Park. He can be reached at (612) 339-4295, or by e-mail at [siltos@mansfieldtanick.com](mailto:siltos@mansfieldtanick.com).

### ***Biber, Two Others Named Minnesota 'Super Lawyers'***

Outgoing Hennepin County Bar Association President **Aaron Biber** headed a trio of attorneys from the law firm of **MANSFIELD, TANICK & COHEN, P.A.** who were recently named "Super Lawyers" in a survey of Minnesota attorneys.

**Mr. Biber** made the select list of about 5% of all Minnesota lawyers for the first time, cited for his achievements in business and general litigation. Joining **Mr. Biber** among the elite Minnesota lawyers were two veteran "Super Lawyers" from the firm: **Seymour J. Mansfield** and **Marshall H. Tanick**. Both of them have been "Super Lawyers" since the ranking was first initiated in 1994. **Mr. Mansfield** was named a "Super Lawyer" for his work in class action, commercial, and employment litigation, and **Mr. Tanick** was recognized for his efforts in labor and employment, Constitutional, and civil rights law, and employment and business litigation. Mr. Tanick was also chosen as one of the "Top 100 Lawyers" in Minnesota.

"**Aaron's** prominence with the Bar Association and **Seymour** and **Marshall's** involvement in high-profile cases undoubtedly helped them achieve this recognition," said **Earl H. Cohen**, CEO of the law firm. "But we feel all our lawyers are 'super.'"

# LEGAL ISSUES ARE ON THE MENU FOR RESTAURANT OWNERS IN MINNESOTA

By V. John Ella



V. John Ella

The restaurant and food service industry has been growing aggressively over the last decade in Minnesota and

elsewhere. While many facilities are part of a large chain or another well endowed ownership, starting a restaurant still remains the province of the small entrepreneur, and anyone with a dream can open his or her own restaurant.

Any bistro, café, or lunch counter will face a number of legal issues both before and after the doors open for business. Here's an overview of certain legal issues which typically face restaurant owners and prospective restaurateurs, and a few tips on how to handle them:

### Appetizers

**Starting the Business.** Starting a restaurant, like any business, requires that an entrepreneur make a number of legal decisions. One of the most important is whether to operate as a corporation, partnership, sole proprietorship, Limited Liability Company, or other entity. This question involves issues of liability protection, tax considerations, and capital needs which should be discussed with your attorney.

**Leasing.** In real estate, location is everything, and restaurant owners must be shrewd when negotiating a commercial lease for their location, or buying if that is an option. Look carefully at all the terms proposed by the owner of the property or management company, including cost, duration, parking, and who is responsible for what. Equipment leasing is another important issue for restaurants needing refrigeration, stoves, and other heavy equipment.

### Entrees

**Employment Law.** The food service industry is a relatively labor-intensive business, and, like any employer,

restaurant owners must pay close attention to employment law issues, including employment discrimination, sex harassment, and other matters. Conferring with legal counsel to arrange for a policy against sex harassment and training goes a long way towards preventing future liability.

Wage and hour laws can be particularly vexing for restaurants because many servers rely on tips for a substantial portion of their income, which are treated differently by state and federal tax authorities. Dress codes for servers and customers is also becoming a growing concern, as proprietors strive to keep the atmosphere up-scale while young people who make up the bulk of their labor force are more likely to push the envelope on appearance and dress, including tattoos and piercings.

**Immigration Issues.** In the Twin Cities, as elsewhere, the food service industry has increasingly relied on kitchen workers who are not native-born. The majority of these employees have proper documentation and authorization to work in the United States. Many do not, however, and the Immigration and Naturalization Service periodically makes sweeps of various restaurants to check "green cards" of dishwashers, cooks, servers and bus people. By now, most employers know that they can be held liable for employing an undocumented worker, and they should be very careful to obtain proper documentation before employing anyone in this market.

It may be necessary for some specialty restaurants to import culinary talent from abroad and seek employment authorization for that person pursuant to an H1-B Visa or otherwise. This process can be difficult, time-consuming and expensive, but if done correctly, can lead to unique culinary talents being employed outside their native country. See "Interesting Immigration Issues Confront Workplace," p. 7.

**Health and Safety Concerns.** As a recent case in which a Minnesota saloon was sued in a class action for food poisoning demonstrates, it is always critical to have proper safety and health



procedures in the kitchen, both from a practical and legal standpoint. Restaurants, unlike most industries, are heavily regulated by city and county ordinances, and it pays to be familiar with their provisions. In the unfortunate event that a case of food poisoning is reported from your establishment, you should immediately call your counsel to engage in damage control before any investigation ensues.

**Liquor Licensing.** Another issue for which it usually pays to have experienced legal counsel is the process of obtaining and keeping a liquor license. Many municipalities issue only a finite number of liquor licenses, and it may take some lobbying before the City Council or County Commissioners to obtain one of these often profitable permits. Of course, selling alcohol without a proper license, or selling to underage patrons, can lead to extreme financial consequences, but this can be avoided with proper employee training and other steps.

The worst-case scenarios stemming from serving obviously inebriated customers can lead to what is known as "dram shop liability." This is a term for liability placed on the business owner for negligently serving alcohol to an obviously intoxicated customer, which leads to injury or death, usually because that person leaves the establishment to drive an automobile. A New Orleans-themed restaurant in the Mall of America in Bloomington was recently forced out of business for not keeping proper control over underage drinking. Proper training and certification of bartenders and other servers is critical to avoid liability.

## ...Consumer Privacy: Fact or Fiction?

(continued from page 1)

agency is required to have employees trained to provide a full account of all information the consumer is entitled to receive, and explain all disclosed items.

FCRA prescribes standards of accuracy for information which a creditor furnishes to a reporting agency. After receiving notice, either from the consumer or a reporting agency, that the accuracy of information reported by the creditor is disputed, the creditor must either promptly correct the inaccuracy or, if unable to resolve the dispute, must note that the debt is disputed by the consumer in any future contracts with credit reporting agencies. A creditor or other furnisher of information to credit reporting agencies which does not maintain a consumer complaint address may not furnish information it knows or consciously avoids knowing to be inaccurate. However, if the consumer uses the address to complain about inaccurate information, the creditor then may only report information which is accurate.

Consumers may also file a "statement of dispute" with a credit reporting agency, which is supposed to trigger a re-investigation by the reporting agency. If a request for re-investigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute, which must be included in future credit reports.

Exercising this right to file a "statement of dispute" and subsequent statement is important for several reasons. It gives the consumer an opportunity to have his or her dispute resolved informally side and places users on notice of potential problems with the report. In addition, some courts may look less favorably at a consumer's subsequent lawsuit challenging an inaccurate report and the failure to correct it where the consumer does not even bother to enter a Statement of Dispute.

### Loopholes Looming

Although FCRA appears at first blush to be all-encompassing, there are certain "loopholes" looming in the law. A consumer report must involve information obtained from third parties, thus, information derived from direct personal dealings with a customer is not covered until it passes into the hands of

a third party, and sometimes not even then. Information compiled by banks and retailers from customer lists is often more valuable than the product or service actually being marketed.

Consider that every time you make a purchase or swipe your credit card at a department store, the store's computer data base receives information including your name, address, credit card account number, item purchased, purchase price, and date of purchase. Your bank's data base has your name, address, telephone number, account number(s), account balances, the amount and date of your most recent debits and who received the money. While this data is in the hands of the creditor, it is not covered by FCRA and can, in theory, be sold to third parties, most commonly telemarketers, without statutory regulation. So long as those third parties deal only with the consumer, they too are not covered by FCRA.

**Both the U.S. Congress and the Minnesota State Legislature are considering proposals to protect consumer privacy.**

The lists compiled from this information can be worth millions of dollars to telemarketers. Indeed, a number of well known retailers who have recently gone bankrupt have discovered that their customers lists are their only marketable asset, and have been forced by bankruptcy courts to sell these lists in order to pay their creditors, even though they assured their customers' privacy.

Recent litigation in Minnesota by private parties and the Attorney General has sought to establish a common law right to privacy of bank records. The action arose out of U.S. Bank's practice of selling its account records to telemarketers, who then used the information to make direct phone solicitations. The plaintiffs alleged that U.S. Bank deceived them by claiming their records would be kept confidential. The litigation eventually settled without a definitive ruling on the privacy issue, but U.S. Bank agreed to notify its customers of the practice and

to not share information if the customer objected. Additional litigation will most certainly take place calling for further definition of the right of privacy. Both the U.S. Congress and the Minnesota State Legislature are considering proposals to protect consumer privacy.

FCRA does allow credit reporters to sell their information to third parties, generally telemarketers, even where the consumer has not applied for credit or insurance, provided the telemarketer has preapproved the consumer for credit or insurance. For example, a telemarketer might request information about everyone in Minnesota over the age of 25 who has dealt with a sporting goods store in the last 24 months. If each person on the list has been preapproved for credit, transfer of the information would not violate the FCRA. If you were on the list, you might get an annoying phone call offering credit at a ski resort.

There are ways to stay off targeted marketing lists. Most banks now offer customers the right to have their names removed from such lists. Some credit card issuers and catalog sellers provide the same option. Credit reporting agencies are required to periodically publish notices telling consumers how to take their names off the lists. If you haven't seen such a notice recently, you may contact the reporting agencies. The "big three" can be contacted as follows:

#### Equifax

P.O. Box 740241  
Atlanta, GA 30374-0241  
(800) 997-2493 or [www.equifax.com](http://www.equifax.com)

#### Experian

National Consumer Assistance Center  
P.O. Box 2104  
Allen, TX 75013-2104  
(888) 397-3742

#### TransUnion Corporation

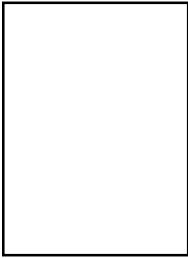
Consumer Disclosure Center  
P.O. Box 390  
Springfield, PA 19064-0390  
(312) 408-1050

While complete protection of consumer privacy is difficult, following these procedures should keep invasions to a minimum.

*Richard J. Fuller is a class action and consumer protection attorney with MANSFIELD, TANICK & COHEN, P.A.*

# MITIGATION PRINCIPLE MEANS LESS LITIGATION

By Marshall H. Tanick



Although the economy has been sagging over the last few months, the job market remains active, and plenty of work is available.

Employers in Minnesota are complaining about not being able to fill job openings, including mid-level management and lower level slots. The low unemployment rate in Minnesota, even with recent lay-offs, is not only good for employees, but also benefits employers, especially those who might otherwise be confronted with lawsuits by disgruntled employees.

In Minnesota, the doctrine of mitigation of damages obligates employees who lose their jobs to take reasonable steps to obtain other work. The mitigation principle does not mean employees must take any job available. The work must be of a similar character, at comparable pay as their previous job, and in the same general geographic area.

If such a job is available, an employee must search for it. If such a job is offered, an employee must take it. If not, the wages and benefits the employee would have earned are deducted, under the principle of mitigation, from any claim for damages against a former employer in a wrongful termination lawsuit.

### Diminished Damages

The mitigation doctrine requires subtracting from a damage claim the amount of money that was, or could have been, earned had the employee sought or found other reasonable work.

For example, an employee who loses a \$60,000 per year job and seeks to pursue a suit for wrongful termination, is unemployed for four months, and then finds other work at \$45,000 per year would have a damage claim for lost wages during the period of unemployment of about \$15,000, as well as a claim for the annual wage differential, another \$15,000. The courts generally allow wage differential claims to be made for a few years, but not indefinitely. Therefore, the damages for this employee would be around \$50,000.

Although this is a large sum, it may be surpassed by the cost of litigation, which could easily exceed \$50,000 in a hotly contested lawsuit. Since the damages for lost wages would be taxable under existing law, an employee may feel that it is hardly worthwhile to pursue litigation under these circumstances in light of the likely net recovery after payment of legal expenses and taxes, coupled with the inherent uncertainty of the outcome. The mitigation principle, therefore, dissuades many employees, and their prospective lawyers, from engaging in full-scale litigation for a claim of wrongful termination of employment.

The balance shifts somewhat when the claim arises under discrimination laws, whistleblowing laws, or certain other statutes providing for recovery of a wronged employee's attorneys' fees. In these cases, attorneys' fees often become the proverbial tail that wags the dog, because the amount of legal expenses can easily exceed the recovery obtainable for an employee who mitigates his damages rapidly.

### McDonald's Mantra

The mitigation principle is occasionally distorted. Lawyers tend to raise what has become known as the "McDonald's" mitigation defense in a wrongful termination case, pointing out that people can obtain a job at a fast food facility, McDonald's for example, at around \$7 per hour. Therefore, they contend any employee's claim should be reduced by that amount, or about \$280 per week, because the employee could have been making those earnings.

The McDonald's mantra overlooks the limitation of the mitigation principle. Under the doctrine, an employee is not required to seek or accept work not reasonably comparable to the last job, nor at a wage rate substantially below what the employee previously earned. While the fast food work might be appropriate for a relatively low-paid employee, a mid-level manager or higher level executive is not obligated to put on a uniform and a funny little hat and take fast food orders in order to comply with the mitigation principle.

Those employees are, however, obligated to seek comparable work.

Because so many jobs at middle and low levels are available, they may find that any claim for wrongful termination is impaired by the existence of other suitable work in the marketplace.

Not all income earned by an employee while not working falls within the mitigation principle. Generally, reemployment compensation benefits are not deemed part of mitigation because the purpose of those payments is to tide employees over during hard times, and they are not to be credited to the benefit of an employer who wrongfully terminates an employee. Similarly, if an employee obtains disability insurances, those benefits would not be an offset.

### Prominent Principle

Because so many jobs are available, the mitigation principle is playing a prominent role in suppressing litigation. Employees are finding other work with increasing alacrity. If they don't, employers suspect they have not been trying very hard or, perhaps, have such shortcomings that they should not have been hired in the first place.

Either way, employers who terminate employees benefit. Employees who find other jobs are less likely to sue. If jobs are available, employers can point to mitigation as a means of diminishing any potential claim for recovery.

Lawyers who represent employees are less likely to take on these cases. They recognize that the mitigation principle will cut into any damages likely to be recovered, which diminishes the amount of money that lawyers who take cases on a contingency basis can obtain.

This relaxation of risks diminishes time, energy, and money that would otherwise be expended in litigation. However, the pendulum may well swing in the other direction, as it often does.

But for the time being, the good job market, coupled with the mitigation doctrine, emboldens employers to act decisively when dealing with troublesome employees. The likelihood of a lawsuit declines, and the potential for large damages diminishes, as long as the economy remains strong, the job market remains good, and the mitigation of damages principle remains intact.

## GIVING BACK TO THE COMMUNITY THROUGH *CY PRES* FUNDS

The law firm of **MANSFIELD, TANICK & COHEN, P.A.** contributes to the community in several ways, including direct charitable contributions and volunteer work. Another way the firm supports worthy charitable organizations is through *cy pres* funds in class action suits.

*Cy pres* is a Latin term meaning “as near as possible.” Historically, *cy pres* was a rule for the construction of instruments in equity, by which a party’s intention was carried out “as near as possible” when it would be impossible or illegal to give it literal effect. Thus, in the case of wills and trusts, the courts would equitably determine the closest possible donee within the broad range of the deceased’s intent.

In class actions, the establishment of *cy pres* funds is often a hotly contested issue, with class action defendants fighting for a reversion of monies to their companies, rather than them being directed to charities.

The law firm of **MANSFIELD, TANICK & COHEN, P.A.** has consistently taken the position that money should not revert to the defendant wrong-doer in these circumstances, but should go to “related” charitable causes. Over the

years, we have achieved substantial secondary benefits in class action lawsuits by providing millions of dollars to worthwhile charitable and public service organizations, particularly those devoted to consumer protection, legal services to the poor, education, and health care advocacy.

Most recently, in 2001, in two of our lawsuits against the rent-to-own industry, *cy pres* funds enabled donations to the Minneapolis Legal Aid Society of more than \$600,000, and to the National Consumer Law Center in Boston of more than \$110,000.

In addition to these contributions, we have used *cy pres* funds to support many other worthy endeavors. For example, in a prior class litigation against ITT Financial Services, we established a \$500,000 endowment for a Consumer Law Chair at the Minneapolis Legal Aid Society and distributed over \$1,500,000 in scholarships through the Minneapolis Foundation to families of low-income class members. In another case, the *cy pres* fund provided over \$100,000 of support to the Inner City Youth Summer Internship Program, which places inner city high school students in summer jobs at Twin City professional organizations to encourage them to consider higher

education in pursuit of such careers. In three other class actions, we generated over \$500,000 to support various health advocacy and support groups, such as The Lupus Foundation, The Scleroderma Society, Fraser Community Services, The Minnesota Health Fund, Joseph Selvaggio Initiative, Loaves & Fishes, Powderhorn/Phillips Cultural Wellness Center, The Children’s Defense Fund of Minnesota, The Green Institute, and Minnesota Health Law Advocacy Program.

“These *cy pres* funds have become a model which legal aid programs and other charitable organizations throughout Minnesota and the country have encouraged other private class action law firms to replicate,” said **Seymour Mansfield** of the law firm, who heads its class action practice.



**Seymour Mansfield**

Attorneys at the firm are very active in volunteer activities, *pro bono* legal services, legal services for the poor, human rights advocacy, and many other charitable activities. The *cy pres* program is a unique way our Firm has been able to significantly expand our support for worthwhile organizations.

### ...Legal Issues On The Menu For Restaurant Owners

*(continued from page 3)*

#### **Special of the Day**

##### **Trademarks and Trade Dress.**

Restaurants often strive to differentiate themselves from competitors and to offer something more than delicious entrees. Recently, several famous cases have involved restaurants or restaurant chains fighting over a particular trademark name or “trade dress.” For example, the law firm of **MANSFIELD, TANICK & COHEN, P.A.** recently successfully represented a large restaurant chain which challenged the misappropriation of its restaurant theme by another well known facility at the Mall of America. **Rainforest Café v. Amazon, Inc.**, 86 F. Supp. 2d 886 (D. Minn. 1999).

At a minimum, you should review federal trademark records to assure protection of your prospective restaurant’s name and any other brand

or trade names you might employ in your business. Also, special recipes can be treated as trade secrets, if indeed they are secret and give you an edge over the competition.

#### **Dessert**

**Expansion Options.** Once a restaurant is successful, a logical next step is to expand to other locations. This will require additional capital. One method is through a licensing agreement, which allows others to use the name and other features of the original restaurant for a fee, usually including a percentage of revenue.

**Franchise Frenzy.** Many restaurants these days are operated through franchises. Minnesota has very specific laws and regulations regarding franchises, which generally are treated comparable to the issuance of sale of

securities. Careful attention to these provisions is necessary when acquiring or selling a franchise.

#### **Conclusion**

Despite this daunting list of legal challenges, owning and operating a restaurant can be a wonderful and rewarding experience. Taking the proper steps up front to avoid legal liability can help keep it that way.

*V. John Ella, an attorney with MANSFIELD, TANICK & COHEN, P.A., works with others in the law firm in representing many restaurants, including Italian, Mexican, and Chinese restaurants in the Twin Cities, a hot dog chain in Iowa, a gelato stand at the Mall of America, a restaurant holding company in California, a night club in downtown Minneapolis, and a bed & breakfast in outstate Minnesota.*

# IRA UPDATE: *IRS SIMPLIFIES RULES*

By Earl H. Cohen



Individuals must generally begin taking minimum annual distributions from IRAs, 401(k)s, and other individual accounts in an

**Earl H. Cohen** employer-sponsored defined contribution plan (such as a profit-sharing plan) upon reaching a certain age. For most people, the required beginning date for payouts is April 1 following the year in which they reach age 70 ½.

The IRS has just simplified and liberalized the rules determining the minimum annual distribution that can be withdrawn from these types of retirement accounts. In general, one can withdraw less each year under the revised rules than under pre-existing IRS guidance. For those looking to withdraw the rock-bottom minimum from their retirement plan accounts, the new rules will result in a lower tax bill, a longer-lived tax shelter for the family, and potentially larger payouts for the owner's beneficiaries.

There are three major simplifications and liberalizations to be aware of:

● **Simplified payout rules mean smaller distributions for most people.**

Under the new IRS rules, one simple table is used to calculate the minimum annual distribution from IRAs and other individual accounts in an employer-sponsored defined contribution plan for virtually all people. (The one exception is where the account owner's spouse is more than ten years younger than him or her, in which case a "joint and survivor" table is used to figure minimum payouts.) Under the prior rules, the minimum annual distribution depended on a host of complex factors.

If you are already receiving required distributions (or are about to start), you should try to determine how much lower they would be under the new rules.

● **New rules for post-death payouts.**

The balance remaining in a retirement account, such as an IRA, after its owner dies must be paid out within a certain time period. These post-death payout rules also have been simplified and liberalized as follows:

...If a retirement account has a designated beneficiary, the account balance may be paid out over the beneficiary's remaining life expectancy. In general, a designated beneficiary must

be an individual, such as your child, and not an institution of your estate.

...If the retirement account does not have a designated beneficiary, and the account owner dies after his required beginning date, the account balance may be paid out over the remaining life expectancy of the account owner, determined just before he died.

...If the account does not have a designated beneficiary, and the owner dies before his required beginning date, the account balance must be paid out within five years after the owner's death.

These rules replace an incredibly complex labyrinth of rules where post-death payouts depended on the payout method chosen by the account owner.

● **When designated beneficiary must be named.** Under the revised rules, the designated beneficiary of a retirement account is determined as of the end of the year following the year of the account owner's death, allowing you to change beneficiaries easily.

*Earl H. Cohen is an attorney with MANSFIELD, TANICK & COHEN, P.A. who works on tax-related matters.*

## LAW FIRM FORMS 'EXECUTIVE ACTION' EMPLOYMENT GROUP

The surge of lay-offs in Minnesota and elsewhere as a result of the sagging economy has spurred the creation of an "Executive Action Group" at **MANSFIELD, TANICK & COHEN, P.A.**

The new department combines the experience of many of the firm's attorneys in providing a wide range of assistance to executives and other high-ranking personnel who have been displaced from their jobs due to acquisitions, mergers, changes in control, and other reductions in force. The services available from the "Executive Action Group" include:

- Assistance in negotiating severance agreements;
- Guidance in dealing with stock options;
- Planning for financial security, taxes, and organization of estates, including wills and probate matters;
- Litigating workplace-related claims;

● Participation in Alternative Dispute Resolution (ADR) mechanisms, including arbitration and mediation.

While litigation remains a component of the "Executive Action Group," the main emphasis is on trying to resolve disputes efficiently and economically without the need to resort to lawsuits, according to **Seymour J. Mansfield**, a senior partner with the law firm. "Executives who have been laid off have special needs that differ from other employees," he said.

Obtaining and exercising stock options remains an important feature of the firm's "Executive Action" program, which is overseen by **V. John Ella**. "Stock options may not be quite as lucrative these days as they were in the 'boom' years in the late 1990's," **Mr. Ella** said. "But they are still an important benefit for many displaced executives."

"Alternatives to conventional litigation are usually more economical, efficient and effective ways to maximize the rights of executives," according to **Teresa J. Ayling**, who heads the law firm's ADR practice.

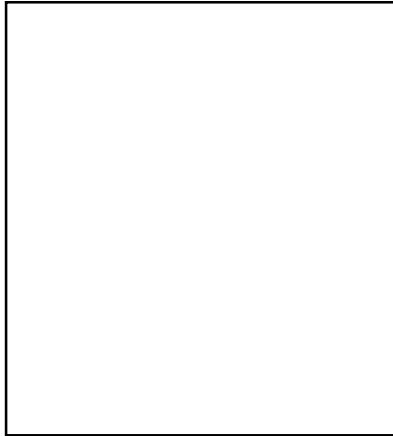
Financial planning also is important for many laid-off executives. **Earl H. Cohen**, the firm's CEO, and **Debra S. Nelson** head the financial planning wing of the "Executive Action" group.

Other attorneys who participate in the "Executive Action" program include **Marshall H. Tanick** and **Phillip J. Trobaugh**, who both assist executives in the negotiation of severance packages, along with other attorneys in the firm.

More information about the law firm's "Executive Action Group" can be obtained by accessing the law firm's website at [www.mansfieldtanick.com](http://www.mansfieldtanick.com).

## EVENTS AROUND THE LAW FIRM

### *Hands-On Tips For Lawyers*



Law firm consultant **Sally Schmidt** recently offered some hands-on tips and guidance for attorneys and paralegals at the law firm of **MANSFIELD, TANICK & COHEN, P.A.** She made a presentation on law firm marketing to highlight a half-day session of training programs for legal professionals at the firm. Her presentation included “20 tips” on improving delivery of legal services, including ways of increasing client satisfaction through enhanced communications during the pendency of legal representation and follow-up interaction.

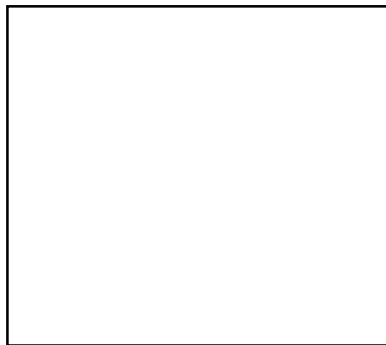
“Maintaining a high level of client satisfaction is important,” **Ms. Schmidt** said, “because the bulk of legal work comes from client referrals.” **Earl H. Cohen**, the law firm’s chief executive officer, praised **Ms. Schmidt**’s presentation. “We all benefitted from her suggestions,” he said, “and we hope we can use them to improve and expand our legal services.”

### *Sportz Shortz*

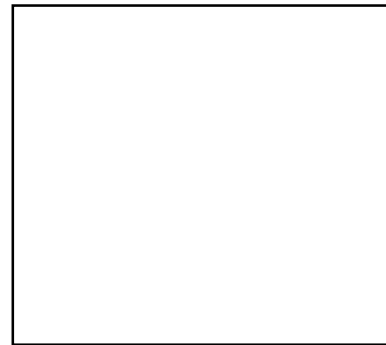


The ad lib comedians from **Comedy Sportz** presented a number of short vignettes on topics including law and business at the annual Holiday dinner of **MANSFIELD, TANICK & COHEN, P.A.** The local comedy troupe entertained law firm employees, their family members, and guests at the Golden Valley Country Club.

### *Law Firm Goes Forward With Retreat*



A pair of business consultants offered tips to members of the law firm of **MANSFIELD, TANICK & COHEN, P.A.** at the firm’s recent day-long Retreat. **Donald Klassen** (left), of Klassen Performance Group, offered suggestions on managing time commitments and priorities to members of the law firm. **Mr. Klassen**, an author and motivational speaker, made several recommendations for effective use of time. His suggestions included ways to eliminate or minimize “enemies” of efficiency and create more balance in professional and



personal activities, among other topics. He is the co-author of *Diamonds*, a highly praised book examining characteristics of successful people.

**Linda Hutchinson** (right) of **Hutchinson Associates, Inc.** guided the law firm through a series of exercises emphasizing effective communications and teamwork. **Earl H. Cohen**, chief executive officer of the firm, urged the attorneys and staff to meet the “new challenges” the firm faces in providing efficient and quality legal services “in a cost-effective manner.”

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