# The Gavel

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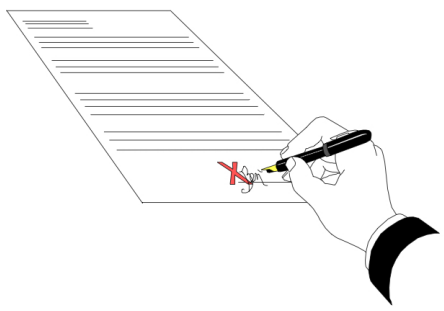
A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**
42657 Garfield, Suite 211, Clinton Township, Michigan 48038 (810) 263-5690

## The Gavel RETURNS!

Now that we have settled into our new offices, the GAVEL is back.  Included is a magnet business card, to help you remember the new office address and phone number (we've had hundreds of calls to the old number, which will be disconnected in the near future). *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

## Employment Questions



As most people know, an employer cannot be discriminatory in it's hiring practice.  However, very few realize how extensively the governing agencies look at interviewing questions (written or oral) to ensure that there is no possibility of bias.
There cannot be bias against nor questions which seek to learn an individual's **religion, race, color, national origin,**
**age, sex, height, weight, marital status, or handicap** not directly related to person's ability to perform the job.  The Michigan Civil Rights Commission advises the following types of questions are unlawful: Not just where the applicant was born, but the birth place of any relative or spouse; Not just male or female, but inquiring whether the applicant uses Mr., Miss or Mrs., and ability to reproduce; not just maiden name, but inquiring about any name change; not just national origin, but how applicant learned to read, write or speak a foreign language; and not just religious affiliation, but asking about which religious holidays the applicant observes.
Fortunately, an employer is not reduced to name, rank and serial number (e.g. can still inquire as to work and school experience), it just seems that way!

# Is the DNR all wet on Wetlands?

Most people either love or hate the Michigan Department of Natural Resources, especially when it comes to Wetlands.  They were originally created to preserve some of our country's natural environment, especially considering the important role wetlands play in the ecosystem and the dependance certain wildlife have upon such areas.  The federal Wetlands Protection Act and the Michigan Environmental Protection Act were created to achieve this goal... Which is all well and good until the DNR declares that your private property is now officially wetland (simplistic definition: land that is pretty wet), and you quickly discover that you can no longer do anything with your own land (except leave it wet).


Landowners whose property has been declared to contain wetlands have argued unsuccessfully for years that such a declaration amounts to a 'taking'; the Fifth Amendment states in part: "...nor shall private property be taken for public use, without just compensation."  However, in 1992, the U.S. Supreme Court declared in Lucas v S.C. Costal Council that a regulatory action (designating wetlands) amounts to a taking that requires compensation when the regulation denies all economically beneficial or productive use of the land.
In a recent Michigan case, a Waterford Township landowner successfully argued that being denied a building permit for a restaurant (because property designated wetlands) amounted to a taking ... and was awarded over $5 Million in compensation! K & K Const v DNR.

A cautionary note: these wetlands taking cases are long, difficult, costly and still hard to prove.

# Watch who you're speaking around!

In some fashion, the following has been the law in Michigan since at least 1897: "Any person who shall use any indecent, immoral, obscene, vulgar or insulting language in the presence or hearing of any woman or child shall be guilty of a misdemeanor." MCL § 750.337.  Seems archaic? As recently as 1990, a case was reported in which a woman was prosecuted under this statute for swearing at her neighbor's children!

# CASES IN POINT:

## Sports injuries

Inherent with participation in any sport is the risk of injury.  Many of us have participated in sports during the course of our lifetime, and probably all have suffered some kind of injury, from minor ones such as a bruise or skinned knee to major ones such as a broken bone.
But what if the injury was the direct result of an actin that another participant took?  Can a plaintiff

successfully sue the other participant for some type of negligence, or is such just the risk taken when participating in a sport?
The following two cases involve **different sports, with different results.**

**[Beware tennis instructors]**
A Tennis instructor was putting six students through a routine drill when the instructor was struck in the eye by a ball hit by Karen, one of his students. That much was undisputed.

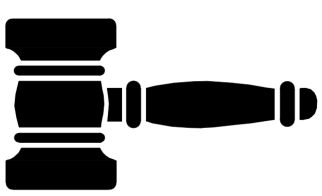
The Instructor sued Karen for her carelessness, claiming that she failed to follow the routine of lobbing the ball over the net.  Further, he claims that the drill had been performed many times by these students, and that Karen was aware of the routine.

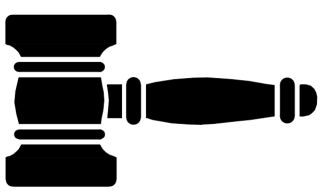
Karen disputed the instructor's claims; she contended that she and the instructor were partners in a practice foursome, and that a return went awry off her racket and struck the instructor.
The trial court agreed with Karen and dismissed the suit; However, the Michigan Court of Appeals reinstated it as there was a factual dispute between the two parties' versions of what happened, and the case could go to trial to resolve it.  The Court reasoned that if the instructor's version was true, then he might be able to substantiate his contention that while he may consent to the inherent risks of being a spectator or participant in a sport, one does not ordinarily consent to another's negligence. Coker v Cartwright.

**[Golf is safer?]**

A recent case concerning golf went the other way: no liability for injury.
A golf foursome made their second shots on the first hole.  Since defendant's ball was furthest from the hole, the rules and custom of golf dictated that he was to shoot next.  However, instead of standing behind Defendant's ball until it was struck, plaintiff drove his cart ahead and waited behind a large tree off of the green for Defendant's shot.  After several minutes had passed and still no shot, Plaintiff moved out from behind the tree, and just then Defendant's shanked shot smacked Plaintiff in the eye.  As you have guessed by now, Plaintiff sued Defendant for negligence; specifically, for failure to warn that Defendant was going to hit the ball.

Plaintiff lost on motion, and the Michigan Court of Appeals affirmed [agreed] on appeal. The Court stated that Defendant: "owed no duty to plaintiff to protect him from injuries that might result from the ordinary and ever-present risks of [golf]." The Court also cited to both common sense and the rules of golf, which require that all players remain behind the ball until struck. Schmidt v. Youngs.





# REFERRALS

If you have been pleased with the service and professionalism you have received from our office, it would be greatly appreciated if you passed the good word along. **Referrals are always appreciated and encouraged**, and we look forward to the opportunity of being of service to your associates and friends. If we can not service their needs, we will be happy to refer them to the appropriate attorney specializing in their specific area of need.

However, if you have <u>not</u> been pleased, contact us directly!

**David B. Forest, JD, MBA**
Attorney and Counselor at Law
(810) 263-5690