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CBA RECORD

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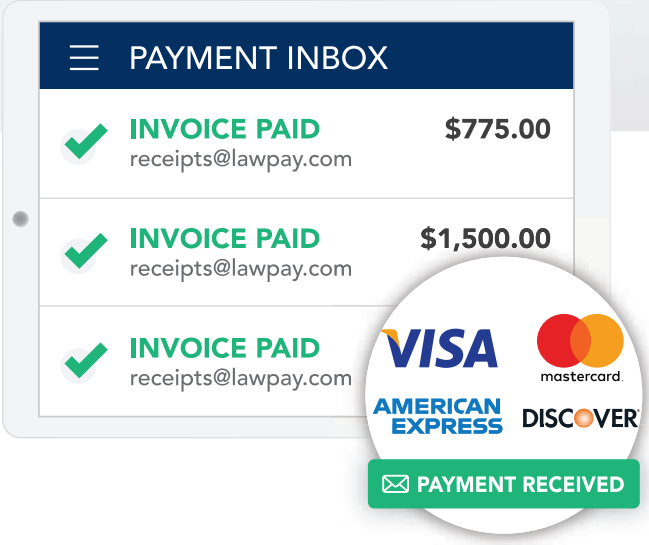

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Clifford Law Offices, an accredited CLE provider in Illinois, is sponsoring the FREE webcast:

"The Path to Lawyer Well being" & "Conscious Inclusion"

Illinois Professional Responsibility CLE Requirements

Illinois professional responsibility CLE requirements have changed. Illinois attorneys are required to complete a minimum of one hour of Diversity/Inclusion training and one hour of Mental Health/Substance Abuse training during each two-year reporting period. These new requirements are now part of the six hours of total Professional Responsibility CLE required for attorneys during each reporting period. This two-hour program HAS BEEN APPROVED fortwo hours of professional responsibility credit: specifically, one hour of Mental Health/Substance Abuse and one hour of Diversity/Inclusion.

Date: Thursday, February 21, 2019
Time: 2:30-4:30 pm CST
Place: The 2019 program is available via webcast broadcast live from the DePaul Center, Room 8005, One East Jackson Boulevard, Chicago, IL

Registration is required to attend the free program.
For registration info, please go to cliffordlawcle.com. For questions, please call Clifford Law offices at (312) 756-7575 or email programs@CliffordLaw.com.

The Path to Lawyer Well Being (2:30 - 3:30 pm)

Too many in our profession are too exhausted, too impaired or too disengaged to develop into their best selves. Many find themselves in a profession drained of civility and compassion and plagued by chronic stress, poor self-care, and high rates of depression and alcohol problems. The result is that the legal profession may not be living up to its full potential as an institution in which attorneys can thrive, best serve their clients and contribute to a better society. Further, recent research demonstrates that lawyers are far more likely to suffer from substance use and mental health disorders compared to other professions and the public as a whole. This program discusses practical steps that can be taken by lawyers, law firms, bar associations, judges, legal educators and regulatory counsel to shift the legal culture from one that can be self- destructive to one that focuses on well being.

Conscious Inclusion (3:30 - 4:30 pm)

Implicit bias occurs in every aspect of the law – from the courtroom to the law firm to legal non-profit organizations. It is a daily challenge to consciously include those who deserve to be part of the picture. The Illinois Supreme Court IPI Civil Jury Committee promulgated a new instruction for civil jury trials in Illinois on implicit bias in May, 2018, recognizing that we "all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called implicit biases or 'unconscious biases.'" Our speakers will discuss a "how-to" in these various areas and how diversity can be meaningful. Hypotheticals will be discussed as well as ways to reduce implicit bias and how diversity and inclusion can become part of one's everyday life.

Robert A. Clifford, Moderator
Founder and Senior Partner, Clifford Law Offices

Speakers:

Robin Belleau
Executive Director, Lawyers' Assistance Program (LAP)

James Faught
Associate Dean, Loyola University School of Law, and Chicago Bar Association, Future of the Profession Chair, Law Student and New Lawyer Committee, LAP Board Member

Hon. E. Kenneth Wright, Jr.
Cook County Circuit Court, Presiding Judge, Municipal Division, and Chair, Illinois State Bar Association Special Committee on Health andWellness

Tracy L. Kepler
Director, Center for Professional Responsibility, American Bar Association

Karen Munoz
Lawyer, Certified Yoga Instructor, LAP Illinois Task Force onWell Being and CBA Member of Mindfulness & the Law Committee

Speakers:

Hon. Thomas More Donnelly
Cook County Circuit Court, and Chair, Illinois Judicial College Board of Trustees, the Illinois Supreme Court's educational arm

Cunyon Gordon
Senior Counsel and Director, Settlement Assistance Program, Chicago Lawyers' Committee for Civil Rights

Josie M. Gough
Assistant Dean for Inclusion, Diversity and Equity, Loyola University School of Law

Allison Wood
Principal of Legal Ethics Consulting, P.C., Former Hearing Board Chair and former Litigation Counsel with the ARDC

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CBA RECORD

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On the Cover

This month's **CBA Record** cover artist, Caroline Eui-Kyung Kim, is a third-year law student at The John Marshall Law School, and a law student member of the CBA.

EDITOR'S BRIEFCASE

BY JUSTICE MICHAEL B. HYMAN, EDITOR-IN-CHIEF

The Art of Optimism

It's said that a life that touches others goes on forever.

The life of CBA member Arthur S. "Butch" Gold deeply touched mine and many more during his 77 years. Art died in October after a short illness. I write about Art because he was that rare individual whose very presence enriched the world for those around him. Because his passion for life and humanity shone through whatever he did. And because his personality radiated genuine warmth that uplifted all who came into his sphere.

Art loved the CBA, and hardly missed a major event. Among his leadership roles, Art served on the Board of Managers, as co-chair of the 2006 commemoration of the 60th anniversary of the Nuremberg War Trials, and as one of the chairs of the CBA's Human Rights Committee in its inaugural years.

To know Art was to never, ever, forget him. He embraced life fully, deeply, and completely, with a mix of adventure, fun, hopefulness, confidence, and a smile–always, a smile. A relentless and skillful advocate, Art maintained the highest ethical standards, and turned many an opposing lawyer into a friend.

Indefatigable Spirit

Here's a glimpse of Art's indefatigable spirit. A few years ago, I was sitting with Art at a table along the perimeter of Captain Morgan's outside of Wrigley Field. A father and his young son happened by. Art stopped the boy to admire his glove and ball. After small talk, Art asked if the boy knew who Art was. No, replied the boy. "Well, I used to play ball. A long time ago. I was pretty good too," Art responded. "Want my autograph?" The boy immediately thrust the ball to Art. As the boy and his father walked away, I asked Art whose name he had signed. "My name, of course." But, Art, I said, you didn't play professional ball. That kid thinks he has a ball signed by some hero of yesteryear. "I didn't say I played for the Cubs" smiled Art. "Besides, I made the kid happy and he now has an authentic Gold ball."

Art practiced law (and lived) undaunted by the obstacles that life presents, most likely due to an innate, cheery, and fearless optimism that nothing could shake or dim. Art's characteristic optimism knew no limits. He expected to win every motion, every case, and every appeal; but when he didn't, he never showed bitterness or regret, nor did he sulk or hang his head or blame others for his fate. Befittingly, a sign in Art's office read, "Persistence and determination alone are omnipotent."

Art's effervescent outlook included his beloved Cubs. He truly expected the Cubs always would come out victorious. A loss meant a momentary setback; they'd win next time.

Not much rankled Art, except injustice, inequity, and incompetence, for which he had no tolerance.

Four years ago Art fought a nasty cancer with all that he had. He wouldn't let it affect his attitude. At the time he wrote, "Being confronted with the 'C' word can be a frightening, anxiety-producing episode in one's life. It need not be." Throughout his treatment, he stayed upbeat and seemingly unfazed, letting every dark cloud pass without a care because he felt certain that in time, it would. He beat cancer.

A couple of weeks before he died, his family e-mailed a picture of Art, sitting in his hospital bed, wires and tubes running everywhere, with Art, wearing a big grin while giving the thumbs up sign.

Art was a master at optimism, and he instilled within me his infectious brand of optimism. And why not? For Art understood what too many of us fail to grasp: optimism is far more powerful than despair, far more healthy than anger, far more constructive than fear, and far more productive than unhappiness. ■

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PRESIDENT'S PAGE

BY STEVEN M. ELROD

Collegiality and The Bar

Collegiality is one of the "Three C" goals on which I have been focusing this year–the other two being Civic Education and Civility. For me and for many of our colleagues, collegiality underpins the practice of law. It enhances productivity, builds professional and personal relationships, and leads to friendships that last a lifetime. In many ways, it defines who we are and how we are perceived by our fellow lawyers, our clients, our friends, and by the world outside of the legal profession. Although collegiality is often taken for granted, many of us know all too well that there is a growing lack of collegiality in the profession. The practice of law requires constant attention to every facet of representation, and collegiality is especially important in our everyday conduct and interaction with others.

When the Chicago Bar Association was organized in 1874, the following purposes were enumerated in its constitution:

- To maintain the honor and dignity of the profession of the law; and
- To cultivate social intercourse among its members.

I'm especially proud that collegiality has and continues to be a hallmark of member participation in our Association. This is evident throughout the year and is reflected in the extraordinary level of services that members provide to the legal profession, to our community, and in all of our social programs and numerous YLS-sponsored events and receptions. Good things happen when lawyers come together, and nowhere does that statement ring more true than with the CBA's many programs and services.

Collegiality, the relationship that we have with our colleagues, is based on mutual acceptance of a common purpose, respect for the abilities of others, and shared responsibility for creating a productive work environment. Although a number of factors determine one's success or failure, collegiality is essential to sustain us in our work regardless of whether we are working in private practice, government, the corporate sector, or in service to the legal profession or to the community. It is the cornerstone of professional work and is indeed the X-factor that determines not just our success but the success of our enterprise.

For lawyers, bar associations are the perfect vehicle to provide their most useful service to the law, the administration of justice, and the public. Collegiality, spawned from knowledge and friendships among professionals, is essential to the success of every CBA-sponsored program and activity.

My goal this year is to enhance our membership experience through the provision of substantive and recreational activities that increase our interaction with each other. We have a magnificent headquarters building on Plymouth Court. With the help of our Member Services Committee, we are examining ways in which the use of our building can be expanded by members during and after business hours for both social and business purposes. Stay tuned for new, innovative uses of the CBA Headquarters.

The CBA's 95 general bar committees and 27 young lawyer committees provide our members an outstanding opportunity to interact with other lawyers who share a multitude of practice interests. Committee participation is the lifeblood of our Association, and more than 6,500 members serve on one or more CBA committees. Most CBA committee meetings feature substantive speaker presentations that qualify for MCLE credit. Significantly, there is no additional charge or fee for membership on Chicago Bar Association committees, and for participation in and attendance at any and all CBA committee meetings.

With our enhanced technology and state-of-the-art web broadcast system, the CBA has made committee participation extremely easy. All CBA Committee meetings are live-streamed over our website so that members can observe and even interact in committee presentations and discussions directly from their laptop or desk at their office or home. Thousands of our members take advantage of our web streaming every week, and of our library of recorded committee meetings. Indeed, my fear is that we may have things too easy! Remote and virtual participation in committee meetings tend to prevent the synergy and good will that is created with direct, in-person contact. In the spirit of promoting collegiality, but still providing the convenience and efficiencies of webcasting, I have requested all Committee Chairs to make at least one meeting each year (preferably the first meeting of the year) an all hands on deck, in person meeting, while allowing web-streaming for all others. My hope is that this will create a healthy balance between these two legitimate, but sometimes competing interests.

The opportunities for our members to engage with each other at the CBA and enhance their professional and personal lives are almost endless. Through the committee structure, members can (1) build a better body of laws by reviewing non-sponsored legislation and drafting new legislation to improve state and federal law; (2) propose amendments to Circuit, Appellate and Supreme Court Rules; (3) assist in planning, and speak at, general and specialized Continuing Legal Education seminars; (4) volunteer to mentor new members, law students, at-risk children in the Juvenile Court, or to serve as a tutor/mentor through the Lawyers Lend-A-Hand to Youth Program; (5) participate in the Association's Lawyer Referral Program and help provide low-cost and pro bono legal services to the public; (6) participate in community education and community service programs, such as our Restorative Justice Training Programs in Chicago schools; and (7) participate in our Leadership Institute that provides leadership

SOLO/SMALL FIRM RESOURCES

The CBA has a free resource portal for solo small firm members. Access archived programs on firm marketing, start up tips, legal software demos, client development and more. Go to www.chicagobar.org or call 312/554-2070.

training and opportunities for rising stars at Chicago law firms. Further, for members with theatrical or musical talent, there are opportunities to get involved in on stage-performance and entertainment committees such the Bar Show, the CBA's Barrister Big Band, the CBA Symphony Orchestra, and the CBA Chorus.

This year, I am working on programs to expand beyond the traditional CBA forms and methods of gathering together, which will include attorney wellness programs and attorney team-building exercises and programs. Look for more to come on these innovations!

I leave you with a comment from Steve Platt, a longtime member and friend who has been active in the Association and the CBA Bar Show for many years. Following the final performance of the 2018 Bar Show this December, Steve made the following observation about the benefit of participating as a cast member in, and as an audience member of, the Bar Show:

"The show is a living, breathing embodiment of our Association. It is like flying our flag. It is who we are. It is what unites us as an organization and gives us pride in belonging. It reminds us of the good we do together and the good we aspire to, both as individuals and as a group. It encourages collegiality and self-deprecating humor that is all too often lacking in the practice of law."

Let's find ways to interact more, engage better, and spend time together in 2019 at the Bar Association. Best Wishes for a happy and collegial New Year! ■

Intersection of Disability Rights & Human Trafficking

Tuesday, January 29, 3:00 5:00 pm • MCLE Credit: 2 IL MCLE Credits

Presented By: *Human Trafficking Committee*

This seminar will discuss how individuals with disability may be vulnerable to human trafficking, how victims of human trafficking may develop disabilities as a result of their exploitation, and how to use disabilities rights law to serve this population. Our distinguished panelists will discuss how to leverage multi-disciplinary partnerships and various stakeholders to protect victims and seek various forms of relief.

Speakers include: Lydia Sharp, Representative Payee Monitor, Equip for Equality;Jae Jin Pak, Illinois Self Advocacy Alliance, University of Illinois at Chicago; and Moderator Catherine N. Longkumer, Legal Aid Society of Metropolitan Family Services; Vice-Chair, CBA Human Trafficking Committee. Reserve your space at www.chicagobar.org.

NOT JUST YOUR **GO-TO** NURSING HOME **LAWYERS**

This summer, we set the record for a jury verdict under the Illinois Nursing Home Care Act when we achieved a $4.1 million result for our client, surpassing the previous record set by our firm in 2006 of $2.9 million. Although we are proud of these results and our reputation in handling nursing home cases, our results in other serious injury, accident, and medical malpractice matters should not be overlooked.

We routinely obtain substantial results in medical malpractice matters and other personal injury matters. Recently we achieved a $9 million-dollar medical malpractice birth injury settlement. We have also set the Illinois record for the largest Jones Act settlement of $7.5 million for an injured boat worker.

OTHER NOTABLE RESULTS:

- **$17.7 Million Medical Malpractice/Brain Injury Settlement**
- **$14 Million Medical Malpractice Lung Cancer Verdict**
- **$10 Million Pedestrian Accident Verdict**
- **$7.6 Million Medical Malpractice Postpartum Bleed Settlement**
- **$6.5 Million Record Kane County Wrongful Death/Trucking Accident**
- **$6.5 Million Birth Injury Settlement**

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Making the Case for Civility

By Clifford Gately
CBA Record Editorial Board

Illinois Supreme Court Justice Anne Burke, the keynote speaker for the November 28 CLE program on civility in the legal profession, opened the program with a quote describing a pervasive "win-at-all-costs mindset" in which ethics are trampled, and "standards, proper decorum, acceptable behavior and the principles of mutual respect…seem to have totally disappeared."

Although incivility in the legal profession is not completely unprecedented, Justice Burke cited a recent National Judicial College survey in which 93% of the American public agrees that the United States has a civility problem, and nearly three-quarters of those polled agreed that is has gotten worse. She observed that the current atmosphere may be a reflection of the world in which we live, including the "social media messaging to which we've become accustomed."

The presentation was co-hosted by the American Board of Trial Advocates (ABOTA) and included a panel discussion moderated by Illinois' National Board Representative for ABOTA, Timothy Tomasik. The panel consisted of Cook County Circuit Court Judges Clare McWilliams and Allen Walker, and attorneys Aurora Austriaco and Bruce Pfaff. The panel offered numerous first-hand lessons on how to deal with incivility.

CBA President Steve Elrod addresses attendees at the November 28 CLE Program.

True-life examples were also provided by audio/visual clips. After several examples of attorneys behaving badly at depositions (many of which would have been humorous, if they weren't disturbing), the panel agreed that attorneys should always conduct themselves as though they were before a judge, whether or not they are in a courtroom.

The panel agreed that lawyers can and should ask for the assistance of the court, and possibly for sanctions, when instances of incivility are abusive or chronic. They also cautioned attorneys to take the high road and not to react rashly or too quickly to personal attacks. "If you wrestle with a pig, you'll both get muddy, but the pig will enjoy it," Tomasik said. Or, as Mary Wortley Montagu was quoted several times as saying "Civility costs nothing, and buys everything." ■

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Letters to the Editor

send your feedback to: publications@chicagobar.org

Ballot Position in Cook County

In the November 2018 **CBA Record,** Albert J. Klumpp's article on ballot position ("Ballot Position and its Impact on Cook County Judicial Elections: The Early Bird Gets the Term") brings up statistical and factual analysis.

I thought it would be of interest to your readership to call attention to a leading case on the subject which holds as a legal matter that ballot position does indeed affect the results of an election. Moreover, it does so in a case wherein the Illinois Secretary of State was the first-named defendant and the other defendants were all of the elected state officers plus the chair of the Democratic and Republican parties. The case was also of unusual practical significance, because it involved ballot position of delegates to the 1970 Illinois constitutional convention, the convention responsible for the present Illinois Constitution.

In *Weisberg v. Powell, individually and as Secretary of State, et. al.,* 417 F. 2d 388 (1969), defendant Paul Powell, primarily responsible overseer for the State of Illinois in with respect to printing ballots and other election functions, was charged with printing the ballots. The underlying law provided that position on the ballot for delegate to the constitutional convention would be in the order of filing. For this reason, most of the candidates lined up to file their ballots in person. However, Secretary Powell informed each of the candidates whom he favored to file his or her petition by mail; he then considered all ballots filed by mail to have been filed simultaneously and planned to "exercise his discretion" to "break the ties" so as to elevate the candidates he favored in each voting district to the top position.

Candidate Bernard Weisberg (later a Federal magistrate judge) brought an action in the Northern District of Illinois alleging violations of constitutional and other rights. The court, although apparently troubled, dismissed the action, but plaintiff's counsel immediately filed an appeal.

The Court of Appeals provided that in those districts where the Secretary of State had employed the procedure assisting the candidates whom he favored, the candidates would be considered to have filed simultaneously and the order on the ballot would be determined by a lottery. Plaintiff did place first on the ballot in the district in which he ran, and was an influential and respected delegate.

Jack Joseph
Chicago

Ed: *The letter writer was one of the attorneys for Weisberg.*

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To receive the discounted rate, enter at 75. W Harrison and push the button at the entry station. You will receive 3 tickets (one to validate at the CBA for discounted rate, two for the valet attendants). Be sure to take your parking ticket with you for validation in the CBA Building lobby. Ticket must be validated at the CBA to receive the discounted rate! Upon returning to the garage, hand your valet ticket to the attendant to retrieve your vehicle then insert your validated parking ticket into the pay station. Pay with cash or any major credit card. The pay station will return your paid ticket to you. Once the attendant retrieves your vehicle, insert your paid ticket into the exit station to lift the gate and exit.

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The Chicago Bar Association and Young Lawyers Section

Committees

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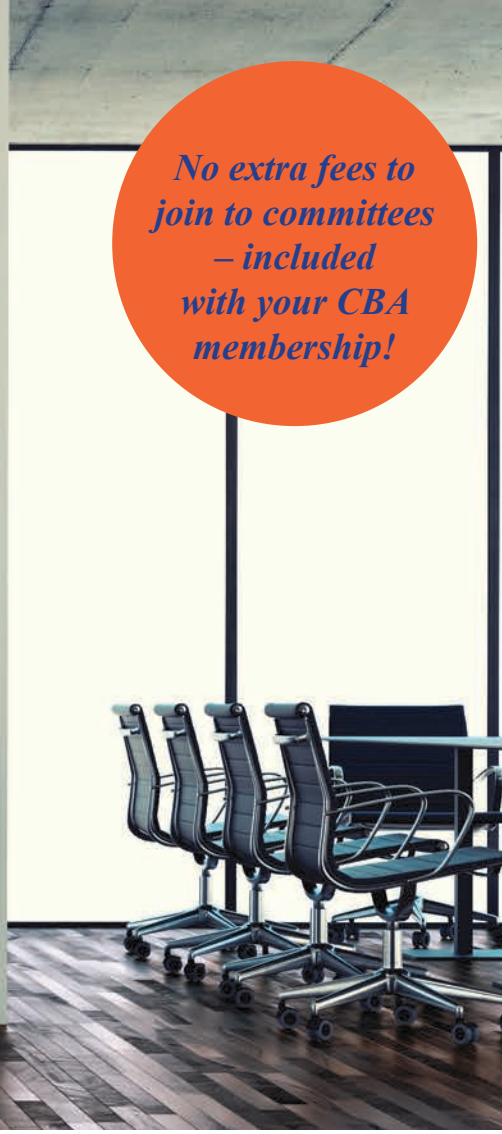
No other legal profession puts you in touch with so many attorneys and judges who live and practice in the Chicago area. Whether you are looking for a new position, a new client or expert advice in a specific legal area, you'll find it through the CBA committee network. **Join one of 130 legal specific committees today - no extra fee required.**



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Diversity and Inclusion in the Legal Profession: First Steps Toward Change

By Katie Liss and
Clare McMahon
CBA Record Editorial Board

Diversity and Inclusion in the Legal Profession: Steps Toward Change was the topic of a recent Chicago Bar Association CLE workshop held at the law firm of Holland & Knight LLP. The workshop was developed in response to the CBA's 2018 Report on the Future of the Practice of Law in Chicago (Report) and its recommendations about what lawyers can do to address the continuing challenges of diversity and inclusion in their workplaces.

The workshop focused on three areas highlighted in Section III of the Report to encourage dialogue about and solutions to the challenges of diversity and inclusion within the law: (1) implicit bias, (2) hiring and promotion practices, and (3) the law school to attorney pipeline. The workshop format included presentations on each of the above areas by a distinguished faculty: Judge Thomas Mulroy, Dean Jennifer Rosato Perea, and Dr. Anna Kaatz.

The presentations were followed by circuits of three different breakout sessions led by roundtable discussion leaders Jessica Bednarz, Daniel Cotter, Daissy Dominguez, E. Lynn Grayson, Katie Liss, James McKay, Emily Roschek, and Lara Wagner. The breakout sessions encouraged audience involvement and elicited input about the issues raised by the faculty to add more diversity and inclusion in their workplaces. As the discussion leaders moved around the room, working with each table, participants helped them compile comments to be reported to the body. Those findings will also be published in an online whitepaper for CBA members.

The workshop proved to be a valuable tool for our members and is a format that can be replicated in workplaces. Below is a restatement of the three topic areas examined in the workshop so that all members have a framework to discuss the future of the legal profession and how issues of diversity and inclusion affect their workplaces and the courts.

Program participants discussed issues such as implicit bias, hiring and promotion practices, and the law school to attorney pipeline.

Roundtable Discussion Topics

Identify implicit biases about diversity and inclusion to help workplace leaders design a strategic plan to make real change in today's firms and organizations.

CBA participants understood that everyone has implicit biases. It's a matter of making yourself aware of these biases and understanding which ones are harmful to others. Therefore, participants wanted to learn more about the concept of implicit bias. They noted that workplace training they have been involved in has not dealt with the topic of implicit bias. Only a few participants had taken a frequently used assessment test found on Harvard University's website (www.implicit.harvard.edu).

Many participants stated that implicit bias is something that is learned at home and is culturally determined at a young age. Regarding implicit bias in the workplace, participants stated that setting goals to improve diversity and inclusion was useful, but that we needed to be more aware of stereotyping and labeling people, as the term "bias" could have a negative connotation. It seemed clear to the participants that we need to have more education about this topic and work in a more productive manner about a sensitive topic. Additionally, individuals thought diversity and inclusion issues could be eradicated in time as a younger generation of lawyers is more inclusive in its work and family circles. However, the question arises as to how to accelerate this important change in perspective and make the vocabulary surrounding diversity and inclusion less pejorative (e.g. biased, prejudiced, etc.) to encourage people to examine their implicit belief systems.

Implement a more progressive hiring and promotion system within law firms and the judiciary to advance diversity.

CBA workshop participants noted that the Mansfield Rule, which requires that women and minorities make up a minimum of 30% of the candidates for "leadership and governance roles, equity

partner promotions, and lateral positions" according to a June 7, 2017 press release by Diversity Lab, did not appear to apply to small firms. If so, it raises the question of what small to midsize firms can actually do to increase their diversity and inclusion. Others did not see the Mansfield Rule as a deterrent to the overall goal of increasing diversity and inclusion, but were unclear as to how it really helped.

It was also noted that the Mansfield Rule is adequate as a goal, but it needs to focus on the "right" things. In some ways, its focus appears narrow and impractical in a profession with few diverse and inclusive members (e.g., it would be difficult to reach a 30% leadership goal from a set of firms with few or no diverse lawyers to promote). Other participants noted that the Mansfield Rule appears to adopt a certification strategy to have legal industry employers consider at least 30% women, LGBTQ+, and minority lawyers for significant leadership roles that had been promoted by the minority and female certification programs used by governments for two decades. The inherent flaw of the Mansfield Rule is that absent client support for such efforts, law firms and law departments have no serious motivation to proceed.

Increase the diversity of law students by using criteria beyond traditional GPA and LSAT scores to advance inclusion and diversity in student bodies and ultimately in the practice of law.

Most CBA participants agreed that to increase the diversity of potential law students in the academic pipeline, mentoring junior high school and high school students was an effective way to attract diverse students to the legal profession. When students are the first generation to attend professional school, it helps to have mentors and alumni encouraging them to attend. Additionally, as many students are part of a first generation of students in higher education, they could benefit from financial support from firms and other legal entities that want to increase their diversity numbers.

Participants also believed that that having alumni interview law school applicants also demonstrates a commitment to diversity and inclusion. The working groups asserted that students' exposure to positive role models who were lawyers in the community would inspire students to apply to law schools, and that training students on what they could expect in law school, including challenges related to gender and race, would help them navigate the rigorous curricula and cultures found in law schools.

Conclusion

The workshop, which all participants deemed a tremendous success, showed that the future of the profession is bright. However, a multi-level approach to creating change is necessary to assure the diverse growth of our profession. The legal profession must develop initiatives that help law students, lawyers, and judges acknowledge their implicit biases and move forward to rethink and reshape the identity of the profession in a changing workplace and broader world environment. Only then can we achieve diversity and inclusion goals with the hope that our workplaces will reflect the society in which we live, without the use of artifices to help us achieve our goals. ■

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CBA CLE PROGRAM "WRITING FOR YOUR AUDIENCE"

A Mindful Approach to Legal Writing

By Anne Ellis
CBA Record Associate Editor

Not all lawyers fully embrace the concept of mindfulness in the practice of law, but Prof. Kathleen Dillon Narko reminded participants in a recent CLE program that all lawyers would do well to be more mindful in one crucial area of their profession: writing.

Lawyers communicate most often in writing. Whether the audience includes clients, courts, or colleagues, Prof. Narko gave practical advice for how to make any written communication more clear, concise, and well-organized.

Numerous before-after examples and alternatives debunked the belief that dense, verbose writing is necessary in legal writing. The program was far from a dry rehash of grammar–in fact, none of the examples presented were grammatically incorrect. What all had in common, though, was that they demonstrated the power of well-chosen (one might say, mindful) words.

Many practitioners are embracing a more direct, journalistic style of writing. This is all to the good, says Prof. Narko, because one goal should be to "make it easy on your audience." A bonus of writing more concisely is that it often leads to greater clarity. Just a few tips include: eliminate "there is/there are"; "it should be noted that"; nominalizations (verbs masquerading as nouns); and puffed-up words such as "utilization." Writing in active voice rather than passive usually achieves both conciseness and clarity, but being more mindful about writing also means recognizing there may be a time for passive voice. Thus, it may be more strategic for a defense lawyer to write, "The dog was hit by three shots," rather than "My client pumped three slugs of lead into Fluffy."

Moving on from these fundamentals, Prof. Narko observed that while good legal writing must be concise and clear, it can also be engaging and elegant. How to do this? The essentials include varied sentence structure, voice, tone, pathos, and applied storytelling. She also raised the question of whether the esthetic quality of elegance found in great briefs and opinions is necessary for all good legal writing. Time, of course, is a factor to be weighed here, which again points to the issue of mindfulness in legal writing.

The program then turned to another essential for clear writing: organization. Seasoned and novice lawyers alike often struggle with structure. Prof. Narko offered the TREAC system as a starting point to help attorneys structure their analysis (see Oct 2004 **CBA Record**). TREAC is an updated version of the IRAC tool (issue-rule-application-conclusion) and stands for: T: Topic sentence; R: Rule; E: Explanation; A: Application; C: Conclusion.

TREAC's simple structure for legal arguments can accommodate sophisticated issues. And after drafting is complete, performing a "TREAC check" will help determine whether arguments are direct and straightforward.

The program also offered advanced strategies for writing strong leads, editing effectively, and proofreading. For the lead (itself a journalism term), a journalistic mindset will help eliminate non-essential preliminaries and ensure that the writing doesn't bury the main point. After drafting is complete, effective editing is as crucial to the final product as the draft itself. How much time to devote to editing? Ideally, "as much time as it took to write." This is not always possible, but a good editorial review will take place in layers, focusing separately on the lead/thesis paragraph; the conclusion (does it match the roadmap in the thesis?); paragraph structure; transitions between issues; conciseness at macro and micro levels; clarity; citations (if applicable); and, finally, proofreading.

The program concluded with some timely thoughts on language change (e.g., pronouns and gender neutrality), with a recommendation to "write for your audience," which in the legal sphere is typically more conservative.

Recommended resources went beyond Strunk & White's classic "Elements of Style" and included legal-specific works, particularly Richard Wydick's "Plain English for Lawyers." ■

The program is also available as a CBA CLE on-demand webinar. Go to www.chicagobar.org for more information.

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JUDGES REPORT SUBSTANTIAL CHANGES FOR NEW YEAR

Eight O'clock Call Covers Domestic Relations Division Issues

By Lynn S. Kopon
CBA Record Editorial Board

The Chicago Bar Association's Eight O'clock Call on January 3 highlighted the Domestic Relations Division. As with other sessions in this series, it was a timely, valuable and interactive session in Courtroom 1307 of the Daley Center. Presided over by Judge Kenneth Wright, Jr., the session also featured Presiding Judge Grace G. Dickler, Judge Robert W. Johnson and Judge John T. Carr. Approximately 45 practitioners attended. The atmosphere crackled with a spirited exchange as the lawyers learned about the impact of recent changes in the law and the judges heard about the lawyers' experiences with those changes.

Judge Wright asked questions of the panelist judges and also took questions from the assembly. Questions focused on changes in the Domestic Relations Division and practical inquiries about work in this area, information that benefitted lawyers who are in the trenches of this practice.

Presiding Judge Dickler's opening remarks explained that this Division has undergone many changes. Among other changes, the former "Parentage Court" has been integrated into the Domestic Relations Division, which now includes all Domestic Relations matters including parentage and child support. Issues involving children born outside of marriage receive the same considerations, forum, judges, and facilities as children born within a marriage.

A highly relevant part of the discussion concerned recent tax law changes brought about by Public Act 100-923, effective January 1, 2019. Prior to this law, alimony to a divorced spouse was deductible by the payer and had to be claimed as income by the payee. The new law eliminates the deduction and the obligation to report income. This will have an impact on high-income taxpayers (who are well advised, as always, to consult with a tax attorney).

New Spousal Maintenance Calculations

The calculation of spousal maintenance has also changed beginning in 2019. Under prior Illinois law, maintenance was calculated by subtracting 20% of the recipient's gross income from 30% of the payer's gross income, with a cap equaling 40% of the parties' combined income. Under the new law, 25% of the recipient's net income is subtracted from 33.33% of the payer's net income to determine the amount of maintenance. Judge Johnson noted that with the current calculations based on both parents' income, it is possible to use tables to determine a pro rata share for child support payments based on where the income is, how many children are in the family, whether the child is receiving other supplemental benefits, and how many nights each parent has custody of the child ("overnights").

Judge Dickler asked the lawyers how this affects their practice. One lawyer noted that it makes support enforcement more efficient, with less resistance to paying the income sharing, calculated child support. The income sharing provisions provide that if a parent spends more than 146 overnights with the child per year, this could reduce child support payable under the calculation. This encourages a parent to spend more time with the child, which may have positive consequences for the child, according to one practitioner, or lead to promises unkept by others. Other lawyers stated that the number of overnights between the parents can result in significant disruption for the children. Judge Carr noted that although the calculations are indicated in the statute, no statutory mechanism enforces the promises of overnights that are made in court. Some cases may have a reckoning at the end of the year. Judge Johnson gave an example of a party who kept a very detailed log regarding the child visitation times, which facilitated a financial adjustment at year-end.

Guidelines for Acting in Domestic Relations Court

Judge Carr observed that people are expected to act in Domestic Relations Court as they would in life generally. Three principles include: (1) Act always in the best interests of their child, which among other things requires that the parents work out visitation issues between themselves; (2) If the parents can't resolve their issues, the attorney should help them, always guided by the best interests of the child; and (3) If the parties cannot resolve their differences, the judge will tell them what to do. One lawyer noted that the statutory overnight system may not be the best solution because many people are unable to commit to 146 overnights due to work demands. However, this does not necessarily mean that the parent cannot spend a significant amount of time with the child.

Judge Dickler asked whether judges are applying the new state maintenance law in a fair and reasonable manner. One practitioner replied that judges are not always addressing the threshold question of whether maintenance was appropriate

in the first place. Instead, she believes, they are jumping right to the calculation, even when maintenance might not be indicated by the facts. Judge Dickler reminded the practitioners that everyone should be watching the new statute to see if it works. Judge Carr noted that Domestic Relations judges must look to what is fair, and if the judge deviates from the statute, this deviation must be explained.

Judge Wright asked the judges if they had any pet peeves regarding practitioners who appear in front of them. Although the panelists did not volunteer a lot of information in response, Judge Johnson did note that many lawyers don't follow the rules of evidence, which is not good practice.

Judge Wright asked what are the prevalent cases and statutes that everyone must have in their arsenal. Judge Dickler reminded everyone that there are many, many appeals in Domestic Relations matters each year. It is imperative that we keep up with the cases and the law. Every life is different, noted the judge, and the Domestic Relations Call is life. ■

CLE & MEMBER NEWS

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By getting more involved in the CBA, you can raise your profile in Chicago's legal community and meet other lawyers whose paths you may have never crossed. Even a small time commitment can reap big rewards. These are just a few examples of speaking, networking, leadership and other opportunities available through your CBA membership.

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–Become a legislative liaison
–Evaluate judges through the CBA's Judicial Evaluation Committee
–Volunteer for a pro bono project
–Help out at a YLS community outreach project
–Do something fun...play in the CBA Symphony, sing in the CBA Chorus, perform in Christmas Spirits (the CBA holiday show), or help produce a legal cable TV show

For more information on these opportunities or to learn how to become more involved in the CBA, contact CBA Membership Director Karen Stanton at 312/554-2131 or kstanton@chicagobar.org. ■

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Chicago Bar Foundation
Report

The Chicago Bar Foundation
Ensuring access to justice for all

The Battle Over Cy Pres Awards

By Bill Boies and Rebecca Finkel,
McDermott Will & Emery LLP

[There is a] fundamental concern surrounding the use of such remedies in class action litigation, including when, if ever, such relief should be considered; how to assess its fairness as a general matter; whether new entities may be established as part of such relief; if not, how existing entities should be selected; what the respective roles of the judge and parties are in shaping a cy pres remedy; how closely the goals of any enlisted organization must correspond to the interests of the class; and so on. This Court has not previously addressed any of these issues.

–Chief Justice Roberts in a statement released with the order denying the certiorari petition in *Marek v. Lane* in 2014

In settling class actions, there is a recurring practical problem: what to do with undistributed settlement funds? Court-approved awards to legal aid and other nonprofit organizations, commonly known as *cy pres* awards, give judges and settling parties a useful procedural device to solve the problem.

In 2006, the Illinois General Assembly recognized this principle and created a statutory framework that governs the distribution of residual funds in state court class actions (735 ILCS 5/2-807). Many other states have similar statutes or court rules. For federal court cases, *cy pres* awards as part of Rule 23 settlements find broad support from class action plaintiff and defense counsel, the American Law Institute, and the federal courts. Legal aid and access to justice organizations like The Chicago Bar Foundation (CBF) rely on these awards as an important source of funding.

Opponents of these *cy pres* awards (who are, in reality, often opponents of class action lawsuits generally) have been vocal in their criticism that these awards are not sufficiently tied to the plaintiff class or that the awards are merely window dressing for plaintiff's attorneys fees. The opposition has been particularly fierce for class action settlements where there is no monetary distribution to the class members.

Congress has considered (but never adopted) legislation that would delineate or curtail the circumstances in which *cy pres* settlements are permissible. The committees that propose revisions to the Federal Rules of Civil Procedure also have considered but never recommended changes in Rule 23 addressing the subject. Now, the Supreme Court is hearing a challenge to *cy pres* awards in Frank v. Gaos (the "Google Supreme Court case"). The CBF and seven other legal aid and access to justice organizations around the country filed an amicus brief in support of *cy pres* awards.

The CBA Class Litigation Committee recently joined with The Chicago Bar Foundation to present a panel discussion on "The Future of *Cy Pres* After the Supreme Court: Perspectives from Academia, the Bar, and the Bench." It is available online on the CBA Class Action Committee's home page at www.chicagobar.org.

The *Cy Pres* Doctrine Works Well In Class Action Settlements

The *cy pres* doctrine arose in the context of estates and trust law, as a rule of construction to save a testamentary gift that would otherwise fail. The term "*cy pres* comme possible" means "as near as possible" in legal French, and the doctrine allows courts to direct bequests to a purpose close to the purpose of an original impossible bequest. In class actions, the courts have adopted a similar approach (endorsed by the American Law Institute) to approve residue distributions for purposes reasonably related to the settled lawsuit. So while different from the trust law setting, *cy pres* awards are used in class actions to achieve equitable results consistent with the *cy pres* doctrine's origins and continued evolution.

In the usual class action settlement, a settlement fund is distributed to class members through a claims process or check mailing, but some amount often remains because not all class members can be located and not all file claims or cash settlement checks–or because the residual amount is so small that the cost of distribution would exceed the amount to be distributed. When further efforts to distribute to class members are not feasible, courts consistently favor distributing residual funds through court approved awards rather than reversion of the funds

to the settling defendant or escheat to the state as unclaimed property.

While *cy pres* awards solve a recurring class action conundrum, the awards have been controversial for several reasons, as Chief Justice Roberts noted in his statement quoted above. For example, any class action settlement–like the Google Supreme Court case–where the plaintiffs' attorneys are compensated but not the plaintiff class (whose claims are discharged by the settlement) can create poor optics. Another concern is the scope of judicial discretion in *cy pres* situations and the propriety of judges (or counsel) selecting *cy pres* recipients from institutions with which they are affiliated or from which they graduated–which is also an issue in the Google Supreme Court case.

The Google Supreme Court Case

Class counsel in the Google case alleged that Google had violated Google users privacy rights; specifically, advertising pop-ups were uniquely generated based on an individual user's searches. As part of Google's settlement with the named plaintiffs, Google agreed to pay $8.5 million, with $6.5 million going to computer user education programs and $2 million for attorney's fees to plaintiffs' counsel–but no distribution to class members. Directing the $6.5 million to *cy pres* recipients made sense; to divide the settlement among 129 million class members would have yielded just 4 cents per person. The district court accepted that it was not feasible to distribute pennies to each class member, and a divided Ninth Circuit upheld the settlement.

The petitioners in the Supreme Court are class members objecting to the settlement (including Theodore Frank–a crusader against class action lawsuits). The objectors' briefs argue that the Supreme Court should restrict or eliminate *cy pres* awards. The respondents are the plaintiffs and Google, who argue that the settlement was reasonable and that *cy pres* awards are a legitimate settlement device. At the recent oral argument in the Supreme Court, the justices seemed divided on the propriety of *cy pres* generally and particularly where there is no distribution to class members. But the Court may not decide the *cy pres* issue; in the oral argument, the justices focused on the issue of standing to sue under Spokeo, Inc. v. Robins, 136 S. Ct. 1540 (2016)). If Google is not the case for a Supreme Court *cy pres* decision, other appeals in the wings will provide opportunities for the Court to weigh in.

Legal Aid Organizations Are Appropriate *Cy Pres* Award Recipients

Dozens of amicus briefs were filed in the Google case, opposing and in support of *cy pres* awards. The amicus brief by the CBF and other legal aid organizations suggested that the Supreme Court should recognize and endorse the reasonable restrictions already in place for *cy pres* awards and, importantly, that the Court should recognize *cy pres* awards for legal aid as an appropriate use of residual settlement funds.

At a time when the selection of organizations to receive *cy pres* awards is under increased scrutiny, *cy pres* awards to legal aid and access to justice organizations provide a recognized and appropriate solution for counsel and the courts when selecting recipients and approving settlements. Legal aid organizations–like the class action device itself–exist to provide broad access to justice. Because of that "access to justice" connection, this one category of *cy pres* recipients always has interests that reasonably approximate the interests of class members. While many legal aid services do work that parallels particular class action lawsuits, legal aid will always reasonably approximate class actions relief by providing access to justice for those in need of legal help. As a result, federal and state courts throughout the country have long recognized legal aid organizations as appropriate beneficiaries of *cy pres* distributions from class action settlements.

This principle is the underlying basis for the statute in Illinois, which is one of 24 states that have adopted statutes or Supreme Court rules providing for *cy pres* distributions to legal aid and access to justice organizations like the CBF. For more information about the Illinois statute and *cy pres* awards to support legal aid and access to justice, please see: chicagobar foundation.org/support/cy-pres/.

Conclusion

The Illinois statute and similar state laws offer a good roadmap for a fair resolution to the problem of undistributed settlement funds. While the Google Supreme Court case may not ultimately reach these issues, the Supreme Court would do well to adopt similar principles to govern class action residue distributions in the federal courts. ■

Bill Boies, Rebecca Finkel and Tim Kennedy of McDermott Will and Emery wrote the legal aid organization amicus brief in the Google Supreme Court case, and Boies and the firm have been lead pro bono counsel for the CBF and other partner organizations a number of other amicus briefs and federal rules submissions on cy pres *issues.*

MURPHY'S LAW

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Congratulations to the cast and crew of the CBA 2018 Bar Show, "Big Little Laws–A Whodunnit," which delighted audiences in early December at DePaul University's Merle Reskin Theatre in downtown Chicago. This year's show skewered local and national celebrities, much to the delight of the audience. Don't miss Adam Sheppard's review of the show, which appears on page 56 of this issue. Photo by Bill Richert.

Don't miss the Association's International CLE program in Jerusalem (April 1-5, 2019), with a two-day pre-conference visit to Amsterdam (March 30-March31) and a post-conference extension in Tel Aviv (April 6-7). In planning this program, we have received invaluable assistance from Israel's Consul General to Chicago, Aviv Ezra, and his staff. We expect to have speakers from all three branches of Israel's government and special presentations on advances in health science and technology. In addition to the four-hour CLE sessions on Tuesday and Thursday mornings (eight hours total of MCLE credit), the travel package includes guided tours of Bethlehem, Jericho, Masada, the Dead Sea and more. In Jerusalem, walking and/or Segway tours will include a private tour of the Supreme Court, the Knesset, visits to the Yad Vashem Holocaust Museum, the Dome of the Rock, the Western Wall, and the acclaimed Mahane Yehuda outdoor market. The pre-conference stop in Amsterdam includes luxury accommodations, private tours, and a special dining experience. For assistance with your travel needs, contact Travel Center Tours at vanchem@rcn.com or call 312/751-0717. A complete description of the CLE in Israel program is available online at www.chicagobar.org or contact CBA Events Coordinator **Tamra Drees** at tdrees@chicagobar.org or 312/554-5057. Members and guests will need to register for the Israel program no later than Thursday, January 31.

CBA Nominating Committee

The 2019 Nominating Committee is in formation and will be selected by the end of January pursuant to Section 8.3 of the Association's Bylaws, which provide for a committee consisting of 17 members selected as follows: five committee chairs are randomly drawn from the CBA's standing committees; three members of the Young Lawyers Section; four members from the Past Presidents Committee, two of whom are past presidents and two of whom must be at-large members of the Association; and four at-large members selected by the Board of Managers from the CBA's membership. Under the Bylaws, the immediate past president one year removed from the Board of Managers automatically serves as chair of the committee. No member may serve on the Nominating Committee more than twice in five years nor for two successive years.

The Nominating Committee will receive nominations for eight board and officer vacancies, which will expire at the Association's Annual Meeting on Thursday, June 20, 2019. Terms for service on the Board of Managers are two years and commence at the Annual Meeting. Members wishing to nominate themselves or another member for an officer or board vacancy may do so in writing or by e-mailing their nomination to me at the Association, 321 S. Plymouth Court, Chicago, IL 60604 or tmurphy@chicagobar.org. The Bylaws specify that nominations from the members must be received no later than Tuesday, March 12, 2019. A general e-mail notice listing the names of the 2019 Nominating Committee with the details and timeline for submitting nominations will be emailed to the members in late January.

Earl Burrus Dickerson Award Luncheon

Save the date and don't miss this year's Earl Burrus Dickerson Award luncheon on Tuesday, February 19, in the Grand Ballroom at the Standard Club. The Dickerson Awards were established in 1990 to honor lawyers and judges whose careers emulate the courage and dedication of Earl Dickerson in making the law the key to justice for all in our society. Dickerson graduated from the University of Chicago Law School in 1920 and became General Counsel of Supreme Life Insurance Company in 1921. He became Chicago's first African American Alderman in 1939 and argued the Landmark Case of *Hansberry v. Lee* in the United States Supreme Court in 1940, which successfully addressed Chicago's restrictive residential covenants.

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directed by Jeremy Aluma
February 15 - 24, 2019

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by Aeschylus
adapted by Robert Icke
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directed byMelanie Queponds
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The Chicago Bar Association Leadership Institute

Lead, Don't Follow. Emerging lawyers in Chicago's legal community are encouraged to apply by March 4 to be part of the Class of 2019.

About the Institute:

The Leadership Institute is a program of The Chicago Bar Association designed to enhance the leadership skills and foster the professional growth of Chicago attorneys. The program will provide emerging leaders within Chicago's legal community with the practical knowledge and business development strategies necessary to attain and be successful in significant leadership roles.

Sessions will feature dynamic faculty, interactive skill building exercises and networking opportunities. Participants who successfully complete the program will receive a graduation certificate.

Registration Fee:

Participants must complete an application. An applicant must be an Illinois attorney with at least 3 years of experience, but not more than 10 years.

The course fee is $1500 per applicant.

Class size is limited.

Questions? Contact Beth McMeen, CLE Director, at 312-554-2051 or bmcmeen@chicagobar.org.

Agenda for the 2019 Leadership Institute Class:

All sessions will be held at The Chicago Bar Association, 321 S. Plymouth Ct., Chicago, IL 60604 unless otherwise indicated.

What Kind of Leader Are You?
April 10, 2019 | 2:00-7:30 p.m

The Foundations of Effective Leadership
April 24, 2019 | 8:00 a.m. -12:30 p.m.

Leveraging Your Network for Career Success
May 8, 2019 | 2:00-7:30 p.m.

Advanced Business Development Strategies
May 22, 2019 | 8:00 a.m. - 12:30 p.m.

Leadership Institute Graduation Reception
June 5, 2019 | 5:30-7:30 p.m.

The Chicago Bar Association Annual Meeting
June 20, 2019 | 11:30 a.m. - 1:30 p.m.
The Standard Club
320 S. Plymouth Court, Chicago

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For information on applying for the 2019 Leadership Institute, visit www.chicagobar.org/ChicagoBar/Leadership.

In November 1945, Dickerson–along with Irvin C. Mollison, Sidney A. Jones, Jr., and Loring B. Moore–became the first African American Lawyer members of the CBA. Mr. Dickerson died in Chicago on September 1, 1986, at the age of 95. Tickets for the Dickerson Award luncheon are $70 per person or $700 for a table of10. For more information or to make reservations, contact CBA Events Coordinator Tamra Drees at tdrees@chicagobar.org or 312/554-2057.

CBA Insurance Agency

For the past 25 years, CBA Insurance Agency has provided outstanding service to members in finding the best and most affordable Lawyers' Professional Liability coverage. Through **Tyler Sill,** Vice President of CBA Insurance Agency, members can receive quotes for their LPL coverage from a variety of A+ carriers including Attorney Protective, Aspen, Axis, Founders Professional, CAN, Wesco, Jurich and Starstone National. Members can also obtain quotes and coverage through agency partners who specialize in health insurance, long-term care and disability, life insurance products, wealth management, etc. CBA Insurance Agency is open Monday through Friday and is housed on the sixth floor at the CBA Building, 321 S. Plymouth Court, Chicago. For insurance questions or to receive a quote, contact Sill at 312/554-2077 or tsill@chicagobar.org.

Congratulations

CBA First Vice President **Jesse H. Ruiz** was recently appointed to serve as one of three Deputy Governors in Governor-Elect J.B. Pritzker's administration… Illinois Supreme Court Justice **Benjamin K. Miller** (ret.) is a recipient of the 2019 Order of Lincoln, Illinois' highest honor for professional achievement and public service. Justice Miller is currently of counsel at Jenner & Block LLP…Illinois Supreme Court Justice **Charles E. Freeman** (ret.) received the Illinois Judges Association's (IJA) Lifetime Achievement Award at the group's 47th Annual Convention…Judge **Mary S. Trew** received the IJA's Presidential Service Award…Judge **Thomas More Donnelly** received the IJA's Harold W. Sullivan Award…Illinois Attorney General **Lisa Madigan** and **Steven F. Pflaum** received the IJA's Amicus Award. The IJA also presented Recognition of Excellence in Outreach Awards to the Illinois Latino Judges Association, Illinois Lawyers' Assistance Program, and to **Marshan Allen** and the Mikva Challenge for their help in producing the IJA's interactive video "Your Future Your Choice," which informs high school students of their rights…**Robert G. Markoff** was appointed Chairman Emeritus of the National Creditors Bar Association…**Peter V. Baugher** spoke at New Zealand's International Arbitration Centre on "Cross-Border Litigation and Arbitration"…**Adam Gross,** Business and Professional People for the Public Interest (BPI), received the Public Interest Law Initiative's (PILI) 2018 Distinguished Intern Alumni Award…**Reena Bajowala,** Ice Miller LLP, received PILI's Distinguished Fellow Alumni Award…Katten Muchin Rosenman LLP received PILI's Pro Bono Initiative Award, and Illinois Attorney General **Lisa Madigan** received PILI's Distinguished Public Service Award at the group's annual luncheon…Illinois Supreme Court Chief Justice **Lloyd A. Karmeier** received the 2018 Unity Award…Judges **Carole K. Bellows, Barbara N. Flores** and **Edward Grossman** received the 2018 Advocates for Diversity Award…**Trisha Rich,** a partner at Holland & Knight, was named to Crain's Chicago Business 2018 "40 under 40 list"… Dykema PLLC announced a strategic combination with the Washington, D.C. law firm of Loss Judge & Ward LLP and will operate under Dykema…**Matthew Case** and **Roman Perchyts** have joined Lavelle Law, Ltd.…**Mandell Menkes** is joining forces with Leavens Strand & Glover… **Melvin L. Katten,** founding partner of Katten Muchin Rosenman LLP, received the Adler & Sullivan Award from Roosevelt University's Auditorium Theatre…CBA Board member **Nina Fain** was elected to the University of Illinois Chicago's African American Advisory Council.

The following 2018 Circuit Court of Cook County Judges were sworn in on December 3: **Michael B. Barrett, Samuel J. Betar lll, Tiana S. Blakely, Joel Chupack, Elizabeth Ciaccia-Lezza, H. Yvonne Coleman, Kevin P. Cunningham, Colleen Reardon Daly, Adrienne Elaine Davis, Kent Delgado, Beatriz A. Frausto-Sandoval, Peter Michael Gonzalez, Ieshia E. Gray, Jack J. Hagerty, Judge Robert F. Harris, Judge Toya T. Harvey, Judge Cecilia Anne Horan, Lindsay Huge, Preston Jones, Jr., Kathaleen T. Lanahan, Thomas F. McGuire, Scott D. McKenna, David R. Navarro, Shannon P. O'Malley, Erika Orr, Linda Perez, Marian Emily Perkins, Clare Joyce Quish, Joanne F. Rosado, Stephanie Saltouros, Debra A. Seaton, James A. Shapiro, Athanasios S. Sianis, Rosa M. Silva, Ketki Shroff Steffen, Kathryn M. Vahey, Andrea M.**

Webber, Arthur Wesley Willis and **Jeanne Marie Wrenn.**

Illinois Appellate Court Justice for the Third District **Mary K. O'Brien** is the new president of the Lawyers' Assistance Program…**Sandra Frantzen** is the new president of the Arab American Bar Association of Illinois…Judges **Marina E. Ammendola, Celestia L. Mays, Lloyd James Brooks, Michael A. Forti,** and **Frederick H. Bates** were recently appointed by the Illinois Supreme Court to fill Circuit Court vacancies in Cook County…Judges **Carole K. Bellows, Richard P. Goldenhersh, Afred Levinson, Hy J. Riebman,** and **John B. Simon** received special recognition awards from the Jewish Judges Association. Posthumous honors were bestowed on U.S. District Court Judge **Milton I. Shadur** and Circuit Court Judges **Leonard Levin** and **Alvin I. Singer**…**Jeremy Glenn** is the managing partner of Cozen O'Connor's Chicago office…**Robert K. Downs** spoke about America's legal system at Masaryk University Law School in Brno, Czech Republic…**John G. Fogarty, Jr.** has joined Clark Hill as senior counsel in the firm's government and public affairs practice group…Judge **Dennis J. Burke** (ret.), **Ruth Ann Schmitt** (Lawyers Trust Fund of Illinois (ret.), received the Illinois Bar Foundation's 2018 Distinguished Service to Law and Society Award, and **Richard R. Winter,** a partner at Holland & Knight, received the Illinois Bar Foundation's Honorary Fellow Award…**Louis G. Apostol,** Public Administrator for Cook County, received NIU's College of Law's Public Service Award…**Richard Saldinger,** a partner at Latimer LeVay Fyock, was named to 2019 Best Lawyers in America list…Seyfarth Shaw received two Value Champion Awards from the Association of Corporate Counsel and was recognized by American Lawyer as an Industry Awards finalist for Best Use of Technology and Best Client/Law Firm Team…Judge **Lorna E. Propes** received the Judge of the Year Award from the Illinois Chapter of the American Board of Trial Advocates…**Harold (Hal) J. Krent,** Dean of IIT Chicago-Kent College of Law, announced his plans to retire this summer. Hal joined the law school faculty in 1994 and has served as Dean since 2003. Hal has served the law school and Chicago's legal community with great distinction…**Britt M. Miller** was named partner-in-charge at Mayer Brown LLP's Chicago office…**Lawrence J. Suffredin, Jr.,** CBA Legislative Counsel and Cook County Commissioner, was a featured speaker at a recent meeting of the First Municipal Advisory Committee…**Michelle M. Kohut** was named a partner at Corboy & Demetrio.

Bob and **Joan Clifford** received the 2018 Distinguished Service Award from the Lawyers for Creative Arts for their support of the arts in Chicago…**Genhi Givings Bailey** was named Chief Diversity and Inclusion Officer at Perkins Coie LLP…Cook County Circuit Court Judge **Celia G. Gamrath** was appointed to the Illinois Supreme Court's Judicial Conference Committee…**Mona Naser** is a new associate at Carlson Dash LLC…**William Bogot,** a partner at Fox Rothschild LLP, spoke about "Legalized Possession and Use of Cannabis: A Legal and Ethical Dilemma for Health Care Organizations" at the Chicago Health Executives Forum…Sidley Austin LLP received the 2018 Corporate Partner Award from the Sargent Shriver National Center on Poverty Law…**Anne E. Rea,** Managing Partner of the Chicago office, accepted the award, which recognized the firm's pro bono contributions to preserve health care for thousands of Illinois residents…**Thomas A. Demetrio** is a new associate at Clifford Law Offices…**Jared I. Rothkopf** was elected a shareholder at Polsinelli P.C.…**Emily N. Masalski,** a partner at Rooney Rippie & Ratnaswamy LLP, was a presenter at the National Asian Pacific American Bar Association Conference on "Rapid Legalization of Marijuana: Risks, Stakes and Future Litigation"…**Samuel Crowley, Katie Trucco** and **Dominique Ritvo** are new associates at Donohue Brown Mathewson & Smyth LLC…**Allen J. Guon,** a partner at Fox Rothschild, was a moderator at the Hon. Robert E. Ginsberg Program on Commercial Bankruptcy…**Mary H. Schnoor** is a new associate at Jones Day…**Patrick A. Salvi II** was a featured speaker at ITLA's December seminar on medical malpractice…**Kerry M. Lavelle,** founder of Lavelle Law Ltd., was a featured speaker for the ABA's GP solo live podcast… Domestic Relations Division Presiding Judge **Grace G. Dickler** and Judges **John T. Carr** and **Robert W. Johnson** were featured speakers at the January Eight O'Clock Call…The Center for Disability & Elder Law (CDEL) will host its Winter Benefit on February 28 at Baker & Mckenzie.

Michael P. Rohan joined Locke Lord LLP as of Counsel in their Insurance Regulatory and Transactional Practice Department…**Richard Bixter, Christopher Buch, Anthony Fuga** and **Maria Metropulos** are now partners at Holland & Knight…**Ashley E. Crettol Insalaco** was named a partner at Tabet Divito & Rothstein LLC…**Charles A. "Drew" Walgreen** has rejoined Weltman Weinberg & Reis Co., LPA…**Corinne J. Pforr** and **Jennifer Y. Tolsky** are new associates at Chuhak & Tecson, P.C.…**Richard E. Nowak** and **Jonathan R. Rosaluk** were named partners at Mayer Brown LLP…**Danielle Neal, Ryan Burandt,** and **Paul J. Coogan** are new associates at Taft Stettinius & Hollister LLP…**K. Courtney Gustin** and **Monica Henderson** are new associates at Cunningham Meyer & Verdine, P.C.…**Jillian M. Molz** is a new associate at Gould & Ratner LLP…E**van Kline-Wedeen, Vincent R. Meyer** and **Kerianne A. Strachan** are new associates at Fitch Even Tabin & Flannery LLP…**David J. Gallagher** is a new associate at Motherway & Napleton LLP…**Elizabeth Awe Hafkey** has rejoined Butler Rubin Saltarelli & Boyd LLP…**Robert C. Ansani** is a new partner at Fuchs & Roselli Ltd.…**Kenneth T. Lumb** was named managing partner at Corboy & Demetrio…**Stephen R. Vedova** was elected an equity partner at Foley & Mansfield PLLP…Querrey & Harrow will celebrate its 80th year anniversary in 2019…**Daniel E. Feinberg** and **Geoffrey J. Repo** are new partners at Gordon Rees Scully Mansukhani LLP…**Michael C. Terranova** has become a partner at Cogan & Power…**Margaret A. Manetti** was named an associate at Sosin Arnold & Schoenbeck, Ltd.…**David F. Standa** and **Michael R. Wilson** were named partners at Locke

continued on page 58

A Special Notice to all Lawyers Who Reside in or Practice in Cook County

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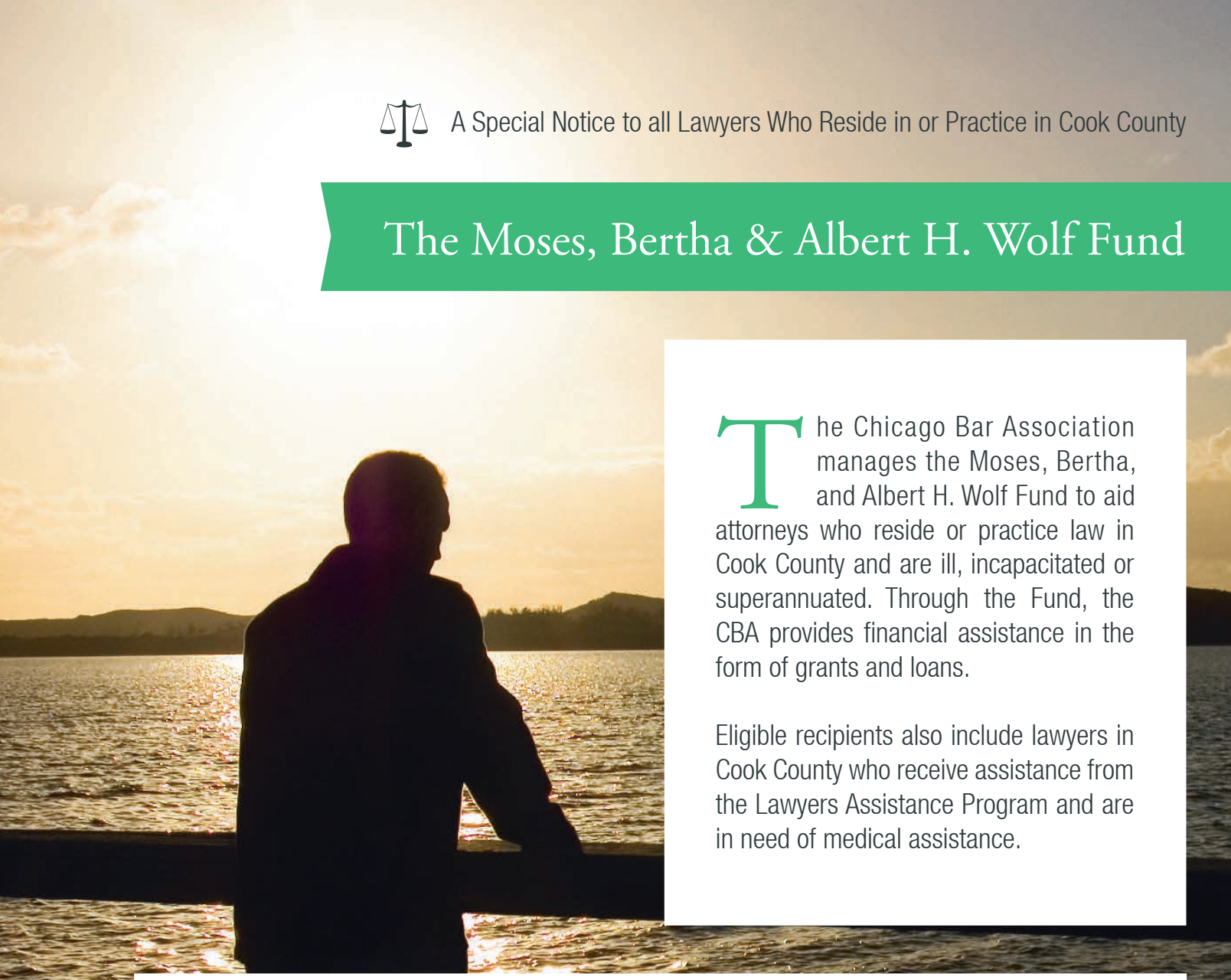

The Chicago Bar Association manages the Moses, Bertha, and Albert H. Wolf Fund to aid attorneys who reside or practice law in Cook County and are ill, incapacitated or superannuated. Through the Fund, the CBA provides financial assistance in the form of grants and loans.

Eligible recipients also include lawyers in Cook County who receive assistance from the Lawyers Assistance Program and are in need of medical assistance.

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– Wolf Fund Recipient

THE CHICAGO BAR ASSOCIATION

For more information, please contact Terrence M. Murphy, Executive Director
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By Judge Janet Adams Brosnahan

IPI Civ. No. 12.04: Making the Case for **Revisions**

The Proper Use and Application of the Sole Proximate Cause Defense

The second paragraph of Illinois Civil Pattern Jury instruction 12.04 embodies what is sometimes known as the "sole proximate cause defense" or the "'empty chair' defense." IPI Civ. No. 12.04 states:

Concurrent Negligence Other Than Defendant's

More than one person may be to blame for causing an injury. If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

[However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than the defendant, then your verdict should be for the defendant.]

THE NOTES ON USE INSTRUCT THAT INCLUSION of the second paragraph ("the long form") is justified "only where there is evidence tending to show that the sole proximate cause of the occurrence was the conduct of a third person" who is not a party to the lawsuit. As long as a defendant can proffer "some evidence in the record" to support the sole proximate cause theory, that defendant is entitled to the long form of IPI Civil No. 12.04. *Leonardi v. Loyola Univ.,* 168 Ill.2d 83, 101 (1995). Despite these deceptively clear and simple directives, confusion persists concerning when the long form is appropriately given.

No Need to Show Negligence

What gives rise to the confusion? Well, let's start with the misleading title. Although IPI Civ. No. 12.04 is titled "Concurrent Negligence other than Defendant's," the Illinois Supreme Court has recognized that a non-party's actions that are alleged to have caused the plaintiff's injury need not be negligent at all. Therefore, in *McDonnell v. McPartlin,* 192 Ill. 2d 505 (2000), the jury was properly instructed using the long form of IPI Civ. No. 12.04 where the defendant doctor in a medical negligence action argued that the conduct of a non-party physician was the sole proximate cause of the decedent's death. The defendant doctor was *not* required to show that the nondefendant's conduct was negligent. The Supreme Court conceded that the title referenced another's negligence, but ultimately concluded that the title had no impact on the use and essence of the instruction:

> Plaintiff places much emphasis on the title of the instruction-"Concurrent Negligence Other Than Defendant's." The title, of course, is not a part of the instruction that a jury receives. In any event, the title appropriately describes the main provision of the instruction contained in the first paragraph, rather than the optional provision contained in the second, bracketed paragraph, which pertains to sole proximate cause. *McDonnell* at 518.

Sole Doesn't Mean One

Misnomer aside, the substantive meaning of the second paragraph has also been the subject of disagreement and contradictory court opinions. The conflict arises from differing interpretations of the word "sole." In *Douglas v. Arlington Park Racecourse,* LLC, 2018 IL App (1st) 162962, the plaintiff, an injured jockey, sued Arlington Park Racetrack, alleging that Arlington Park negligently maintained the synthetic surface of the track, known as Polytrack. In its defense, Arlington Park presented evidence that two non-parties caused the plaintiff's injuries–a jockey, who improperly allowed his horse to clip the plaintiff's horse during a race; and the manufacturer of the Polytrack surface, for its failure to provide instructions on the proper way to maintain Polytrack to ensure its safe use. At Arlington Park's request and over the plaintiff's objection, the trial court instructed the jury using the long form IPI Civ. No. 12.04. After a verdict in favor of Arlington Park, the trial court granted plaintiff's motion for a new trial. The trial court found that use of the sole proximate cause instruction was improper and confusing to the jury because the Arlington Park blamed *two* alleged tortfeasors based upon *two* alternative and distinct theories of negligence. The First District Appellate Court disagreed, concluding that "sole," as used in the second paragraph of IPI Civ. No. 12.04 can mean any number more than zero. In so holding, the Appellate Court tacitly disregarded the use of the singular form of the prepositional object ("some other person"), and specifically rejected the rationale in both *Clayton v. County of Cook,* 346 Ill.App.3d 367 (1st Dist. 2003), and *Abruzzo v. City of Park Ridge,* 2013 IL App (1st) 122360, which interpreted "sole" as meaning only one:

Both *Clayton* and *Abruzzo* are grounded in the notion that the word "sole" connotes the singular, and thus "sole proximate cause" must refer only to a single nonparty actor or cause, not multiple. There is nothing illogical about that reasoning, but neither is it the only possible conclusion. If we were to delve into linguistics, the word "sole" does not necessarily imply only the singular. Merriam-Webster's Dictionary defines "sole" not only as "having no companion: Solitary" or "being the only one" but also as *"belonging exclusively or otherwise limited to one usually specified* individual, unit, or *group."* (Emphases added.) Other definitions include "being the only one; only" along with "belonging or pertaining to one individual or *group to the exclusion of all others;* exclusive." (Emphasis added.)

Douglas at ¶57 (internal citations omitted).

Thus, the *Douglas* court concluded that the sole proximate cause instruction is apropos whether one or one hundred nonparties are claimed to be at fault for the plaintiff's injuries. While disagreeing with the court's interpretation of "sole" in *Clayton* and *Abruzzo*, the *Douglas* court found support for its reasoning in Nolan v. Weil-McLain, 233 Ill.2d 416 (2009) (trial court erred by denying the defendant's sole proximate cause defense where 11 nonparties were charged with causing the plaintiff's injuries); and in Ready v. United/Goedecke Services, Inc., 238 Ill.2d 582 (2010) (trial court erred in refusing to give the second paragraph of IPI Civil No. 12.04 where two non-parties were accused of negligent actions resulting in the plaintiff's injuries). The reasoning of the majority in *Douglas* was consistent with an earlier, unpublished opinion by the Fifth District Appellate Court in Wehmeyer v. Caterpillar, Inc., 2017 IL App (5th) 160100-U, ¶ 37, which concluded, "To the extent the *Abruzzo* court held that the sole proximate cause instruction never should have been given in the first place because there were multiple other causes, we find the reasoning of the *Abruzzo* court unpersuasive in light of Nolan and decline to follow it."

The dissent in *Douglas* sharply disagreed, finding that the facts and reasoning in Nolan and Ready were distinguishable, and pointedly stating that "Any competent speaker of English would recognize that sole means one." *Douglas* at ¶127.

Examining the Utility of Two Sole Proximate Cause Instructions

The dissenting opinion in *Douglas* highlights another problematic issue pertaining to the appropriate use of IPI Civ. No. 12.04. At the jury instruction conference, the parties disagreed over whether the second sentence of I.P.I 12.04 should be given, *and* whether IPI Civ. No. 12.04 or IPI Civ. No. 12.05 was more appropriate. Arlington Park advocated for the use of the long form IPI Civ. No. 12.04, and plaintiff's counsel proffered instead, the short form of IPI Civ. No. 12.05. In its entirety, IPI Civ. No. 12.05 reads:

> ***Negligence—Intervention of Outside Agency***
>
> If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that something else

may also have been a cause of the injury.

[However, if you decide that the sole proximate cause of injury to the plaintiff was something other than the conduct of the defendant, then your verdict should be for the defendant.]

Plaintiff's counsel argued that an instruction on sole proximate cause should be "limited to one or the other of these instructions," depending upon whether the defendant presented evidence that another person (IPI Civ. No. 12.04) or another thing (IPI Civ. No. 12.05) caused the plaintiff's injury. The trial court agreed, ruling that a defendant is not entitled to "two separate distinct sole proximate cause instructions." *Douglas* at ¶103.

But, in practice, the distinction between a third person, as described in IPI Civ. No. 12.04 and "something else" as described in IPI Civ. No. 12.05, has been conflated. For instance, in *Barbara a Vendt-Rhoades Indep. Ex'r of the Estate of Patrick v. Mathew-Stilson,* 2008 Ill. Cir. LEXIS 2,*23, the long form of IPI Civ. No. 12.04 was proposed, accepted and given where the defendant doctor's expert medical witnesses testified that the sole proximate cause of plaintiff's death was his pre-existing prostate cancer (obviously, a thing, not a person).

In *Banks v. Climaco*, 283 Ill. App. 3d 842, 852 (5th Dist.1996)(overruled on other grounds), the First District Appellate Court aptly noted that IPI Civ. No.12.05 is more comprehensive than the language of IPI Civ. No. 12.04, because "'something other than the conduct of the defendant' may include the conduct of a nonparty." Therefore, in *Banks,* when contemplating the proper use of long form IPI Civ. No 12.05, the court relied upon case precedent discussing the use of long form I.P.I Civ. No. 12.04, reasoning that whether the sole proximate cause instruction pertained to a thing or a person was "a distinction without meaning."

Indeed, various courts, adopting the language used in *Leonardi v. Loyola Univ.,* 168 Ill.2d 83, 101 (1995), have reiterated that the sole proximate cause instruction is warranted whenever there is evidence tending to show that the sole proximate cause of the plaintiff's injures was "the conduct of a third person, or *some other causative factor."* (Emphasis added.) Why not adopt similar language in a single jury instruction? A sound argument can and has been made that a jury should not be given two sole proximate cause instructions; an even better argument is that there should not be two separate sole proximate cause instructions.

When an Illinois Pattern Jury Instruction has caused litigants, judges and justices to disagree about its meaning and its application, certainly it has the potential to confuse, rather than to direct and inform, the jury. Regarding IPI Civ. No. 21.04, the *Douglas* court said, "Nomenclature aside, the sole proximate cause theory is simply one way a defendant argues that the plaintiff failed to carry its burden of proof on proximate cause—specifically, by arguing that the negligence of another person or entity, not a party to the lawsuit, was the only proximate cause of the plaintiff's injuries." *Douglas* at ¶36. Without question, IPI Civ. No. 12.04 is flawed if we must both disregard its title and set "nomenclature aside" in order to use it as intended. Moreover, IPI Civ. Nos. 12.04 and 12.05 can and should be combined into a single comprehensive and clear instruction reflecting the sole proximate cause defense.

Conclusion

In light of the ambiguity inherent in the word "sole" and the conflicting interpretations contained in case law, the Illinois Supreme Court should weigh in, and the Illinois Supreme Court Committee on Jury Instructions in Civil Cases should revise both the title and the text of IPI Civil No. 12.04, so that the law on sole proximate cause is understood by lawyers, judges and juries alike. ■

Judge Janet Adams Brosnahan serves in the Circuit Court of Cook County's Law Division.

The CBA Record's Flash Fiction Creative Writing Contest 2018

The results are in! The **CBA Record** is thrilled to publish the winning entries from its 2018 Flash Fiction Creative Writing Contest.

Coinciding with the Write Across Chicago initiative, 22 CBA members submitted entries to the competition, which was judged by members of the Record's Editorial Board. The winning entry is *The Poetry Garage*, by Julie Justicz, who is with the Chicago Lawyers' Committee for Civil Rights. Second place goes to *Frankie* by Tom Sotos of Greenburg Traurig LLP. he third place reciepient is *Quietly,* by Daniel P. Lindsey of the Legal Assistance Foundation. We hope you enjoy these short fiction pieces as much as we did.

Thanks to all the entrants, who demonstrated that many talented writers belong to the CBA. Due to the enthusiasm for the competition, the Editorial Board intends to repeat it in about a year.

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Episode 9

The Brexit Brouhaha

What's all the brouhaha about Brexit? In this episode, host Jonathan Amarilio and Andrew Walker, Queen's Counsel and the 2018 Chair of the Bar of England and Wales, break it down for us with a rousing discussion about the practice of law across the pond, how the legal community is impacted by Brexit and much more. Special thanks to our episode sponsor: One Legal.

Episode 10

The Amanda Knox Again Edition: Defense Team

Was the media's portrayal of the murderous "Foxy Knoxy" accurate or was she just an innocent college student caught in a nightmare? In this episode, hosts Jon Amarilio and Trisha Rich speak with Amanda Knox's lead Italian defense lawyer, Carlo Dalla Vedova, and her media consultant, Alex Guittieres, getting a behind-the-scenes look at the trial that gripped the world. Special thanks to our episode sponsor: One Legal

Episode 11

Benching Judicial Independence: The Poland Edition

In this episode, hosts Jonathan Amarilio and Jennifer Byrne are joined by Mikoaj Pietrzak, Dean of the Warsaw Bar Association, for a discussion about the political and social conditions that led to this assault on Poland's judiciary, the impact it's had on the Polish people and legal system, what this tells us about similar efforts in other countries, and what can be done to defend the rule of law.

Flash Fiction Creative Writing Contest

–First Place–

The Poetry Garage | By Julie E. Justicz

Traffic snarled at Dearborn and Madison. Ten minutes before Margie could squeeze her scrappy 2002 Honda into the backlogged buses, bullying cabs, and ubiquitous Ubers. Driving into the city was never worth the hassle, even when she needed a car. Tonight, she had a maybe date with Larry. Maybe, because he often cancelled at the last minute. Maybe, because it might not be a date. They'd been friends and work colleagues for over 25 years at Legal Assistance Foundation of Chicago (recently rebranded, expensively, stupidly, LAF). Still, she was hopeful about what the evening might bring: she'd dust busted the car seats this morning to get rid of dog hair and she was wearing her flowy blue outfit from Second Time Around.

She'd booked her parking spot with one of those new apps: Spacegrabber? Spotmonster? Sixteen dollars all day. A real deal because Loop retail was closer to forty bucks. Yasmina, a new attorney, fresh out of UChicago (which hadn't yet been rebranded that when Margie attended), had downloaded the app on Margie's phone, then insisted on adding another one named Venmo—"for, you know, like charging a friend after you buy them a latte." Didn't that defeat the whole point? Would Larry "Venmo" her for dinner tonight?

Cyclists pedaled furiously past her car window. Divvy was the latest plague to hit the city. As with iPhones and sleeve tattoos, the blue bikes appeared overnight, infecting everyone under thirty, then slowly spreading to the older generation. Margie was tatt-free, planned to die that way, but she'd surrendered to Apple, bought a used iPhone 6S, last month. "I miss the flip-phone," Larry had said, when he entered his info into her contacts. Unnecessarily, because Margie knew all his numbers by heart: home, office, cell. Address and email, too. Larry was the first person she'd met at LAF. She'd just finished a clerkship in Detroit; he'd arrived fresh from a Kibbutz where he'd picked dates for a year post law school. When they were baby attorneys together in different neighborhood offices, they talked on the phone for hours every day, had dinner at least once a week. She hadn't found him attractive; he was tall and tan and tended to bump into things. But now, with his thinning hair and unkempt beard, his ever-stained ties, well, could she imagine growing old with him, maybe moving to Cape Cod?

A pedestrian banged hard on the hood of her car. Cheap suit, briefcase, comb-over, no doubt headed for the 9:30 call at the Daley Center. He flashed his thick middle finger at her, disappeared behind a bus. Self-righteous jerk. He was the one jay-walking. Margie laid on her horn, loud and long, like a driver in a New Yorker traffic cartoon.

Hadn't Larry first won the caption contest on a cartoon like that? He submitted an entry every week, spending hours finding the perfect line, even when he was overwhelmed with cases. He'd email her his ideas, but she was terrible at picking winners. Terrible at telling jokes, too, apparently. Larry once said, "No one can flub a punchline like you." But he also said that she was the best damn brief writer in the agency. "Precise and compelling." That from his first evaluation of her work, when he became Housing Project Director, her direct supervisor, and she was bumped up to Senior Attorney, a title without a pay raise. He'd won the caption contest eight times in the last few years; twice the number of trials Margie had won in the past quarter century.

The red light at Wells changed two more times before she got through, turned into the garage, and spiraled up to level five. W.H. Auden's floor, because yes, this was The Poetry Garage and yes, she'd picked it for that reason, and yes, she wrote poetry in her spare time. She imagined retiring to a beach house with Larry. With her dogs, too. She'd sit with a mug of coffee, watch the waves, write nature poems, while he sat on the can, coming up with winning captions.

Waiting for the elevator, she looked at Auden's photo—young, horse-faced, slicked hair, big-ears. The words printed under his image: If equal affection cannot be/Let the more loving one be me. Why not Stop all the clocks, the poem made famous by Four Weddings and a Funeral? She'd seen that rom-com twice, foppish Hugh Grant and the admittedly awful Andie MacDowell. She saw it the first time with Larry at Webster Place. His nostrils had flared throughout the movie. "Sentimental crap," he said afterwards, so she'd had to watch it again on her own a week later to cry freely. Larry and she did better with books than movies. Better with restaurants than books. Though she was a little dubious about the Vietnamese place he'd suggested for tonight. She suspected Larry had been turned on to it by one of the pretty young lawyers he supervised. They got to you, the twenty-somethings, putting new tastes in your mouth, new apps on your phone.

The elevator down: Frost, Whitman, Eliot. Emily Dickinson on street level. Was she the only female poet the floor-namer could come up with? If that were a full-time gig, paying decent money, Margie would love to name garages and then label their floors. She'd start with The Book Garage, each level titled for a favorite novel. Maybe one for movies…Chicago movies…Would there be enough? Blues Brothers. Adventures in Babysitting. Home Alone. At 53, Margie felt she was approaching irrelevance. She'd never be a floor in The Law Garage. She'd never won so much as a newsletter mention for her (admittedly minor) victories at LAF. And now she worked alongside iPhone X'ers, tech-savvy, Divvy-riders. They knew how to do things with computers that seemed liked sorcery. She'd fought the office manager for two years before giving up WordPerfect; she still missed the old key codes, hated the wireless mouse.

Yasmina stood outside Margie's office, misery drowning her fine features. Overwhelmed by their caseloads, new attorneys often lined up outside Margie's door to ask questions: Is medicinal marijuana use cause for eviction? What about a therapy dog? Oral research was how legal aid lawyers managed to assist sixty clients a month.

Margie held up her hand like a stop sign. "Give me a minute, please."

She got five seconds.

"Remember the family in that crappy building in Pilsen? Well, the landlord changed the locks on their apartment last night, so the dad, Jorge, broke a window to get in. Now the cops are there and the landlord's threatening to call ICE and Jorge's terrified he'll be arrested…"

Margie's computer whirred to life. "I'm sending you my file on illegal lockouts. Fill out a petition--start adding names, summarize the events up to now. Attach the judge's order from last week. Be sure to include the kids' ages—the baby. I'll head over there."

"Now? Are you driving? I can download the Waze app for you…"

"No need. My car's happy where it is. I can catch a cab, then Venmo Larry later for the fare." ■

Julie E. Justicz is Program Development Counsel for the Chicago Lawyers' Committee for Civil Rights

Flash Fiction Creative Writing Contest

–Second Place–

Frankie | By Thomas J. Sotos

He looked different than she remembered. Gone was the beard she once adored, and slimmer, average height stretched taut. His hair was the same, rusty blonde styled in a short, boyish fringe.

And then, of course, that other change, beneath the surface.

He was married eight years ago, he was twenty-five years old, her name is Elin, they grew up together in Gothenburg.

It had been ten years, but still, an uneasiness roiled her insides at the sight of the wedding band on his left hand. Steeling herself, she walked over to where he sat and rested a trembling hand on his shoulder.

He looked up from his newspaper. For the first time in a full decade, she heard him speak, "Kan jag hjälpa dig?"

She giggled. Swedish, of course! Oh lord, stop laughing. Everyone's looking at you. Nervously, she replied, "Probably should've touched up on my Swedish before I—well, sorry. Anyway, long time Isak. It's good to see you again."

Isak, in hardly a whisper, responded, "Horunge. Marissa?"

Marissa smiled. That was one of the few fragments of Swedish he'd bothered to teach her. "Hey I know that one! 'Son of a bitch!' Right?" You just swore loudly in a Swedish coffee shop. Please stop.

He spoke again, this time in English. "Yes, yes. My God. Marissa? What are you doing here?" He stared at her, unmoving. Like he'd seen a ghost, the blood drained from his face, rosy cheeks fading pale.

Marissa's anxiety betrayed another giggle. "Yeah, it's me. Sorry, I wanted to catch you on your lunch break, and your receptionist said I could find you here. Such a cute place! I didn't know—"

"Marissa, what the hell is going on?"

God damnit. Pull it together. "Right, sorry again. Look, Isak, we need to talk. I know this is strange, and I know it's been so long. I just, can we go somewhere? Is there a place—"

"My office."

With the abruptness of someone accustomed to receiving important news without delay, Isak stood up, threw on his overcoat, and walked out the door.

This is going swimmingly. Marissa sighed and looked around the café. It was a small, self-contained room. Four walls of exposed brick, half-full with twelve people, all staring directly at Marissa. Quickly, head down, she strode for the door and found Isak outside.

Ten years since Marissa last saw him. A decade of upheaval, a decade of refusing to send so much as an email to the man unknowingly responsible for

turning her life on its head. Ten years of wondering about him, his marriage, his life. Maybe I should have called before ambushing him at a Swedish coffee shop.

Isak set a brisk pace, Marissa trailing silently behind as they walked two blocks to an old-seeming cottage-style building just outside of Stockholm. But for the Swedish law firm it housed, the building wouldn't have been out of place in a New England hamlet.

They walked into the lobby, past the receptionist and administrative staff, and into Isak's office. Marissa closed the door, and Isak hung their coats. He leaned onto a large oak desk and looked her in the eye, gaze sympathetic but unwavering, waiting for her to speak.

"My God, he looks just like you Isak." Oh come on Marissa. She couldn't help it. It was the only thing on her mind. Isak's nose, smallish and thin, Nordic in every sense. The elongated face, cheekbones so prominent they looked ready to burst from his skin at a moment's notice. Even the hair, beautiful and blonde and youthful, just like it was when they'd first met.

She reached into her clutch, retrieved a picture, and handed it to Isak. Voice aquiver, she said, "He's ten. Franklin, after my dad. Everybody calls him Frankie. His middle name—he's yours, Isak. Franklin Isaac Keller."

Isak held the postcard-sized photograph not six inches from his eyes, concealing his face from Marissa. Two minutes ticked away on the clock above his desk. Ten years of not knowing. In two minutes.

Sweat trickled down Marissa's forehead. Isak lowered the picture—Marissa's favorite, Frankie in his baseball uniform, holding his hat in his first baseman's mitt—an inch or so. Eyes still glued to the image in his hands, Isak muttered, "He has my nose. Your eyes though, definitely your eyes. None of my blue."

Despite herself, Marissa laughed. "And he already has to wear glasses. Blame me for that one, too."

Isak looked up, eyes locking onto Marissa. He looked back to the picture, then again at Marissa. She could feel Isak's mind churning at warp speed, eyes darting from picture to woman and back again, trying to process the events before him. After an eternal minute of uninterrupted contemplation, he said, "Marissa, am I to understand that this is my child? For ten years, you have been raising my son?"

Her heart clenched, jolted to the core. He wasn't angry, and he certainly wasn't loud. Marissa could have handled that. Hell, she found herself almost hoping for it. Instead, Isak spoke gently, his tenor warm and familiar, his questions direct. It crushed her.

Marissa breathed deeply, searching for something to say. She came up with little. "I'm sorry Isak. I—yes."

Isak looked down once more, at the picture of Frankie. His son. He spoke slowly, weighing the propriety of each word as it escaped his lips. "You will understand if I ask you to leave now? I would like some time alone. I will cancel my dinner plans so we can speak over a meal, yes?"

His accent, unlike his mannerisms, had undergone a drastic transformation. Where once he stuttered and skipped over articles, refrained from using contractions, and had the unintentional but amusing habit of employing the wrong verb to wildly inappropriate effect, now his English was crisp and precise, nearly bereft of Swedish influence. Except for that contraction thing. Marissa noticed he had yet to use even one.

Through the lump in her throat, Marissa forced an answer. "Yeah, yeah of course Isak."

"Thank you, I will have a car pick you up this evening. Leave your address with my receptionist. I will see you tonight." The words he spoke to Marissa, but his eyes had long since returned to the picture.

"Oh, okay, yeah. Thanks. See you tonight."

As Marissa stood up to leave, Isak looked at her. Softly, he asked, "I may keep the picture, ja?"

Marissa smiled. "Yes! Isak of course!"

"Tack. God dag, Marissa."

Isak rose from his chair, walked around the table, kissed Marissa deftly on both cheeks, and returned to his desk. She lingered a moment. With both hands on the table's edge, Isak leaned over the photo and stared, transfixed by the image of a boy he created, but did not know. Eyes welling up, Marissa shuffled soundlessly to the door, opened it without a word, and stepped out of his office. She hurried to the firm's front entrance and burst outside, her tear-strewn face greeted by a chilly Stockholm wind. ■

Thomas J. Sotos is a Chicago Litigator with Greenberg Traurig, LLP

Flash Fiction Creative Writing Contest

–Third Place–

Quietly | By Daniel P. Lindsey

Ana slumped down into the curve of cracked orange plastic. From here she could avoid the gaze of the receptionist, a large block of woman with an accent heavy on borscht and light on vowels. Not that Ana was judging. Her maternal grandparents came over from the steppes of Eastern Europe–so far east it was Asia, depending on who you asked. Gramma Ulyana had been her favorite person in the world, but, had she been here, she would have been the one judging. Ana didn't need the reminder.

A whoosh of air and a chime of bell. Ana felt a chill, and then, even without looking, she knew: her mother. Ana stayed very still. When she was little she and her mother played a modified version of *Hide and Seek.* The Hider would go into the next room and find a spot in plain view, and after a count of twenty the Seeker would come into the room with eyes closed, moving slowly and feeling along the wall. The Hider would sit as still and as quiet as possible, while the Seeker would listen and reach out and creep along. If the Hider could remain undetected for more than two minutes, she won the round.

Ana started counting. Maybe if she concentrated hard enough her mother would play the game. Maybe if she could last two minutes, her mother would go away.

"Ana?"

She looked up. For a confused moment she found herself staring into the face of Gramma Ulyana. How could that be? Was the force of Gramma Ulyana's disapproval so great that she had summoned herself here from beyond the grave?

The image resolved itself into that of Ana's mother. It had been a trick of the incandescent light, its harsh glare framing her mother against the dark contact paper lining the windows. When Ana first arrived, she assumed the opaque layering was there to protect the privacy of those within. But sitting inside, she began to wonder if it was meant to safeguard the sensibilities of those outside.

"Ana?"

"Mother."

As Ana's mother took a seat and leaned toward her daughter, the heavy brass St. Michael medallion hanging from her neck swung out and clipped Ana's jaw.

"Ow!" Ana grabbed her chin. "You brought reinforcements."

"Oh, I'm sorry!" Ana's mother gathered in the necklace and stowed it under her sweater.

"It's alright. I've always wanted to be touched by an angel. Just not that hard."

Ana's mother sighed. "Ana, why didn't you tell me what was going on? We could have talked. I could have helped." She paused and looked around, as if belatedly acknowledging the private nature of their conversation, but the only other person in the room was a headphoned girl rocking to a heavy bass line.

"Helped?" repeated Ana. "How could you have helped?"

"We could have talked. I could have listened. I could have told you stories about—about girls I knew. Girls who made mistakes. Who had regrets." She paused and shook her head. "Anyhow, it doesn't matter." She mustered her resolve. "For the wages of sin is death. I believe that, Ana. You must choose life. Always. No matter the cost."

"That's easy for you to say."

"No, not so easy." She paused, reaching for her medallion, fumbling when she came up empty. She placed her hand on Ana's leg. "We didn't plan on you, you know. We had our perfect family of five. We'd just bought the house. We were just getting settled. And then your father lost his job. And then—surprise!—you came along. At the worst time."

"You never told me."

"Because you didn't need to know. And because you also came along at the best time. Because in the end there is no worst time. Only the best—even if it's the hardest."

Ana blinked and turned away. She met the gaze of the headphoned girl, who stopped rocking though her bass line continued to thump.

"Ms. Lukashenko?" intoned the receptionist from the open door to the back of the office. "Ms. Lukashenko?" she repeated, sounding bored.

Ana stood. So did the headphoned girl. They looked at each other in confusion.

The receptionist shook her head. "Sofia Lukashenko?" Ana sat down as the girl disappeared inside.

Ana turned to her mother. "So how did you know?"

"Oh, Ana. A mother knows these things. You've been acting strange lately. Then yesterday at the market I ran into Coach Bennett's wife. She told me about the birthday dinner she was planning tonight for Emma, and how the whole family would be there, and so I knew you were lying about basketball practice. It's not like you to lie."

Ana felt a warmth rising to her face. "Okay, but how did you know I was here?"

"Oh. I followed you."

"From school? All afternoon? But that's, like, two hours."

She shrugged.

From the back they heard muffled voices, then a scrape and a thump and the slamming of an inner door. Footsteps and louder voices, then the door to the waiting room flew open and the girl rushed out, awkwardly trying to yank on her coat and reattach her headphones all as she hurried out the front door and onto to the street.

Ana felt her mother squeeze her leg. "You see?"

"No, Mother, I don't see," answered Ana. "I have no idea what that was about, and neither do you."

"Well, it wasn't good. My guess is that the reality of the…procedure…finally sank in."

Ana stared at her mother. "Procedure? You mean…you think I'm here to get an abortion?"

Ana's mother cringed. "Please don't say that word. But, yes, why else would you be here?"

Ana shook her head. "I'm here to get birth control."

"Birth control. What? You mean you're sexually active?"

"No. Not yet. I'm just being careful. But, even if I were, two minutes ago you thought I was pregnant. Isn't sexually active better than pregnant?"

"But one leads to the other."

"Not if you use birth control."

Ana's mother opened her mouth. Then she closed it. Then she surprised Ana by letting out a small laugh. "Well," she said, "it doesn't always work. Like I said, you were a surprise. You were the daughter we didn't plan on."

Ana frowned. "Wait a minute. Are you saying that you and dad used birth control?"

"Ana, believe me, if all we'd used was the rhythm method, you would have a lot more than three sisters."

"But you're Catholic."

"I'm aware."

"But the Church doesn't believe in birth control."

"But I do. I may be Catholic, but I'm also a woman.

The inside door opened. "Ms. Lukashenko?"

Ana stood up.

So did her mother.

"Mother, what are you doing?"

"I'm coming in with you."

"What? I thought you didn't approve."

"I don't," she agreed, patting St. Michael, who remained quietly hidden beneath her sweater. "But I'm still your mother." ■

Daniel P. Lindsey is Director of the Consumer Practice Group at the Legal Assistance Foundation

Protecting Your Family

By Brandon E. Peck YLS Chair

This past holiday season brought families together, gave everyone a chance to enjoy each other's company, and the opportunity to see many family members for the first time in months or years. Often, these family gatherings are when individuals observe a cognitive decline in a member of the family. Whether this is the first instance in which a decline is observed, or whether the decline has been observed for many years, the time to take action to protect that family member is now.

Changes in an individual's behavior, mood, spending habits, relationships, or friends may indicate that they need assistance. A family gathering not only presents an opportunity to observe these changes, but also provides a good setting for a family to sit down and discuss what they can do to help.

Additionally, the end of the year is a great time to take stock of estate planning documents or advanced directives. In the world of probate and estate litigation, individuals often wait too long to create an estate plan or execute an advance directive that could have protected themselves and their family. Expensive and protracted litigation can be a consequence of failing to timely execute estate planning documents.

Facing one's own mortality and planning for personal disability or death is not an easy or attractive subject. However, the alternative to not addressing the realities of life can cost individuals and families time, money, and unnecessary grief.

Unfortunately, many people think of an estate plan as something that is used after death. However, that's often not the case. A proper estate plan involves more than just a will. A power of attorney for property will identify who can make financial decisions for you, should you become incapacitated. A revocable living trust can designate how your money will be distributed, even while you are still living. Seeing why these two things are so important is as simple as asking these questions: How do I want to spend my time if I become ill? Who will pay my bills if I can no longer do so? Where would I want to live? Would I rather live in a nursing home, or at home with a caregiver? If you don't have an estate plan, and you are unable to make decisions for yourself, the answer to these questions are in the hands of someone else. A lack of planning in the financial area can have a major impact on how you spend the end of your life.

Everyone over age 18 should have powers of attorney in place for their protection. Powers of attorney are powerful documents that allow an individual (the "principal") to designate an individual or entity ("agent") to make financial and health care decisions when they are no longer able to make those decisions on their own. Illinois recognizes two types of powers of attorney: financial and medical. Financial powers of attorney usually include the right to open bank accounts, withdraw funds from bank accounts, trade stock, pay bills, and cash checks. They can also include the right to give gifts. Medical powers of attorney allow the agent to make health care decisions when the principal is no longer able to make them. In all of these tasks, the agent is required to act in the best interests of the principal. The power of attorney document explains the specific duties of the agent.

A power of attorney is one of the most

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important estate planning documents, but it is important to know the rights and limitations associated with it. For example, when a parent names only one child to be the agent under a power of attorney, it can cause bad feelings and distrust among the child's siblings. The following are some things to keep in mind:

- Right to information. Your parent doesn't have to tell you whom he or she chooses as the agent.
- Access to the parent. An agent under a financial power of attorney should not have the right to bar a sibling from seeing their parent. A medical power of attorney may give the agent the right to prevent access to a parent if the agent believes the visit would be detrimental to the parent's health.
- Revoking a power of attorney. As long as the parent is competent, he or she can revoke a power of attorney at any time for any reason. The parent should put the revocation in writing and inform the prior agent.
- Removing an agent under power of attorney. If the agent is acting improperly, family members can file a petition in court challenging the agent. If the court finds the agent is not acting in the principal's best interest, the court can revoke the power of attorney and appoint a guardian.
- The power of attorney ends at death. If the principal under the power of attorney dies, the agent no longer has any power over the principal's estate. The court will need to appoint an executor or personal representative to manage the decedent's property.

While it may seem like overkill to have a young adult execute such documents, the preparation of such advanced directives help negate the possibility of any disagreement as to who should act on your behalf, should you be unable to make decisions for yourself.

In addition to powers of attorney, all adults should have a will. The will itself will become effective upon the death of the testator and will nominate an individual "executor" to handle the distribution of their assets. A common misconception is that a will can provide the executor with authority during the testator's life. This misconception is one of the main reasons that people do not execute powers of attorney. Over the last few years, I have observed individuals seeking to have wills prepared in a number of scenarios: when they begin to accumulate wealth; when they have children; when they retire; and when family members pass away. These are common occurrences leading individuals to speak with their attorney, but are not by any means the only instances in when a will should be prepared.

While an estate plan can encompass other documents besides these, they are fundamental for all individuals to protect themselves and their family. Not only will the creation of these documents help you plan for the future, but they give you piece of mind that you have protected your family and loved ones. ■

Defense Tools to Preclude Forum Shopping

By Steven A. Montalto

A client recently emailed you a new civil defense matter for review. You promptly gauge the allegations in the complaint and prepare an initial strategy. Was the lawsuit timely filed? Is the client a suitable party? While these are valid contemplations, a recent Illinois Appellate Court decision reminds defense counsel of an additional consideration: whether the plaintiff has engaged in forum shopping. In *Hale v. Odman,* 2018 IL App (1st) 180280, the Illinois Appellate Court, First District, reviewed the Circuit Court of Cook County's denial of a defendant's motion to transfer under the forum *non conveniens* doctrine. The First District's reversal of the lower court shows that a motion to transfer venue under the forum non convenviens doctrine continues to serve as a valuable tool to thwart forum shopping.

The *Hale* lawsuit involved an automobile collision in Kane County, Illinois, approximately one mile from its border with Cook County. On the date in question, the plaintiff operated a motorcycle that collided with a commercial vehicle operated by the defendant. The plaintiff died from his injuries. Hale, as administrator for his son's estate, filed a wrongful death action against the driver and the driver's employer, alleging the driver negligently caused the accident. Hale filed the lawsuit in Cook County, and the defendant driver sought a transfer to Kane County under the forum *non conveniens* doctrine.

The trial court found Hale and the defendant driver were Kane County residents. The driver's employer was also located in Kane County. Of the five eyewitnesses to the accident, four were Kane County residents and one lived in DuPage County. Of the 11 damages witnesses Hale named, one lived in Kane County, two resided in DuPage County, one was from Washington and seven resided in Cook County. The accident was investigated by five Kane County Sheriff's agents and one from the Illinois State Police.

Private and Public Interest Factors

In denying the defendant driver's forum *non conveniens* motion, the trial court applied the Illinois Supreme Court's analysis from *Dawdy v. Union Pacific R.R.,* 207 Ill. 2d 167 (2003), and found both the private and public interest factors weighed against transferring the matter to Kane County. As to the private interest factors, the trial court found the parties' convenience was neutral. That is, in filing the lawsuit in Cook County, Hale found Cook County convenient and in seeking transfer, the defendant driver found Kane County suitable. In analyzing access to evidence, the court favored transfer to Kane County, as most witnesses resided in Kane County. In examining the practical problems involved in making the case expeditious and inexpensive, the trial court found the cost of obtaining willing witness testimony favored Kane County due to reduced parking expenses.

As to the public interest factors, the trial court stated the interest in deciding

localized controversies locally favored Kane County. Nevertheless, the court found Cook County maintained a "palpable interest" in the lawsuit because the defendant employer did most of its business in Cook County. The court determined the unfairness associated with imposing jury duty on county residents with little connection to the lawsuit also favored Kane County. In total, the trial court found the forum *non conveniens* factors favored Kane County, but it held the defendant driver failed to meet the standard for moving to transfer. The defendant driver appealed.

On review, the Illinois Appellate Court reversed the trial court and remanded the matter with directions to transfer to Kane County. The First District paid particular attention to a number of private and public interest factors. Under the private interest factors, particularly the parties' convenience, the First District looked beyond "declarations of conveniences" and realistically evaluated convenience relative to Cook County versus Kane County. There, the court took judicial notice that approximately 40 miles separate the Daley Center (Cook County) from the Kane County courthouse. The First District ultimately rejected the trial court's reasoning and found the parties' convenience favored Kane County, as both Hale and the defendant driver resided in Kane County. Additionally, while the trial court found the relative ease of access to testimony and evidence slightly favored Kane County, the First District disagreed with the trial court and found this factor weighed "strongly" in Kane County's favor, as the majority of witnesses resided in Kane County. Citing to the Illinois Supreme Court's decision in *Washington v. Illinois Power Co.,* 144 Ill. 2d 395 (1991), the appellate court held a 40 mile drive between counties was to be factored into a forum *non conveniens* analysis.

In evaluating the public interest factors, the Illinois Appellate Court rejected the trial court's conclusion Cook County maintained a "palpable interest" in the lawsuit. The First District cited to the Illinois Supreme Court's decision in *Kahn v. Enter. Rent-A-Car Co.,* 355 Ill. App. 3d 13 (1st Dist. 2004), and stated that merely conducting business in a county does not affect a forum *non conveniens* analysis. Applying *Kahn,* and distinguishing the *Hale* matter from *Blake v. Colfax Corp.,* 2013 IL App (1st) 122987, the appellate court determined while the defendant employer had a connection to Cook County, it did not perform the "overwhelming majority" of its work there. Thus, at best, the defendants' connection to Cook County resulted in a neutral finding under the public interest factors. In all, the Illinois Appellate Court found both the private and public interest factors strongly favored transfer to Kane County. Accordingly, the First District reversed the trial court's denial and remanded the matter back to the trial court for transfer.

Implications for Defense Counsel

Hale has a number of implications for defense counsel. First, *Hale* reminds defendants that not all private and public interest forum *non conveniens* factors need be met to successfully transfer a matter under the doctrine. Indeed, the First District in *Hale* found certain private interest considerations, namely the location of attorneys on the case, favored Cook County as the venue. Nevertheless, the appellate court remanded the case with directions to transfer. *Hale* prompts defendants to bear in mind that courts consider both the private and public interest factors "without emphasizing" any specific factor. *See Langenhorst v. Norfolk Southern Ry. Co.,* 219 Ill. 2d 430 (2006). Ultimately, determining the most appropriate forum depends on the facts presented in each case. *See Moore v. Chicago & North Western Transportation Co.,* 99 Ill. 2d 73 (1983).

Second, *Hall* supports the proposition that trial courts should seek to prevent plaintiffs from forum shopping. S*ee First American Bank v. Guerine,* 198 Ill. 2d 511 (2002). To ensure this, trial courts should look beyond what the parties say is convenient and evaluate what the burden on each party actually entails. In *Hale,* for example, the First District set aside affidavits from party witnesses addressing what location each witness thought was convenient. Instead, the appellate court focused on the mere fact most witnesses lived in Kane County and the Kane County courthouse was a much closer venue than the Daley Center.

Most importantly, the *Hale* court refused to take into account Hale's choice of forum in its convenience analysis. Although Hale petitioned the court to provide his venue selection significant deference, the First District disagreed. In doing so, the court reminds defendants that where the selected forum is not the plaintiff's home forum, it is not necessarily reasonable to assume the plaintiff's choice is convenient. This is particularly the case where the accident in question did not occur in the selected forum. *See Espinosa v. Norfolk & Western Ry. Co.,* 86 Ill. 2d 111 (1981).

Finally, *Hale* stands for the implication that merely doing business within a particular county is insufficient to defeat a motion to transfer under the forum *non conveniens* doctrine. In *Hale,* the trial court originally found the defendant corporation conducted most of its business in Cook County. On review, the First District found while the defendant corporation did, in fact, do business within Cook County, it did not perform the majority of its work in the county. The appellate court found this work, alone, was not a proper basis to deny the defendant driver's motion to transfer.

The next time client submits a case for your review, it is important to keep in mind the *Hale* decision and its implications of motions to transfer under the forum *non conveniens* doctrine. *Hale's* reversal serves as a reminder that a well-formulated motion to transfer venue due to forum non convenviens is an effective tool to help thwart forum shopping. ■

Steven A. Montalto is an associate in the Chicago office of Cassiday Schade LLP, concentrating in construction injury and defect, product liability, general liability, automobile collisions, bankruptcy, toxic tort and commercial litigation.

SUBSTITIONS, DISMISSALS, AND NONSUITS

The Voluntary Dismissal: Getting It Right

By Alexander J. Beehler

One of the many benefits of working in chambers with the Presiding Judge of the Circuit Court of Cook County's Law Division is having an opportunity to see how the court administers cases around their trial dates. For the most part, trials proceed and are assigned without a hitch. Things can get tricky, though, when there are judge substitutions, or if a plaintiff decides to take a voluntary dismissal or nonsuit. Often, as the trial date looms, someone from plaintiff's office will deliver a proposed order containing language such as, "Plaintiff hereby voluntarily dismisses her lawsuit." A court cannot enter an order if that is the only language—the proposed order does not mention notice or costs. Litigants are frequently surprised when the court asks for revisions. This article aims to inform and instruct both plaintiffs' and defense attorneys on voluntary dismissals under Illinois law.

The goal of this article is to provide a practice-ready synopsis of the law. If you are interested in learning more, Richard Michael devotes a portion of a chapter to voluntary dismissals in his Illinois Practice Series book, *Civil Procedure Before Trial.* Richard A. Michael, Civil Procedure Before Trial § 42.2, (2d Ed. 2011). This article will highlight the steps both plaintiffs and defendants should take to ensure the rights of their clients are not impeded when a voluntary dismissal occurs.

Voluntary dismissals are governed by 735 ILCS 5/2-1009. The statute allows plaintiffs to voluntarily dismiss actions at virtually any time, with certain limiting conditions that: (1) the dismissal must occur before trial or hearing begins; (2) notice must be given; and (3) costs must be paid. If the plaintiff complies with all of the statute's requirements, the right to voluntarily dismiss is absolute. Courts do have discretion, however, to decide

an already-filed dispositive motion at the time plaintiff moves for voluntary dismissal under Section 1009(b); but only when the motion, if granted, would dispose of the entire case.

Before Trial or Hearing Begins

In a jury trial, plaintiff cannot voluntarily dismiss a case after jury selection begins. The Illinois Supreme Court has held a plaintiff could voluntarily dismiss its lawsuit after *motions in limine,* but before a jury was examined and sworn. *Kahle v. John Deere, Co.,* 104 Ill. 2d 302, 309 (1984). The Fourth District affirmed a trial court's decision to deny a voluntary dismissal motion after seven jurors were excused for cause and plaintiff used two peremptory challenges. *Baird v. Adeli,* 214 Ill. App. 3d 47, 51 (4th Dist. 1991). That court determined trial begins "when the jury selection process begins."

A "hearing" under Section 1009 is the equitable equivalent of a trial; it is a bench trial where the court makes the final determination on the merits. The hearing does not begin until the parties begin presenting arguments and evidence to the court for an ultimate determination of their rights. *Bailey v. State Farm Fire & Cas. Co.,* 137 Ill. App. 3d 155, 158 (5th Dist. 1985). While no appellate court has delved into further specifics, it stands to reason that the bench trial "hearing" would normally begin when opening statements begin. See *Kahle,* 104 Ill. 2d at 309 (concluding trial had not begun when no jury had been selected, and "counsel had made no opening statement."). If the judge forgoes opening statements, the hearing would begin when the first witness is sworn in. The trial court could, in its discretion, allow a voluntary dismissal under Section 1009(c) after the trial or hearing begins; but parties are subject to terms fixed by the court and the motion must be either stipulated to or in written form with supporting affidavits.

Notice

The notice required to comply with Section 1009 must be consistent with applicable rules. *Vaughn v. Northwestern Memorial Hosp.,* 210 Ill. App. 3d 253 (1st Dist. 1991). In Cook County, that means notice must be provided pursuant to Local Rule 2.1 and Illinois Supreme Court Rule 11. Courts have allowed voluntary dismissals, even if notice is not technically proper, as long as there is actual notice and no resulting prejudice. *In re Marriage of Brown,* 86 Ill. App. 3d 964, 969 (1st Dist. 1980). In *Brown,* plaintiff failed to comply with Cook County Local Rule 2.1 and mailed notice of the motion late to defendant. Defendant objected, the trial court continued the hearing for three days, and then the trial court granted the voluntary dismissal. The First District affirmed the trial court. It instructed that, while notice provisions "should be strictly applied," they "should not be used as a technical means of disqualification." Central to the court's reasoning was that the defendant did not suffer harm or substantial prejudice from the late notice. If plaintiff does not give notice, however, courts will deny the motion to voluntarily dismiss. See *Vaughn,* 210 Ill. App. 3d at 258-59.

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Visit www.chicagobar.org/yls and search under "YLS Volunteer Programs" for more information and to RSVP for upcoming workshops.

Costs

The costs paid are the statutory costs defendants must pay in order to defend the suit—appearance fees, filing fees, and jury fees. *Galowich v. Beech Aircraft Corp.*, 92 Ill. 2d 157, 160 (1982) (affirming trial court's grant of "usual costs in the clerk's bill," but holding deposition fees were not recoverable). If these costs are not actually paid or tendered, they must be provided for in the order; or the record must reveal that the plaintiff acknowledged them as a binding obligation and expressed a willingness to pay. In the *Brown* case mentioned above, the trial court granted a voluntary dismissal when costs were not paid but plaintiff clearly acknowledged her liability and willingness to pay on the record. The First District affirmed. 86 Ill. App. 3d at 970-71. If the defendant objects because costs were not paid, or if the record does not reveal any consent to pay costs, the motion to voluntarily dismiss is improper. *In re Marriage of Hanlon,* 83 Ill. App. 3d 629, 632 (1st Dist. 1980). Parties will quite frequently agree to waive costs, or agree that costs are due upon refiling. An agreed waiver of costs is appropriate when defendant acknowledges and relinquishes the right to costs. A unilateral proposal by plaintiff for dismissal "without costs" or "costs due upon refiling" is improper and contrary to the statute. See *O'Reilly v. Gerber,* 95 Ill. App. 3d 947, 949 (1st Dist. 1981).

Effect of Voluntary Dismissal on Refiled Case

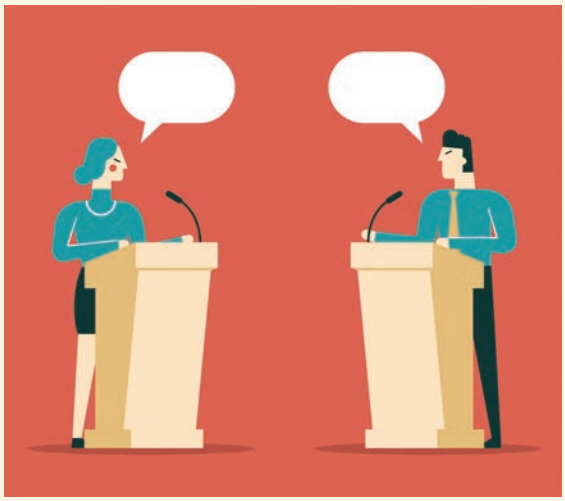
Plaintiffs must be acutely aware of the procedural history of their case before taking a voluntary dismissal. If there has been a substantive ruling on a dispositive motion, *res judicata* could dismiss a case after it is refiled. *Hudson v. City of Chicago* explains that *res judicata* bars a refiled case if there was already final judgment on a count stemming from the same set of operative facts. 228 Ill. 2d 462, 482 (2008). For example, if you filed a two-count complaint from a car accident, and one of the counts was dismissed with prejudice, taking a voluntary dismissal could potentially end your client's case.

Finally, voluntary dismissals cannot be taken for the purpose of evading a discovery order or an adverse ruling. Plaintiffs cannot use voluntary dismissals as an attempt to substitute judges or avoid an unfavorable ruling barring an expert from testifying. In Cook County's Law Division, General Administrative Order 17-1 mandates that a refiled case will go back to the calendar judge who was presiding over the original matter. That same calendar judge will preside over the refiled case, and may reinstate all prior orders. In all Illinois courts, the judge presiding over the refiled case will consider the original action and determine whether to reimpose discovery orders and sanctions under Illinois Supreme Court Rule 219(e).

Rule 219(e) punishes evasive voluntary dismissals in two ways. First, the rule enhances the monetary burden associated with voluntary dismissals by allowing the court to order the plaintiff to pay the opposing party or parties their reasonable expenses in defending the action—discovery expenses, opinion witness fees, travel expenses, and more. Second, the rule requires the court in the refiled case to consider the prior litigation in determining what discovery will be permitted and what witnesses and evidence may be barred. *Morrison v. Wagner,* 191 Ill. 2d 162, 166-67 (2000). Defendants must file a motion for 219(e) expenses in the original action once the plaintiff files for voluntary dismissal. *Quintas v. Asset Mgmt. Group, Inc.,* 325 Ill. App. 3d 324, 336 (1st Dist. 2009).

If you represent a plaintiff, and are going to take a voluntary dismissal, you should: (1) Give notice pursuant to Local Rule 2.1 and Supreme Court Rule 11; (2) Tender costs—they are due under the statute. You can try and initiate discussion with opposing counsel to see if they will waive costs. If so, make the proposed order an agreed order and provide language that defendant is waiving its right to costs. You can also ask defendant to agree to add the language "costs due upon refiling." If so, mark the order as agreed. The First District has suggested, "costs will be due only if plaintiff refiles. Payment to Defendants will be due prior to such refiling. Defendants' right to collect the award arises only if the Plaintiff chooses to exercise the right to refile." *Jones v. Chicago Cycle Ctr.,* 391 Ill. App. 3d 101, 111 (1st Dist. 2009); (3) Make sure the motion is made before *voir dire,* or before the bench trial begins with either opening statements or the swearing in of the first witness; (4) Understand the trial court has discretion to rule on a dispositive motion if one is pending; (5) Be wary if there has been a final determination in part of the case—*Hudson* could apply; and (6) Be aware of General Administrative Order

CBA LAW & DEBATE CLUB–REACHING THE NEXT GENERATION OF LAWYERS



The program–formerly known as Law Explorers–was recently rechristened the *CBA Law & Debate Club* to more accurately reflect its core function. The Club sponsors lectures and activities for Chicago high school students who are interested in careers in law and government. Brett J. Geschke of SmithAmundsen LLC has served as a Co-Chair of the Club for the past four years. He has high hopes for this year's crop of budding advocates, who he reports and "the best and brightest I have seen," and "would hold their own against college mock trial teams."

The program teaches students about the various parts of a trial (e.g., opening statements, cross examination) as well as mediation and negotiation skills. The Club also has a few guest speakers lined up for the students, including Judge Maritza Martinez and Judge Michael Hyman. According to Geschke, this allows the students to "learn about the many areas of the law and improve upon their public speaking skills." They also "gain friendships with fellow students from other high schools who are interested in the law."

The students aren't the only ones who benefit from their involvement with the Club. For the attorney-volunteers, the program is a way to provide public service and mentor young people who are in a malleable period of their young lives. Geschke particularly enjoys "helping these students expand their knowledge in different areas of the law and improve upon their already impressive public speaking and advocacy skills."

The Club plans to continue to grow its student base. There is one CPS high school bussing students to the CBA building to participate in the Club, and Geschke would love to have more participants. According to Geschke, "I have awesome co-Chairs in Kevin [Kelley], Brad [Kaye] and Caroline [Lourgos] and I hope we can continue to lead this program for years to come!" Lawyers interesting in becoming involved in the Club can email Jennifer Byrne at the CBA (jbyrne@chicagobar.org) or Geschke (brett.geschke@gmail.com).

17-1 and Supreme Court Rule 219(e). You cannot take a voluntary dismissal to avoid a judge or the judge's discovery orders.

If you represent a defendant and receive notice plaintiff is going to take a voluntary dismissal, you should: (1) Determine whether you want to object based on defective (untimely) notice. Understand this is most likely a losing argument unless you can assert how your client was prejudiced; (2) If a dispositive motion is pending and you want it to be ruled on, file a response to the motion asking for the ruling under Section 1009(b); (3) Determine your position on costs. If you want costs prior to the dismissal, object to any order that allows costs to be due upon refiling. If you are willing to waive costs, or agree that they are due upon refiling, make sure the proposed order contains the language accurately reflecting your position; (4) Determine if you want to preserve an argument for expenses under Supreme Court Rule 219(e). If so, this motion for expenses must be filed in the original action; and (5) file a motion to reinstate the discovery orders, if they exist, in the new case once the case is refiled.

If you represent a defendant and plaintiff springs a voluntary dismissal on you when you are both present in court, you can object based on lack of notice—assuming you can assert prejudice. You can also ask for a continuance to review the file and determine your position on costs and expenses, or if you want a previously-filed dispositive motion ruled on.

If you represent a defendant and find out plaintiff *ex parte* voluntarily dismissed its case without notice, then you should file a motion to reconsider if you do not like the language in the order. If you want costs and they had not been tendered—or Rule 219(e) expenses—this needs to be bought to the attention of the court. Because a voluntary dismissal order is final and appealable for defendants, a 2-1301 motion to vacate is also proper. See *Kahle v. John Deere Co.,* 104 Ill. 2d 302, 307 (1984).

Conclusion

The language of the voluntary dismissal statute seems simple, but the nuances can trip up an unaware attorney in a way that jeopardizes their client's interests. Hopefully the explanations provided can help you practice law better and save some time on legal research. And, as always, be civil with opposing counsel. Many of these issues can be solved with a simple phone call. ■

Alex Beehler was formerly a law clerk to Judge James P. Flannery, Jr., Presiding Judge of the Circuit Court of Cook County's Law Division. Now an associate attorney at Pretzel & Stouffer, Chartered, he is also a co-chair of the YLS Tort Litigation Committee.

LEGAL ETHICS

BY JOHN LEVIN

Why Lawyers Practice Law

If a friend told you he was going to practice the piano, you would understand that he was going to play a piece over and over again until he could play it to his satisfaction. If he said he was going to perform on the piano, you would imagine him sitting before an audience playing the piece to perfection.

If your doctor said you had to go to the hospital so she could practice an operation on your liver, you probably would not go. You might consider going if she were going to perform the operation.

We lawyers "practice" law–we do not "perform" law. A performance implies that there is a known beginning, middle and end. The piano piece ends. The patient is stitched up. The audience knows what is going to happen. If another lawyer tells you that his client will be in the room and he will have to "perform for the client," you know you can ignore the histrionics. They are just a performance.

However, in many instances when we go into a room to solve a problem, negotiate an agreement or resolve a dispute, we do not know what is going to happen or what we are going to say. We are practicing our skills.

How is this reflected in our professional ethical requirements?

Illinois Rule 1.1–Competence, states: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment 8 states: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

Simply put, it means that lawyers have to continue learning and practicing their profession. The law itself is continually changing. New statutes and new cases come about almost daily. It is obvious that failure to keep abreast of these changes would violate Rule 1.1 and likely give rise to a malpractice claim.

However, what about changes in the "practice" of law–changes in the day-to-day routines on how we do what we do? Following court decisions and legislative reports will not be of much help. We "maintain the requisite knowledge and skill" to provide "competent representation" by doing it every day–by practicing. And here is where we run into problems. How do we know what to practice?

Numerous books and articles (including this column) have been written on the changes to our work environment caused by changes in technology and, especially, artificial intelligence. Smart programs can now do some projects that used to take hours of lawyer time, and we are expected to keep abreast of the "benefits and risks associated with relevant technology." Further driving this development, clients are questioning the technological competence of their lawyers and are asking that the economic benefits of technology be passed on to the client. To add further complexity, data and internet security has become a frequent media topic.

Unfortunately, we do not get quality technical training in law school. According to a brief internet survey, the best way for a lawyer to address the technology problem is through a collaborative effort with the client, tech vendors, and (perhaps) a consultant. And this effort has to be repeated as technology changes.

In other words, we have to keep practicing. ■

John Levin is the retired Assistant General Counsel of GATX Corporation and a member of the CBA Record Editorial Board.

John Levin's Ethics columns, which are published in each **CBA Record,** are now indexed and available online.

For more, go to http://johnlevin.info/legalethics/.

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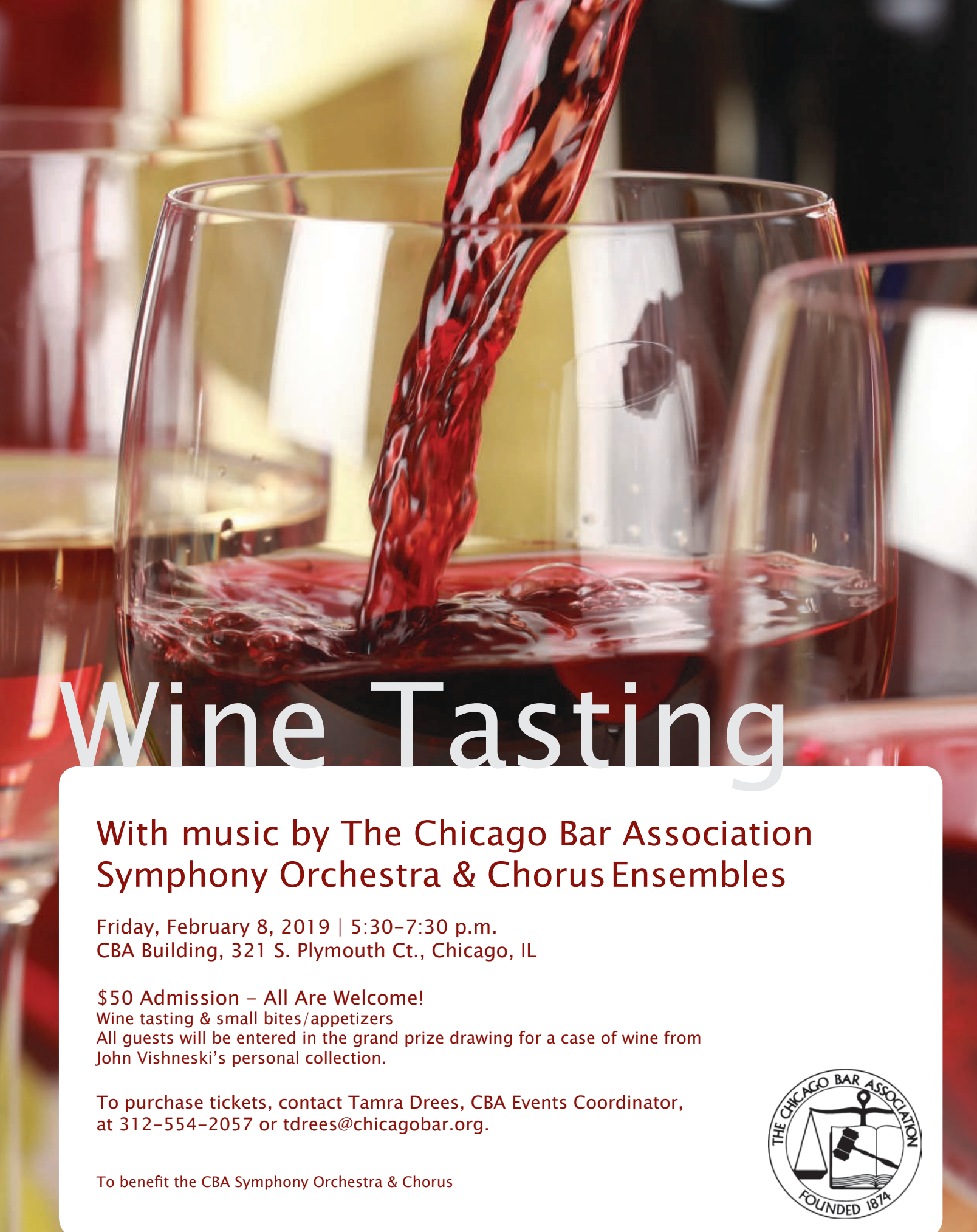

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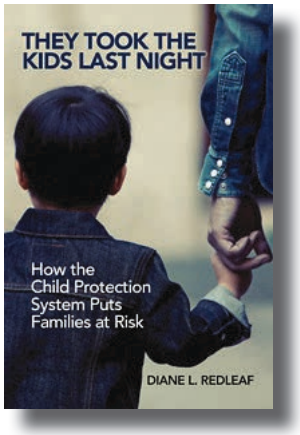

They Took The Kids Last Night–How the Child Protection System Puts Families at Risk
By Diane L. Redleaf
ABC-CLIO, 2018

Reviewed by Katie Liss

Diane Redleaf spent the last 33 years of her 38 years as an attorney focusing on the Illinois child protective services (CPS) system. This book highlights the challenges in her cases, examples of her clients' frustration with navigating the CPS system, some of the obstacles she faced in litigation, and her attempts at modifying legislation. One thing is crystal clear: Redleaf is dedicated and passionate about protecting families.

Redleaf believes the CPS system must do a much better job of distinguishing true abusers from reasonably good parents who deserve protection from having their children removed from their custody. She does not believe CPS is always incorrect–but she believes CPS frequently errs on the side of removal to the detriment of children and families where there is no abuse.

The book references one of her most memorable cases: *Dupuy v. Samuels.* This case was filed in 1997 as a class action lawsuit. It took over 13 years, 5 federal Circuit Court appeals, a U.S. Supreme Court denial of review, plus a total of 26 attorneys, 3 law firms, 2 nonprofits, and more than a dozen law clerks, before it was formally closed. Diane and her team represented approximately 145,000 individuals whose names were placed and retained in the Illinois child-abuse register following a CPS investigation with an "indicated" finding of abuse or neglect without having any opportunity to contest the finding on the merits. Individuals on this list were not able to work with children. Judge Rebecca R. Pallmeyer's 101 page decision found that the state violated the plaintiffs' constitutional rights to due process. In 2003, the federal court directed the state to do fuller and fairer investigations for abuse and neglect.

However, this did not provide a remedy for safety plans–CPS' formal procedure on where to place children removed from parents. Redleaf observed CPS caseworkers threatening families first and gathering evidence second. The CPS protocols required that children be deemed "unsafe" based solely on allegations made to the hotline. This was enough cause to remove children from their parents for unknown periods of time pursuant to a safety plan without end dates. Over 10,000 Illinois families each year were being separated under these safety plans in the late 1990s, per the CPS deputy director's estimate. However, no one could be sure as records were not kept.

In March 2005, Judge Pallmeyer issued a ruling rejecting CPS' argument that safety plans were voluntary and deemed them coercive. In December 2005, Judge Pallmeyer issued a second decision that established the remedy that safety plans could remain in place for 14 days before a review was required. Redleaf's appeal of this 14-day separation period was denied by Judges Posner, Easterbrook, and Evans in the Seventh Circuit Court of Appeals.

The book also references *In re. Yohan K.* In this case, a five week old boy named Yohan and his two-and-a-half year old sister were separated from their parents for over a year and half. For the first five weeks of Yohan's life, he experienced seizures, seizure-like symptoms, and bleeding in his head and retinas that doctors could not explain. Numerous medical tests in May and June 2011 triggered an automatic internal referral to the hospital's child protection team, as they suspected Yohan had shaken baby syndrome. The hospital called the CPS hotline to report the parents despite their adamant denials of abuse. A CPS investigation began and a safety plan was put in place requiring supervision of the children with their parents by relatives.

Trial on this complicated case began in May 2012 - almost one year after the safety plan was put in place requiring the children to live with relatives. The juvenile court judge found Yohan had been the victim of child abuse by the parents after hearing the testimony of 11 doctors, caseworkers, service providers, and a guardian ad litem.

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The judge stated that there was a possibility that one of three rare medical events could have occurred in Yohan's case. However, he found it unreasonable to conclude all of these rare incidents could have occurred at once.

Redleaf appealed the finding of abuse on behalf of Yohan's parents. Justice Michael B. Hyman's decision swiftly overruled the finding of abuse and ordered the return of both children to the parents. Justice Hyman's opinion faults the juvenile court for allowing the state to prove its case of abuse by relying on a "constellation of injuries" theory. This argument does not meet the state's burden of proof. Redleaf believes that the opinion ratifies the parents' presumption of innocence.

The book ends with an epilogue called "What Needs to Be Done." Redleaf believes that CPS policies and practices need more checks and balances. For example, families who cannot afford counsel do not have a right to appointed counsel during a CPS investigation of register listing challenge. She believes this is unfair to families who are at a disadvantage due to race, class, history of substance use, disabilities, domestic violence, or criminal conviction. She also believes the risk of removing children from families must be reduced to make sure that this only happens in cases of actual abuse, in life-threatening emergencies. Redleaf also believes the state's burden of proof in child protection cases should be heightened (i.e., from the preponderance of the evidence to clear and convincing evidence), as relaxed burdens of proof give the state every possible advantage.

Redleaf and her colleagues continue to fight on behalf of families at the Family Defense Center (which she founded in 2005), the National Center for Housing and Child Welfare, and the United Family Advocates (which she founded and co-chairs). ■

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Straws, Vegetables, Oompa Loompas, and Politicians

Big Little Laws–The 2018 Bar Show

Reviewed by Adam Sheppard

The 95th annual Bar Show was one for the ages. For the uninitiated, the irreverent musical comedy revue parodies local and national political, sports, and showbiz figures. The writers work through opening night to incorporate up-to-the-minute news stories. The show's title this year, "Big Little Laws," was a play on "Big Little Lies," the popular 2017 HBO show. The "plot" was a mystery–the opening musical number was "A Mystery" (parody of Something Rotten's "A Musical"). The show's script goes missing in the first scene and famed investigators (Holmes, Clouseau, Colombo, Briscoe, Jessica Fletcher, and Scooby Doo) and others hunt for the script.

President Trump got things started by singing of his summer fling with Supreme Leader Kim in "Summer Nights" (Grease). Trump was then Putin's (literal) puppet in a parody of Chicago's "We Both Reached for the Gun." In this version, "the end of our democracy has now begun, begun, begun, oh yes, the end has now begun, now begun." World leaders Merkel, Macron, May, and Trudeau lamented Trump's threat to pull out of NATO in "goodbye reliable NATO, NATO, NATO's being destroyed" (sung to Guys & Dolls' "The Oldest Established").

The comedy gods also granted cert. this year to poke fun at the Supreme Court. Justice Kavanaugh recounted his high-school years in a "teenage wasteland" (The Who). Justices Sotomayor and Kagan beseeched Justice Ginsburg to "Hold on" (parody of Wilson Phillips' song with the same title).

A diverse group of newly-elected congresswomen celebrated their victory in a pair of Gloria Estefan songs: "the Women were gonna getcha" ("The Rhythm is Gonna Get You") and "Turned the House Around" ("Turn the Beat Around"). Republican Congresswoman Murkowski and Democratic Congresswomen Pelosi and Waters sang across the aisle in "The Middle" (pop song by Zedd, Maren Morris, Grey).

The tech sector made it into the fold this year. Alexa, the device (an actress dressed as an Alexa) sang to her operator that he made her feel "Like an Actual Woman" (parody of Carole King and Gerry Goffin's "Natural Woman"). Mark Zuckerberg testified in the Senate that Facebook is, in fact, "Getting to Know you, Getting to know all about you" (The King and I).

As for Chicago politicians, Bill Daley reminded his competition in the mayoral race of his distinct advantage: the public has "grown accustomed to our name" (ung to "I've Grown Accustomed to Her Face," My Fair Lady). The other mayoral candidates, however, implored the public: "Take a Chance on Me" (Mama Mia). In a show-stopper, Mayor Emanuel, donning a

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Mama-Mia-esque, gold dance suit, bedazzled the crowd with Rahma Mia. That was one of several numbers that highlighted the terrific dancing and choreography this year. The other that comes to mind is "Rats"–actors in life-sized rat outfits scurried about the stage to the tune of "Jellicle Songs for Jellicle Cats" (Cats).

The Bar Show is audition-only, and lawyers completely comprise the cast. It's obvious that these lawyers have musical-theatre training. In "Make Our Garden Grow" (Candide), the actors nailed the difficult operatic ballad (in this version, cannabis entrepreneurs were seeking a loan). In another vocally impressive number, Sarah Sanders remained defiant in "And I Am Telling You I'm Not Going" (Dreamgirls).

The sets too were notable this year. In Willy Wonka's Chocolate Factory, Oompa Loompas who worked for Trump interacted with "The Candy Man" (Sean Hannity); Stormy Daniels sang of her "Golden Ticket"; and Michael Cohen admonished Stormy: "Hush, little lady, don't say a word, Donald's worried you'll be a mockingbird." In a parody of Wonka's "Pure Imagination," Trump governed with "pure intimidation." Against a Wizard of Oz backdrop, Mike Pence, Lindsey Graham, and Susan Collins were "off to see his twitter, the wonderful tweeter of ours." Paul Ryan wondered what he could have been if he "only had a spine" ("If I only had a brain"). Melania longed for the days when she lived "Somewhere over Manhattan way up high" ("Over the Rainbow"). Ivanka acknowledged "complicit am I" (sung to "The Wizard and I").

The show would not be complete without the Joe Stone/Fred Lane vaudeville straight-man/eccentric partner act–and as always, they delivered. Another scene that highlighted the cleverness of the show's writers was a play on Abbot & Costello's "Who's on First." In this version, the back-and-forth concerned which bands would perform first for a retro rock concert:

COLUMBO: Can you give me a little information about which groups are performing when?

HUGO: Sure

COLUMBO: Who's on first

As for pop culture, the "Real Housewives of Cook County" premiered on Bravo. (Parody of "Beauty School Drop Out," Grease). Roseann Barr self-reflected in "Oops I did it Again" (Britany Spears). Matt Lauer explained, "What I did for Love" (Chorus Line). In the Food Channel's annual Vegetable of the Year show, avocado boasted, "I'm the thing in Guacamole" ("How Are Things in Glocca Mora," Finian's Rainbow); lettuce crooned, "The Lettuce Sits Tonight" ("The Lion Sleeps Tonight"); asparagus welcomed the "Age of Asparagus" ("Aquarius," the Fifth Dimension); but "Kale is the Victor" (Michigan fight song).

In a series of short segments, Governor-elect J.B. Pritzker sang "Oh What a Beautiful Morning" (Oklahoma); Colin Kaepernick sang "I Want to Kneel in America" (West Side Story); a now-banned plastic straw parodied "You are My Lucky Star (Straw)"(Singing in the Rain); Omarosa sang her name to the tune of "Oklahoma"; Giuliani and Dershowitz lamented their fall from grace in "Maim" (parody of "Mame"); and Elizabeth Warren invited the public to "come see my DNA" (parody of "Cabaret").

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The show closer, pre-encore, was the upbeat "Raise You Up/Just Be" (Kinky Boots). In this version, the cast exalted the Bar Show for "raising up" the cast, crew, and crowd.

As always, the show encored with the Bar Show original "Junior Partners," the show's pièce de résistance. Per tradition, the CBA President joins the cast on stage on opening night to sing a line. This year, CBA President Steven M. Elrod, a Bar Show enthusiast, cast member wanna-be, and one of the strongest and longest supporters of the show, took the stage for every one of the show's four performances, and belted an entire verse (solo). Elrod (half-jokingly) declared to the audiences that the only way he was able to get to be on stage at the Bar Show was to be elected CBA President. President Elrod said this about the show: "After 40 years of attending the show, it is hard to believe, each year, that the show could keep getting better; but it does. This year's show could have been the best ever, primarily because of the highly talented singers and dancers in the cast this year, and of course the incredibly creative and witty writers (all lawyers)!" ■

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Murphys Law
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Lord LLP…**David S. Mann,** longstanding member and partner at Holland & Knight, has retired…**Danielle Hirsch,** Assistant Director of Access to Justice Division, Administrative office of the Illinois Courts, has taken a position as Principal Management Consultant at the National Center for State Courts. **Alison Spanner** will succeed Danielle Hirsch as Assistant Director of the Access to Justice Commission… **Sondra Denmark, Gerardo Tristan, Jr., Lynn Weaver Boyle, James T. Derico, Jr.,** and **Kerrie Maloney Laytin** were recently appointed to the Circuit Court of Cook County…Congratulations and best wishes to Judges **Alexander P. White, Robert Bertucci, Sebastian T. Patti** and **Carole K. Bellows** on their recent retirement.

Condolences

Condolences to the family and friends of Judge **John F. Hechinger, George S. Feiwell, John P. Coleman, Chester Slaughter,** and **Gene Niezgoda,** Administrator, First Municipal District. ■

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