

BWM&S

BURKE, WARREN, MACKEY & SERRITELLA, P.C.

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BWM&S BULLETIN

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BWM&S

FIRM EXPANDS/STRENGTHENS CORPORATE, LITIGATION AND EMPLOYMENT PRACTICES

In a continued expansion of its business-focused law practice, Burke, Warren, MacKay & Serritella, P.C. is pleased to announce the addition of two shareholders: Ken Richman and Fred Mendelsohn. For many years prior to joining BWM&S in January, Ken and Fred were colleagues at the Chicago firm of Schoenberg, Fisher, Newman & Rosenberg, Ltd. where Richman served as managing partner for ten years through 2003 and Mendelsohn served as chair of its litigation practice beginning in 2001. Ken's practice is

focused on corporate and employment law matters. Fred's practice revolves around complex commercial litigation and related business matters.

"The addition of Ken Richman and Fred Mendelsohn is extremely positive for our firm and for our clients," says Jeff Warren, BWM&S Managing Partner. "Their arrival strengthens our corporate, employment law and litigation capabilities, three areas of

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PERSONAL VICTORY DRIVES CHICAGO PARK DISTRICT LEADER

One of America's greatest challenges today is the creeping problem of obesity. Weight gain does not happen overnight. Instead it occurs as the result of lifestyles consisting of too many calories and too little activity. Although the health issues associated with obesity are well known, the problem continues to mount for millions of Americans one pound and one inch at a time.

In the City of Chicago, with nearly three million people living in a northern climate, it is easy to be inactive, especially during these cold winter months when there is always something on TV. Mark Twain captured this winter inertia when he said, "Every time I feel the urge to exercise, I lie down until it goes away."

The organization most responsible for the recreation/activity side of the obesity equation for Chicago residents is the Chicago Park District (CPD). With an annual budget of \$360 million, the CPD is responsible for diverse entities including hundreds of park properties and thousands of programs. The City's ice rinks, harbors, and beaches all fall within its jurisdiction.

How is the CPD dealing with the problem of obesity? Spend a few minutes with CPD Superintendent Timothy Mitchell, and you will discover a special kind of passion for this subject created through personal experience.

Mitchell is just 40 years old and has been with CPD for only 12 months. He joined the City in 1989 as Managing Deputy Commissioner of the

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Chicago Park District helps fight "winter inertia" with facilities like this CPD outdoor skating rink.

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NEXT ISSUE:

Sarbanes-Oxley for Privately Held Companies, New BWM&S Director, a Client Profile and More...

FIRM ATTORNEYS MOONLIGHT AS ADJUNCT PROFS

This Spring, the firm's Jonathan Michael will join his colleague Stephanie Denby to co-teach an Estate Planning course at The John Marshall Law School in Chicago. The course is designed for students seeking their Juris Doctor and Masters of Law degrees.

"It is great to work with students who are interested in our area of law," says Jonathan Michael. "I am looking forward to teaming with Stephanie. It is also an honor to be appointed to the adjunct faculty at The John Marshall Law School."

The course is Tax 371, a basic estate planning course designed to introduce Illinois common law, Illinois statutes and Federal tax laws associated with estate planning. The course will provide students with a technical and practical understanding of the application of these concepts and laws. A student who completes the class should have sufficient knowledge to understand the basic groundwork of the area of estate planning.

Students in the class are a mix of full and part time students



Stephanie Denby



Jonathan Michael

seeking their J.D. They include practicing attorneys seeking their LL.M. in Taxation who are working at a law firm

and practicing in this area. Others include attorneys who are looking to expand their practice into this area.

Both Stephanie Denby and Jonathan Michael are members of the adjunct faculty at The John Marshall Law School and the Estate Planning practice at BWM&S.

For more information, please contact Stephanie Denby at 312/840-7068 or sdenby@burkelaw.com or Jonathan Michael at 312/840-7049 or jmichael@burkelaw.com **B**

LABOR & EMPLOYMENT

STARBUCKS CLASS ACTION GIVES EMPLOYERS WAKE UP CALL

This newsletter has previously reported on cases that signify the potential liabilities faced by employers who categorize employees as managers when in fact they do not have management responsibilities. Starbucks is the latest and potentially largest organization to face such charges.

A federal court in Florida recently granted conditional collective action status in a lawsuit filed by two Starbucks store managers who claim they, and others similarly situated, were improperly denied overtime pay in violation of the federal Fair Labor Standards Act (FLSA).

FLSA requires overtime pay of time-and-a-half for non-management employees working over 40 hours per week. Managers are exempt as long as they make over \$455 per week, supervise more than two employees and have input in key staffing decisions.

The plaintiffs filed affidavits of four former Starbucks managers in different parts of the country stating that their primary



Christina Yeager



Martin LaPointe

Starbucks store managers who were classified as exempt during the preceding three years.

FLSA's provisions focus on the actual duties being performed, regardless of job titles and descriptions, and whether

duties consisted of nonexempt activities such as waiting on customers, that they rarely exercised discretionary powers and that they did not regularly supervise two or more employees.

A U.S. district judge permitted the plaintiffs to give notice of the lawsuit to current and former

employees are paid a salary rather than an hourly wage. An employer's best defense is to ensure that its classification and utilization of salaried employees as exempt complies with current FLSA provisions (as well as applicable state laws).

Employers may wish to consult with employment and labor counsel and other specialists to ensure compliance. With the advice of his or her attorney, an employer can avoid the pitfalls of the FLSA altogether. Also, an employer that seeks and follows the advice of such experts will establish a "good faith" defense that will provide a shield against liquidated damages and limit any award in the event of litigation.

For more information concerning regulations governing overtime pay, contact Christina Yeager at 312/840-7050 or cyeager@burkelaw.com, Martin LaPointe at 312/840-7012 or mlapointe@burkelaw.com or your BWM&S attorney. **B**

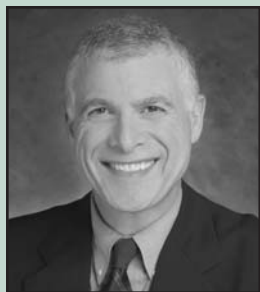
FIRM EXPANDS

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growing need among our clients.” More information about the new partners follows.

Ken Richman

Mr. Richman concentrates his practice in the areas of corporate transactions and labor law. For more than 25 years, he has served as general corporate counsel to privately held businesses including middle market manufacturers and distributors,



Ken Richman

start-up entities, and service providers; he has represented business owners and their families in a broad variety of personal and business

planning matters. Mr. Richman’s experience encompasses all types of commercial transactions and organizational, governance, succession planning, and creditor issues.

His labor practice includes representation of management in union organizing, bargaining, arbitration, mediation, strategic planning, and employment practices. Additionally, Mr. Richman has a consulting practice that assists company leadership teams in the implementation of complex change and other management initiatives.

Mr. Richman is a graduate of the University of Wisconsin Law School. From 1973-1975, he worked for the Federal Trade Commission. From 1975 to 2004, Mr. Richman worked for the firm of Schoenberg, Fisher, Newman & Rosenberg. He was the firm’s managing partner from 1993 to 2003. He is a member of the Illinois Bar Association.

Ken Richman can be reached at 312/840-7002 or krichman@burkelaw.com.

Fred Mendelsohn

Prior to joining the firm, Fred Mendelsohn was a partner at Schoenberg, Fisher, Newman

& Rosenberg, Ltd, where he practiced for 15 years. Prior to private practice, Fred served as an Assistant State’s Attorney in the Financial and Government Fraud Task Force of the Cook County State’s Attorney’s Office in Chicago.

Mendelsohn focuses his practice in complex commercial litigation and dispute resolution; labor and employment law; market channel matters involving dealers, distributors and sales representatives; and the general representation of middle market business. His wide range of experience includes complex commercial litigation matters, from shareholder and other business ownership and governance disputes to complex patent and international customs litigation, anti-trust cases, and professional malpractice litigation. Mendelsohn regularly represents clients in matters involving financial transactions, intellectual property matters, including the protection and enforcement of proprietary business information, such as patents, trademarks, copyrights, and trade secrets, and the enforcement of related covenants-not-to-compete, licensing agreements and other protective agreements.

A significant portion of Mendelsohn’s practice involves labor and employment matters, and the handling of union organization efforts, including matters before the National Labor Relations Board and litigation matters relating to union



Fred Mendelsohn

organizational and decertification elections. He also handles the arbitration of disputes between management and labor interests and the negotiation and

administration of collective bargaining agreements. He regularly appears before and tries cases in courts and other forums across the country.

Mendelsohn holds a B.A. from Brandeis University, where he graduated *cum laude* in economics, and he was awarded a J.D. from Marquette University in 1986. In 1992, Mendelsohn earned an LLM in Taxation from John Marshall Law School. He is also an adjunct faculty member of the National Institute of Trial Advocacy and regularly speaks and authors on legal topics for various trade groups and magazines. Mendelsohn was admitted to the bars in both Wisconsin and Illinois in 1986, to the U.S. District Court for the Northern District of Illinois, including the Trial Bar, in 1991, and to the U.S. Court of Appeals for the Seventh Circuit, as well as other courts across the United States, on particular cases pursuant to local rules.

Fred Mendelsohn can be reached at 312/840-7004 or fmendelsohn@burkelaw.com. **B**

BURKE, WARREN, MACKAY & SERRITELLA P.C.



to host Executive Compensation Briefing

On Tuesday, March 22, business executives will be briefed on how the **American Jobs Creation Act of 2004** affects executive compensation.

Presenters include:

TERRENCE W. STEIN,

Head of BWM&S Income Tax Practice

JAMES F. RUDWALL,

CFM, VP, Rudwall/Wasserman Group/Merrill Lynch & Co.

The briefing will take place at the Chicagoland Chamber of Commerce, 330 N. Wabash in Chicago. Registration begins at 7:30 a.m. Presentation/Q&A 7:45 - 9:00 a.m.

BWM&S clients are encouraged to attend. For more information, please contact your BWM&S attorney.

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PERSONAL VICTORY

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Department of Human Services. He demonstrated skill as a leader within city government and was given increasingly responsible positions including Commissioner of the Department of General Services and Chief of Infrastructure and Operations. In 1994, Mitchell received the City's Kathy Osterman Award, its highest honor for public service. As he devoted long hours to his work, which often included weekends and evenings, a healthy lifestyle was less and less a part of Mitchell's daily routine. With each passing year, Mitchell gained weight.

Close friends and colleagues, including Chicago Mayor Richard Daley, began to engage Mitchell in conversations about his health. In 2001 when his weight reached 510 pounds on his 5'10" frame, he took action. He underwent gastric bypass surgery, which included reducing the size of his stomach, a procedure reserved for the severely obese.

10,000 Steps

"Following surgery, I attended counseling sessions offered by petite young professionals who I knew had never faced anything personally like this," said Mitchell. "I was told to take 10,000 steps a day. They might as well have said swim to Milwaukee. It seemed just as impossible to me at the time." Mitchell picked up important information from the sessions. He knew he needed to manage his diet as well as become active and that this activity needed to be measured.

Mitchell purchased a pedometer, a device used to count steps, and measured his



Tim Mitchell
CPD Superintendent

current activity: approximately 1500 daily steps. He then began to incrementally increase the number of steps taken each day. After a few months he finally reached his 10,000 step daily goal. Mitchell also locked into a daily routine of an appropriate diet and exercise, and the weight steadily came off.

"You can call it a life altering experience," says Mitchell. "A life saving experience is probably more accurate." Mitchell lost a total of 320 pounds and weighs in at a healthy 190 pounds. He maintains a rigorous daily routine by walking as much as possible and is on the treadmill 5 days a week. Sundays are his "walk-everywhere" days.

Mitchell says he is looking forward to being even more active this year than last, including getting on his bicycle. Simple activities like these would have been completely out of reach just four years ago.

Mitchell's personal experience brings a fundamentally different outlook to his position and the role in general of the Chicago Park District. "My experience is an extreme one, but I got myself in trouble with my health. Thousands of Chicago kids and adults are struggling with obesity. We need to do all we can to help others avoid this problem."

Keenly aware of the circumstances that led to his weight gain as well as what it took

to lose the weight and keep it off, Mitchell says, "Creating opportunities for residents to be more active is a core mission of CPD programming."

To find the Chicago Park District facility and programming closest to you, please visit www.chicagoparkdistrict.org.

The attorneys at Burke, Warren, MacKay & Serritella, P.C. are proud to serve the Chicago Park District including our efforts in connection with the Burnham Park Redevelopment and Soldier Field Renovation. In addition to providing services to the CPD, you will also find firm employees taking advantage of the facilities and activities made possible by the CPD. **B**

THE AMERICAN CANCER SOCIETY'S DAFFODIL DAYS

Every year, the American Cancer Society welcomes Spring with daffodils. Daffodil Days provides an opportunity for people to join in the fight against cancer while raising awareness through the "hope" delivered by the flowers. Flowers are pre-sold in February, and then delivered/picked up the third week of March, the official "Daffodil Days." The flowers are available in bunches of 10 for \$7. The Gift of Hope — a bunch of daffodils in a vase — can be delivered anonymously to cancer patients currently going through treatment for \$15.00. Dollars raised through the sales of daffodils support groundbreaking research, education, advocacy and patient services. BWM&S's Gayle Welch is managing the firm's involvement in the program. She can be contacted at 312/840-7032 or gwelch@burkelaw.com, or you may contact Jill Pavey at the American Cancer Society at 312/279-7263 or jill.pavey@cancer.org. **B**