

MACMA BULLETIN

September/October 2004
www.macmaweb.com



President: Tim Howard
The News & Record, NC
1st Vice President: Earle Woodward
The Item, Sumter, SC
2nd Vice President: Ray Bruett
Richmond Times-Dispatch, VA
Convention Secretary: Debra Morris
Durham Herald Sun, NC
Secretary/Treasurer: Carol Moseley
The Daily Herald, Roanoke Rapids, NC

-----“TO EXCHANGE IDEAS, ASSIST EACH OTHER, GET BETTER ACQUAINTED”-----

MACMA'S Third Party Session Was Held at the Raleigh News & Observer

Friday, October 22, 2004

Jennifer Davidson had this to say about the session: "...we had a total of 28 attendees including speakers! So far my training experiences with MACMA have been gratifying, but this training seminar was one of the best. Everyone brought their ideas, best practices and concerns to the table and we all as a group hashed them out. It was GREAT! I did collect email addresses from folks that would like me to email Jeff Walsh's presentation."

- "Trisha Mitchell passed out her hand-outs. She was great, very innovative ideas in Wilmington.
- Amy McSwain also welcomed folks to pick up her presentation, 'Growing Readership and Building Circulation.'
- Keith Petty opened the floor for everyone to share ideas from their market.
- Rufus Friday talked about the *News & Observer's* relationships between advertising and circulation. He touched on how your circulation department can get more involved in advertising, and vice versa.
- Jeff Walsh was able to sit back and shake his head. (HA! HA! HA!)"

"A special THANKS goes to the *News & Observer* for hosting a very nice seminar at The Cardinal Club.

A big THANKS also to: Bellatrix Systems, Prime Time Promotions, Gp Plastics and *News & Observer.*"

Circulation Ideas Service Announces Winners in Its 2004 Circulation Best Ideas Competition

Pittsford, New York, June 23, 2004 – Winners and select honorable mentions were chosen recently in the 2004 Circulation Best Ideas Contest sponsored by Circulation Idea Service and RCAnderson Associates, Inc. There were five subject categories in which participants could enter. Two complete competitions were held: one for newspapers under 40,000 circulation, and one for newspapers with 40,000 circulation and higher. The complete list of winners is as follows:

NEWSPAPERS WITH CIRCULATION UNDER 40,000:

SUBSCRIPTION ACQUISITION

WINNER: *The Telegraph* – Hudson, NH
Michael Sheehan (Circulation Director)

HONORABLE MENTION:

Eagle Times – Claremont, NH
Randy Yanick (Circulation Director)

SINGLE COPY SALES

WINNER: *The Barrie Examiner* – Barrie, ON
Ryan Huston (Cir. Sales & Promo. Manager)

HONORABLE MENTION:

Oshkosh Northwestern – Oshkosh, WI
Ryan Lenz (Single Copy Manager)

CUSTOMER SERVICE

WINNER: *The Telegraph* – Hudson, NH
Michael Sheehan (Circulation Director)

NEWSPAPERS WITH CIRCULATION 40,000 AND OVER:

SUBSCRIPTION ACQUISITION

WINNER: *The Times* – Trenton, NJ
Steve Stilwell (Circulation Manager)

RETENTION MARKETING

WINNER: *The Morning News* – Springdale, AR
David Whittlesey (Sales & Marketing Manager)

SINGLE COPY SALES

WINNER: *The Press of Atlantic City* – Pleasantville, NJ
Tracey DuFault & Louis Lambert
(Acquisition & Retention Managers)

CUSTOMER SERVICE

WINNER: *The Telegraph* – Hudson, NH
Michael Sheehan (Circulation Director)

TRANSITIONS

Betty Howard, MACMA Bulletin Editor, accepted the position as Local Retail Advertising Manager at the *News & Record*. Betty's early career and education were in advertising.

Jim Puryear, MACMA Director for 2005, has accepted the position as NAA liaison for MACMA. Jim is at the *News & Observer* in Raleigh, NC.

OPEN MACMA POSITION

Due to Betty Howard's move, there is an open paid MACMA position as Bulletin Editor. The MACMA Bulletin is published every other month. For questions, call Betty Howard at 1-800-553-6880, ext. 7104, or if interested, contact MACMA President Tim Howard at 336-885-5403, ext. 206.

FROM THE PRESIDENT: Tim Howard

Hello again to all MACMA members and vendors. I hope everyone had a nice summer. My heart goes out to the people in Florida, which suffered a record hurricane season. I am sure there have been great difficulties for some of our circulation colleagues at many of Florida's newspapers. Alabama, Georgia, South Carolina and even Richmond, Virginia suffered floods and damage. I hope everyone that has been affected can recover personally and professionally.



At this time, I am sure many of you are budgeting for 2005. Please remember, it will cost an employee around \$400.00 to attend our 2005 conference in Harrisonburg, Virginia – May 1-3, 2005. It includes lodging, registration, most meals, training, networking, and career development. One good, useable, new practice can more than cover the cost of attending the MACMA conference. More information will be forthcoming.

We just had a board meeting on October 21. We are very excited about the possibilities for our program in Harrisonburg. We are working on several new ideas for speaker presentations and group discussions. We have one speaker on board, Bob Davis from Davis and Associates. His group trains in the areas of customer service, long-term retention, and company sales focus. He has worked with newspapers (Jacksonville – *The Florida Times-Union*), and other large companies such as America Online.

I hope everyone has a great holiday season. I look forward to seeing all of you very soon. Thank you for your continued support.

Legally Speaking

by **L. Michael Zinser** MACMA General Counsel

This month we report on a very important Supreme Court decision involving the *Weingarten* Rule, an independent contractor victory in Washington state, and a new sexual harassment development involving constructive discharge.

1. *Weingarten* Rule no longer applies to non-union sector

In a 3-2 decision, the NLRB overruled the 2000 decision, which extended to unrepresented employees a right to have a co-worker present during investigatory interviews. The majority pointed out the changes in work environments requires employers to conduct various types of workplace investigations pursuant to state, federal, and local laws, especially workplace discrimination and sexual harassment, and the need for an employer to conduct these investigations in a thorough, prompt, and confidential manner.

The Board also pointed out that in a non-union workplace, co-workers do not represent the interest of the entire workforce; co-workers have beneficial status, as does a union representative, in dealing with an employer, and thus, cannot address the imbalance between the employer and the employees. The presence of a co-worker may compromise the confidentiality of a workplace investigation.

- the contract could not be terminated without cause without 30-days' notice;
- the contractor could distribute newspapers for TNT's completors.

The Board further stated:

Our re-examination of *Epilepsy Foundation* leaves us to conclude that the policy considerations supporting that decision do not warrant, particularly at this time, adherence to the holding in *Epilepsy Foundation*. In recent years, there have been many changes in the workplace environment, including ever-increasing requirements to conduct workplace investigations, as well as new security concerns raised by incidents of national workplace violence.

Our considerations of these features of the contemporary workplace leads us to conclude that an employer must be allowed to conduct its required investigations in a thorough, sensitive, and confidential manner. This can best be accomplished by permitting an employer in a non-union setting to investigate an employee without the presence of a co-worker.

Board members Liebman and Walsh (both Democratic holdovers from the Clinton administration) dissented. The dissenters stated, "Our colleagues... have overruled a sound decision not because they must, and not because they should, but because they can. ...we dissent."

2. Washington newspaper carrier is independent contractor

A newspaper carrier who struck an individual while delivering newspapers was found to be an independent contractor, not an employee of the *Tacoma News Tribune* ("TNT"), in the vicarious liability context. The Court of Appeals of Washington affirmed the trial court's grant of summary judgment on that issue to TNT.

(continued on back page)

Officers-Directors-Committees

Officers

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to All of Our
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Legally Speaking (continued from page 2)

Despite the fact that the Court of Appeals found that TNT “assigned” a territory to the contractor and leased the contractor a list of subscribers, the Court of Appeals noted that Washington uses the common-law right to control test. The Court of Appeals found that the following facts conclusively established that the newspaper carrier was an independent contractor:

- the contractor signed a contract that specifically stated that the contractor was going to be an independent contractor;
- the contract stated that the contractor had the right to use his/her own methods;
- the contractor had to provide his/her own equipment and pay his/her own expenses;
- the contractor had the right to hire helpers;
- the contractor bore the risk of loss of undelivered newspapers;
- the contractor was required to hold harmless TNT against all claims resulting from the contractor’s performance of the agreement;
- the contractor had to post a \$2,000 bond;
- the contractor’s pay consisted of the difference between the wholesale and retail price of the newspaper.

The Court of Appeals acknowledged that the parties’ contract required timely delivery of the newspaper in good condition. Also, the court acknowledged that the contractor was

required to meet the reasonable delivery requests of each subscriber. However, the court reasoned that TNT was permitted to retain the kind of controls meant merely to ensure that the contractor complied with the parties’ agreement. The court distinguished the case from earlier cases involving newspaper carriers, noting that in one previous case the carrier was paid a salary, had a duty to promote good will, was required to give personal services, and could be terminated at any time.

3. Affirmative defense in “constructive” discharge

The U.S. Supreme Court ruled that if a company-sanctioned adverse employment action (e.g. humiliating demotion or extreme cut in pay) precipitates a constructive discharge caused by supervisory sexual harassment, employers will be strictly liable. To prove constructive discharge, a plaintiff must prove more than a hostile working environment (harassing behavior sufficiently severe or pervasive to alter the conditions of their employment), and establish “that the abusive working environment became so intolerable, that her resignation qualified as a fitting response.” The Court referred to it as “‘worse case’ harassment scenario, harassment ratcheted up to the breaking point.”

If no employer-sanctioned adverse employment action precipitates the constructive discharge, the employer may defend against a constructive discharge by showing “both (1) that it had installed a readily accessible and effective policy for reporting and resolving complaints of sexual harassment, and (2) that the plaintiff unreasonably failed to avail herself of that employer-provided preventative or remedial apparatus.”