

Melissa Klimpel,  
ACP, Editor

# SUMMONS

*Official Publication of*

**WESTERN DAKOTA ASSOCIATION OF LEGAL ASSISTANTS**

*An Association for Paralegals/Legal Assistants*

[www.wdala.org](http://www.wdala.org)

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## PRESIDENT'S MESSAGE

**By Shari L. Erdman, CP**



**Shari L. Erdman, CP**

As I sit in my office trying to decide what to write about, I am struck by the fact that I have waited to the last minute to work on my article and I am not happy with myself. I don't think of myself as a procrastinator as I actually enjoy tackling the tough projects first. I feel that lately time is just getting away from me and there are just not enough hours in the day to accomplish everything. However, I don't care to work MORE hours!

Pity party aside, we had a wonderful fall seminar and annual meeting in September. Leigh again outdid herself on the lineup of speakers and her presentation at the registration desk was fabulous! And the Board was excited to give out the WDALA pins to its members. I have to admit I was extremely nervous to conduct the annual meeting for the first time. I think it went well - I don't remember much - but I believe we got everything taken care of. Thank you to all that were able to attend.

We are getting extremely close to unveiling a new and exciting website as well as updating our WDALA bro-

chure information. It is truly an exciting time for us! I know Leigh is already busy working on the spring seminar as well as a teleseminar in October. I, too, am working on a teleseminar to be held in January.

I am honored to be your WDALA president for another year. I would like to extend my sincere appreciation to those outgoing board and committee members for all their work on behalf of WDALA. I welcome the new board and committee members as well as those new to WDALA. A special thanks to Corrina, our new treasurer, for all she went through to simply change over the WDALA checking account. It even entailed holding a special Executive Committee meeting to fulfill the bank's requirements and I believe Corrina also had to sign over her youngest child! It took a ridicu-

**PRESIDENT’S MESSAGE continued**

lous amount of time and work on her part. Corrina, you are a saint and possess much more patience than I!

We have lost our two newest members from the Dickinson region. When asked, one of the prior members mentioned that the seminars were not covering areas of law that benefitted her. Please know that we have always been, and continue to be, open to suggestions for any topics and

would greatly appreciate your input.

I have to give a shout out to Tera and Cherlyn in Stanley for taking over the position of Region I Director for the next year – thank you! I am hoping by the time my next article is due, I will have obtained or be close to obtaining my ACP designation.

Again, thank you for allowing me to be your President. It’s an honor and a privilege and I am so

proud to be a part of this group.

I hope everyone gets outside and enjoys this fall weather – it is beautiful! Finally, as I write this article it is October, which is breast cancer awareness month. Please be sure you are having yearly mammograms and doing regular self-checks. (God bless you, Kim :)

**CALENDAR OF EVENTS**

December 1, 2013	Application Filing Deadline for January CLA/CP Exam Window
January 24, 2014	Deadline to submit <i>Summons</i> articles
January 1-31, 2014	CLA/CP Exam Testing Window
April 1, 2014	Application Filing Deadline for May CLA/CP Exam Window
April 25, 2014	WDALA’s Spring Seminar, Sleep Inn, Minot
May 1-31, 2014	CLA/CP Exam Testing Window
July 23-25, 2014	NALA Convention, Charleston, SC
August 1, 2014	Application Filing Deadline for September CLA/CP Exam Window
September 1-30, 2014	CLA/CP Exam Testing Window



# Welcome Our New Members



**Charlene Smith, CP**

**Rosanna Smith** – picture and bio will be published in the February issue of the *Summons*. Rosanna is employed with the Nehring Law Office in Williston.

**Charlene Smith, CP.** I began working for Larson Latham Huettl law firm in December 2011. I primarily work on Family Law cases although I do work with some Personal Injury and other miscellaneous cases. I graduated from Minot State University with a degree in History Education. My recent experience prior to joining Larson Latham Huettl includes serving four years as a paralegal in the United States Army at Fort Richardson, Alaska. I recently obtained my Certified Paralegal Credential in July 2013. My ultimate goal is to obtain my ACP in Family Law.

I have two adult children. In my free time, I enjoys volunteering at the State Archives, reading, traveling, spending time with her family and friends and playing with my dog.



**Alice Johnson, CLA**

**Alice M. Johnson, CLA (formerly Alice M. Schafer).** I started working as a paralegal in 1982 and my CLA status obtained in 1990. I was a member of WDALA from 1984 to 2004 and am very please to be back!

Work history: Phase I ~ Rosenberg, Evans, Moench & Baird - Bismarck, ND as a paralegal for Dale Moench then continued as Dale's paralegal and office manager at Evans & Moench until 1992. The type of work I did for REMB and E&M was personal injury litigation, corporate law, banking law, and general litigation.

Phase II ~ I worked for Tom Tuntland in Mandan, ND as a paralegal from approx. 1992 until 2003. I did domestic litigation (including paternity, child support, and custody as well as divorce work) and criminal defense work.

Phase III ~ I started with the State of North Dakota in 2003, working very briefly for the Department of Public Instruction before I was hired as a paralegal for the Attorney General's Office. My particular position is technically split between two of our agencie's divisions - State and Local Government, and Civil Litigation.

Personal: I live with my husband/best friend/soul mate of 10 years out in the middle of God's country! We live 15 miles SW of Mandan with our 3 cats, 3 dogs, and 3 horses. Between the two of us we have a 22 year old son who lives in Minneapolis, MN, a 24 year old son who lives with his girlfriend and their soon-to-be one year old daughter in Mandan, and a 25 year old daughter who lives with her husband in Bismarck.

I am a 1st degree blackbelt in Kumdo (Korean Sword), a 4th degree blackbelt - Master - in TaeKwonDo, and an avid gun rights proponent. In my spare time, I love to ride horse, read, babysit my granddaughter, bake, travel, do yoga, hunt deer and pheasant, and sit in the hot tub at night staring at the stars and listen to the coyotes sing.

WESTERN DAKOTA ASSOCIATION OF LEGAL ASSISTANTS 2013-2014

OFFICERS/EXECUTIVE COMMITTEE

President..... Shari Erdman, CP  
 First Vice President..... Leigh Johnson  
 Second Vice President .....Afton Basden, CP  
 Secretary ..... Nilla Fry  
 Treasurer .....Corrina Pfaff  
 Parliamentarian.....Laurie Guenther, ACP  
 NALA Liaison ..... Jen Defoe, ACP

BOARD OF DIRECTORS

Region I..... Tera Skaar, CLA and Cherlyn Biber, CLA  
 Region II.....Mary Sue Knutson, CLA  
 Region III .....Charlene Smith, CP  
 Region IV .....

COMMITTEES

Education .....Leigh Johnson (Chair); Corrina Pfaff; Melissa Hamilton, ACP;  
 Traci Hilsabeck, ACP; and Candace Schafer, CLA  
 Membership .....Afton Basden, CP  
 Finance/Budget .....Corrina Pfaff  
 CLA Chairman ..... Jen Defoe, ACP  
 Nominations/Elections ..... Melissa Hamilton, ACP  
 Auditing ..... Donna Seright; Lorelee Clay; and Afton Basden, CP  
 Legal Assistant Day .....Jen Defoe, ACP and Melissa Hamilton, ACP  
 Ethics/Professional Development..... Vicki Kunz, ACP  
 Summons ..... Melissa Klimpel, ACP  
 Library ..... Melissa Hamilton, ACP  
 State Bar/NDTLA Liaison ..... Bonnie Harris  
 Historian .....Laurie Guenther, ACP  
 Student Liaison ..... Vicki Kunz, ACP  
 Website.....Charlene Smith, CP; Jen Defoe, ACP;  
 Melissa Hamilton, ACP; and Terri Atkins  
 30th Anniversary Committee..... Shari Erdman, CP; Leigh Johnson; Afton Basden, CP;  
 Laurie Guenther, ACP; Melissa Klimpel, ACP;  
 Melissa Hamilton, ACP; and Vicki Kunz, ACP



**Leigh Johnson**

*“Our Spring Seminar is scheduled for April 25, 2014 and will be held at the Sleep Inn, Minot.”*

## **FIRST VICE PRESIDENT’S REPORT**

**By Leigh Johnson**

**Fall Seminar Summary:** The Fall Seminar was held at the Radisson Hotel in Bismarck on September 11 & 12, 2013. WDALA’s Fall Seminar had a successful turnout with 29 people attending the two-day seminar. WDALA earned \$2,663.18 from the seminar. I consider this seminar a success. Our knowledgeable speakers and generous sponsors played a major role in that success, as well as the members (and two non-members) who took time out of their busy schedules to join!

**Speakers:** We were very grateful to have speakers from various fields in the legal system at the seminar, including Michael Williams, Esq.; Duane A. Lillehaug, Esq.; Robin Rosendahl; Susan H. Wagner, LSW; Rebecca Quinn, MSW; BCI Special Agent Steve Harstad; Honorable Bruce Romanick; Lisa Dynneson, Esq.; and Charles DeMakis, Esq.

**Sponsors:** I also want to recognize the outpouring of support we received from sponsors who support WDALA by donating money, food and beverages, and/or speakers for our events. They include our Corporate Sponsor: Crowley | Fleck PLLP. Corporate Donors: Smith Bakke Porsborg Schweigert & Armstrong;

Storslee Law Firm, PC; and Chapman Law Office. We were also fortunate to have W.T. Butcher & Associates as a Corporate Exhibitor. The Corporate Breaks were sponsored by Maring Williams Law Office; Emineth & Associates; and Larson Latham Huettl Attorneys. In addition, we received a door prize donation to Starbucks from Emineth & Associates and pens donated by Thomson Reuters Westlaw.

**Fall Luncheon Webinar:** WDALA’s Fall Luncheon Webinar will be held October 30, 2013 at 12:00 PM. Our guest speaker is Kay Halvorson, Esq. Kay is a Westlaw Academic Account Manager and the title of her presentation is “Westlaw in the Transactional and Litigation Setting.”

**Spring Seminar:** Our Spring Seminar is scheduled for April 25, 2014 and will be held at the Sleep Inn, Minot. So far Judge David Nelson has agreed to present at the seminar. I appreciate the topic suggestions that I received at the Fall Seminar from those in attendance. For those of you unable to attend the Fall Seminar, please feel free to email me your suggestions for topics or speakers at [ljohnson@bkmpc.com](mailto:ljohnson@bkmpc.com).



**Afton Basden, CP**

**SECOND VICE PRESIDENT’S REPORT**

**By Afton Basden, CP**

Thank you for electing me as your WDALA Second Vice President for the 2013-2014 year. I look forward to serving WDALA in this capacity.

There are currently 43 members (down from 45 in July). An updated roster is attached. I did attempt to contact the two members who did not renew, to find out if there was something we could have done differently to retain them as members, but I did not receive any helpful information.

Membership dues were due and payable September 1, 2013. We welcome renewals at any time, but as they are past the due date they would presently be assessed a \$10.00 additional fee for reinstatement.

If there are any questions, please feel free to drop me an e-mail message at [abasden@srt.com](mailto:abasden@srt.com).

*Happy Birthday to the following WDALA members:*

Linda Hagen, CLA	November 27
Mitzi Sundheim	December 3
Mary Kay Duchsherer, CLA	December 9
Bonnie Harris	December 15
Becky Hillerud	December 19
Susan Wolf, ACP	December 21
Shari Erdman, CP	December 22
Corrina Pfaff	January 12



**Jen Defoe, ACP**

*“Having recently obtained my advanced certification, I strongly encourage anyone who has even contemplated doing so, to GO FOR IT!”*

## **NALA LIAISON’S REPORT**

**By Jen Defoe, ACP**

With the change of the season comes changes to WDALA’s Board of Directors. I am honored and excited to have been elected the NALA Liaison for 2013-2014. The support and guidance former officers lend to new officers within WDALA continues to impress me. I look forward to this new position and the challenges and opportunities that accompany it.

There is no better way to gain confidence and recognition than to continue to further your education and credentials. We all know that as paralegals in a growing and ever-changing profession, we need to be familiar with changes that occur constantly in this profession and educating ourselves is imperative to our careers. Advancement opportunities are at our fingertips with the educational opportunities and exams offered by NALA. Having recently obtained my advanced certification, I strongly encourage anyone who has even contemplated doing so, to GO FOR IT! NALA and our local group are the best tools you can be given to make your dreams come true in the paralegal world.

The NALA Certifying Board has updated the Certification section of the NALA website extensively. Information recently posted for Certified Paralegals includes:

- Recertification requirements and procedures;
- Revocation of the CP for failure to meet CLE requirements and appeal procedures;
- Rules for complaints against certified paralegals; and
- Appeals of disciplinary procedures.

NALA has recently announced the Advanced Paralegal Certification Board will soon be releasing a new course for those working with business ethics. The Advanced Certification Course on Non-corporate Entities presents essential concepts related to the historical development, governing law, formation, operation, taxation, and advantages and disadvantages of non-corporate business entities. The course is organized into ten modules, as follows:

- Introduction and sole proprietorships;
- General partnerships;
- Limited partnerships based on the Uniform Limited Partnership Act of 1985;
- Limited liability companies;
- Limited liability partnerships;

**NALA LIAISON’S REPORT continued**

- Limited partnerships based on the Uniform Limited Partnership Act of 2001;
- Other noncorporate entities;
- Special issues;
- Taxation; and
- Comparison and selection of business forms.

The course is one of two Advanced Paralegal Certification courses for paralegals working with corporations and business organizations. This course is expected to be available by November 1.

NALA Campus Live! continues to offer a wide variety of courses - most of which provide up to two hours of credit toward maintenance of the CP credential. For a detailed listing and additional information, please visit: [www.nala.org](http://www.nala.org).

The NALA 39<sup>th</sup> Annual Convention, Institutes & Exhibition will be held July 23-25, 2014 in Charleston,

SC. I can tell you if you haven’t attended a convention but have interest in doing so, you will be amazed at what you take away! The NALA convention leaves you feeling more confident than ever about our profession; refreshed and exhausted J; and will inspire you to be the best you can be and also, will give you the desire to inspire others. You will meet so many intelligent, hard-working, and kind paralegals and other professionals and will leave with unlimited resources that come in handy in a pinch.

Finally, the Certified Paralegal examination dates are listed below.

Please feel free to contact me with any questions or concerns you might have. I am also available for motivation if anyone needs that little push to make the decision to test to become certified or for advanced certification. :)

Examination Date	Application Filing Deadline**	Late Application Filing Deadline (With \$25 late filing fee)
2014	2013/2014	
January 1-31	December 1, 2013	December 10, 2013
May 1-31	April 1, 2014	April 10, 2014
September 1-30	August 1, 2014	August 10, 2014



**Corrina Pfaff**

## **TREASURER'S REPORT**

**By Corrina Pfaff**

The treasury balance for the Western Dakota Association of Legal Assistants as of September 23, 2013 is \$12,808.18. Hope everyone has a spectacular fall.



**Mary Sue Knutson,  
CLA**

## **REGION II REPORT**

**By Mary Sue Knutson, CLA**

Region II is gearing up for the new year. We began our monthly luncheons and networking in October. I would like to say that we are looking forward to it; however, with that comes the cold weather and short days.



**Charlene Smith, CP**

## **REGION III REPORT**

**By Charlene Smith, CP**

Region III had 20 members present at the Fall Seminar. In October we resumed our monthly luncheons, signaling the end of summer. At our first luncheon, we had six members present.

I am really excited to be the new Region III director and I am looking forward to a great year for our region. In the words of Zig Ziglar, "You don't have to be great to start but you have to start to be great." Let's have a GREAT year!

## *WDALA's Fall Seminar*



Michael J. Williams, Esq.

*"Navigating the Maze of North Dakota Auto Insurance"*



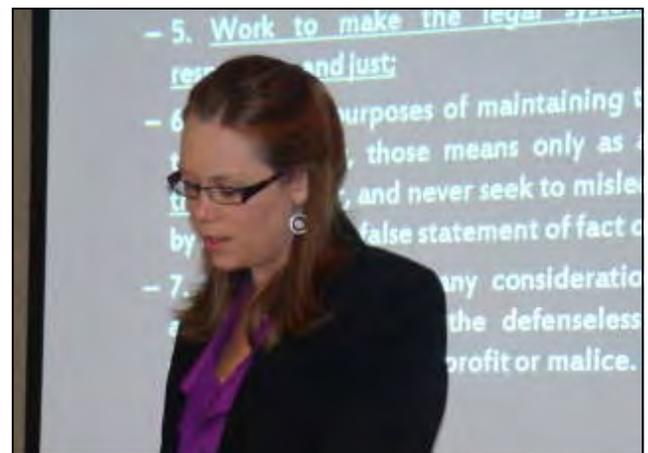
Duane A. Lillehaug, Esq.

*"Navigating the Maze of North Dakota Auto Insurance"*



Honorable Bruce Romanick

*"Ready for Trial? A Judge's Point of View . . ."*



Lisa M. Dynneson, Esq.

*"Ethics: A Daily Dilemma in the Practice of Law"*

## *WDALA's Fall Seminar*



Rebecca Quinn, MSW

*"The Intersection of Traumatic Brain Injury and the Justice System"*



Robin Rosendahl

*"The Intersection of Traumatic Brain Injury and the Justice System"*



Susan H. Wagner, LSW

*"The Intersection of Traumatic Brain Injury and the Justice System"*



Charles G. DeMakis, Esq.

*"Abandoned Minerals and Common Oil and Gas Title Issues in North Dakota"*

## *WDALA's Fall Seminar*



Leigh Johnson, WDALA First Vice President

2013-2014 – WDALA's Executive Committee and Board of Directors: Charlene Smith, CP – Region III Director; Tera Skaar, CLA and Cherlyn Biwer, CLA – Region I Directors; Jen Defoe, ACP – NALA Liaison; Corrina Pfaff – Treasurer; Nilla Fry – Secretary; Afton Basden, CP – Second Vice President; Leigh Johnson – First Vice President; and Shari Erdman, CP – President (not pictured: Laurie Guenther, ACP – Parliamentarian; and Mary Sue Knutson, CLA – Region II Director).



**Richard P. Olson,  
Esq.**

## **WHAT YOU DON'T KNOW CAN HURT YOU**

**By Richard P. Olson, Esq.**

The current oil boom is good for business and the population in the surrounding area has exploded. Unfortunately, with an increased population comes more problems, and more problem makers. Probably gone for good are the days when job applicants at your business were born and raised in the Minot area, or a small town somewhere in North Dakota. You no longer know someone who knows your applicant, and you may be opening yourself up for liability if you do not do a background check when one should be done.

### **Negligent hiring.**

North Dakota recognizes the tort of “negligent hiring,”<sup>1</sup> a legal theory under which employers can be held responsible for injuries caused by their employees if it can be shown that they failed to make reasonable inquiries into the employee's background and suitability for the job or position. Across the country, most negligent hiring lawsuits claim that the employer failed to conduct appropriate background checks such as reference checks and investigation for criminal records and other information that would have revealed the employee's past wrongdoing. Under this theory, the employer's failure to conduct a background check indicates that the employer was negligent for putting someone with criminal or otherwise dangerous inclinations in a position where he or she could pose a threat to others. An em-

ployer may be found liable for negligent hiring when an employee causes harm to a customer or member of the general public -- whether or not the employee is acting within the scope of his or her job duties. With job applicants coming to North Dakota from all over the country, it is prudent, in appropriate cases, to do a background check to screen out risky applicants, especially those who will or may have contact with customers or patients (especially minors or the vulnerable). As a start, employers need to understand what negligent hiring and retention is, what sort of responsibilities employers have to create safe working environments through employee hiring, and what actions are necessary to reduce the risk of liability and loss.

### **Background check.**

When an employer conducts a background search on an applicant entirely “in-house” using only the employer's staff, background check laws generally do not apply. *However*, when an employer uses an outside entity for a fee to obtain a criminal background check or to otherwise obtain a background report or investigate an applicant's background for employment purposes, the employer must comply with background check laws, including Fair Credit Reporting Act (“FCRA”)<sup>2</sup> and any applicable state law.<sup>3</sup> The FCRA establishes a number of legal requirements for obtaining a background report from a reporting

agency, including notice, consent, and various procedural steps that must be followed before acting on background check information to withdraw a job offer.<sup>4</sup> Additionally, although the legal landscape of online searches is still developing, it is most likely that an employer who pays an outside company or uses a fee-based online service to obtain online background information on an applicant must comply with FCRA and any applicable state background check laws. While background checks arise most often in the hiring context, employers sometimes pay outside entities to obtain criminal background information about or to otherwise investigate a current employee. In these situations, FCRA and state background check laws may still apply. Without a doubt, employers walk a tightrope because they may use background checks to screen candidates only insofar as the results relate to safety concerns or other demands of the job or are required by law. In fact, the Equal Employment Opportunity Commission (EEOC) considers it a violation of Title VII of the Civil Rights Act to reject an applicant based solely on an arrest record and cautions employers to consider such information on a case-by-case basis.<sup>5</sup>

Obviously, there are no fail-safe rules to help an employer identify a potentially dangerous employee, but an employer with a reasonable and consistently fol-

lowed pre-employment background checking process can greatly reduce its exposure to negligent hiring claims. A good system should have at least the following elements:

1. The scope of the pre-employment background check should reflect the specifics of the job sought. For example, if the position involves access to people's homes or property, or sensitive information, the employer may be wise to conduct a criminal records check.<sup>6</sup> A prudent employer should consider a more comprehensive background checks when hiring for positions of special trust, such as counselors, care givers, security personnel, etc.

2. If the position involves driving a vehicle, motor vehicle department checks should be conducted.

3. On the other hand, if the position requires little contact with the public or customers, and does *not* involve sensitive information, a rigorous background check is probably not necessary.

4. Review the employment application. During the interview process, ask the applicant to explain any gaps in employment, or between education and employment. Obviously, there is nothing wrong with a time not working in and of itself - but the lack of a reasonable explanation could signal the need for further investigation.

5. Conduct reference checks. Almost all employers ask for references, but many don't bother to check them. Verify all employment and educational claims.

6. Document the checks conducted. Document all reference and background checks in the company's file, including attempts to contact references who did not respond.

7. Be consistent. Even the most thoughtfully conceived procedures will not protect the employer that fails to use them consistently. Even in the face of pressure to fill a position as quickly as possible, do not cut corners if the position requires someone with a "clean" background.

Under the theory of negligent hiring, even though the employer may not have actually known of the risk presented by the employee, an employer will be held liable if it should have known about the risk. Employers found negligent in the hiring process have been subject to substantial financial penalties, which can include both actual and punitive damages. Generally, a background check should be done after the offer is made and *before* employment starts.

Finally, don't think an employer's duty ends after it receives a clean background check. A background check may save you from negligent-hiring liability, but if supervisors allow employees to run wild, the business could still face liability for negli-

gent supervision (which is a whole separate issue). Employees must know that violating company policy, especially when it comes to violence or violent behavior WILL NOT BE TOLERATED. Let them know that if an employee shows any signs of violent tendencies, a meeting with a superior should be scheduled. If there are any acts of aggression towards co-workers, clients and/or customers and the employee will be terminated and the authorities will be contacted. By developing this “zero tolerance” policy, employees might extinguish the problem before it becomes disastrous; employees should have a solid definition of what constitutes workplace violence and aggression. It's critical to train employees continually, remind them of the complaint process if they have issues with fellow employees, and follow up immediately on complaints. That won't prevent all employee misdeeds, but it will give you a solid defense against negligent hiring (and negligent supervision) claims. Tight supervision helps to keep liability away.<sup>7</sup>

1 There are at least three cases in North Dakota addressing an employer's negligence for hiring, supervising, or retaining an employee or independent contractor: *Richard v. Washburn Pub. Sch.*, 2011 ND 240, 809 N.W.2d 288 (N.D. 2011), *Nelson v. Gillette*, 1997 ND 207, 571 N.W.2d 332 (N.D. 1997), and *McLean v. Kirby Co.*, 490 N.W.2d 229 (N.D. 1992).

Nelson and McLean dealt with an em-

ployer's liability to a third person that was not also an employee. In *McLean*, the plaintiff was the employer's customer; in *Nelson*, the plaintiff was the employer's patient; in *Richard*, the plaintiff was a fellow employee.

2 The FCRA isn't just a “credit check” for debt - it covers any background report, such as driving records and criminal records obtained from a “consumer reporting agency.”

3 In the interview itself, do not ask “Have you ever been arrested?” An arrest does not mean that someone has actually committed a crime. Instead, ask “Have you ever been convicted of a felony?” See North Dakota Department of Labor publication “Employment Applications and Interviews”, located at <http://www.nd.gov/labor/publications/docs/employment.pdf>.

4 Generally, if you run background checks using a reporting agency, the FCRA requires you to 1) Obtain a release – have applicants or employees give their written approval before any investigation begins. The release should be separate from the rest of the application to make sure applicants understand they're consenting to a background check; 2) Notify if the rejection is caused by a background report. If you use information in background checks to reject applicants or terminate employees, you must notify applicants in writing or electronically. Also, give them copies of their reports and an FCRA consumer disclosure summary. (The agency conducting the investigation should give you a copy.); 3) Explain the right to challenge the report. You must also tell applicants or employees who conducted the investigation, how to obtain a copy of the report, and that they can challenge the report's accuracy. If an applicant doesn't give permission to do the check, you are not obligated to hire him or her without it.

5 There are many peripheral issues that are beyond the scope of this article and

any business that conducts or intends to conduct background checks is urged to consult qualified legal counsel to determine procedures. For example, in 2012, the EEOC issued guidance on employers' use of criminal history information to exclude individuals from employment. See [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm). Because persons of color are arrested and convicted at disproportionate rates, excluding individuals from employment based on a criminal record can be unlawful race discrimination under Title VII of the Civil Rights Act of 1964. To be lawful under Title VII, an employment exclusion must be based on proven criminal conduct and must be job-related and consistent with business necessity. In light of the EEOC's new guidance, employers should tread carefully and consult with legal counsel before excluding someone from employment based on criminal history information, including information found online.

6 A vacuum cleaner manufacturer was found liable for \$45,000 because one of its distributors hired a door-to-door salesperson with a criminal record who attached a female customer in her home. The victim let the salesman into her apartment to demonstrate a Kirby vacuum cleaner. The salesman also brought with him a set of knives, provided by the distributor, as a “door opener” or “gift offering” for allowing the in-home demonstration. After beginning the demonstration, he used the knives in assaulting and raping McLean. During the year before his employment, the salesman was convicted of two assault charges and two weapons charges in Minnesota, and a Minnesota charge of criminal sexual conduct in the third degree was pending when he was hired. The North Dakota Supreme Court found that there was evidence of a foreseeable risk of harm to the manufacturer's customers from dealers whose backgrounds were not investigated for fitness to enter customers' homes. In

plain English, the manufacturer should have required its distributors to conduct pre-hiring screening of door-to-door salespersons to avoid hiring persons with criminal histories. McLean v. Kirby Co., 490 N.W.2d 229 (N.D. 1992)

In April 2013 a Texas TGI Friday's was sued for negligence based on an employee's attack on a customer. The restaurant hired a waiter who was a registered sex offender, and the plaintiff alleged the restaurant created an environment where the 17-year-old was attacked just days before her senior prom. The girl entered into the TGI Friday's looking to use the phone. Instead, she walked into an afterhours employees party. According to the lawsuit, manager was there, drunk. A waiter at the restaurant offered the girl his phone, lured her into a bathroom, and raped her while the girl's friend heard the entire attack on the other end of the call. The waiter was a registered sex offender. The complaint alleges that TGI Friday's either did not check him out, or if they did they ignored it. Jane Doe v. TGI Friday's, Inc., Harris County Texas.

Beverly, a 55-year-old mentally retarded woman with the mental capacity of a six- to eight- year-old child, was raped by bud driver employee of the defendant bus company. Mujahid Nasiruddin, a convicted felon just out of prison, was hired without any criminal background check or former employer reference check, even though these were requirements of the bus company's hiring policy. His background included convictions over a 10-year period for conspiracy to commit robbery, felony robbery, possession of marijuana, reckless driving, and concealment of a firearm. A jury found that bus company's negligence caused the rape and then awarded Beverly \$3 million in compensatory damages. "Beverly" by Doe v. Diamond Transp. Servs., Inc., 1999 U.S. App. LEXIS 11136 (4th Cir. Va. June 1, 1999).

A nursing home was found liable for

\$235,000 for the negligent hiring of an unlicensed nurse with numerous prior criminal convictions who assaulted an 80-year-old visitor. Velma came to the nursing home at 5:30 a.m. to visit her older brother - it was her habit to come at all hours, though she had been told to restrict her visits to visiting hours. On that morning, an unlicensed, 36-year-old, 6'4" male nurse employee attempted to prevent her from visiting. She testified that he was greatly agitated and yelled out that she had been told not to come before 9:00 a.m. Upon his approach, she threw up her hands but was hit on the chin. He slapped her down and followed her to the floor, pinning her there with his knee upon her chest, thereby injuring her. Deerings West Nursing Center, Div. of Hillhaven Corp. v. Scott, 787 S.W.2d 494 (Tex. App. El Paso 1990).

A furniture company was found liable for \$2.5 million for negligent hiring and retention of a deliveryman who brutally savagely attacked a woman customer in her home, leaving her with permanent scarring and disfigurement, loss of one eye, and partial paralysis in both hands. Prior to being employed by the furniture company, the employee had worked as a laborer on construction projects for a company owned in part by a managing agent of Tallahassee Furniture, and he had performed odd jobs and yard work for the managers of Tallahassee Furniture. Because of this, he was hired to work part-time for Tallahassee Furniture; after about three months, he was hired to work full-time as a furniture deliveryman. Although this job required deliveries to customers' homes on a daily basis, no job interview was conducted, no references were requested, and he was not asked to complete a job application form. Tallahassee Furniture Co. v. Harrison, 583 So. 2d 744 (Fla. Dist. Ct. App. 1st Dist. 1991).

7 This article is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with

respect to any particular question, issue or problem. This article does not create an attorney-client relationship between Olson & Burns P.C. and the reader.

*Richard P. Olson was born in Minot, North Dakota. He engages in general commercial practice regularly representing more than 40 North Dakota banks and other financial institutions in litigation, bankruptcy, transactional, and regulatory matters.*

*Education: 1971 Concordia College (B.A., cum laude); 1974 University of Minnesota (J.D.).*

*Career Highlights: 1974 Admitted to Bar, State of North Dakota; 1982 U.S. Claims Court; 1984 U.S. Court of Appeals, Eighth Circuit; Ward County (President 1977-1978); Northwestern (President 1979-1981); America Bar Association (Member, Sections on Business Law and Economics of Law Practice); State Bar Association of North Dakota (Member, Board of Governors, 1979-1981); Local Bankruptcy Rules Committee (Chairman, 1991-1996); Federal Practice Committee (1989 - present (Chairman, 1992-1996)); Eighth Circuit Practices Committee (present); American Bankruptcy Institute; Conference on Consumer Finance Law; Listed in The Best Lawyers in American (1987 to 2013 editions) in the areas of corporate law, business litigation, and bankruptcy; Listed in 2009 Chambers USA "America's Leading Business Lawyers" selected as the only North Dakota State Individual in Corporate/Commercial Bankruptcy. (2003 - present); Selected Great Plains Super Lawyer since 2007; Defense Research Institute; International Association of Defense Counsel; Chief Editor Community Banker's Advisor (Bimonthly legal publication of Independent Bank of North Dakota since 1993); North Dakota State Counsel - Harland Financial Solutions Network (since inception - 1978); and Achieved top ranking by Chambers USA 2010-2013 in the areas of Bankruptcy/Restructuring and Corporate/Commercial.*



**Carol K. Larson,  
Esq.**

## **2013 GIFT AND ESTATE TAX EXPLAINED**

**By Carol K. Larson, Esq.**

There is some confusion about the effect on estate planning caused by the tax law passed by the senate on New Year's Eve, and the House one day later. Mostly what congress did is make permanent the system that has been in effect for the past two years.

Under the "old law" the tax-free amount would have reverted to \$1 million per person, and the estate tax rate would have increased to 55% for assets which exceeded \$1 million. Under the "new law" an individual can still leave \$5.25 million of property free of estate tax, with an estate tax rate of 40% for those estates which exceed \$5.25 million.

Here are questions and answers on the federal estate and gift tax after the fiscal cliff deal.

Who has to pay federal estate tax? An individual can leave \$5.25 million in assets free of estate tax. If your estate is more than \$5.25 million, you will pay estate tax on the excess, unless you are married.

Does my spouse have to pay estate taxes when they inherit from each other? No. There is an unlimited marital deduction from estate and gift

tax. The tax due, if any, will be due when the second spouse dies. The inheriting spouse must be a US citizen to benefit from the marital deduction.

How much can the second spouse pass tax-free? \$5.25 million. If the estate of the first to die filed a federal estate tax return (even if there was no estate tax to pay) the surviving spouse can use the unused exclusion of the spouse who died added to their own. This enables them to transfer up to \$10.5 million tax-free. This is called "portability". (Also, if the first spouse to die created a special kind of trust for their property, up to \$5.25 million, this would transfer free of estate tax as well.)

Portability is not automatic. The executor must file an estate tax return when the first spouse dies even if there is no tax due. This return is due nine months after the first spouse dies, with a six-month extension allowed. If the executor doesn't file the return or misses the deadline, the spouse loses the right to portability and their estate will pay tax if the estate exceeds \$5.25 million.

What about lifetime gifts? You can make either lifetime gifts or gifts at death, totaling \$5.25 million. For example, if you have made a lifetime gift of \$1 million, the unused exclusion when you die will be \$4.25 million, rather than \$5.25 million.

Are there gifts that don't count? Yes. An individual can give another person \$14,000 per year without it counting against the lifetime exemption. Married people can combine their gifts for a total of \$28,000 per gift per

person. There is no limit to the number of people you can give annual exclusion gifts to. For example, a married couple can give \$28,000 to each of their six children, and each of their 16 grandchildren, for a total gift of \$616,000, and it will not count against their lifetime exclusion. These annual exclusion gifts can be made every year. This is one good way to save estate taxes, by making gifts each year to your family and thereby reduce the size of your estate.

*Carol K. Larson is a partner in the law firm of Pringle & Herigstad, P.C., in Minot, North Dakota. She graduated from the University of North Dakota School of Law in 1986 and joined Pringle & Herigstad at that time. She has a wide range of experience in estate planning, probate, family and cooperative law. She resides in Minot with her husband, Tom. Carol and Tom have three children.*

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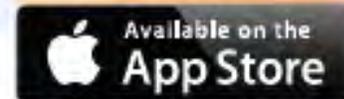


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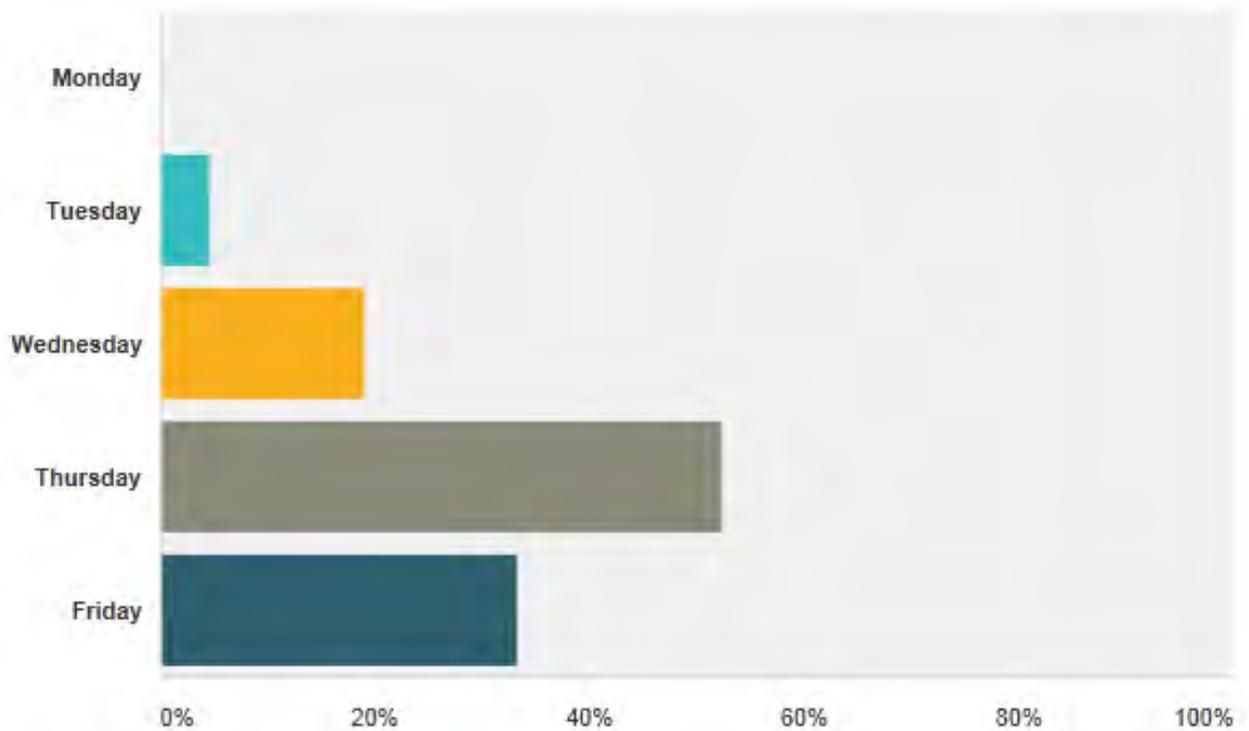
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### WDALA's Survey Results

For the Spring Seminar held in Minot, which day of the week would you prefer?

Answered: 21 Skipped: 1

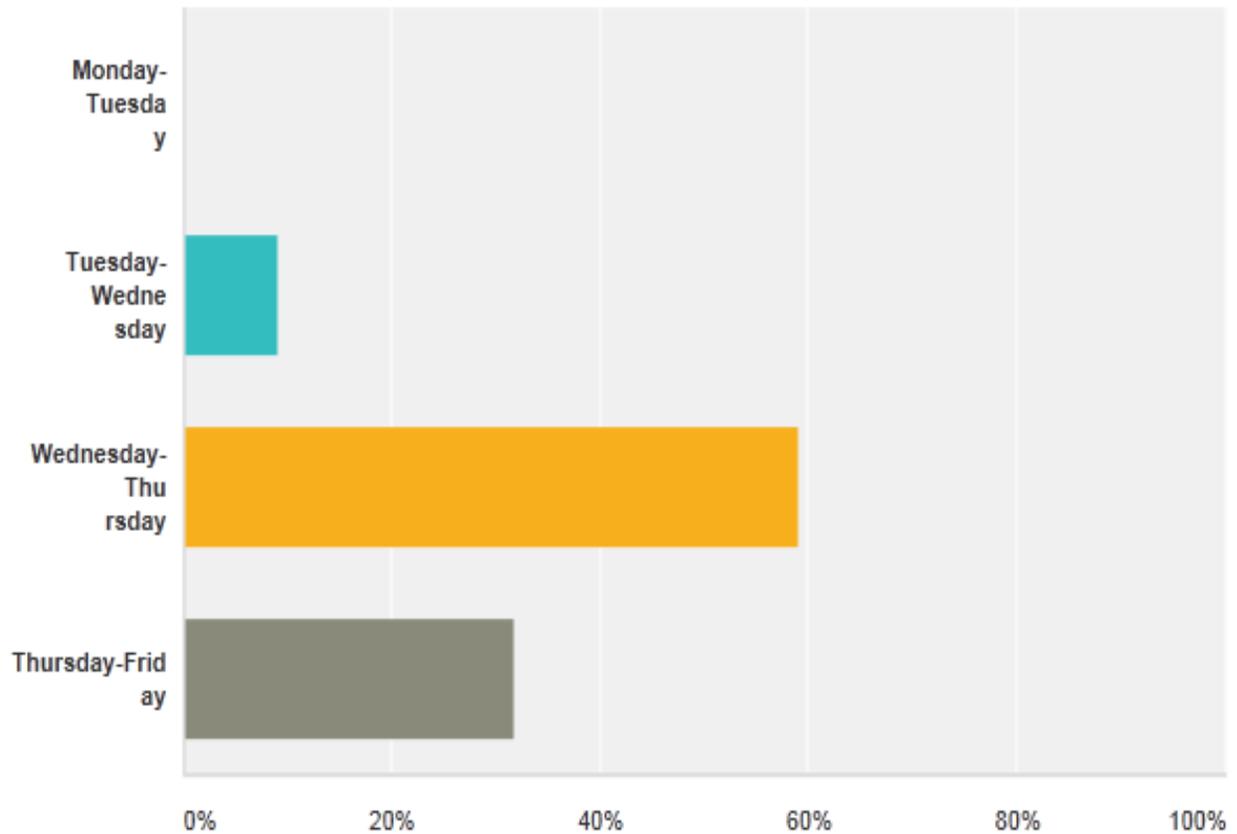


Answer Choices	Responses
Monday	0% 0
Tuesday	4.76% 1
Wednesday	19.05% 4
Thursday	52.38% 11
Friday	33.33% 7

Total Respondents: 21

### For the Fall Seminar held in Bismarck, which days of the week would you prefer?

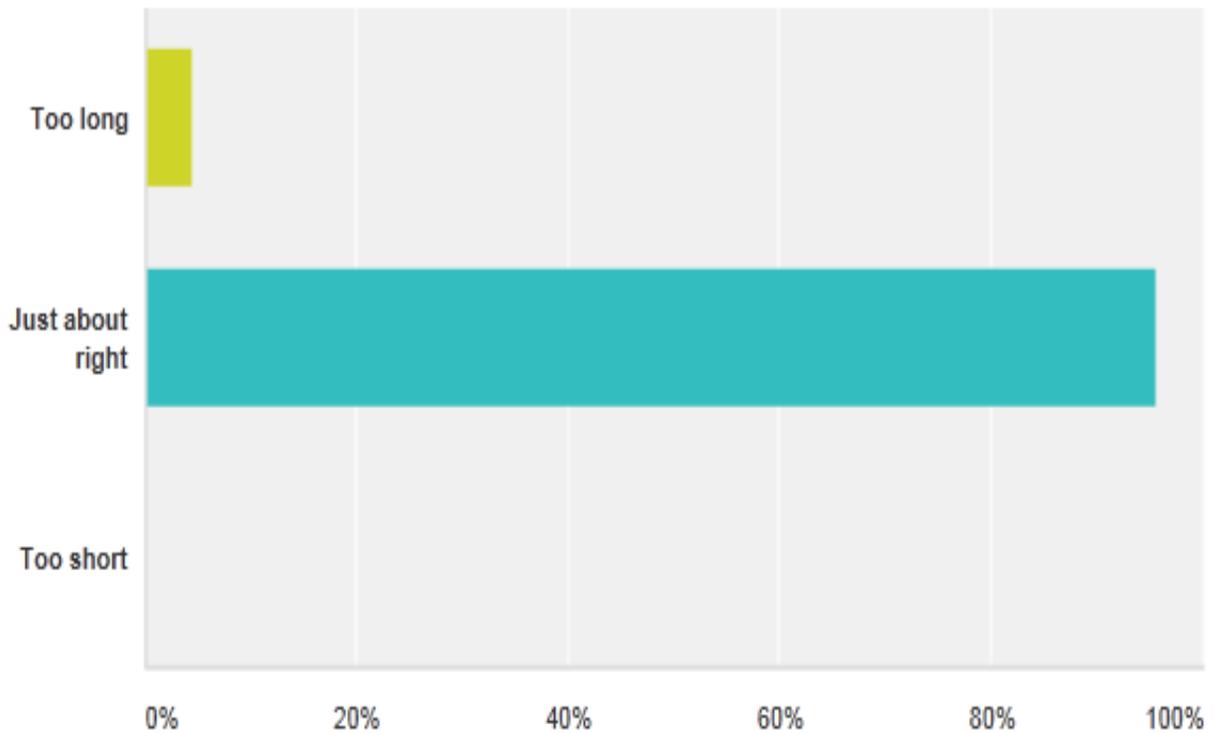
Answered: 22 Skipped: 0



Answer Choices	Responses
Monday-Tuesday	0% 0
Tuesday-Wednesday	9.09% 2
Wednesday-Thursday	59.09% 13
Thursday-Friday	31.82% 7
Total	22

### Do you feel the length of conference sessions are too long, just about right, or too short?

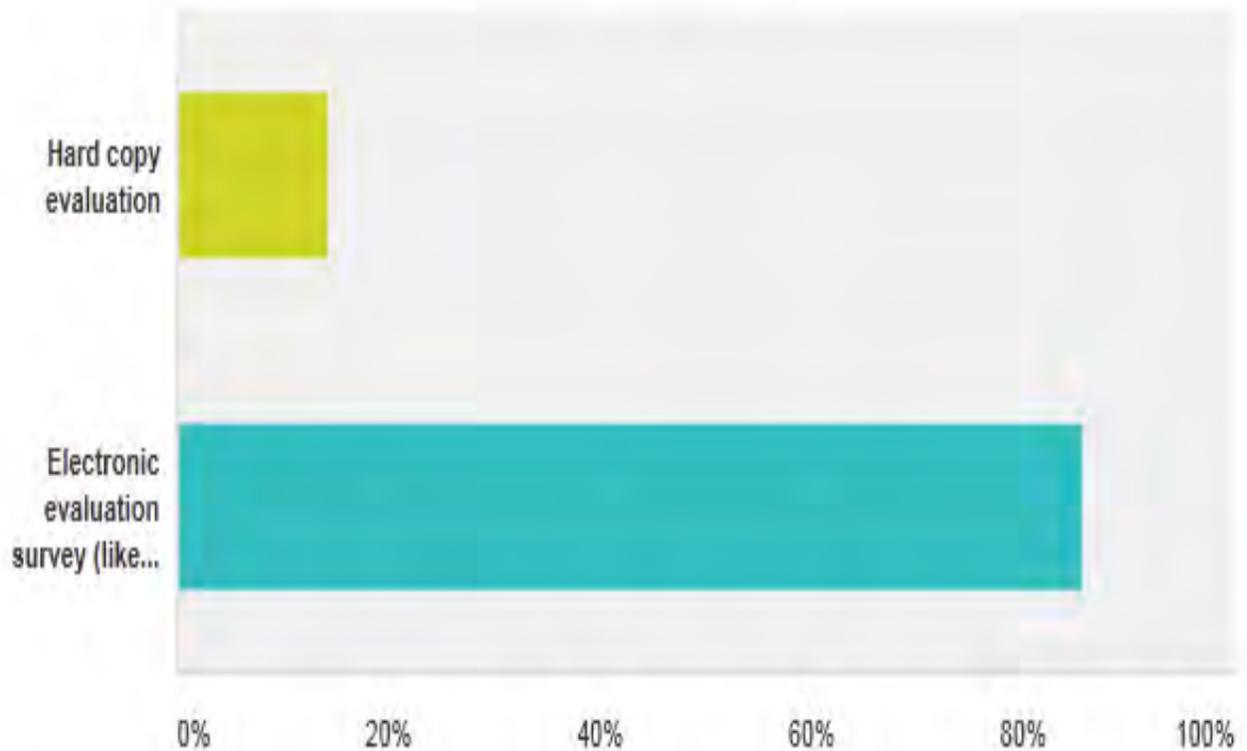
Answered: 22 Skipped: 0



Answer Choices	Responses
Too long	4.55% 1
Just about right	95.45% 21
Too short	0% 0
Total	22

## Which would you prefer in order to complete the seminar evaluation:

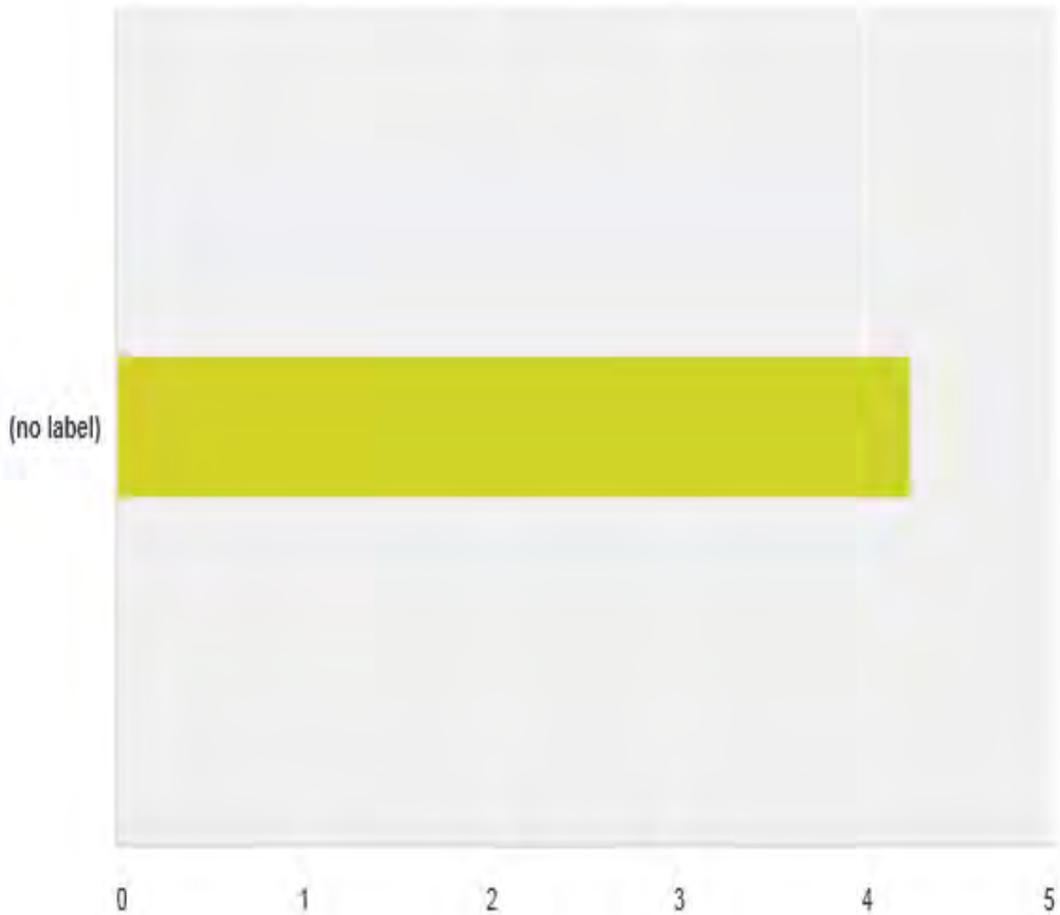
Answered: 21 Skipped: 1



Answer Choices	Responses
Hard copy evaluation	14.29% 3
Electronic evaluation survey (like this one)	85.71% 18
Total	21

## How necessary are door prizes?

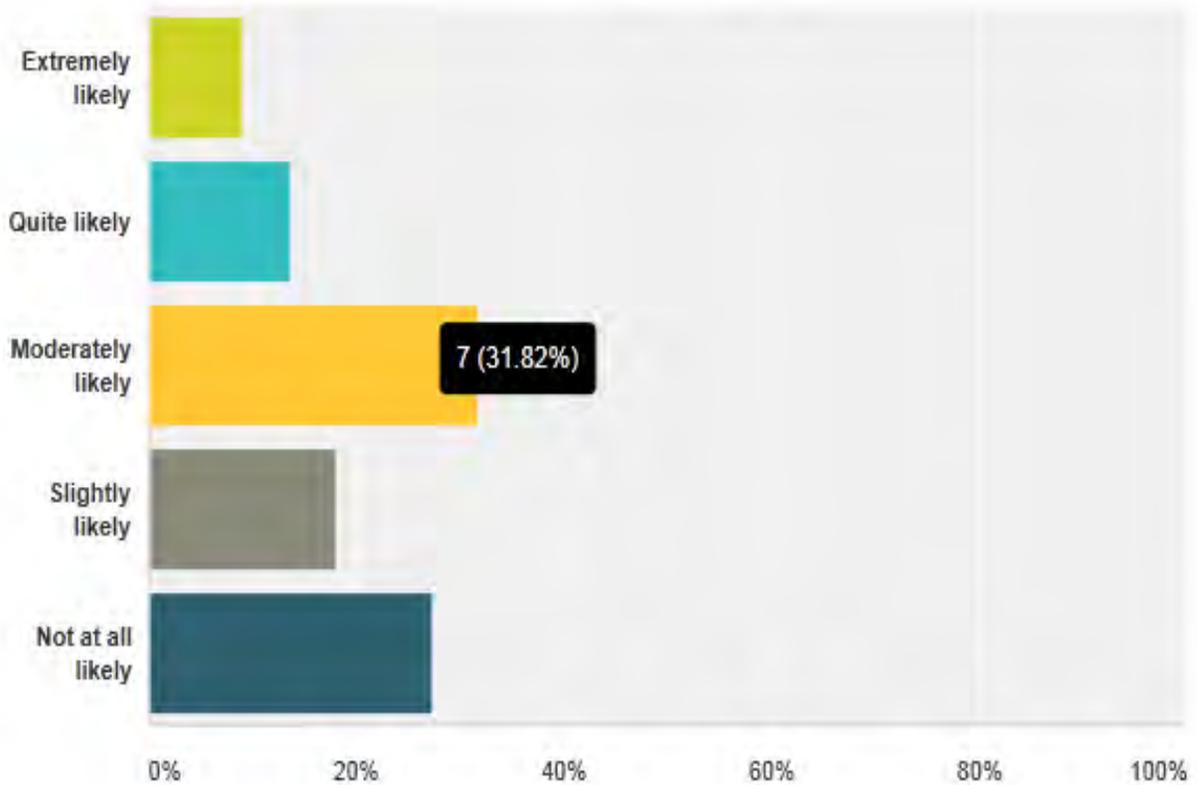
Answered: 22 Skipped: 0



	Extremely necessary	Quite necessary	Moderately necessary	Slightly necessary	Not at all necessary	Total	Average Rating
(no label)	0% 0	4.55% 1	22.73% 5	18.18% 4	54.55% 12	22	4.23

### How likely are you willing to pay \$80-\$100 for a 90 minute webinar in order to earn CLE credits?

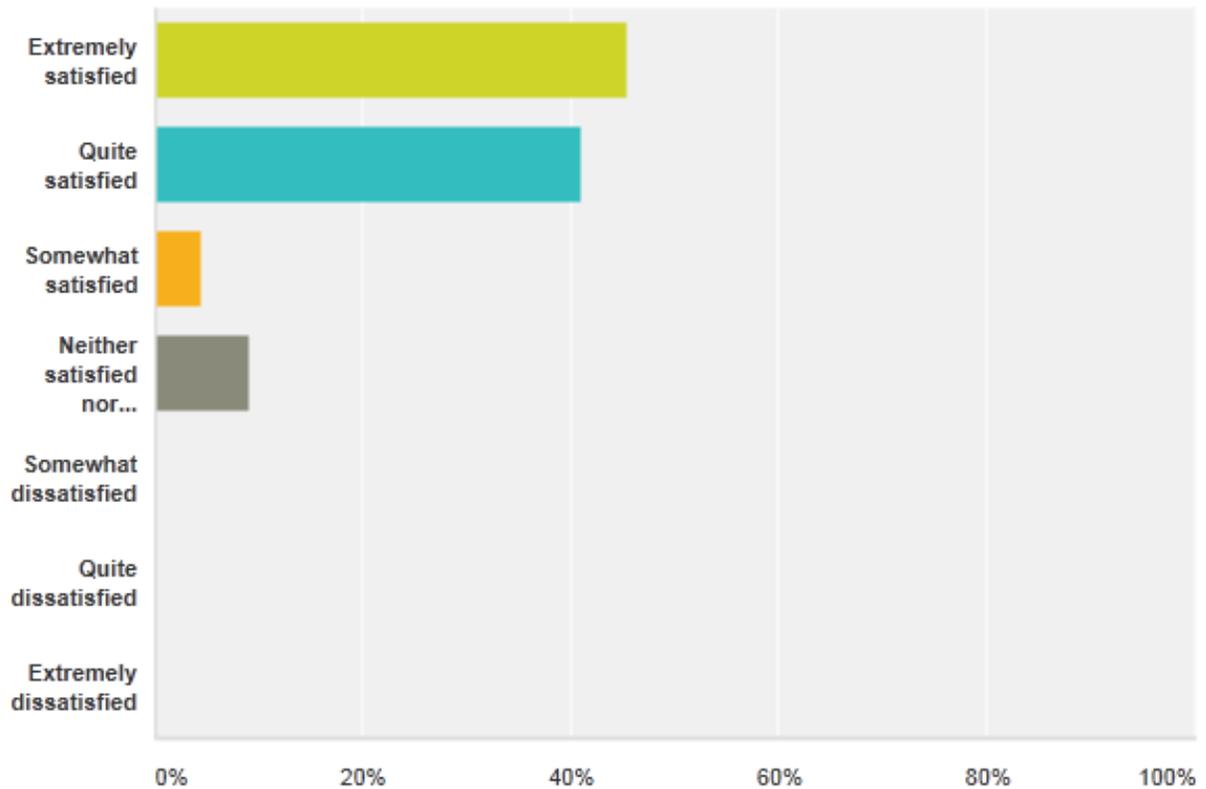
Answered: 22 Skipped: 0



Answer Choices	Responses
Extremely likely	9.09% 2
Quite likely	13.64% 3
Moderately likely	31.82% 7
Slightly likely	18.18% 4
Not at all likely	27.27% 6
Total	22

### Overall, are you satisfied, dissatisfied, or neither satisfied nor dissatisfied with WDALA?

Answered: 22 Skipped: 0



Answer Choices	Responses
Extremely satisfied	45.45% 10
Quite satisfied	40.91% 9
Somewhat satisfied	4.55% 1
Neither satisfied nor dissatisfied	9.09% 2
Somewhat dissatisfied	0% 0
Quite dissatisfied	0% 0
Extremely dissatisfied	0% 0
<b>Total</b>	<b>22</b>