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Leadership in Action

BY JOHN J. PCOLINSKI, JR.

Despite common stereotypes, I have found that attorneys are typically civic minded individuals who recognize the fact that it is a privilege to practice law and give of themselves accordingly. Current economic circumstances and changes in the nature of the practice of law, though, have created some challenges to newer lawyers’ ability and inclination to give of their time. This month’s Feature focuses on three extraordinary individuals with close ties to the DuPage County Bar Association who have given freely of their time to foster professionalism and improve the profession on both a local and a statewide basis. Each of them is in line over the next three years to use their leadership experience with the DCBA to help them carry out their duties during their respective terms as President of Illinois State Bar Association. The piece is done in a roundtable format. I had the privilege of spending a thoroughly enjoyable afternoon with people whom I have admired over the years while we discussed their respective backgrounds, their thoughts on the profession and their plans for the ISBA relating to how they propose to help keep the profession vibrant and meet the challenges facing all lawyers including the newly minted ones. The meeting was a relaxed one conducted in an informal, conversational manner. The result, of course, was the need to edit to meet space constraints. The reader should consider then, that although I started with a nearly verbatim transcript of our comments, some changes have been made. The remarks are, as nearly as possible given my limitations, accurate paraphrases or actual quotes from the participants. What I hope will come through is the genuine humility each of the gentlemen brought to the ARC and the discussion. They each also made it a point to separately underscore their beliefs that although the DCBA played an important role in their careers and leadership tracks with the ISBA, they have observed similar situations with a great many lawyers and a great many local bar associations throughout the state. Hopefully, the article will also inspire some of us to consider getting more involved in the DCBA and/or the ISBA as well.

In addition to the Roundtable, we have three excellent articles edited by this month’s Lead Articles Editor, Larry Stein. Thanks very much, Larry, it is a sometimes unappreciated task which allows me to continue to claim credit for being Editor in Chief of the DCBA Brief. Kylin Fisher provides a very interesting discussion of rights of tenants with mental disabilities in subsidized housing settings and the obligations of landlords to them. Erin Birt and Elizabeth Chacko’s article traces the development of the law with regard to the Tender Years Doctrine and its purported abandonment in family law settings and Josh Greene discusses the expansion of the concept of absolute priority of creditors’ claims over owner equity in Chapter 11 Bankruptcy matters. That expansion will obviously have significant negative effects on the abilities of closely held businesses to reorganize while keeping ownership or management groups in place.

Finally, I want to acknowledge several members of the Editorial Board who have stepped up this year to help with specific tasks. Associate Editor, Raleigh Kalbfleisch, will be coordinating our news articles, Katie May has agreed to work with the law schools in the state to obtain student authored articles and made great strides at reestablishing that source of material. Mike Sitrick continues to coordinate our monthly law updates. Terry Benshoof, Melissa Piwowar and Tim Newitt recently answered my prayers for help with In Brief, Features and Where to Be matters going forward. Thanks to all.

John Pcolinski, Jr. is a partner in the Wheaton law firm of Guerard, Kalina & Butkus. Licensed in Arizona in 1986 and in Illinois since 1987, his practice is concentrated on all phases of civil litigation with an emphasis on chancery matters, contested guardianship and probate matters and commercial litigation including intra-company disputes. Pcolinski has served the DCBA as a member of the Board of Directors, General Counsel, chair of a number of committees and Editor of the DCBA Brief. He is also the proud recipient of the second ever Loose Cannon Award.
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What You Need to Know

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Collecting Feedback
We provide you with all the marketing materials you need to collect reviews.

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Custom Video
Blogs & Social Media

OVV’s NO HASSLE SYSTEM
We take your positive collected reviews and publish them online.

EXTEND ONLINE REACH
ATTRACT CUSTOMERS

Greg Wildman, President
Put Off That Procrastination Until Tomorrow

BY PATRICK B. HURLEY

The journey of a thousand miles begins with a single step.” – Lao Tzu

As I stare at my blank computer screen, trying to figure out what to write in my first President’s Page column, the above quote pretty well sums up my feelings about this daunting task. My anxiety is heightened in knowing that, were I to miss my submission deadline, the Editorial Board plans to rerun Jim McCluskey’s President’s Page from February 2002 – and I simply can’t let that happen in good conscience. (Sorry, Jim. All in good fun.) It occurs to me that Lao Tzu’s famous words not only accurately sum up my case of writer’s block, but they also serve as a segue to discuss my chosen theme for my year as DCBA President—attorney wellness. As with so many challenges in life, often the hardest part is getting started. Wellness is no different.

As lawyers, we are often confronted with overwhelming situations, responsibilities and deadlines. Writing an important brief, preparing for trial, embarking on a new career path – or any other of the myriad challenges that face us as lawyers – can and do cause us a tremendous amount of stress and anxiety. And so it is with other aspects of our lives as well. Take, for example, losing weight, getting in shape, or dropping an undesirable habit. Unlike many of our professional responsibilities – which are typically mandatory – we tend to undertake these personal challenges voluntarily, making it much easier to put them off or avoid them altogether. After all, I may not want to prepare that trial notebook or hammer out a response to opposing counsel’s motion for summary judgment, but I don’t really have much of a choice now, do I? At least not if I enjoy having a paying job and a law license in good standing. Losing fifteen pounds, well, that can wait until tomorrow, right? After all, there’s work to do. Who has time for such frivolities? I have exercised this form of selective procrastination on more occasions than I can recall. Most of us have, I imagine. But why?

Speaking for myself, it is clear that I am drawn to tasks that allow me to see the results of my efforts immediately. I struggle with delayed gratification and, consequently, prefer undertaking tasks of a “fast food” nature. I have been this way for as long as I can remember. A perfect example is mowing the lawn. I actually look forward to cutting the grass every weekend, just to catch that buzz I feel when I see that smooth green surface and straight lines when I’m finished. (Plus, we have a pretty small yard, so I’m always done in under an hour.) I know what you’re thinking – my suburban lifestyle is über-exciting. More importantly though, this seemingly small insight into my personality has given me a broader perspective. I have come to realize that my preference for tasks that allow me to enjoy immediate results – like mowing the lawn –

CONTINUED ON PAGE 6

Patrick B. Hurley is the President of the DuPage County Bar Association and a Director with the law offices of Huck Bouma in Wheaton, Illinois, where his practice is concentrated in domestic relations and general civil litigation. He grew up in Wheaton prior to attending Boston College and Boston College Law School. He has served on the DCBA Board of Directors (2007-2010) and as chair of the Civil Law and Practice Committee, Entertainment Committee, Planning Committee, Budget Committee, and Lawyer Referral Service Committee. In 2005 and 2008, he received Board of Directors Awards for outstanding service to the DCBA. He has also participated in Judges’ Nite since 2001, as a writer, cast member, band member, and musical director. He served as President of the Robert E. Jones Chapter of the American Inns of Court (2009-2010), has received an AV Preeminent Peer Review Rating from Martindale Hubbell and has been selected as an Illinois Super Lawyer.
tends to inhibit me from undertaking challenges that will not provide me with similarly instant gratification. And perhaps some of you tend in this direction as well. How many of us have put that big, tedious project on the back burner, choosing instead to answer non-urgent emails and phone calls, or tackle a relatively small project? Come on, 'fess up; I know I'm not the only one. And how many times have we put off starting a diet or exercise regimen, or looking into yoga or meditation, or delving into that long book we've always meant to read, because we have other personal and professional responsibilities? I suspect most of us have done that sort of thing more times than we care to admit. I know I have.

What can be done about this tendency? We can't simply avoid undertaking difficult challenges, right? I mean, where's the adventure in that? Instead, it seems to me that the answer is to start embracing the journey, and not focus so intently on the destination. Sure, it might take us a few (or more than a few) months to drop those extra pounds, or train for that marathon, or set about achieving whatever lofty goal we have set for ourselves. But if we focus on how long it will take, how much effort will be expended along the way, and how far away we are from the finish line, we prevent ourselves from even getting started. As my parents would tell my brother and me during long car rides in our 1976 Plymouth Volare station wagon (with the authentic fake wood paneling on the side), “Enjoy the view.” They also told us to stop hitting each other and count cows, but that seems somehow less appropriate here. In any event, this concept of embracing the journey would seemingly require us to undertake a more patient and less self-critical approach to life. But that in and of itself would seem a worthy goal, wouldn't it?

So how do we change that mindset? You know the one that reminds us that we're not spring chickens anymore, that we have “important” professional responsibilities, and that we simply don't have time to dedicate to our physical, emotional and spiritual lives. At the risk of sounding cliché, it may be as simple as just taking it one day at a time, and not constantly tallying the results of our efforts: a good dose of mindfulness, if you will. This can be hard for attorneys in particular, since we are so often evaluated – by clients, superiors, and even ourselves – based upon the results we generate. And if we string together enough of those “one day at a time” days, next thing you know we've altered our outlooks, formed some great new habits, and maybe, just maybe, improved our professional lives along the way. Imagine that: taking time away from work to work on ourselves – and we actually end up helping our careers in the process. Pretty cool concept, eh?

You know, that Lao Tzu was a pretty sharp fella. And since I like his quote so much, I think I'll sign off with a favorite Chinese proverb of mine: “The best time to plant a tree was twenty years ago. The next best time is now.” And look, my first President's Page is in the books – not that I'm focusing on the destination or anything.
Over a Dozen Speakers Scheduled for Guardian Ad Litem Training  

PLUS:
Chief Justice Thomas Kilbride to Speak About Access to Justice for the Elderly  
DCBA Assists Court in Providing Mobility for the Disabled  
Lawyers Lending a Hand  

INBRIEF
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Tom Jordan, CPA/CFF, CVA
Managing Director
tjordan@dhjj.com
Illinois Chief Justice Thomas Kilbride will be speaking at a DCBA sponsored CLE event at Le Jardin (Cantigny) on October 30, 2013. The seminar on issues effecting the elderly will begin at 4:00 pm and run for approximately one hour. The seminar and the reception following are open to all DCBA members.

The event, which will both provide attendees with an opportunity to pick up some important lessons on elder law and give everyone a chance to toast Justice Kilbride as he completes his three-year term as Chief Justice, was put together by Elder Law Committee Chair, Zach Hesselbaum. “I am excited for the chief Justice of the Illinois supreme court to share his time and views with the DuPage County Bar Association,” said Hesselbaum. “I think obtaining a broader perspective on issues that the judicial leaders in Illinois feel are important is significant to the bar. This provides the DCBA an opportunity to direct time, resources, and collaborations at possibly easing or erasing particular difficulties our Illinois justice system is facing.”

When the plans were finalized, DCBA President Patrick Hurley said, “The DCBA has been involved and will be involved in efforts to ensure meaningful access to the courts for all people. As our population ages, I expect new issues will arise with regard to how we meet the needs of that population. It is great to see that Justice Kilbride is willing to lend his considerable influence and reputation to fostering those efforts.”

Justice Kilbride practiced law for 20 years in Rock Island, Illinois before becoming a judge. He served as president of the Illinois Township Attorneys Association and as a charter member of the Illinois Pro Bono Center. He received his BA magna cum laude from St. Mary’s College and his law degree from Antioch Law School. He was elected by his colleagues on the bench to Chief Justice in 2010 and will be completing that term on October 26, 2013, just four days prior to this presentation. He was among those spearheading a movement in 2012 to allow for cameras to be placed in the courtroom, a program which the courthouse in DuPage County was among the first to initiate.

Le Jardin at Cantigny is located in the Visitor’s Center of Cantigny Park in Wheaton, Illinois. Though there is no charge to attend the meeting or the reception, reservations are required. Please make your reservations by contacting Marija Malacina at (630) 653-7779.
few short months ago, DCBA member and County Board member, **Grant Eckhoff**, was presiding at a meeting as Chair of the County Judicial and Public Safety Committee. In attendance at the meeting was Chief Judge **John Elsner**, who reported to the committee the need for an electric wheelchair to provide mobility from time to time for members of the general public and for a courthouse employee.

Shortly after that meeting, Eckhoff contacted DCBA Director **Terry Mullen**, to inquire as to whether he knew of ways to pursue financing for such a chair. Mullen talked with other members of the DCBA and the DuPage County Bar Foundation (“DCBF”), eventually talking to **John (Jack) R. Kozar**, who offered to donate a nearly new electric wheelchair. Mullen then discussed the idea with **Sharon Mulyk**, current President of the DCBF and she in turn helped facilitate Kozar’s donation through the DCBF.

The matter was discussed by the DCBA Board, and the decision was made to have the donation made through the DuPage County Bar Foundation. On August 27, 2013, Jack Kozar delivered the electric wheelchair to the Courthouse. Thanks to his generous donation, the DuPage County Court system is now able to provide mobility to those in need when they make a trip to the courts. At the presentation DCBF President Sharon Mulyk said, “We are thrilled that the Dupage Bar Foundation has been able to assist in making the court system more accessible to those with special needs and grateful to Terry Mullen and Jack Kozar for their hard work and generosity.”
Over a Dozen Speakers Scheduled for Guardian Ad Litem Training

Guardian Ad Litem (GAL) Training is sponsored every two years by the DuPage Judicial Domestic Relations division and is offered through the DuPage County Bar Association. This 10 hour training fulfills the Supreme Court Rule 906 requirement “for attorneys appointed by the court to represent children in child custody cases and guardianship cases when custody or visitation is an issue.” (Rule 906a)

If you are an attorney who would like to maintain your standing on the Domestic Relations GAL List or would like to be added to the list, this program is mandatory. It is also open to anyone interested in earning 10 hours of CLE. The training will be recorded and available online for those unable to attend or who practice outside of DuPage County.

The GAL Training will be offered in two parts on consecutive Saturdays, November 9 and November 16. The day will begin with Registration/Breakfast at 7:30 am, with the program running from 8:00 am – 1:15 pm. It will take place at the DuPage Judicial Center in the Attorney Resource Center, 3rd Floor at 505 N. County Farm Road in Wheaton.

The first day of training, November 9, will open with a welcome and overview from Judge Rodney Equi, who oversaw the GAL Training curriculum with assistance from the GAL Committee. Umberto Davi, Rebecca Laho and Lisa Giese will begin the program with an overview and panel discussion of the Role of the GAL from the Perspective of the GAL. Lynn Mirabella will follow with a discussion on Supervised Visitation and the Serious Endangerment Standard for Restricting Visitation and Sheila Murphy-Russell will discuss the role of the DuPage County Family Center. After a short break, the first session will continue with Dr. Phyllis Amabile discussing Substance Abuse Issues Affecting Custody and Parenting, Dr. Mary Gardner discussing Physical Custody Considerations and Parental Alienation and Wendy Musielak discussing Legal Custody: Rights and Responsibilities.

The second day of training, November 16, will open with another welcome and overview from Judge Equi. Tammy Daniele will begin the session discussing Interviewing Children and Parenting Schedules. Kim Zoeller of the Ray Graham Association will follow with a discussion on Issues When Children Have Special Needs and Tim Daw will discuss Mental Health and Developmental Disabilities Confidentiality Act and Disclosure of Information. After a short break, the day will continue with Chantelle Porter sharing a discussion on The Culturally Competent GAL and Juvenile Delinquency and conclude with a Judicial Panel.

The total price for both sessions is $200 for DCBA members and $250 for non-members. To register for this program, please contact Marija Malacina at mmalacina@dcba.org or 630-653-7779. □
Lawyers Lending a Hand Seeks Volunteers for 2013-14

BY TERRENCE J. BENSBOOF

On July 25, 2013 the Lawyers Lend a Hand group provided meal packing services to Feed My Starving Children at its Aurora, Illinois location. Founded in 1987, FMSC’s mission ‘is to feed starving children worldwide.’ Volunteers hand-pack nutritious meals made up of rice, soy, vitamins and dehydrated vegetables which are shipped through various relief organizations world-wide. FMSC has shipped more than 600 million meals with 99.96% reaching the hungry children they were meant to benefit. FMSC enjoys a 4-star rating from Charity Navigator. DCBA attorneys from LLH packed 79 boxes full of meals – enough food to feed 47 children for 1 year. Lawyer’s Lend a Hand was founded in 2000 by now Judge Paul Marchese and then DCBA Executive Director Eddie Wollenberg. Lawyers Lending a Hand gathers volunteers who happen to be lawyers for non-legal pro bono activities on a regular basis. Judge Marchese commented, “The volunteering we do is an opportunity. Everyone walks away refreshed, and often thankful for what they have in life. The group of DCBA members that attend every month are diverse. Young and old lawyers from every area of law work together at each event side by side. Just hanging out with these remarkable, selfless, people once a month is a big source of pride for Eddie Wollenberg and me. They truly represent the DCBA well. Friends and family are welcome as well.” Watch for notifications from the DCBA for your opportunity to volunteer and enjoy good fellowship with other attorneys and members of the legal community. □
In our prosecution and defense of class actions throughout the United States in Federal and State Courts, we are proud of our recent accomplishments, which include the following:

**RECENT CLASS ACTIONS**

**Walczak v. Onyx Acceptance Corporation**
Class certification order affirmed by the Appellate Court. 365 Ill.App.3d 684. Represented class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,600 class members able to claim up to $2000. In addition to the damages payment, debt totaling $6.5 million was forgiven as to all class members as part of the settlement.

**S37 Management, Inc. v. Advance Refrigeration, Inc.**
Court certified claims involving allegedly deceptively labeled, non-tax charges called government processing fee in the tax line of customer bills. Class certification order affirmed by Appellate Court and Supreme Court declined to review appellate court decision. 961 N.E.2d 6.

**Terrill v. Hilton**
Court certified a class of all customers of Hilton’s Oakbrook Terrace Hotels. Following successful interlocutory appeal (338 Ill.App.3d 431), judgment in favor of the class for millions of dollars in damages, prejudgment interest and all attorneys’ fees. Affirmed on appeal in Rule 23 Opinion. Class received in excess of 30% of overcharges with monies being mailed to each class member following win on appeal. Settled identical cases on a class-wide basis against other national hotel owners including Marriott, La Quinta, Comfort Suites and Four Points.

**Morales v. Sonography Trade School**
Court certified class seeking millions of dollars in refunds and other damages for all students who took a medical sonography course but did not obtain jobs in the field. The class claimed that Defendant violated the Consumer Fraud Act’s provision for vocational schools by failing to disclose that very few graduates obtained jobs. Appellate and Supreme Court refused to hear an appeal of class certification order.

**Municipal Booking Fee Class Actions**
Representing class members against a number of cities and towns for return of booking fees charged to persons who are arrested. Class certified by federal court against a town in one case and motion to dismiss denied against a different town in another case.

**Boundas v. Abercrombie & Fitch; Daniels v. Hollister**
Representing class of consumers that received a $25 purchase reward card that did not contain an expiration date but which defendant claims should have contained an expiration date and will no longer honor. Class action certified and 7th Circuit denied request for interlocutory appeal of class certification in Abercrombie case. 200 F.R.D. 408.

**Unpaid Overtime Class Actions**
Representing putative class members in a number of cases against employers seeking repayment of alleged unpaid overtime or for other wage and hour violations such as failure to pay minimum wages. We have obtained favorable class wide settlements in wage and hour and overtime cases.

**Erickson v. Ameritech**
Court certified consumer fraud claims for failure to disclose hidden voicemail charges. In 2005, Crain’s Chicago Business listed the settlement as the third highest settlement/verdict in Illinois.

**Class Action Defense**
Defended national marketing company in four Fair Credit Reporting Act class claims seeking over $100,000,000 brought in federal court in Chicago and Maryland. Defended national residential mobile home rental chain in consumer fraud claims. Defend a number of large to mid-size companies in class claims throughout the country including defending a landlord in class claims alleging violations of Illinois security deposit laws, a municipality in claims involving alleged illegal fines, a medical services finance company regarding alleged illegal loans for plastic surgery procedures. Also act as advisors and co-counsel with attorneys who have asked us to assist them in defending their clients in class claims.

We are also investigating the following Potential Claims...

...and enter into referral and co-counsel agreements with attorneys who assist us in prosecuting class action or whistle blower claims:

- Violations of Federal and state Wage claim laws by failing to pay overtime to salaried employees, forcing employees to work off the clock and failing to pay minimum wages.
- Whistle Blower claims involving fraud on the government or securities purchasers.
- Manufacturers, retailers and advertisers who materially misrepresent how a product works or performs.
- Banks that re-sequence checks on check accounts so checks for larger amounts clear before checks for smaller amounts thus causing more overdrafts and unfairly increasing the number of overdraft (or NSF) fees charged to customers.
- Banks that charge FDIC insurance fees on savings accounts despite an FDIC opinion that it is improper to charge such fees.

**Areas of Interest:**
- Wage & Hour Overtime and Minimum Wage Violations
- Whistle Blower (Qui Tam) Claims
- Unfair Check Overdraft Fees
- Healthcare Product Fraud
- Defective Car & Vehicle Products
- Insurance Fraud
- Fair Credit Reporting Act -- FCRA
- Fair Debt Collection Practices Act -- FDCPA
- Privacy Violations
- Violation of Car Repossession Statutes
- Vocational School Deception
- Excessive Late Charges
- Infomercials & Deceptive Advertising
The Surveys are Coming, the Surveys are Coming!

As DCBA Executive Director Leslie Monahan discusses in more detail in this issue's DCBA Update (page 50), members will soon be getting a number of short surveys in their email, asking for their views on a number of different subjects, including questions about membership benefits, DCBA events, continuing legal education programs, and legal technology and communication. The surveys are being put together by the DCBA's Planning Committee, chaired by Second Vice President Jay Laraia. The goal is to ensure the DCBA provides its members with the benefits and resources they want from their bar association so we all hope you'll take a few minutes to complete these surveys as they arrive. We promise: it's painless and it'll only take a few minutes.

Demling to Receive LAP Award. As we first reported last month, on Friday, November 1, 2013, the new president of the Lawyers' Assistance Program (LAP), Francis Patrick Murphy, will be sworn in when LAP holds its annual dinner at the Union League Club of Chicago. Our own Judge John Demling (along with Bruce Black from the United States Bankruptcy Court, Northern District) will receive the Honorable John Powers Crowley Award, which honors judges who have made significant contributions to LAP. Judge Demling is receiving this honor because of his efforts and the significant amount of time he has volunteered as part of LAP. He began volunteering in 2009. As a volunteer he has helped with peer support and served on intervention teams. When part of an intervention team, Judge Demling assists in assembling the members of the team, conducts practice interventions leading up to the actual intervention and allows the team and individual access to his chambers at the courthouse for the intervention itself. LAP Executive Director, Janet Piper Voss, said that Judge Demling "has been a great volunteer." LAP Clinical Director and former DuPage County attorney, Robin Belleau, said that Judge Demling is "one of the few volunteers in DuPage County so he gets called more often. He has never once turned me down. He never says 'no' and will always help." LAP is a registered not-for-profit 501(c)(3) organization funded by seven dollars of every lawyer's annual registration fees. The organization helps Illinois lawyers, judges, law students, and their families with alcohol abuse, drug dependency, or mental health problems. The available services include education, information...
and referral, peer assistance, and intervention. The program is designed to address problems before they jeopardize a lawyer’s practice, a judge’s career, or a law student’s education. LAP recognizes that addiction and mental health problems may significantly impact a lawyer or judge’s ability to function in a legal setting. The basic tenet of LAP is the belief that it is the responsibility of the legal profession to assist its members and the families of those who need help before family, personal and professional relations are put at risk.


We’d also like to welcome new student members: Adam Demuro, Jessica Fabiszak, Antonio Favela, Beverly M. Jones, Katherine Legel, Maria L. Parente, Connor P. Singleton, Mary E. Sparrow, Laura Brito, Renee M. Casey, Ciana J. Christian, Darlene Compean, Nicole Gooden, Cara Gross, Cynthia Mohn, Kathy A. Omelka, and Alyssa K. Rabulinski.

New Legal Community and Affiliate Members include: Cindy Wolverton of Mirabella, Kincaid, Frederick, Toni L. DiOrio of Transworld Systems, Carol McCarthy of National Title Solutions, and Jennifer Zuithoff of Avenue Mortgage. Congratulations to new member Sue Makovec on her new position at the DuPage Judicial Center. Sue is the Judicial Secretarial Supervisor and is overseeing all judges’ secretaries with a goal of uniform procedures and cross training. □
ARTICLES

“I Need a Reasonable Accommodation to Request a Reasonable Accommodation”: Fair Housing Rights of Tenants With Mental Disabilities in Subsidized Housing

By Kylin E. Fisher

The Changing Role of the Tender Years Doctrine: Gender Bias, Parenthood, and Illinois Law

by Erin N. Birt and Elizabeth J. Chacko

In re Castleton: Seventh Circuit Expands Scope Of Absolute Priority Rule

by Joshua D. Greene

ILLINOIS LAW UPDATE

Illinois Supreme Court Renders Decision in Hope Clinic for Women v. Flores

by Michael Sitrick
Searching For A Theory of Coherence
As The Kids Head Back to School

BY LAWERENCE A. STEIN

This month’s edition brings a diverse array of articles of particular interest at the moment, including an interesting take on the rights of disabled individuals for accommodations under the Americans with Disabilities Act, an incisive and reminiscent study on whether gender should play any role in assigning parental duties among divorced couples, and, as a reminder of the past and current economic situation, a scholarly piece on the aspect of bankruptcy that to me is where “the rubber meets the road.” All of use can find something of value to our lives, interests, and practices among the contents of this issue, thanks to the hard work of the authors.

But before you decide only to read some of these works, consider letting me tell you how I think they all fit together. My theory of the coherence of these writings may seem like a stretch, so to convince you I will first have to digress. I hope you will stay with me, because I think all of you will see it, and consider it worthwhile, if you just give me a moment of your precious time.

As I write this, I just sent my youngest (did I say my YOUNGEST?) child off to college in another state. That milestone, among other recent events in my family, got me thinking about how my family life, especially raising children in my home, interacted continuously with my law practice until now. I hadn’t had to think about that, except on the surface, until this very moment, as my first child was born almost exactly when I became a lawyer. So until now I have always been practicing law while simultaneously raising children in my house. And perhaps just as notably, until now I have never practiced law without having children to raise in my presence, except perhaps for those fleeting times my parents, siblings, or in-laws, had them without my wife and I for short times. As I write this I wonder whether practicing law with no children at home full time will differ from the entirety of my prior time – about 21 years – practicing law with kids at home.

As I read and selected these articles, while my daughter counted the days until she could go to college and be free of my annoying presence, and my wife shopped (and shopped some more) for all her dorm “essentials,” it occurred to me that each of the contents of the articles in this issue involved an issue relating to the functioning of families. While I admit that this epiphany is unsurprising given the ubiquity of family life in human society, it did not come to me quickly.

But it all tied together with me eventually. The easiest was the study of parental gender in the context of divorce. That work brought me back to my childhood days of watching television, “way, way back” when the cutting edge of television programming involved the mere idea of raising kids by adults other than their natural parents, as a couple. The piece on housing touches on one of the basic foundations of family life – a home.

The bankruptcy article was the hardest. Many would agree that the “absolute priority rule” has nothing at all to do with families, given that it only applies to corporations and other artificial legal entities. But putting aside that those entities are ultimately owned, managed, and staffed by people with families of some sort or another, the study reminds us that it takes more than love and hope to raise a family – it takes money, and that’s where the “rubber meets the road.” So I hope you will consider reading all the articles in this issue for the surprising insight they may give you, so you can benefit from them as I did. By the time you read this issue, my wife and I will have adjusted to living in a house with no children, and you can ask me about practicing law without children living at home. □

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“I Need a Reasonable Accommodation To Request a Reasonable Accommodation”: Fair Housing Rights of Tenants With Mental Disabilities in Subsidized Housing

BY KYLIN E. FISHER

For a person with a mental disability, the ability to remain in stable housing can be one of the most important aspects of reaching her potential and remaining a functioning member of society. Unfortunately, a mental disability can create a seemingly insurmountable barrier in reaching this goal. Approximately twenty-six percent of all sheltered homeless people have some form of severe mental illness. However, most of these individuals could remain in the community if appropriately housed, with only five to seven percent requiring institutionalization. When unsuitably housed, many individuals with mental illness experience more severe manifestations of their symptoms and struggle to retain control of their lives. The ability to access safe, affordable housing is crucial.

The Fair Housing Amendments Act of 1988 (FHAA) promised greater housing opportunities for people with disabilities. Congress declared, “[p]rohibiting discrimination against individuals with handicaps is a major step in changing the stereotypes that have served to exclude them from American life. These persons have been denied housing because of misperceptions, ignorance, and outright prejudice.” The law forbids the denial of housing opportunities because of a physical and mental disability. People with disabilities have the right...
to the use and enjoyment of their homes, but for those with mental disabilities this right is often not the reality. Many tenants cannot find housing or face eviction from their homes because of needs or behaviors directly related to their disabilities. The FHA’s legal requirements are disconnected from the day-to-day reality of people with mental disabilities.

This is particularly true for tenants of subsidized housing. Because tenants of subsidized housing cannot afford a market rate unit, subsidized housing is often the last opportunity before becoming homeless. Public housing authorities (PHA) manage and control most subsidized units. In larger cities, the PHA can be a huge bureaucratic agency with thousands of employees. This bureaucracy includes employees of the housing authority and contracted agencies that manage properties. In Chicago, the housing authority serves more than 50,000 households. Eligible families can be wait-listed for years. The sheer number of tenants and applicants makes it easy for individuals to fall through the cracks.

Legal Standards under the FHAA and Other Federal Regulations. In 1988, Congress defined people with disabilities as a protected class for purposes of housing discrimination. In passing the FHAA, Congress intended to make a “clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.” The FHAA prohibits discrimination “against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services of facilities in connection with such a dwelling because of a handicap.” Due to the variety of disabilities and the wide array of barriers to safe, affordable housing, Congress intentionally wrote the statute with many open-ended definitions. In interpreting this broadly written statute, “generous construction” is needed, and appropriately given, in order to achieve “a policy that Congress consider[s] to be of the highest priority.”

The FHAA anti-discrimination policies apply to private and public landlords. Tenants and potential tenants of subsidized housing have additional protection under the federal Department of Housing and Urban Development (HUD) regulations. HUD regulations cover all federally assisted PHAs. Part 9 of the HUD regulations clarifies what actions a PHA must take to accommodate tenants with disabilities. It also clarifies the FHA standards that apply to all landlords, and increases the burden on PHAs to take steps to ensure that a tenant with a disability has an “equal opportunity to the uses and enjoyment of the dwelling.”

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person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services of facilities in connection with such a dwelling because of a handicap.”20 Under the FHAA, “handicap” is defined as “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.”21 The statute states that “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”22 This extremely broad definition takes into account a wide variety of disabilities confronted by the American population.

One of the most important tools in ensuring that people with disabilities have continuing access to safe, affordable housing is the “reasonable accommodations” requirement. Under the FHAA, unlawful discrimination includes “a refusal to make reasonable accommodations in rules, polices, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”23 Most people think of reasonable accommodations in terms of the physically disabled, such as the widening of doors for wheelchair access and waiving a “no pet” policy for a service animal.24 These accommodations allow the person with a disability to access the dwelling. Unfortunately, for many with a mental disability, the need for a reasonable accommodation often comes at a time of great conflict with the landlord.25 Behavior that is a direct result of the disability may violate the lease.26 In these cases, the request for a reasonable accommodation is a defense to an eviction proceeding.27 The accommodation may excuse the violation and allow the tenant to remain in the dwelling. This would be easiest when a violation is unlikely to happen again, such as an aggressive verbal outbreak during a transition to a new treatment plan. The same solution would be appropriate for minor lease violations, such as noise.

PHAs have an affirmative obligation to make all tenants aware of their rights under the FHAA.28 “The [PHA] shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.”29 Many PHAs expressly recognize the requirement in their voluntary compliance agreements with HUD.30 It is particularly important that the PHA convey to the tenant that the reasonable accommodation can assist in meeting lease requirements.31 Even people living with disabilities often think of accommodation in terms of the physical environment and may not know how powerful the accommodation requirements are.

20 42 U.S.C. § 3604 (West).
22 42 U.S.C. § 12102 (West).
24 CHA prominently listed both examples in its resources. CHICAGO HOUS. AUTH., APPLICATION REQUEST FOR A REASONABLE ACCOMMODATION/STRUCTURAL MODIFICATION GUIDE 5 (April 10, 2008).

25 Carter, supra note 9.
26 Id.
28 24 C.F.R. § 966.7.
29 Id.
31 24 C.F.R. § 966.7.
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A reasonable accommodation is only required when the PHA has enough notice to consider the accommodation.\(^{32}\) It is the duty of the tenant to “request” the reasonable accommodation.\(^{33}\) “As a predicate to obtaining a reasonable accommodation in federally financed public housing, a disabled tenant must, if his landlord is not already aware, inform the landlord that he has a disability and must request some accommodation.”\(^{34}\) To make a reasonable accommodation request, no ‘magic’ words are required.\(^{35}\) A request can simply inform the “landlord that the tenant is a qualified handicapped person, and that the tenant is currently being denied an equal opportunity to use and enjoy a dwelling.”\(^{36}\) In making the request, the tenant is not required to make the request in writing or cite any legal standard.\(^{37}\)

The landlord cannot deny a reasonable accommodation request because the tenant did not provide evidence of the disability, or because the connection between the request and the disability is unclear in the initial request.\(^{38}\) “If a landlord is skeptical of a tenant’s alleged disability . . . it is incumbent upon the landlord to request documentation or open a dialogue.”\(^{39}\) The landlord may ask for additional proof, but the landlord cannot create an unreasonable burden by severely limiting the possible sources of proof that the tenant may use to demonstrate the disability.\(^{40}\) The tenant need not state the exact accommodation that would be appropriate. Courts recognize that requesting a reasonable accommodation should be an “interactive process.”\(^{41}\)

Creating an accommodation that will ensure an equal opportunity and still be reasonable requires knowledge of the disability and possible changes to the status quo. This information is naturally divided between the parties. The tenant has the greatest understanding of his or her own disability and limitations. In the public housing context, the landlord has information about the abilities of the entire PHA. The landlord may have information about possible services or other buildings that would benefit the tenant.

Once notice is given, the burden is on the landlord to do an individual evaluation of the request. For a private landlord this is a fairly basic cost/benefit analysis of the burden to the landlord and the benefit to the tenant.\(^{42}\) For a federally funded PHA, the standard for what would be unreasonable is different.\(^{43}\) “[A] reasonable accommodation is required where there is a causal link between the disability for which the accommodation is requested and the misconduct that is the subject of the eviction” or other barrier to remaining housed.\(^{44}\) Because subsidized housing is housing of last resort, displacement heavily burdens the tenant.\(^{45}\) “For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.”\(^{46}\) Therefore, mere cost or inconvenience is an unacceptable reason for the PHA to deny an accommodation.

The FHAA provides an exception to private and public landlords’ obligation to grant a reasonable accommodation. “Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”\(^{47}\)

The House Committee Report compares the exception to §504 Rehabilitation Act, which governs programs and activities receiving federal financial assistance.\(^{48}\) Under §504, an “otherwise qualified handicapped individual” may not be subjected to discrimination based on his or her handicap.\(^{49}\) “An individual is not otherwise qualified if . . . he or she would pose a threat to the safety of others, unless such threat can be eliminated by reasonable accommodation.”\(^{50}\)

The House Committee Report also cited School Board of Nassau County v. Arline, in explaining how to apply the exception.\(^{51}\) In Arline, a teacher who had suffered several relapses of tuberculosis was determined to be a “threat”

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\(^{32}\) Beck v. Univ. of Wis. Bd. of Regents, 75 F.3d 1130, 1135 (7th Cir. 1996).

\(^{33}\) Id.

\(^{34}\) Bridgewaters, 898 N.E.2d at 857.

\(^{35}\) Id. at 859.

\(^{36}\) Id. at 857.

\(^{37}\) Id.

\(^{38}\) Jankowski Lee & Assoc. v. City of Milwaukee, 91 F.3d 891, 895 (7th Cir. 1996).

\(^{39}\) Id.

\(^{40}\) 24 C.F.R. § 966.

\(^{41}\) Beck, 75 F.3d at 1135.

\(^{42}\) 42 U.S.C.A. § 3604 (West).

\(^{43}\) 24 C.F.R. § 966.

\(^{44}\) Bridgewaters, 898 N.E.2d at 860.

\(^{45}\) See, Popkin, supra note 12.

\(^{46}\) 24 C.F.R. § 966.7.


\(^{49}\) Id.

\(^{50}\) Id. (Emphasis supplied).

\(^{51}\) Id.
to the safety of others in the school. Her condition was a disability because it limited her ability to work. The Court held if a person was “otherwise qualified” under the definition of a handicapped individual, the question was “whether the employer could reasonably accommodate the employee.”

The legislative history also shows the House rejected a more sweeping provision than that adopted; it would have excluded “a category of individuals with disabilities from the [antidiscrimination] protections of the [FHAA].” Congress believed only the most severe cases of endangerment should deprive someone of a place to live. The House Committee noted: “[a]lthough the Committee believes it extremely unlikely that the tenancy of an individual with handicaps would ever pose a direct threat to others, such that the reasonable accommodation requirement would be necessary to eliminate the threat, the requirement exists for those situations in which it might be necessary.”

While “direct threat” is not defined by the FHAA, its regulations do provide a definition. “Direct threat’ means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.” HUD has made clear that its policies require federally funded housing programs to comply with the statements within the FHAA legislative history. A PHA cannot evict a tenant for being a threat to others if there is an action that the PHA can take to minimize the threat to an acceptable level.

Stereotypes or generalizations of people with the same or similar disabilities cannot form the basis for denying a reasonable accommodation.

In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

The PHA must consider the individual actions, behaviors, and needs of the tenant in question. Furthermore, it is also required to work with the tenant, through a dialog, to discover what accommodations could minimize the threat the tenant causes. If the tenant initially provides an unfeasible course of action, the PHA must still explore other possible options.

The burden is not on the tenant to propose the perfect accommodation that would eliminate the threat to others. If the PHA wants to evict a tenant because the tenant’s disability creates a threat, the PHA must show that no accommodation could make the tenant a non-threat. “The [FHAA] requires [a PHA] to demonstrate that no ‘reasonable accommodation’ will eliminate or acceptably minimize the risk [the tenant] poses to other residents … before they may lawfully evict him.”

The Massachusetts Supreme Court held the Boston Housing Authority to this standard in Boston Hous. Auth. v. Bridgewaters. In Bridgewater, a tenant with severe bipolar and borderline personality disorders assaulted another tenant causing hospitalization and temporary paralysis of his right side. The assault occurred after the defendant’s doctor removed him from medication because of negative side effects. By the time of trial, the defendant was “in a better situation” with a stable treatment plan including medication and psychiatric support.

Before a federally assisted public housing authority such as the [Boston Housing Authority] may lawfully evict a

53 Id. at 282.
54 Id. at 288.
56 Id.
57 Id.
59 Id.
60 Id.
61 Id.
62 H.R.Rep. No. 100–711 at 18; Bangerter v. Orem City Corp., 46 F.3d 1491, 1504 (10th Cir. 1995).
64 H.R.Rep. No. 100–711 at 18; Bangerter v. Orem City Corp., 46 F.3d 1491, 1504 (10th Cir. 1995).
65 Beck, 75 F.3d at 1135.
66 Id.
68 Id.
70 Bridgewater 898 N.E.2d at 851.
71 Id.
72 Id.
73 Id. at 852.
disabled tenant who requests a reasonable accommodation as posing a threat to others, it must either demonstrate the failure of an accommodation instituted at the request of the tenant, or demonstrate that no reasonable accommodation will acceptably minimize the risk the tenant poses to other residents.74

The standard that “once a reasonable accommodation had been requested, ‘the burden is on the landlord’ to ‘demonstrate that no reasonable accommodation will eliminate or acceptably minimize any risk’ that tenant ‘imposes on other residents’” goes a long way in protecting tenants with mental disabilities.75 The intent of the FHAA was to allow people with physical and mental disabilities to find safe, affordable housing in the community.76 The direct threat standard shows the extent that Congress and HUD believe accommodations must be made for individuals with disabilities.

Conclusion. Safe, affordable housing is a necessity for all people. Individuals with mental disabilities who have stable housing are less like to be hospitalized, visit the emergency room, or be arrested.77 Protecting individuals’ access to affordable housing is the only way to insure that individuals with mental disabilities can continue living within and being a part of the larger community.78 Protecting tenant’s rights is more important in subsidized housing because subsidized housing is housing of last resort.79 When the safety net of subsidized housing fails, there is nothing to prevent homelessness.80 The FHAA and HUD regulations impose a higher standard on PHAs than on private landlords. The law requires a wide variety of reasonable accommodations and an interactive process between the parties. PHAs cannot justify denying a reasonable accommodation with cost. They must also meet a higher burden in showing that no accommodation could alleviate a threat caused by a tenant. These requirements are vital because they could make all the difference for tenants with mental disabilities on the verge of homelessness.

74 Id. at 855.
75 Bridgewaters 898 N.E.2d at 856.
77 U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, supra note 2, at 18.
78 Id.
79 Popkin, supra note 12.
80 Id.
The Changing Role of the Tender Years Doctrine: Gender Bias, Parenthood, and Illinois Law

BY ERIN N. BIRT AND ELIZABETH J. CHACKO

In the 1970’s, when Illinois family courts last relied on the gender-biased principles of the Tender Years Doctrine, Eight is Enough, The Brady Bunch, and One Day at a Time were among the most popular television programs. The success and popularity of that programming are not the only similarities. Each show also shared a relatively edgy premise for television in the 1970’s: non-traditional families. Interestingly, while each show tackled the serious issue of single parenting to some degree or another, each explained the custodial parent greatly differed. Both Eight is Enough and The Brady Bunch starred fathers that maintained custody of their children after the death of the mother. The Brady Bunch also starred a mother that maintained custody of her children; however, the narrative never disclosed how her prior marriage ended. One Day at a Time starred the most unique single parent for its time, as it focused on a divorced single mother that was presumably granted custody subsequent to the divorce.

1 Screen Source Website, www.amug.org/~scmsrc/top_tv_shows_70s.html. (last visited March 18, 2013).

All three help illustrate the social climate of the 1970’s — a climate where a single mother with children was preferred, not questioned, and not explained — and a single father with children had to be justified and explained as having overcome difficult circumstances such as becoming a widower. Their popularity may have helped to perpetuate the belief that mothers are the preferable caretakers for young children absent extreme circumstances and allegations against the mother.

Not surprisingly, as the social climate began to change in the 1980’s so did the popularity of the no-longer edgy ‘single parent/divorced parent/blended family’ shows. By the 1980’s those programs were no longer in production, the preferred family dynamic changed, and Illinois, as well as other states, explicitly rejected the Tender Years Doctrine.

Gender Bias and Parenthood. Did the changing economic, social, and legal trends for men and women...
during the past thirty years make the gender bias of the Tender Years Doctrine truly obsolete or has it been simply replaced by other legal means? In order to trace the changing role of the Tender Years Doctrine, this article will focus on the legal history of the Tender Years Doctrine, the current statistics for the average single parent, whether the gender of parents matter, and how the proposed revisions to the Illinois Marriage and Dissolution of Marriage Act may or may not protect children and affect future use of the gender bias principles of the Tender Years Doctrine.

**Legal History.** The principles of the Tender Years Doctrine have been around for centuries. The origins of the Tender Years Doctrine in colonial America stemmed from the heavy influence of English law. Originally, fathers, in both England and the United States, were awarded custody of children. During Early English Common Law and thus American Law, fathers had an absolute right to custody of children as married mothers had few if any legal rights.

In the 1800’s the culture of the United States began to change. Families began to focus on children and realized that children needed special attention. In 1839, Congress enacted the Talfourd Act which created the legal presumption that children under the age of seven should be awarded to the mother. The presumption is what became known as the Tender Years Doctrine.

In *Miner v. Miner*, decided in 1849, the Court found that “an infant of tender years is generally left with the mother, if no objection to her is shown to exist, even when the father is without blame, merely because of his inability to bestow upon it that tender care which nature requires, and which it is the peculiar province of a mother to supply.”

Over 100 years later, the Tender Years Doctrine persisted; and in 1952, in *Nye v. Nye*, the Supreme Court of Illinois held that compelling evidence must be presented proving the mother to be unfit for custody to be denied to the mother and further that due to the tender years of the child it would not be unusual for the mother to be entrusted with the children. It reasoned the mother, due to her maternal nature, was in a better position to care for the child than the father.

By the 1970’s, a child’s tender years were generally acknowledged to be between birth and 13 years. The burden of proof continued to be placed on the father to demonstrate that denying the mother custody would not be in the best interests of the child, or in other words, that the mother was unfit.

Up through 1981, the Tender Years Doctrine was used to help decide custody cases in Illinois. In 1981, Illinois explicitly rejected the Tender Years Doctrine due to the changes in social and legal trends and in the new lifestyles of men and women. While explicitly rejected, Illinois courts did acknowledge that due

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4 *Id.*
5 *Id.*
7 *Id* at 896.
8 *Id.*
to a majority of primary caregiver's being mothers, that in practice, a majority of custody awards will still be to mothers.\textsuperscript{15} The rejection of the Tender Years Doctrine was also due to the perception that it was antiquated and outdated and furthermore denied fathers due process and equal protection of the laws.\textsuperscript{16}

Under the Illinois Constitution, equal protection is mandated irrespective of one’s sex.\textsuperscript{17} The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution also mandates that each state provide equal protection under the law.\textsuperscript{18} Thus the Tender Years Doctrine was determined to be unconstitutional. It is due to such equal rights that where both parents are fit, each parent has an equal right and equal standing to petition for the custody of their children.\textsuperscript{19}

Subsequent to the rejection of the Tender Years Doctrine, Illinois created the legal standard of “The Best Interests of the Child.” Section 602 of the Illinois Marriage and Dissolution of Marriage Act provides that the court must consider all relevant factors in making a determination of custody.\textsuperscript{20} While Section 602 enumerates specific factors for the court to consider in determining custody, no one single factor is controlling or given more weight.\textsuperscript{21} Even as the courts now utilize the best interests of the children standard when determining custody, the age and sex of the children and the parent can arguably be factors considered by the courts in determining custody.\textsuperscript{22}

In addition, under Section 602, the courts can consider caretaking activities such as which parent feeds, bathes, transports the children to school, consults with the teachers, and involves the child in community activities. If the mother performs such acts and is the primary caretaker (which statistics show to be more often the case) Section 602 arguably achieves similar results to that of the Tender Years Doctrine all while bypassing constitutional objections.\textsuperscript{23}

The Average Single Parent. While patterns of family formation and household structures are changing, statistics about the average single parent in the United States have remained surprisingly consistent with the principles of the Tender Years Doctrine. According to the U.S. Census Bureau, in the spring of 2010, there were an estimated 13.7 million single parents with custody of children under the age of 21.\textsuperscript{24} Of the 13.7 million single parents, 82.2% of custodial parents were mothers and 7.8% were fathers.\textsuperscript{25}

The typical single mother is most likely divorced or separated (44%), over the age of 40 (37%), employed (76%) and working full time (49.5%), not living in poverty (70%), not receiving public assistance (78%) and is raising one child (57%).\textsuperscript{26} Current research reveals that single fathers often receive custody of boys, older children, or children with behavioral problems when mothers lacked interest in parenting, committed neglect or abuse, or died.\textsuperscript{27} Single fathers are most often sued for custody whereas mothers often obtain custody through mutual agreements.\textsuperscript{28}

Thus, current research and statistics about the average single parent do not appear to conform to the idea that times have significantly changed and that the gender bias principles of the Tender Years Doctrine are rejected or obsolete.

Gender and Parenting. The issue of gender and

\begin{itemize}
\item \textsuperscript{15} In re Marriage of Bush, 170 Ill. App.3d 523, 525 N.E.2d 163 (1988); In re Custody of Switalla, 87 Ill. App.3d 168, 408 N.E.2d 1139 (1980); Strand v. Strand, 41 Ill. App.3d 651, 355 N.E.2d 47 (1976)
\item \textsuperscript{16} Carlson v. Carlson, 80 Ill. App.2d 251, 225 N.E.2d 130 (1967)
\item \textsuperscript{17} U.S. Const. Amend. XIV, § 1.
\item \textsuperscript{18} Anagnostopoulos v. Anagnostopoulos, 22 Ill.App.3d 479, 317 N.E.2d 681 (1974).
\item \textsuperscript{19} 750 ILCS 5/602.
\item \textsuperscript{20} Id.
\item \textsuperscript{21} Mulvihill v. Mulvihill, 20 Ill. App.3d 440, 444, 314 N.E.2d 342, 345 (1974); Switalla, 87 Ill. App.3d at 172, 408 N.E.2d at 1142.
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Timothy J. Biblarz & Judith Stacey, How Does the Gender of Parents Matter? Journal of Marriage and Family 72:3-22. (February 2010).
\item \textsuperscript{28} Id. at 13.
\end{itemize}
parenting can easily ignite volatile debates over single parenthood, same-sex marriage, gay parenting, and divorce. While the purpose of this article is not to explore the research regarding the merits or results of various family forms, it will explore the limited context of a gender preference in custody matters and within the principles of the Tender Years Doctrine.

Popular belief would lead many to believe that there are gender preferred parenting abilities. Presidents, organizations, and even laws have perpetuated the stereotypical views about gender specific parenting. In 2008, President Obama stated

> Of all the rocks upon which we build our lives, we are reminded today that family is the most important. And we are called to recognize and honor how critical every father is to that foundation. They are teachers and coaches. They are mentors and role models. They are examples of success and the men who constantly push us toward it.”

While it can be argued that both parents are valuable, arguments that both a father and mother are needed to raise a child presumes that mothering and fathering are gender specific. Current research, however, does not support such an argument.30

While researchers agree that men and women parent differently, the source and consequence of the parenting differences is generally unknown.31 They further agree that both genders appear to present both “motherly” and “fatherly” qualities as a single parent and in the absence of the other parent.32 Researchers also agree that after attempting to control for all other family variables, two parents that exist in a low conflict relationship generally provide more advantages for children than one parent.33

Thus it appears there is a lack of current research to support the popular belief that the gender of a parent matters for a child’s well-being. Rather, research indicates that families headed by at least two committed and compatible parents, regardless of gender or marital status, are generally best for children.34

**Minimize Conflict, Not Gender.** Children experiencing a parental divorce or separation may go through hardships during certain developmental stages as the child deals with the emotional impact of the divorce.35 The child’s development starts in infancy with trust as the cornerstone. If a child’s attachment to either parent is broken whether by divorce, conflict, or other factors, it can lead the child to regress and develop mistrust. Once mistrust is established, the child may develop feelings of shame, doubt, guilt, inferiority, and identity confusion.36

To minimize regression, mistrust, and conflict, children need committed and compatible parents. Other key factors that contribute to positive advantages for children, regardless of a parent’s gender, are: (1) appropriate parenting (support, supervision, discipline, and reasonable

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31 Id. at 2.
32 Id. at 14.
33 Id. at 3.
34 Id. at 15.
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To help children cope with divorce and minimize conflict, mental health professionals support the use of certain appropriate developmental stage interventions. For instance, when experiencing a parent’s divorce, children from infancy through the age of 10 may experience an awareness of tension, guilt, fear of abandonment and an appropriate intervention by parents is to develop a routine, a predictable schedule, and simple explanations for questions. Being familiar with developmental stages of a child and appropriate interventions can help all single parents, regardless of gender, minimize conflict and thus maximize positive advantages for their children.

Revisions to the Illinois Marriage and Dissolution of Marriage Act. At the time this article was prepared, Illinois House Bill 1452 (“HB 1452”), which seeks to amend the Illinois Marriage and Dissolution of Marriage Act (“IMDMA”), had been set for a Judiciary Hearing and General Law Subcommittee Meeting. The proposed amendments contained in HB 1452 include major changes to the parenting time provisions of the IMDMA. The amendments aim to essentially render any gender bias in parenting obsolete.

As first reported in the Illinois Bar Journal, the Illinois Family Law Study Committee, which is comprised of family law experts, two appointees from the Illinois Supreme Court and two from the Department of Healthcare and Family Services, unanimously agreed that there should be a statutory presumption in Illinois that it is in the best interest of the child for that child to spend at least thirty-five percent of their time with both parents. Taking into account the time children spend in school or daycare, the amendment essentially provides a presumption for parents to have equal parenting time. Shared parenting time appears to be the trend not only in Illinois, but in other states as well. Alaska, Iowa, Kansas, Massachusetts, Michigan, New York, North Dakota, Oklahoma, Texas, and Wisconsin are among the states that have either considered or implemented shared parenting initiatives.

Summary & Recommendations. The social climate has changed since the Tender Years Doctrine was last formally implemented in Illinois. The social and economic trends for men and woman have greatly changed as have the legal trends for determining custody. While Illinois explicitly rejected the Tender Years Doctrine in the 1980’s, it appears that the role of the Tender Years Doctrine simply changed from a mandated presumption to a consideration under Section 602. Current statistics reflect, however, that a gender bias may still exist as the typical single custodial parent is still the mother. While research appears to suggest that gender should not matter in parenting, in practice, single mothers continue to care for a majority of the children. Based upon the history of the doctrine, the statistics of custodial parents, and the research about gender and parenting, it could be argued that the principles that culminated in the Tender Years Doctrine still influence American culture and thus family services and courts today.

Illinois HB 1452 attempts to remedy the replacement of the Tender Years Doctrine with Section 602 of the IMDMA by requiring a presumption of shared parenting time. It is unclear, however, if mandated shared parenting time will result in quality parenting time. With or without a presumption of joint or shared custody, to adequately protect children of divorce from the hardships, children will need routines, predictability, both parents, and minimal conflict. It is suggested that should the presumption of shared parenting time be implemented, or even advocated, that divorce professionals and parents minimize conflict by utilizing proactive services and resources such as parenting coordinators, divorce coaches, qualified mediators, mental health professionals, and experienced family law attorneys.

40 Lasker, Adam W., “Is a family-law overhaul on the way?”.
The United States Bankruptcy Code gives certain creditors priority over other creditors, depending on the type or “class” of debt. For example, the Internal Revenue Service has priority over general unsecured creditors. This means that priority creditors must be paid in full before the general unsecured creditors receive anything. The lowest priority of creditor in a Chapter 11 bankruptcy is an equity interest holder, or shareholder. Shareholders receive nothing until all creditors are paid in full. This is called the “absolute priority rule,” and is codified in section 1129(b)(2)(B)(ii) of the Bankruptcy Code. In many Chapter 11 reorganization proceedings, especially involving closely held corporations, the existing shareholders or a close friend or family member called an “insider” propose to contribute a new investment in order to keep their equity interest in the corporation. The U.S. Supreme Court held in Bank of America National Trust and Savings Association v. 203 North La Salle Street Partnership that a debtor’s pre-bankruptcy shareholders may not contribute new capital and receive an ownership interest in the reorganized entity over the objection of a senior creditor without giving other creditors or third parties the opportunity to bid on the equity interest. The Seventh Circuit recently extended this holding In re Castleton Plaza, LP by finding that if a creditor objects to a proposed contribution of new value by an insider to receive the equity in a reorganized debtor corporation, the debtor corporation must market the equity to third parties through some bidding procedure.

4 707 F.3d 821 (7th Cir. 2013).
In the debtor’s plan of reorganization in 203 North La Salle, the debtor tried to purchase the former partners’ shares, which would have violated the absolute priority rule. The Fifth Circuit ruled that the equity interest in the reorganized debtor must be marketed to potential third party purchasers.

In Castleton, the debtor sought to get around the rule set forth in 203 North La Salle by providing that the equity interest in the reorganized debtor be purchased by the owner’s wife, who was not an equity owner of the pre-bankruptcy entity. Prior to the bankruptcy, the debtor was owned 98% directly by George Broadbent and the other 2% indirectly by George Broadbent. In the plan of reorganization, Broadbent’s wife offered to pay $75,000 in exchange for a 100% equity interest in the reorganized debtor. The Seventh Circuit, noting that no court of appeals had addressed the issue of whether competition is essential when a plan of reorganization gives an insider an option to purchase equity in exchange for a new value contribution, found that the proposed plan of reorganization violated the absolute priority rule despite the fact that the new equity contribution was coming from a third party and not the former owners directly.

The court reasoned that having the new value contribution come from an equity holder’s spouse is essentially the same as having the contribution come from the equity holder directly. First, the court noted that for many purposes under bankruptcy law, such as the recovery of preferential transfers, an insider is treated the same as an equity investor and that family members are insiders under the definition of an “insider” under Section 101(31) of the Bankruptcy Code. Second, the former equity holder, George Broadbent, would receive value indirectly from the equity that his wife contributed. In this particular instance, one form of value that Broadbent would have received would be the continuation of his salary from the corporation that managed the debtor. Another form of value would be an increase in his family’s total wealth, because in Indiana, which is a community property state, one spouse usually receives at least an indirect benefit from the other spouse’s wealth. In the court’s view, competition was simply essential to assure that the appropriate market rate had been paid for the equity in the reorganized debtor.

The Seventh Circuit has previously held that the definition of an “insider” is not limited to those specific categories of entities mentioned in Section 101(31) of the Bankruptcy Code. Rather, the term “insider,” as defined in Section 101(31) “also encompasses anyone with a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arm’s length with the debtor.” Thus, an “insider” could be anyone depending on the facts of the case. For example, presume that the previous owner of a reorganized debtor formed a corporation, Corporation X, of which he is a 100% owner, and that under the proposed plan of reorganization Corporation X had the exclusive right to purchase the equity in the reorganized debtor for $100,000. Under this factual scenario, Corporation X is not an insider under the definition of the Bankruptcy Code. However, since Corporation X is owned 100% by the former owner of the debtor, it is likely that Corporation X is also an insider, since the former owner controls corporation X. Further, since the former owner would obtain an economic benefit due to his ownership of Corporation X, the court would likely find that the plan provision violates the absolute priority rule. The water becomes even muddier if Corporation X were only partly owned by the former owners of the Debtor. However, given

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6 In re Krehl, 86 F.3d 737, 741-42 (7th Cir. 1996).

7 Id. at 741.
Disputed Guardianships

Kerry Peck, Esq., renowned named partner of Peck Bloom (www.peckbloom.com) and Diana Law, Esq., partner of Law ElderLaw (www.lawelderlaw.com) focus their practices litigating tough guardianship and disputed trust and estate administration cases. They were recently tapped by the Illinois Institute of Continuing Legal Education (IICLE) to present on the subject of “Ethical Issues in Guardianships.” They were joined by the Hon. Jane Louise Stuart, Circuit Judge, Probate Division, Circuit Court of Cook County, Chicago.

The presentation covered a number of topics:

• Alternatives to Guardianship: An overview of factors which give rise to the need for a guardianship, and when an attorney should recommend to the client to see other remedies.

• Guardian’s Obligations to Property: An overview of the knotty and difficult role of fiduciary relationship and the high standard and obligation of the guardian to safeguard the estate.

• Guardian’s Obligations with Regard to the Person:
  o Obligation to insure the ward lives in the least restrictive environment
  o Sterilization and the Illinois Guardianship Act
  o Factors to consider regarding a ward’s medical treatment

• Communication and Decision Making Obligations
  o Best interest vs. substituted judgment standard
  o Informed consent
  o Obligation to terminate or limit the guardianship
  o Consultations with family and others
  o End of life decisions

If you or one of your clients needs help with a tough guardianship problem in the Chicago metropolitan area, either Kerry Peck and Diana Law welcome your call or email to discuss the matter you may wish to refer. Kerry’s email is kpeck@peckbloom.com and Diana’s email is diana@lawelderlaw.com.

Rick L. Law, Esq.
the reasoning of the Seventh Circuit, this would still violate the absolute priority rule since the former owner gained an economic benefit.

Second, it is unclear as to what extent that the equity interest needs to be marketed. Does there need to be an auction? Must one or more advertisements in the local newspaper? Does actual cash have to be paid? A creditor of the corporation may not have to pay cash to obtain an equity interest in the reorganized entity. Interestingly, one case cited by the Seventh Circuit was *RadLax Gateway Hotel, LLC v. Amalgamated Bank*, 8 where the Supreme Court held that a plan of reorganization may not provide for the sale of collateral free and clear of the creditor’s lien without permitting the creditor to “credit-bid” at the sale. In *Castleton*, the Seventh Circuit used broad language in describing this holding, stating that “A plan of reorganization that includes a new investment must allow other potential investors to bid. In this competition, creditors can bid the value of their loans.” It seems that the Seventh Circuit would at least allow secured creditors to “credit-bid” the amounts they are due and owing on the value of their loans as part of an offer to purchase the equity in a reorganized debtor. This rule may even extend to unsecured creditors, given the broad language used by the Seventh Circuit. If so, it would make it much more difficult, if not impossible, for the pre-petition shareholders to keep their equity in the reorganized debtor by allowing creditors to drive up the price of the equity in the reorganized debtor. The creditors would not have to pay actual dollars for the equity, instead using the “credit-bidding” process to bid on their ownership interest. Perhaps this was the intention of the Seventh Circuit in rendering its opinion, although allowing a creditor to “credit-bid” the value of its debt may not add much value to the bankruptcy estate. By way of example, an owner’s proposed contribution of $10,000 in many chapter 11 cases would likely add more to a bankruptcy estate than a creditor’s credit-bid of $10,000. This is because, in most bankruptcy cases, the creditors will receive less than 100% of what they are owed. For example, in a plan where creditors are to be paid 10% of what they are owed, a creditor’s credit bid would be worth only 10% of what the actual credit bid is. A creditor who makes a credit bid of $10,000 only adds value of $1,000 to the estate when creditors are to be paid 10% of what they are owed. Thus, the creditor would need to make a credit bid of $100,000 to equal a cash contribution of $10,000 being made by an equity owner. Courts should take this into account when allowing creditors to credit-bid against the former owners to obtain the equity interest in a reorganized debtor.

**Conclusion.** The Seventh Circuit’s holding in *Castleton* is to be expected given the holding of the Supreme Court in *203 North La Salle Street Partnership*; however, its reasoning in reaching its conclusion and broad-sweeping language could have potential implications on many future cases in the Seventh Circuit and in other jurisdictions. The court’s reasoning gives creditors who are unhappy with proposed plans of reorganization substantial leverage. The prospect of losing their equity interest in a reorganized debtor could be a strong motivating factor that could be used by creditors to drive up the contribution being made by the former equity holders. Attorneys representing corporate Chapter 11 debtors should advise their clients of *Castleton*’s reasoning and warn the owners that they could potentially lose their ownership interest in the reorganized debtor to the very creditors they sought to rid themselves of in the bankruptcy.

Illinois Supreme Court Adopts New Rules, Decides *Hope Clinic for Women v. Flores*

EDITED BY MICHAEL R. SITRICK

**Civil Practice**

**New Additions and Amendments to Illinois Supreme Court Rules Seek to Bolster the Quality and Scope of Legal Services Available to Illinois Citizens.**

By Michael R. Sitrick

This past summer, a series of new additions and amendments to the Illinois Supreme Court Rules were adopted by the Court and took effect on July 1, 2013. The Rules and Amendments were recommended by the Court's Commission on Access to Justice, an 11-person body chaired by Jeffrey D. Colman, a partner at Jenner & Block in Chicago. Although varying in scope, according to a spokesperson for Chief Justice Thomas K. Kilbride and the Illinois Supreme Court, the new Rules and Amendments share a common goal of “improve[ing] equal access to justice for all people of Illinois[,] . . . especially for the poor and vulnerable.”

**Ill. S. Ct. R. 63.** Rule 63(a)(4) of the Illinois Code of Judicial Conduct was amended with the intent of allowing judges to better facilitate the ability of self-represented litigants to be fairly heard during proceedings. The Rule’s original language stated that “[a] judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” However, the amended language goes a step further by expressly adding that “a judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.”

**Ill. S. Ct. R. 707.** Rule 707 was amended to afford an attorney licensed in another state the ability to appear pro hac vice in an Illinois proceeding with a licensed Illinois attorney upon filing a request and statement with the Illinois Attorney Registration and Disciplinary Commission (“IARDC”) and paying a fee of $250 per proceeding. In addition, the petitioning attorney must now also register with the IARDC and pay its annual registration fee. Notably, attorneys utilizing this courtesy are limited to entering a maximum of five appearances in different Illinois proceedings per calendar year. Once an attorney is awarded permission to appear in a proceeding, it will last for the proceeding’s duration, subject to termination by the issuing court upon its own motion, or a motion from the IARDC. Compliance with this amended Rule is not required for those attorneys who were permitted to appear pro hac vice in a proceeding on or before June 30, 2013. However, compliance is mandatory for those seeking to appear in proceedings on or after July 1, 2013. For further details about compliance with this Rule, please read it and visit the IARDC’s Web site at: www.iardc.org.

**Ill. S. Ct. R. 711.** Rule 711, which allows law students and unlicensed graduates to represent clients through legal aid services and various state law offices in certain proceedings, subject to the consent of the clients and supervision of a licensed attorney, was broadened to encourage more students to obtain and utilize 711 licenses to help needy clients. Under the amended Rule, students now only need to have earned half of the credits necessary to obtain their law degrees when applying for a 711 license, rather than the three-fifths previously required. Additionally, the amended Rule expressly permits students to represent clients in “mediations

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Michael R. Sitrick is director of development for The DuPage Community Foundation in Wheaton, Illinois, where he works closely with the Foundation’s president, Development Committee and Board of Trustees to devise and implement successful fund development and marketing strategies focused on growing the Foundation’s endowment and increasing its visibility throughout the community. He received his B.S. in Business Management and a minor in Music from Millikin University in Decatur, Illinois, where he graduated magna cum laude. He received his J.D. from Loyola University Chicago School of Law, where he also earned a certificate in Trial Advocacy, received two CALI Awards, was recognized on the Dean’s List multiple semesters, and was president of Loyola’s chapter of the International Legal Fraternity of Phi Delta Phi.
and other non-litigation matters”; to prepare pleadings, motions, and other papers; and to prepare briefs and other documents in state appellate courts.

Ill. Ct. R. 719. Sponsored by Angela Allen, the wife of a National Guard member and an associate at Jenner & Block in Chicago, newly-enacted Rule 719 provides greater ease for any attorney married to or in a civil union with a military member stationed in Illinois to obtain an Illinois law license for the duration of their spouse or partner’s assignment to the state. Specifically, the Rule allows for any such individual, who is already admitted to practice in another state or the District of Columbia, to obtain a temporary Illinois license by: (1) successfully completing an application for license and a character and fitness registration; (2) providing a certification of good standing from the highest court of each jurisdiction in which he or she is already licensed; (3) providing a copy of the military order that designated the individual’s spouse or partner to Illinois for permanent assignment; and (4) affidavits and other documentations as requested. If the applying attorney is certified for temporary licensure, the duration of the license is limited to one of the following: (1) the attorney’s spouse or partner concludes his or her military service; (2) the attorney and military member cease to be married or in a civil union; (3) the duration of the attorney’s spouse or partner’s mandatory assignment in Illinois concludes and he or she is transferred to a new location that allows for accompaniment by dependents; or (4) the attorney is admitted to practice in Illinois under any other of the Illinois Supreme Court Rules. Illinois is the fifth state in the United States to adopt a similar rule.

Family Law

Jurisdiction

In re Marriage of Matwichuk, 2013 IL App (1st) 120553-U, 2013 WL 1296072 (March 29, 2013)

By Danya A. Grunyk, Hilary A. Sefton, Leah D. Setzen and Victoria C. Kelly

In In re Marriage of Matwichuk, an ex-wife filed a petition to modify and extend rehabilitative maintenance. The ex-husband filed a petition to terminate the ex-wife’s rehabilitative maintenance and then filed a motion for summary judgment. The trial court entered an order denying the ex-husband’s motion for summary judgment and thereafter found, pursuant to Illinois Supreme Court Rule 304(a), that there was no reason to delay ex-husband’s appeal of the order denying the motion for summary judgment. The ex-husband then appealed.

On appeal, the Court ultimately declined to address the merits of the case because it lacked appellate jurisdiction. The Court’s decision was based on the fact that an order denying a motion for summary judgment is not a final order, but rather interlocutory in nature and not appealable.

Notice Requirement of a Minor’s Intent to Terminate a Pregnancy Upheld as Constitutional: Hope Clinic for Women, Ltd. v. Flores, et al., 2013 IL 112673, 991 N.E.2d 745 (2013)

By Michael R. Sitrick

In Hope Clinic for Women, Ltd., the Illinois Supreme Court ended a contentious legal battle spanning nearly two decades by ruling that the Parental Notice of Abortion Act of 1995 (750 ILCS 70/1 et. seq.) (the “Act”) is not violative of Illinois’ constitutional guarantees of due process, equal protection, privacy or gender equality. The Act prohibits a physician from, in most cases, performing an abortion on an “unemancipated minor” or “incompetent person” unless “48 hours actual notice” is given to “an adult family member” prior to the procedure. Notwithstanding this general requirement, the Act provides for certain exceptions to it such as when 1) the minor or incompetent person is accompanied by a person entitled to notice; 2) notice is waived in writing by a person entitled to notice; 3) the attending physician certifies that a medical emergency exists and there is insufficient time to provide notice; 4) the minor declares in writing that she is a victim of “sexual abuse, neglect, or physical abuse” by an adult family member; or 5) the minor obtains a judicial waiver of notice.

As a point of key procedural history, although passed in 1995, the Act was permanently enjoined from being enforced for several years following a ruling from an Illinois district court after the Illinois Supreme Court, for several years, declined to promulgate rules for implementing the judicial bypass procedure as requested under a certain provision of the Act. However, the Court ultimately devised a rule to address this in 2006. Subsequently, Illinois Attorney General Lisa Madigan and Cook County State’s Attorney Anita Alvarez moved to have the permanent injunction on the Act’s enforcement lifted. On appeal, the Seventh Circuit Court of Appeals granted the lift of the injunction barring the enforcement of the Act upon finding that the Act was facially constitutional.

Shortly thereafter, plaintiffs in this action, a clinic and its doctor, filed suit in the circuit court of Cook County seeking to again enjoin the Act’s enforcement on the
grounds that it is facially invalid and violates a minor's rights to privacy, due process, equal protection and gender equality as afforded under the Illinois Constitution. The defendants, which included officials from the Illinois Department of Financial and Professional Regulation and the Illinois State Medical Board moved for judgment on the pleadings, or, in the alternative, dismissal of the complaint. Concurrently, two Illinois State's Attorney's petitioned for leave to intervene in the matter. The trial court upheld the Act's validity, granted defendants' motion for judgment on the pleadings and dismissed plaintiffs' complaint, while also denying the proposed petition to intervene as moot. The appellate court reversed the dismissal and remanded the case for further proceedings but affirmed the order denying the proposed intervenor's petition to intervene. The defendants and proposed intervenors each filed leave to appeal the rulings against them, but their appeals were consolidated.

With regard to plaintiffs' first argument that the Act violates the privacy clause of Article I, Section VI of the Illinois Constitution, the Court disagreed and held that it was reasonable since it was “crafted narrowly to achieve its aim of promoting the minors' best interests through parental consultation.” Specifically, the Court reasoned that although a minor has an “expectation of privacy in her medical information,” an intrusion requiring her to notify a “parent or interested adult” or to “prove her maturity by obtaining a judicial waiver in a waiver process that is expedited and confidential,” is not unduly burdensome. This is so according to the Court because “the state has an interest in ensuring that a minor is sufficiently mature and well-informed to make the difficult decision [of] whether to have an abortion.”

With regard to plaintiffs arguments that the Act violates substantive components of the Illinois Constitution's due process clause by unjustifiably impairing a woman's fundamental right to obtain an abortion, and, that it also violates equal protection by “discriminating against minors on the basis of their decision to exercise their fundamental right to an abortion,” the Court found these arguments unpersuasive and upheld the Act on the grounds that it “furthers a 'constitutionally permissible end' by encouraging an unmarried, pregnant minor to seek help and advice of a parent or other adult family member in making the very important decision [of] whether or not to bear a child.” In support of its reasoning, the Court relied upon several United States Supreme Court decisions that have upheld parental notification statutes as constitutional under federal substantive due process and equal protection law. In that regard, the Court noted that it agrees that “the decision to undergo the surgical procedure of an abortion is sufficiently distinguishable from other medical care decisions and, thus, provides a basis for treating pregnant minors who choose abortion differently than those who choose to continue their pregnancy.” The Court further added that it saw no reason to disregard federal precedent when interpreting our state constitution's due process and equal protection clauses. Rather, in order to do that, it felt that it “must be able to point to something in the constitutional debates and records, or our state history and custom, which would suggest that a different meaning should attach to our [state's] due process and equal protection clauses.” Here, however, the Court found that plaintiffs offered no “state-based rationale” for doing so, but merely sought an opportunity to argue that the United States Supreme Court decisions relied upon by defendants are premised on “outdated assumptions and prejudices about abortion.”

Next, the Court also rejected plaintiffs' argument that the Act violated the gender equality clause of Article I, Section 18 of the Illinois Constitution. In count IV of their complaint, plaintiffs had argued that the Act violated the clause “by preferencing childbirth over abortion, thus improperly advancing gender stereotypes about the role of women as mothers.” In dismissing the argument, the Court stressed that it “failed to see how the Act creates a sex-based classification or how the alleged discrimination against pregnant minors who choose an abortion is in any way related to their gender.” The Court further noted that it found “no evidence that the Act's purpose is to deny pregnant minors their right to an abortion or to advance a preference for childbirth.” Having already previously held that the Act is not violative of equal protection, the Court stated that it, thus, could not agree with plaintiffs' contention that the Act discriminates against minor females who choose to have an abortion. However, it further noted that, even if it had agreed with plaintiffs, it would not have found a gender equality violation since the discrimination alleged “is between different classes of persons of the same gender,” and the Act's gender equality clause has “never been interpreted so broadly as to apply in such situations.” Finally, the Court denied the intervenors’ appeal of the circuit court's denial of their petition to intervene on the ground that since it held that the Act does not violate our state constitutional guarantees of due process, equal protection, privacy or gender equality, plaintiff's case was properly dismissed with prejudice and there is no case left in which to intervene. □
THE ISBA CONNECTION

An Interview with Richard Felice, Umberto Davi and Vincent Cornelius by John Pcolinski

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Photo by Jeffrey Ross
Barring a break from tradition, June of 2014 will see the installation of Richard D. Felice as President of the Illinois State Bar Association. He will be followed in order by Umberto S. Davi and Vincent F. Cornelius. While all three were raised outside of DuPage County, each has been an active member and leader of the DuPage County Bar Association in a variety of capacities. There have been other important members of the DCBA who have gone on to significant leadership roles in the ISBA. But we here at the DCBA Brief could not help but notice the happenstance that has three, well-respected members of our association continuing a strong tradition of DCBA support of the ISBA in succession. We decided to get all three together to discuss their backgrounds, experiences in bar leadership (and DuPage County bar leadership in particular), and their thoughts on the future of the profession and bar associations in general.

DCBA BRIEF: Gentlemen, let’s start with a brief summary of what your first experiences with the practice of law and the legal system in DuPage County were. Rick?

FELICE: My first experience was as a teacher for the driver improvement school. Executive Director [of the DCBA] Sarah Schmitz suggested I contact Joe Laraia for a clerking job with his firm Laraia, Solano, Berns & Kilander. When I graduated, I initially wanted to work at the public defender’s office so I met with Frank Wesolowski; nothing was available for a couple months. Joe and Frank set up an interview with the Cook County Public Defender but by then I had decided I’d rather work out here, so I went back to Joe and asked if I could work as a lawyer at the firm and he agreed to make room for me; it seemed like it was a good potential and it turned out to be a great opportunity. I stayed there until about 1985 and then opened my own practice.

DAVI: My first experience was very typical of a lot of lawyers that were not from this county. I was asked by a Judge what I was doing in DuPage County...
County seeing as how I was from Cook County. So despite having been told [to stay away] I persisted. I’ve been practicing for 31 years, and I come out of Cook County, I’m based in Cook County, I ran out of Cook County for Third Vice President, and the beginning of my practice was mostly in Cook County, but I found that since I was close to County Line Road I would get some clients around here, and so I would come out here. Early on I was uncomfortable for two reasons. First, I still was learning the process. The second reason was the fact that at that time I was regarded as an outsider. But I determined to work at it really hard and to make sure that someday I’d be recognized as part of the group.

I joined the DCBA, I went to all the meetings that they had, the activities, the inaugurations, the installations, the celebrations, the wakes, everything. I’m pleased to say that things have come a long way since. Just about every single Judge we have in DuPage county today has an all encompassing, an all embracing attitude. Lawyers here are the same way.

CORNELIUS: I was introduced to DuPage County by a couple of pretty prominent people. As a member of our national mock trial team at NIU College of Law my mock trial coaches were Judge Bonnie Wheaton and Judge Jack Darrah. I formed a good relationship with Judge Darrah early on. I decided that I was not interested in interviewing with any downtown Chicago law firms. Some people in the law school were not happy about that decision but I declined respectfully to interview no matter how the law school persisted. They asked Judge Darrah to talk with me about it and he did. I told him I wanted to start in the prosecutor’s office, get some civil practice in and be off on my own by the age of 30.

Judge Darrah said, “Well, my former partner, Jim Ryan, is State’s Attorney of DuPage County, we’ll take a ride out and I’ll get you guys introduced”. Ultimately I had the full blown interview with all of the higher ups in the DuPage County State’s Attorney’s Office and I was hired. I learned probably a month or two afterwards that I was the first black prosecutor in the history of DuPage County because there was a reporter who wanted to do an article about it, and to my surprise it was front page DuPage Daily Herald news. I started as an Assistant State’s Attorney which by its nature I think made my experience a little bit more well embraced than it might have been otherwise. I found my colleagues were great, the bosses were great, and I got to jump right in and get a lot of trial experience right off the bat, and get really comfortable in a courtroom. My main office is here in DuPage County since 1995 and for the last nine years I’ve had a satellite office in Joliet as well.

DCBA BRIEF: Umberto, you mentioned that you made the decision to become actively involved in the DCBA. Tell us a little bit about the kinds of activities, aside from the social functions and the meetings.

DAVI: Committee. I’ve been a member of both the Real Estate and Family Law committees as far back as I can think. I practice in both areas, although my trial work, my court work is obviously family law oriented. The DuPage County Bar at the time was small enough that when you went to meetings you could get one on one with people. And when you do that it transcends who you are because you’re not in a courtroom setting, you’re not in a legal setting; you’re in a social setting. And people get to get to know you and you get to know them for who they are and what they are. And that’s how I think I transitioned. That’s how the DuPage County Bar helped a lot. Chairing the committees helped a lot; it was the area that I practice, of course. Still today the numbers are small enough that you can put your hands around them. So the dialogue is always good and you don’t get lost in the sea of members.

DCBA BRIEF: How about you, Rick?

FELICE: I became a member of DuPage County Bar I think the
moment I got licensed in '79 and I've been a member ever since. I was fortunate because when I first started out; Joe Laraia was about to be or was incoming President of the DuPage County Bar so I had a firsthand opportunity to really watch and learn from his experiences as Bar President. I decided that I wanted to advance in the DuPage County Bar as much as I could and as the years went by I chaired some committees and then moved into a leadership role and ran for Director for the DuPage County Bar and served two terms as director. Ultimately I ran for President. My competition was Pat Bond; I didn't have much in the way of any odds to win, but fortunately I prevailed. Those years where I was involved with the Bar were very good years. I learned quite a bit. I would agree with Umberto, the one thing that I really appreciated about the DuPage County Bar, as I do with many other bar associations was it was a place to share ideas, it was a place to go to when you needed support, fellowship. The social factor was a consideration too; I always felt at home, I always felt when I went to bar meetings that I had other people that lived experiences and I could learn from their experiences and help me in my endeavors. I think that's probably one of the most important parts of my growth throughout my career and that's why I've been so strong with the bars in terms of wanting to be more involved. They're people that have committed their careers to helping other lawyers; advancing the interests of other lawyers. To some degree I see it as looking out for your brothers and sisters. I've known over the years when lawyers have been troubled, lawyers take care of their friends, take care of their contemporaries and step up to help. And we have seen that here in this county and I think that's a good part of being part of the membership: fellowship.

DCBA BRIEF: Vince, what has been your involvement in the DCBA?

CORNELIUS: Well, it's been long standing as well. When I started in the State's Attorney's Office, I don't know that very many of us were members of the DCBA. We didn't think we could afford it. We weren't sure where we belonged as prosecutors. And I think that we probably, as ASA's were not as encouraged [to join] as they are now. I'm glad there are membership or dues accommodations that have been made to encourage participation which has changed things dramatically. Immediately upon starting my own practice, I joined the DCBA. I served as the Assistant Treasurer and I served on a couple committees. The committee
I enjoyed most was the Membership Committee. I really enjoyed recruiting new members especially the swearing in ceremonies where we would be there signing up new members of the DCBA. Eddie Wollenberg was Executive Director and she really got a kick out of that and so did I. The leadership aspect of DCBA in a number of ways gave me an opportunity to really get to know the leaders of the DCBA. And oddly enough, so many of the leaders of the DCBA are also leaders in the Illinois State Bar Association, which I joined right out of law school. So, I think it helped me a lot to have access to people who would teach us. It helped to get to know these lawyers on a social basis as a new lawyer, and like me, one who was new to DuPage County. I would like to have been more involved in the leadership of the DCBA, perhaps as a director. I pondered running a couple of times but by that time things had started to change for me in the ISBA with some leadership opportunities. And what I was reluctant to do — what I refused to do — was to run for a leadership position here in the DCBA and be the kind of director who could rarely make it to board meetings, but always had a great reason for not being there.

DCBA BRIEF: You mentioned a number of people who have been active in the DuPage County Bar Association who served essentially as facilitators in your introduction to the ISBA. I can think of Ralph Gabric, Irene Bahr and Jim McCluskey, and I’m sure you could name a few others. To what would you attribute that kind of crossing of lines or that affinity between the two associations?

CORNELIUS: By the time I got here I think Ralph Gabric had been President of the ISBA already and when I got involved, Irene was involved as a member of the Board of Governors. She was the one who actually encouraged me to run for a spot on the Board of Governors. It was either 1998 or 1999. I ran for that seat and was successful and I came to find that when I walked into an Assembly Meeting, it was nice to see so many familiar faces. Likewise, at the meetings of the Board of Governors. Chris Ory was another person who was also very active and very engaged. This is a county in which the lawyers are committed to their relationships with one another and are committed to making our profession better. They’re unwilling to simply sit back and accept things that need to be changed but do nothing about it. So when we talk about Ralph Gabric or Chris Ory or any of these individuals, there are a lot of names that you can
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just call off around our county, and you see that these are people who are on the forefront of major issues, and the forefront of the state of the law. So it seems almost natural, because there is that kind of environment in this county, we would have people that who would be also very involved on a state wide level with the ISBA. The DuPage County Bar Association provides a great training ground for bar leadership. I would just say that it’s a great benefit to have been around the kind of leaders on such a cross relational basis. When you think about a place like Cook County, the big shots are really hard to get access to. Not so much here in DuPage County. The guys that we consider the big shots are guys that we walk up to, call them by name, they call you by name, someone’s always walking a new lawyer, a new intern up to one of these guys, introducing them, I see that all the time. There are many other local bar associations out there whose members also play an active role in the ISBA, including the Will County Bar Association that I have been active in and many others. There are a lot of places where the lawyers step up both on a local and on a statewide level as well.

DAVI: I think the reality of the situation just about anywhere in the state is that what we do is all volunteerism. No matter what we’re going to promote, what committee we chair, what meetings we attend, it’s all volunteer time. People who want to give back to the profession, the lawyers who want to do that and Judges that want to do that, they’re the ones that are members of these organizations, members of the committees, they’re the ones that go to meetings, they’re the ones that pass on their knowledge, they share with other lawyers. And that’s a common element of just about every bar association I’ve run across. As a result, what ends up happening is that as we go to the different organizations we see a lot of the same people that we already know through other associations; that’s great because it fosters what you’re doing, it promotes what you’re doing. Vince is absolutely right, you look at a lot of the members of the DCBA, and many other bar associations and you see those people because they want to give back to the profession. I get asked all the time why I do this, why I give up all that time. I don’t consider it giving up time; that’s a wrong way to look at what we’re doing. We’re doing it because we want to do it, because it’s part of being a lawyer, it’s what makes us better lawyers, it’s what makes one a better Judge, and it’s what puts us in the middle of what goes on in our legal profession. [When participating in bar associations] you’re with some of the greatest minds in Illinois, legal minds a lot smarter than me, but I learn from them, I learn a lot. So it’s not “giving up time”; you get paid in spades, not dollars. But that’s okay, not everything revolves around dollars.

FELICE: As I look back over my career, I must say that the one thing that stands out is how helpful lawyers have been to me. I didn’t grow up in DuPage County, I grew up in Chicago and a [Cook County] suburb outside Chicago. So when I came to DuPage County, similar to what you heard Umberto say earlier, you know, I felt there might not be as much opportunity for me to become a person that could grow and develop in a significant way. But just the opposite was true. I found
that the people here were very willing to help, and really extended themselves. I can remember in my early years some very important people to me that seemed great leaders such as Harold Field and Jack Darrah and presidents, Steve Culliton, Bill Scott, the list goes on and on. I can remember Lester Munson's installation speech, I told him he'd really inspired me with what he'd said, and he had — — I went on to serve as the chair for the Membership and Admissions Committee for two years at his request. I think that one reason there are so many individuals who have segued from the DCBA to the ISBA is that there's a natural progression, and I think that's true for other local bar associations as well. Leadership is not something that's limited by anything other than how far someone wants to go with their leadership abilities. There are individuals who prosper in the role of officer for an organization, enjoy it and find ways to use it to help the membership. I learned how to create a workable leadership role for myself from watching others in that role.

DCBA BRIEF: We've all heard a lot of talk over the last several years about the profession being in transition, about voluntary associations facing substantial changes and challenges. We addressed last year on the board level for the DuPage County Bar Association as part of drafting a new three year strategic plan. What kinds of suggestions would each of you have to bar associations throughout the state, including the ISBA and DCBA in that regard? Are there things you would each like to see done or undertaken in the future to help to ease transition into the changes in the profession and to keep members?

FELICE: I chaired a special committee on membership enhancement for the Illinois State Bar recently. We did a lot of work on studies and surveys to try to find out what interests members to stay members of the bar as well as getting those that are not currently members to join. Along the way we also had exposure to a similar inquiry that was done on the American Bar Association level. I think at the end of the day we have to be cognizant that the circumstances are different for new lawyers. It's much more financially challenging for new lawyers; a lot of new lawyers have significant school loans that they have to repay, their job opportunities are more limited, many of them are unemployed and looking for opportunity. A lot of them are discouraged. I think part of our job as bar leaders is to help those people find their way. Towards that end I think the bar associations serve a great role in helping those individuals meet other lawyers, see other opportunities that are in the legal profession that might be available that they weren't aware of, understand the value of a bar association membership, not just come to a bar association to socialize, but continuing legal education. That's the practice of being part of the bar association. On the ISBA side we have a continuing legal education component to our bar membership and here in DuPage County we also have committees that meet monthly and there's MCLE credit for those meetings. [New lawyers and non-member lawyers] need to understand the value of continuing their educations. They need to understand the value of relationships. And that's where the bar associations are very important to help them develop the kinds of relationships that Umberto spoke of earlier, relationships with other lawyers, more experienced lawyers, lawyers that have been doing this for some time, judges and people that have succeeded in the profession so they have an example that they can follow and learn from. One of the things that young lawyers tell us is that one of the most exciting things for new lawyers is to be able to watch and learn from experienced attorneys. Seeing them in action in the court room, seeing how to do a real estate closing, understanding the dynamics of practicing law — those aspects are very difficult to learn in law school. Really, there's a mentor side that we can offer as bar associations to these individuals so they can truly understand how to practice law. And I think that's where bar associations need to spend more time and develop programs to help those individuals that are in need, and there are plenty of those individuals who need us at this time.

DAVI: I think the core issue is the lawyers that we have today and the lawyers that are coming out of law school come from different generations. I'm talking about starting with the baby boomers (Rick and I) through generation X (I believe that is where Vince is, maybe he's straddling both) and then generation Y. When Rick and I were at the ABA yearly meeting in San Francisco we were part of another group that also met. They had breakout sessions dealing with different topics. One excellent breakout session had to do with the generational differences between lawyers who were coming to retirement age, the ones who came after us, generation X, and then generation Y. They had an interesting chart which compared the way we think on a number of different areas. And there were differences. So we are saying bar associations are made up of members; the members are the people that join. But if we think differently and we continue to give back what the core of the initial group, the baby boomers, got and liked, that's not going to work [for the newer lawyers]. So there has
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to be a radical change. And before you can make that change you’ve got to figure out “who am I trying to service here?” And the person, the entity, the human being, the lawyer, the Judge that I’m servicing, “how does he or she think?”, “how does he or she process the information?” And then besides the fact that the law school debt, the money demands, the fees that it takes to join bar associations on a yearly basis, what do people get back for that membership, which is what Rick said. We have to understand the core element of the member that we want to join us. What does that person want? How does that person process information? I didn’t grow up with computers, I didn’t grow up with instant messaging, I didn’t grow up with this business of social networking that you have all these elements of Facebook and all this other stuff, Tweeters, and all that tweeting. But that’s here, it’s here and this is how they function. And maybe membership is not that important to them. Maybe coming to the happy hour is not that important to them. Maybe coming to a meeting is not. Maybe they feel that they can accomplish the same thing by tweeting or getting a Facebook or whatever else is going to come along in the next 30 seconds. So this is our challenge, and I don’t have any answers. We’re trying to understand all that, we’re trying to implement things that would allow us to process that and give something back that makes sense.

DCBA BRIEF: Vince, your suggestions for the future?
CORNELIUS: I agree with everything that Rick and Umberto said. I served on the special committee on membership enhancement with Rick. I’m the one most recently off the campaign trail and I knew that this was an issue that I had to address a candidate. I almost had to address two very specific things. The first is that we have a great leadership tradition [in the ISBA]. We have a great bar association, it has a fantastic history, and it’s worth honoring and it’s worth preserving, and it’s worth recognizing. But at the same time there is a new, different generation of lawyers. And as one ages out, the other ages in or ages up, if you will. And that generation has to be embraced. And we have to embrace them by meeting them where they are, as opposed to dragging them where we think they should be. And we’re learning that we’ve got to learn what it is that appeals to them, what it is that is relevant to them. Because that’s the way we make ourselves relevant today. Probably more than anything the generation following the baby boomers did not join anything out of duty and obligation, as the baby boomer generation did. I was born in 1964 I think I can say that I
was borderline. I have made the point to be generationally ambiguous, I feel very connected to the tradition that mentored me and I feel close to this group of lawyers who are part of our young lawyers tradition, and I think I get both of them. The timing for me to run was perfect because of that issue and where those two generations are in our profession. Definitely there has to be a paradigm shift. We have learned that after the world wars people had a strong, overwhelming sense of duty and obligation to join, to be a part of, contribute, to move forward, to embrace this great new future that was out there for them. And now we see this new, younger generation, for whom this future is not so apparently bright. They see a tough job market, they see a flooded lawyer market, they see fewer job opportunities, they see the daunting financial detriment that education and law school has caused in pursuit of a dream, for God's sake, in pursuit of their dream. Think about it; that's a pretty overwhelming place to be. And here we are, the leadership of these associations, having practices that do very well, having the regard of our peers, and we feel like they just ought to come on over and hang out with us, learn from what we have done. That's so far from reality right now. [Newer lawyers] have a different reality and we have to understand their different reality. They are driven right now by return on their investment, because they don't have a lot to waste. We have to show them where the bang for their buck is in the ISBA, in the DCBA and in any other associations. I'll add that it's not just the DCBA and the Illinois State Bar Association. It's all volunteer associations and churches. All these institutions are seeing themselves become less relevant to this new generation. At some point there's got to be an embrace, I believe backwards as opposed to forward. I think we've got to go back and reach these lawyers. I don't think they're going to chase us. And I think if we don't reach them, our associations will begin to wither because we're not relevant to these young people; they don't see the need, they don't see the benefit for us. Finally (this is what I said throughout my campaign) they have so much to offer us. The whole world has changed; the way the whole word connects has changed and they are at the forefront of this. They're living it as it develops. We're reaching back to try to figure out what they know naturally. Remember when it used to be the other way around? We had so much that we could teach young lawyers, and now there's so much that we can learn from them. We really have to get a grasp or sense of that.

**Continued on page 54**
A Stamp of Progress and a Plan to Move On

By Leslie Monahan

My oldest child started Kindergarten this fall. I joined the ranks of those posting their “First Day of Xth Grade” pictures on Facebook. I wonder how many times the words “time flies” were posted in the comments during August. Those pictures seem to be a stamp in time – a moment to pause and say, “Wow, look how far this child has come” and consider how much is ahead of him in school and in life.

Wrapping up DCBA’s three year strategic plan is serving a similar function. As we finish the plan that launched in Spring of 2011 and begin preparing to develop a new plan, it’s a good time to pause and recognize our progress. As I recently reviewed the old strategic plan for a report to the Board, I was thrilled to see how many of our overall goals we have accomplished.

The plan set a goal of 2800 members and as of September 1 we have 2831; it had a goal of 90% retention of members and right now we are tracking to end the dues renewal season with 91%; and a goal of 100 Sustaining Members has been blown out of the water as we now have 122. We did not meet the goal of 33% of the membership voting in the elections as this spring we had a 28% voting participation level, but we expect that number will grow with online voting.

The second goal was to offer valuable benefits essential for any lawyer. Over the last three and a half years, we have added three Affinity Programs offering significant cost savings in credit card and payroll processing and office supplies. We continue to offer a large number of excellent MCLE programs and offer ample opportunities to network and share ideas with other attorneys.

The third goal was to effectively communicate about community service programs. Callers to Lawyer Referral Service have increased from 9,397 in 2010 to 11,818 in 2012. We have continued to work with the Domestic Relations division to offer service to pro se litigants and attorneys have served our community through Lawyers Lending a Hand and the Lawyers Feeding Illinois programs.

The fourth, and final, goal was to ensure DCBA’s financial health. More productive investment strategy and reserve policies are now in place and the organization is in good financial health so that we can continue to serve our owners, our members.

It is nice to have those concrete numbers about membership and LRS to examine, but more information is needed to define our progress to this point. Those of you who were members in the fall of 2010 may recall a membership survey that was circulated. Using those results and comparing them to results from a new survey will give us a much clearer picture of how far we have come and what work needs to be done next. We hope that you will participate in the surveys when you receive them in your email. Yes, I said “surveys” plural. We recognize that asking members to take one, long, 20+ minute survey is too much and the returns have shown to be much lower. Therefore, we are splitting our survey into five smaller sections, each on different topics. Periodically this fall members will receive a survey that should only take five minutes to complete. The topics will be Education, Events, Member Benefits, Practice Concerns and Technology & Communication. Take them all or only take the ones that interest you, we really want your input and feedback so that we can continue to develop this organization into what you want it to be.

I look forward to getting your responses and opinions and I really look forward to seeing the progress we make with the next strategic plan. As we wrap up that plan in the fall of 2016, I will be celebrating the first day of 3rd grade for my son and the 1st day of 1st grade for my daughter. I cannot even imagine that future, but I’m sure it will be here in a blink. Time flies.

Leslie Monahan is the Executive Director of the DuPage County Bar Association and the DuPage County Bar Foundation. A graduate of North Central College, she previously worked with the Promotional Products Association of Chicago, American Fence Association and Coin Laundry Association.
very month, the DCBA Brief includes Lawyer Referral Service statistics from the most recent month for which we have totals available. LRS is the DCBA’s referral program, taking in roughly 1000 calls every month from potential clients we refer to LRS members. We’ve decided that perhaps providing depth and an explanation along with the statistics will benefit our members. That’s where this column comes into play. In hopes of providing a further explanation and to increase awareness among our members, along with the LRS statistics, the DCBA Brief will now include an LRS update in each issue. If you are already a member of the LRS and have ideas or would like to give feedback in regard to your experience with the LRS, please feel free to call or email me at cgarcia@dcba.org. If you are not currently a member and would like additional information that you think would benefit yourself and or anyone else who may be considering LRS as a means of increasing their client base, please contact me as well.

As the new LRS Coordinator for the DCBA, I’m currently working on a number of goals that Leslie Monahan and I have established for LRS including focus on increasing public awareness of the referral service. Trying to find an attorney can be very intimidating, especially if you don’t know where to start. Every time we receive an LRS call, we ask where the caller heard about our service. Some of the predominant answers include: the court clerk, another bar association or attorney, a friend, their town hall and our website. All of these callers need a helping hand to find the right fit for their situation. There are many more out there who don’t yet know about LRS. So, in response to that need, we’re compiling a list of various community centers/resources within DuPage County who we plan to reach out to and let them know of our referral service. After all, LRS is a public service.

I’m very excited to be working with the LRS committee and of course the staff at DCBA. If you see me, please say hello and introduce yourself and if you have any questions in regard to LRS or about how you might benefit by being an LRS member please feel free to ask away.

LRS took in 910 requests for referrals to attorneys in the month of August, 2013. LRS provides referrals to participating attorneys and serves the community by putting people in contact with a local attorney. For more information or to join LRS, contact the DCBA at (630) 653-7779 or visit www.dcba.org.

Please refer prospective clients to (630) 653-9109 where the DCBA maintains someone to answer the phones from 9:00 a.m. to 4:30 p.m., Monday through Friday (excluding holidays).

Of the 910 referrals received in August, 436 came in by telephone, four were walk ins, and 470 came in through the Internet. 25 of the callers were Spanish speaking in need of translation. □

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Cynthia Garcia is the LRS Coordinator for the DuPage County Bar Association. She has her BA from DePaul University where she studied public relations, advertising and graphic design.
The Illinois State Bar Association recently endorsed a Resolution of the American Bar Association, which was introduced by the Tort Trial & Insurance Practice Sections of the ABA, to further protect the attorney-client privilege by designating in-house lawyers as ethics advisers. In recent years, attorneys have faced an increasingly complex array of legal and ethical duties arising from complicated regulatory regimes, changes in rules of professional conduct, and heightened disclosure of obligations under the Sarbanes-Oxley Act and similar legislation.

In guiding attorneys on complex ethical issues and assisting them in reaching the right decision, many law firms have created general counsel positions and/or formed professional responsibility committees. Specialization among attorneys has only increased the importance of these advisers, especially with the growth of law firms and the increasingly complex representations they undertake.

The availability of in-house counsel encourages lawyers to raise questions that they might otherwise ignore. An in-house attorney can provide assistance in navigating and reconciling obligations, including potential disclosure obligations to the client and public, and can provide ready advice in response to client behavior or a lawyer's mistakes that may avoid or alleviate harm to clients. Attorney-client privilege for consultations with in-house counsel is critical to ensuring that attorneys and other law firm personnel receive the best possible advice on complicated legal and ethical issues. It is in the public interest for the law to encourage and facilitate the use of law firm in-house counsel.

The ISBA and the ABA support the preservation of attorney-client privilege and work product doctrine as essential to maintaining the confidential relationship between client and lawyer required to encourage clients to discuss their legal matters fully and candidly with their counsel so as to (1) promote compliance with law through effective counseling, (2) ensure effective advocacy for the client, (3) ensure access to justice, and (4) promote the proper and efficient functioning of the American Adversary System. Prudence in ensuring that all appropriate legal and ethical issues arising in representation are followed may require attorneys to consult in-house counsel about the obligations to the client.

The ISBA and the ABA are in agreement that it is in the public interest for law to encourage and facilitate the use of law firm in-house counsel.

The use of in-house lawyers has been argued by large firms to be a double check system as to professional ethics and competency issues. Of course, the privilege created between the practicing lawyer, his client, and the in-house ethics lawyer has been argued to be waived for the purpose of legal malpractice claims. This creates a double-edged sword. In one context, when acting on behalf of a client, the privilege is extended from the practicing lawyer and in-house counsel.

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James F. McCluskey, a principal of Momkus McCluskey LLC, handles a wide range of litigation. His areas of expertise incorporate 30 years of experience in contract, shareholder disputes, real estate, partnership dissolution, and professional liability litigation. He is the 18th Circuit’s Governor of the Illinois State Bar Association and Past President of the DCBA.
Meet Legal Aid’s New Officers and Directors

BY BRENDA CARROLL

The new Officers and Board of Directors of the DuPage Legal Assistance Foundation were voted in last month at the first quarterly meeting of our new fiscal year. The Board consists of six attorneys and five lay persons who serve four years and who have an interest in the purpose of the Foundation which is the following: (A) To assist natural persons and community organizations to secure legal protection against injustice and to obtain due process of law and the equal protection of the laws; (B) To promote knowledge of the law and of legal process, rights and responsibilities among the poor and the public generally; and (C) To study the use of law and legal process to combat poverty and living conditions among the poor and to provide counsel to natural persons and groups seeking these ends.

The current Officers for 2013-2014 are Sean McCumber, President; Michael Scalzo, Vice President; Thomas Slymon, Secretary; and Dorothy Mintz, Treasurer. The Directors include: Connie Gessner, Christa Winthers, Jeff York, Daniel Smyth, Kenneth Schroeder, Bobbi Walsh, and Bernard Kleina.

The Board also reviewed the past year’s fiscal reports and the current year’s Budget and had an opportunity to review the achievements of the past year, noting those who generously support our agency.

Notwithstanding the generous grant from the DCBA Board of $85,000 last year, our review of the last fiscal year leads the Foundation Board to also extend its gratitude to the DCBA and its members for their support to the Legal Aid Service through the DCBA dues check off incentive which added $15,846 to our program. This financial support is in addition to the individual donations from DCBA members and friends which totaled $2,800 in this past year. Thank you to Justice Ann Jorgensen, Presiding Justice Illinois Appellate Court, Second District; Judge Bonnie Wheaton, Presiding Judge Chancery Division, 18th Judicial Circuit; Administrative Law Judge Joel Fina of the Office of Disability Adjudication and Review, Social Security Administration; Bruce Goldsmith and Scott Hardek of Dykema Gossett LLC, and Sean McCumber … and again, Sean McCumber.

The Foundation Board cannot forget the support through the annual Judges’ Nite show which garnered an additional $4,620. The crew and participants are also recognized for their amazing dedication and commitment to putting on such a great show this year and every year.

Once again, those of you who attended the DCBA golf outings took part in the fundraising efforts for legal aid this year, and last year, from which our program received $1,505.00. Finally, thanks again to all those attorneys who accepted legal aid pro bono assignments this past year because without you, many needy persons would have no way to have their legal needs met.

Pardon Our Dust. You might have noticed the renovations to the DCBA offices and now it is Legal Aid’s turn for a makeover. Please excuse any inconvenience this might mean for you, your pro bono assigned clients and your staffs. We will try to get out and back into our new digs without anyone even realizing we were gone.

Brenda Carroll has been the DuPage Legal Assistance Director since 1988. She earned her JD at IIT Chicago Kent College of Law in 1986. She was admitted in Illinois and the Northern District in 1986 and to the U.S. Supreme Court in 2005. She serves as Vice President of the Child Friendly Courts Foundation and is a Past President and former Board Member of the DuPage Association of Women Lawyers and DuPage County Bar Association.
context, any communication made by the practicing lawyer to the in-house lawyer may be discoverable when involved in a malpractice claim. Thus, the practicing lawyer must proceed with caution when conversing with an in-house ethics lawyer. See, Garvy v. Seyfarth Shaw, 966 N.E.2d 523 (1st Dist. 2012).

In other news, the ISBA has recognized two DuPage county lawyers as distinguished counselors, the Honorable Donald J. Hennessy and Keith Roberts, Sr. Both have been in practice for 60 years and members of the ISBA for many of those years. Congratulations to Don and Keith.

Congratulations are in order to the following DuPage county lawyers who have been elected to the ISBA Assembly: Lynn Cavallo, Terra Costa Howard, Patrick Hurley, James Laraia, Christine Ory, Chantelle Porter, and David Schaffer. And congratulations as well to the ISBA’s new President Elect, Richard Felice, Second Vice President, Umberto Davi, and Third Vice President, Vincent Cornelius, who are collectively featured elsewhere in this issue of the DCBA Brief.

The Illinois Bar Foundation Gala will take place on October 18, 2013 and honor Manny Sanchez with the 2013 Distinguished Award for Excellence. The Gala will be held at the Four Seasons Hotel in Chicago, Illinois. To my knowledge, the Illinois Bar Foundation is the only Bar Foundation in Illinois dedicated to helping lawyers and their families who are in need of financial assistance. Lastly, please mark your calendars now for the ISBA Mid-Year Meeting at the Sheraton-Chicago Hotel on December 12-14, 2013. I hope to see you there.

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FELICE: I just wanted to add one other thing that was said, and that is when Vince commented on it, the new lawyers can bring a lot to the table, and they can share with us, the older lawyers, new ideas. Technology is one of those areas they have a handle on much greater than many of us who have been around for a while. But the one element that doesn’t change, and the one element that the new lawyers and people that we want to attract to our membership have to understand, is the human element. You can virtually communicate, you can Twitter, you can have e-mail, you can be text messaging, instant messaging but at the end of the day there’s nothing to replace that human element, being with another person, having an opportunity to share your thoughts together, and really feel a bond or closeness that can only come from that personal relationship. That requires you to be at a place with that person, in person and you can add the other parts to it, once you’ve established that you have that connection. But you have a core relationship that you’re building on. That is the central part of the bar associations that cannot be replaced just with technology. So it’s really a combination of both. It’s the older members understanding that we have to get better at communicating, and technology is a big part of it. And it’s the younger members understanding that’s it’s not just going and hanging out in a chat room online, that you really need to find the time and devote the time to be with other members, together, in a forum that works for you. I also would agree with Umberto, it isn’t easy for a lot of new members to give up the time, but some of the time becomes essential in order to build a relationship in this profession. And in my view, without that, it’s a real struggle.
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WHERE TO BE IN NOVEMBER

Veterans Day Luncheon

BY TERRENCE J. BENSFOOF

Now Hear This!! On November 12, 2013 the DCBA will once again take time from the normal schedule to honor the members of the bench and bar who have served the nation in the Armed Forces. Gathering in the Attorneys’ Resource Center at lunchtime, our veterans of the Army, Navy, Marines, Coast Guard and Air Force will swap “war stories” over a buffet lunch (blotting from memory those days of C-Rations, MREs, and chow halls), and remember those colleagues, parents, sons and daughters who have served.

This year, the event will focus on that small, but very important segment of the veteran population, the homeless veteran. Only about one percent of the nation’s population has a military service background. These are the nation’s heroes; a volunteer force, a military no longer made up of enlistees and conscripts. But from that volunteer force, while many return from deployments, or leave military service, going back to their family life, a small, but distinct number of our veterans find themselves among the forgotten. They have nowhere to go; no job, perhaps no family, and most tragically, no home.

In 2000, Navy combat veteran Bob Adams founded the Midwest Shelter for Homeless Veterans, with a mission of providing veterans and their families with housing and supportive services that lead to self-sufficiency. In 2004, he was joined by Marine Corps combat veteran Dirk Enger, and the concept of opening a transitional housing program began to emerge the following year. The Midwest Shelter Board was formed, among them DCBA member Bridget Duffield, and a quest for a building resulted in the lease of the property at 119 North West Street in Wheaton. That first building was purchased with the help of grants from the DuPage County Community Development Office and the Veterans Administration, and was named the LCpl Nicholas Larson Home for Veterans, in memory of Nicholas Larson, a Wheaton native killed in action in Iraq in 2004.

In 2012, the apartment building at 111 North West Street was purchased and rehabilitated with grants from the DuPage County HOME Funds. That second building was named for Army SSG Robert J. Miller, a Wheaton North High School graduate and recipient of the Congressional Medal of Honor, killed in Afghanistan in 2008.

During this year’s Veteran’s Day Luncheon, Mr. Adams will relate to us the work that the Shelter continues to do to help forgotten heroes, and plans for the future. Despite the diminished numbers of those who serve, the Shelter serves veterans of all eras, and there are several million veterans nationwide. DuPage County has its share of veterans, and veterans in need. DCBA veterans and everyone else who attends will come away from this year’s lunch meeting with a better understanding of the need, and what can be done to remedy future needs. And, of course, there will be the camaraderie that’s always present when veterans come together. That is all! □
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