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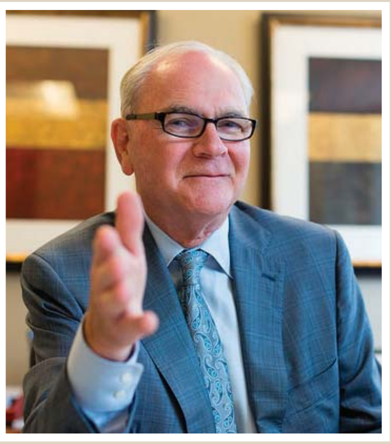

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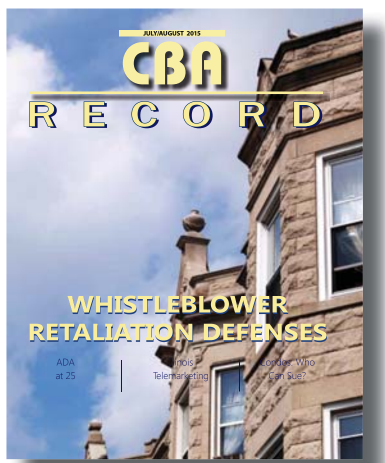

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PRESIDENT'S PAGE

BY PATRICIA BROWN HOLMES

Membership & Inclusion: A Call to Action

It is an honor for me to serve as the 139th president of The Chicago Bar Association and I am especially honored to be the second African American woman to lead the Association. Our Association is among the leading metropolitan bar associations in the country and our services to the court, the bar and the public are outstanding.

A strong and vital bar association is essential to our city and state's legal community. Bar associations are guardians of the law providing essential services to our state and federal courts, to the legal profession, and to the greater Chicago community. To be sure, these are difficult and challenging times for the legal profession, law firms and law schools, and it is especially important now to keep and get more lawyers actively involved in bar association work. Without a strong and vital bar association, the legal profession will inevitably falter because no law firm, large or small, and/or law school, will be able to provide the wide array of services that bar associations provide to underpin the administration of justice in our state. In addition, Illinois' fiscal problems are likely to have a significant impact on legal service programs throughout our city and state.

My number one leadership goal for the CBA this year is the "Call to Membership and Inclusion" campaign and I am calling on all of our members to help. Notre Dame's legendary football coach, Lou Holz, said that "…leadership is all about getting people involved and if we get enough people involved we can solve almost any problem." I have a five-point plan that I am asking each member to pledge to support this year. In order to be successful, I need your leadership and commitment to assist me in achieving the following plan:

- I am asking every member to recruit five new members to the Association during the coming bar year. Each of us comes in contact with lawyers every day and it is easy enough for us to ask them if they are a CBA member. The leadership, business development and networking opportunities for members are almost endless, and the friends that you will make through your bar association involvement will last a lifetime. Becoming a member is easy and convenient by visiting the CBA's website at www.chicagobar.org. Please remember to be inclusive in your recruiting efforts.
- I am asking each committee member to reach out to five recently dropped CBA members and to encourage (convince) them to rejoin the Association and to join one of our 92 standing committees and/or one of the Young Lawyer's Section's 22 committees. Our membership

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department will be pleased to provide you with the names of recently dropped members to contact.

- I am asking every member to mentor someone this year. Mentoring helps others learn, grow and become more effective in their career and life. Through your wisdom and good will, you can help share your knowledge with a less experienced colleague. The CBA has a variety of mentoring opportunities–please take the time this year to coach, inspire, and motivate someone who needs guidance and assistance. They will be better and you will be a better person because of the mentoring gift you are giving. For a list of CBA mentoring programs, go to www.chicagobar.org/mentoring.
- I am asking every member to contribute in any amount to one of the CBA's many charitable arms such as The Chicago Bar Foundation, which provides essential financial support to numerous legal service organizations in Chicago and Cook County; support The Chicago Bar Association's Television Committee, which provides needed financial support for the work of the Interfaith Committee in offering a variety of Restorative Justice Programs in Chicago and suburban grammar schools that help reduce teen youth violence and to public education programming about the law and our justice system; support the "Lawyers Lend-A-Hand to Youth" program, which helps fund needed mentoring programs in Cook County; and contribute to the "Institute for Inclusion in the Legal Profession" (IILP), which is being incubated by the Association to help advance inclusiveness and diversity in the legal profession. These are only a few of many options members have to support worthy programs that help our community.
- I am asking every member to create a "legacy" by giving your time and talent in service to the Association and to the legal profession. As lawyers we have a duty and responsibility to serve and advance the highest goals of the legal profession. We can do this by volunteering to do one of the following: working to improve the administration of our courts, working to increase access to justice programs for those who can't afford counsel, and by giving generously of our time and talent to help make our community a better place for all.

With your help we will succeed in keeping the Chicago Bar Association a strong and vital force within the legal profession and in our community. Thank you and please let me know your thoughts and suggestions to improve our Association during the coming bar year. ■

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Justice Stevens Discusses His Life and Career at Harold Washington Library

By William A. Zolla
Editorial Board Member

In June, the CBA hosted a special program featuring retired Supreme Court Justice John Paul Stevens, who travelled to Chicago to sit for an intimate conversation about his extraordinary life and career, his judicial legacy, and the most significant decisions issued by the Supreme Court in recent years. Judge Ann C. Williams of the U.S. Court of Appeals for the Seventh Circuit moderated the program, which was held at the Harold Washington Library before a large audience that included state and federal judges, several of Justice Stevens's former law clerks, and members of his family.

Justice Stevens, who celebrated his 95th birthday in April, served on the Supreme Court from December of 1975, until his retirement in 2010. At the time of his retirement, he was the third longest-serving Supreme Court Justice in the nation's history and had authored more than 1400 opinions, nearly half of which were dissents. Asked by Judge Williams about his propensity for writing dissenting opinions, Justice Stevens claimed that he felt obligated to the public to explain the reasons for his disagreement with the Court's majority. Certainly in his final years on the Court, Justice Stevens received widespread national attention for his strong dissents in several highly controversial cases, including *Bush v. Gore*; *District of Columbia v. Heller*, in which the Court ruled that the Second Amendment protects an individual's right to own guns; and *Citizens United v. FEC,* which struck down restrictions on campaign spending by corporations.

Seventh Circuit Court of Appeals Judge Ann C. Williams interviewed Justice Stevens and moderated the program, which was held at the Harold Washington Library. Photo by Bill Richert.

Over the course of the program, Judge Williams engaged with Justice Stevens in a wide-ranging discussion about the seminal moments in his life, while also exploring how his personal history influenced his work and philosophy as a Supreme Court justice.

Born in 1920 into a prominent Chicago family, Justice Stevens grew up in Chicago's Hyde Park neighborhood, where he attended the University of Chicago Lab School. In 1927, Justice Stevens's father built the Stevens Hotel, now the Hilton Chicago, which at the time was the largest hotel in the world. Through his father's hotel, Justice Stevens met numerous celebrities of the era, including Charles Lindbergh and Amelia Earhart. He also learned difficult, lasting, lessons when his family lost much of its wealth during the Great Depression. Among other childhood memories, Justice Stevens vividly recalls witnessing Franklin D. Roosevelt accepting the nomination for president at the 1932 Democratic National Convention at the Chicago Stadium, and seeing Babe Ruth hit his famous "called shot" home run at Wrigley Field during the 1932 World Series.

Justice Stevens earned his undergraduate degree in English from the University of Chicago in 1941, and then enlisted in the Navy, where he served as an intelligence officer during World War II. Following the war, Justice Stevens attended law school at Northwestern, where he graduated *magna cum laude* in 1947 with the highest grade point average ever recorded. After earning a clerkship with Supreme Court Justice Wiley Rutledge, Justice Stevens returned to Illinois, where he developed a highly successful private legal practice during the 1950s and 60s.

continued on page 56

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PATRICIA BROWN HOLMES BECOMES 139TH PRESIDENT OF THE CHICAGO BAR ASSOCIATION

Inclusion and Involvement

By Kathleen Dillon Narko
Editorial Board Member

Incoming CBA President Patricia Brown Holmes is a self-described "no BS" kind of person. At the Annual Meeting of the Chicago Bar Association, June 25, 2015, Holmes outlined her direct, no BS plan for greater inclusion and involvement of CBA members.

Holmes has a varied background in the law, which should make attorneys from both the private and public sectors feel at home in the CBA. She is currently a partner at Schiff, Hardin LLP. Prior to that, she served nine years as a judge in the Circuit Court of Cook County. She was also a federal and state prosecutor.

Holmes takes the helm of the CBA at a difficult time for the legal profession. Law school applications are down, and those who do graduate have a harder time finding a job. With fewer attorneys, maintaining CBA membership numbers is a concern, according to CBA Treasurer, Steven Elrod. Despite these challenges, Pat Holmes sees this year as an opportunity to add new members and increase current members' involvement.

She plans to implement five themes to reach her goal:

- *Reclaim Membership.* First and foremost, "Pay your dues," Holmes urged. She has asked each of the approximately 95 committee chairs or co-chairs to "reclaim" five lapsed CBA members by convincing them to re-join the Bar Association.
- *Get Involved.* Holmes has also asked each committee chair to get five new people involved in his or her committee. Holmes supports more active members and innovative programming.
- *Contribute.* Every lawyer should contribute to the community and the bar. Holmes' definition of "contribute" is

At the Annual Meeting, Patricia Brown Holmes spoke about the joy of bar association membership and of collaboriating with outgoing President Daniel A. Cotter, to whom she presented gifts. Photos by Bill Richert.

CBA EXECUTIVE DIRECTOR TERRY MURPHY HONORED AT ANNUAL MEETING

Terry Murphy.

CBA past presidents

CBA past presidents and staff gathered in the President's Room to toast Terry Murphy following the CBA Annual Meeting.

CBA staff members.

Anyone who has been around the CBA long enough knows and admires Executive Director Terry Murphy. In recognition of his over 40 years with the CBA and 30 years as its Executive Director, the CBA will name the lobby at the Chicago Bar Association headquarters the "Terrence M. Murphy Lobby." The CBA has commissioned a portrait of Murphy to hang above the fireplace in the lobby.

In addition, the date of the Annual Meeting, June 25, 2015, was declared by official proclamation to be Terry Murphy Day in Chicago. (Thank you, Alderman Ed Burke!) Finally, outgoing president Daniel A. Cotter presented Murphy with a specially commissioned scroll containing a famous quotation from Theodore Roosevelt: "It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena[.]" Many thanks to Terry Murphy for his unwavering service to the CBA and its members.

broad. Lawyers could donate to the Chicago Bar Foundation, support a charity, or do pro bono work.

- *Mentor.* Holmes urged all experienced attorneys to mentor younger attorneys, or even high school students. She reminded the audience, "If you don't teach them, you take your talents with you."
- *Leave a Legacy.* "It is incumbent upon us to teach others and leave a legacy," stated Holmes. She mentioned nearly a dozen individuals who influenced and helped her in her career. She hoped those in the audience would do the same for others.

Holmes stressed all five of her themes fit into her ultimate goal of inclusion for every Chicago attorney in the CBA. Holmes acknowledged the important role of diversity but stated her goal is "so we can all feel included." She cautioned, "If we don't, we will be a dying profession." Holmes reminded the audience she was "No BS," and closed promising to "Get it done." ■

Patricia Brown Holmes will be profiled in the September issue of the* CBA Record. *For more information about the upcoming bar year, go to www.chicagobar.org.

A Legal Tool for Social Change

By Barry C. Taylor

In 1990, Congress enacted the Americans with Disabilities Act (ADA) to provide comprehensive civil rights protection to people with disabilities in all aspects of life, including employment, state and local government services, public transportation and private businesses. July 26, 2015 marked the 25th anniversary of the ADA. This article reviews examples of how people with disabilities in Illinois have used the ADA to remove barriers over the last 25 years.

Accessible Public Transportation

When Congress passed the ADA, it found that lack of access to public transportation was a significant barrier to people with disabilities' participation in community life. Because many people with disabilities are unable to drive or do not have access to a car, they rely heavily upon public transportation. Despite the ADA's extensive provisions related to public transportation, many barriers remained after passage of the law, making enforcement actions very important.

In the late-1990s, Equip for Equality received many complaints about the inaccessibility of the Chicago Transit Authority (CTA). Most of these complaints concerned parts of the CTA that were designated accessible, but in practice, were not actually accessible. For instance, although many of the elevated train stations had elevators, these elevators were frequently broken, so riders using wheelchairs were unable to access trains. Additionally, nearly all of the CTA's buses had lifts, but often the bus lifts were broken or bus drivers would refuse to deploy them. Moreover, even though the ADA requires that stops be announced for people who are blind, bus drivers and train operators routinely failed to make the announcements or the microphones used to announce stops were frequently broken.

To address these systemic problems, Equip for Equality, Access Living, the law firm of Butler Rubin Saltarelli and Boyd, and private attorney Kate Yannias brought suit under the ADA in *Access Living v. Chicago Transit Authority,* 00 C 0770, on behalf of people with mobility, vision and hearing disabilities. After the court denied the CTA's motion to dismiss and motion for summary judgment, the parties negotiated a comprehensive class action settlement agreement.

Highlights of the settlement included:

- Installation of audio-visual equipment on buses to announce bus stop information to riders who have visual or hearing disabilities;
- Improvements to the gap-filler system for rail riders who use wheelchairs;
- Specially-trained customer service controllers to assist riders with disabilities;
- A comprehensive rehab of train station elevators and increased elevator service repair hours; and
- Creation of a $500,000 Operational Improvement Fund to increase access for riders with disabilities. Many of these changes benefitted non-disabled riders as well. The systemic changes achieved through this case would never have been possible without the ADA.

Community Living

In passing the ADA, Congress recognized that the isolation and segregation of people with disabilities was a serious and pervasive social problem. Following passage of the ADA, the U.S. Department of Justice issued a regulation known as the "integration mandate," requiring that state and local governments administer their programs in the most integrated setting

Barry C. Taylor is the Vice President of Civil Rights and Systemic Litigation at Equip for Equality, the Protection and Advocacy System for people with disabilities in Illinois. For more information, go to www.equipforequality.org.

appropriate to the needs of people with disabilities.

In 1999, two women with intellectual disabilities and mental illness who were residents of a state-operated hospital in Georgia filed suit alleging that the state had violated the ADA's integration mandate by denying them community placements. Their case ultimately was heard by the U.S. Supreme Court. In *Olmstead v. L.C., 527 U.S. 581* (1999), the Court issued an historic decision holding that the unjustified institutionalization of people with disabilities is discrimination under the ADA. Many people compare the *Olmstead* decision to *Brown v. Board of Education* because of the Court's recognition that separate is not equal for people with disabilities.

The disability community was hopeful that the ADA and *Olmstead* would be catalysts for Illinois to develop a robust community-based service system and end its reliance on large institutions. However, after many years of trying to work collaboratively with the state, the disability community concluded that litigation would be the only way to achieve meaningful change in Illinois. Equip for Equality, Access Living, and the ACLU of Illinois jointly filed three community integration class actions against State of Illinois officials for failing to serve people with disabilities in the most integrated setting.

Ligas v. Maram, 05 C 0331, was filed on behalf of approximately 6,000 people with developmental disabilities across Illinois living in over 250 large privately-owned state-funded facilities, as well as on behalf of approximately 20,000 people with developmental disabilities living at home with family members waiting for services. Dentons served as the pro bono law firm for that case. A second case, *Williams v. Blagojevich,* 05 C 4673, was filed on behalf of approximately 5,000 people with mental illness residing in large privately-owned state-funded nursing homes, known as Institutions for Mental Disease. Kirkland & Ellis and the Bazelon Center for Mental Health Law served as co-counsel. *Colbert v. Blagojevich,* 07 C 4737, was filed on behalf of approximately 16,000 people with physical disabilities and/or mental illness residing in traditional nursing homes in Cook County. Dentons served as pro bono counsel.

Ultimately, consent decrees were reached with the state in all three cases. Under the consent decrees, people with disabilities are finally being given a meaningful choice of where to live and the supports necessary to be successful in the community. Although all three consent decrees are still in the process of implementation, to date over 7,000 people with disabilities have received community services, and many thousands more will move into the community by the time the consent decrees end. Without the ADA, the vast majority of these people would still be denied the choice of living in the community.

Prisoners' Rights

A significant number of prisoners have disabilities. When the ADA was passed, it was unclear whether prisoners with disabilities were even covered by the law. This question was answered in the affirmative by the U. S. Supreme Court in *Yeskey v. Pennsylvania Department of Corrections,* 524 U.S. 206 (1998).

In the wake of *Yeskey,* prisoners with disabilities have filed numerous ADA class actions, including two currently pending in Illinois. The first case, *Holmes v. Godinez,* 11 C 2961, was filed in response to the systemic failure of the Illinois Department of Corrections (IDOC) to provide accommodations to deaf and hard of hearing prisoners. The IDOC has failed to provide sign language interpreters, captioning, video relay services, and other accommodations required by the ADA. Without these accommodations, deaf and hard of hearing prisoners are deprived of meaningful access to disciplinary proceedings, healthcare, religious services, educational and vocational programs, telephones, library services, grievances, and pre-release programs. *Holmes* was filed by Equip for Equality, Uptown People's Law Center, the National Association of the Deaf and Winston & Strawn, providing representation on a pro bono basis.

The second case, *Rasho v. Godinez,* 1:07-CV-1298, was filed in response to the systemic discrimination faced by prisoners with mental illness, including receiving woefully substandard care, having little opportunity to see mental health professionals beyond cursory conversations to renew their prescription medication, being punished for symptoms of their mental illness, and being placed in harmful social and physical isolation. Rasho was filed by Equip for Equality, Uptown People's Law Center, and Dentons and Mayer Brown, which are both providing representation on a pro bono basis.

Although the Constitution provides some remedies for prisoners with disabilities, the ADA is an important legal tool that provides additional protections and accommodations to address the discrimination that they routinely face.

Access to Entertainment

Like most Americans, people with disabilities enjoy going to the movies. Unfortunately, people who are blind or deaf have not had equal access to the movies because of communication barriers. Accordingly, Equip for Equality filed a complaint with the Illinois Attorney General against AMC, the largest movie theater company in Illinois, seeking to remove these barriers.

Attorney General Madigan reached a comprehensive settlement with AMC that ensures that people who are blind and deaf have equal access to the movies at AMC. Under the terms of the settlement agreement, AMC made 100% of its 460 movie screens across Illinois accessible to people who are blind or deaf by providing audio descriptions to enhance the moviegoing experience for people who are blind, and personal captioning devices for people who are deaf. Without the ADA, people with disabilities would still not have meaningful access to the movies.

The ADA has been a tremendous legal tool for social change for people with disabilities across the country, including in Illinois. While many barriers still remain, 25 years after the passage of the ADA, the landscape for people with disabilities has improved dramatically and will continue to get better as the ADA is used to address the remaining barriers. ■

Do Something That Makes You Proud

By Anne Ellis
Editorial Board Member

CBA Past President Dan Cotter and keynote speaker Pulitzer Prize winning columnist Mary Schmich of the *Chicago Tribune*. Photos by Bill Richert.

Herman Kogan Media Awards Chair Dennis Culloton (far right) with Kogan Print Legal Beat category winners from the *Chicago Tribune,* from left Duaa Eldeib, Gary Marx and David Jackson, who won for their investigation of juvenile state wards and residential treatment centers.

Focusing on the similarities between law and journalism, Pulitzer Prize-winner Mary Schmich urged members of both professions to use their privilege as a "special opportunity to do something that makes you proud." Schmich gave the keynote address at the CBA's 26th annual Herman Kogan Media Awards on May 6 at Maggiano's in Chicago.

Kogan Awards

The awards, named in honor of legendary Chicago journalist and raconteur Herman Kogan, recognize outstanding legal and public affairs reporting. With past CBA President Daniel Cotter presiding and members of the Kogan family–sons Rick and Mark–in attendance, the awards were presented by Dennis Culloton, Chair of the Kogan Awards Committee. The Committee selected winners from among 31 entries in print, broadcast, and online media categories.

Keynote Message

Among the similarities between law and journalism cited by Mary Schmich, a long-time columnist for the *Chicago Tribune*, are tools of the trade–words, facts, and ideas; the heat and intensity of competition and deadlines; and intimate involvement with clients' issues and subjects' stories, which makes the work both difficult and rewarding.

But the main similarity between the two professions is that "lawyers and journalists have some of the most privileged work in the world." Schmich defines privilege as "a special opportunity to do something that makes you proud." She reminded the audience of how lucky we are to do the work we do, and that "At our best, we try to make something better."

Schmich said she wanted to leave the audience with four words: "Patience. Perseverance. Joyful effort." Those words can inspire us to keep going and keep doing the best work we can, even when it's hard–the kind of work that the Kogan winners inspire us with, even if there are not always tangible prizes. ■

2015 Kogan Awards Honorees

Print–Legal Beat Reporting Category:

Kogan Award: David Jackson, Gary Marx and Duaa Eldeib of the *Chicago Tribune* for "Harsh Treatment" (investigative reporting on sexual assault of minors in juvenile state wards and residential treatment centers).

Meritorious Achievement Award: Timothy P. O'Neill of the John Marshall Law School writing for the *Chicago Daily Law Bulletin,* "Discrimination in Justice System Can Lead to Economic, Psychological Costs" (column on the cycle of crime set in motion when the poor receive traffic tickets they can't afford to pay, and must hide from authorities and violate more ordinances as a result).

Meritorious Achievement Award: Cynthia Dizikes and Todd Lighty of the *Chicago Tribune* for "Warrantless Searches: Threats, Missing Money and Planted Drugs" (investigative reporting on systematic abuse of probationers' civil rights in the adult probation department of the Cook County Circuit Court).

Print–Features and Series Category

Kogan Award: David Bernstein and Noah Isackson of *Chicago Magazine* for "The Truth About Chicago's Crime Rates" (two-part investigative series exposing the Chicago Police Department's under-reporting of city crime statistics).

Meritorious Achievement Award: Roy Strom of *Chicago Lawyer* for "Who Do They Belong To?" (groundbreaking Illinois court case involving control of frozen embryos).

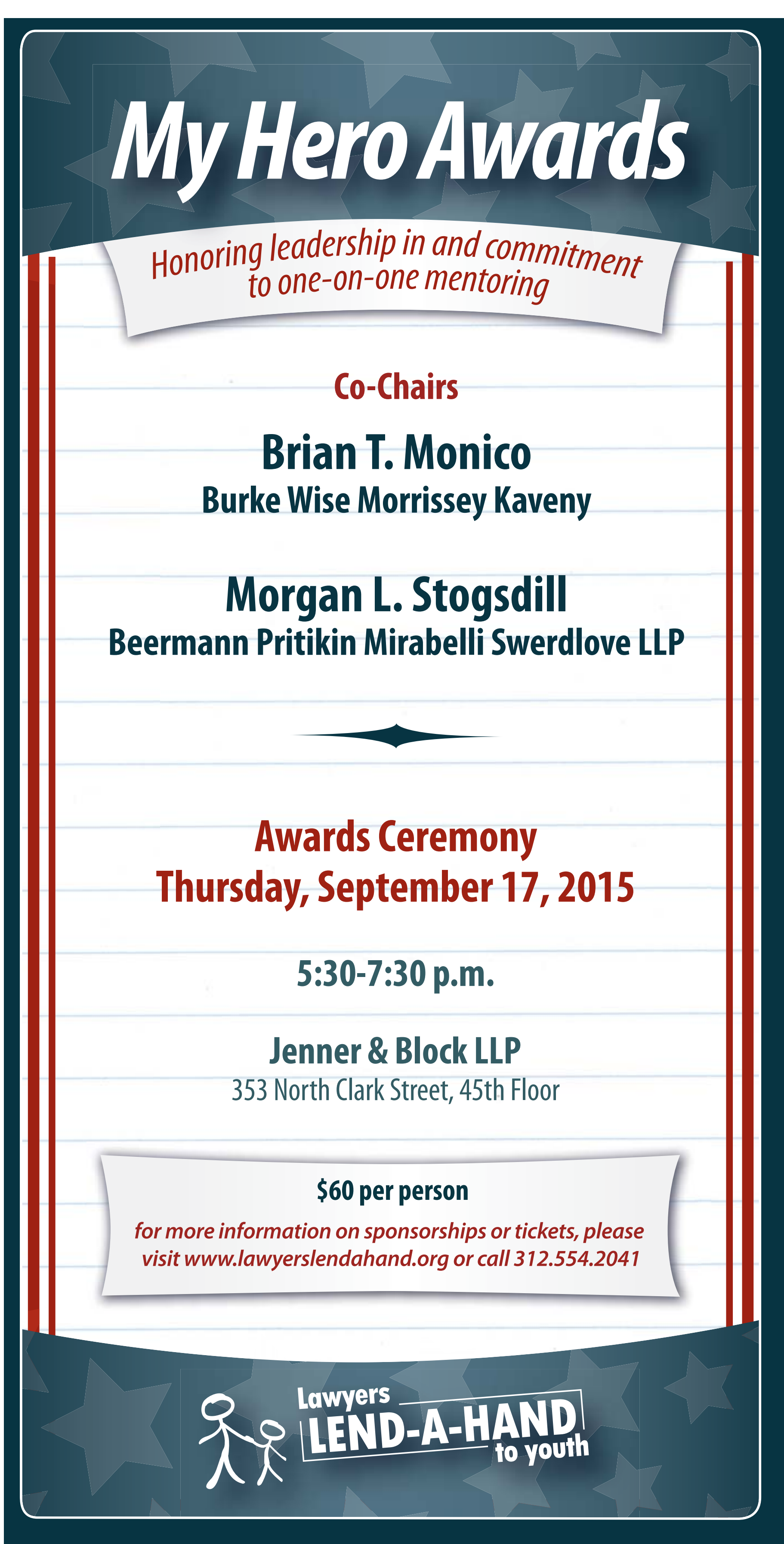
Online Category

Kogan Award: Brett Chase, Patrick Rehkamp and Andrew Schroedter of the Better Government Association for "Next Up: Illinois Municipal Bankruptcy/ Suburban Pension Peril" (effect of the Illinois pension situation on small towns and suburban municipalities as many contemplate bankruptcy).

Broadcast Category

Kogan Award: Robert Wildeboer, Cate Cahan, and Patrick Smith of WBEZ-FM, Chicago Public Media, for "Of Natural Causes: Death in Illinois Prisons" (circumstances of natural deaths in Illinois prisons).

Meritorious Achievement Award: Derek John and Natalie Moore of WBEZ-FM, Chicago Public Media, for "Why Are We Still Collecting Taxes to Prevent White Flight in Chicago?" (why taxing entities developed over 20 years ago are still operating, apparently unsupervised or unmonitored).



CBA HOSTS FOIA SEMINAR

Information is Power

By Amy Cook
CBA Record Editor-in-Chief

There are two sides to every story when it comes to Freedom of Information Act requests. Investigative reporters or attorneys who represent public interest groups dedicated to open government may see indifference, secrecy, and roadblocks in response to FOIA requests. For representatives of government bodies, such requests may be seen as overreaching, overly burdensome, or fishing expeditions for irrelevant information. Both sides agree that government bodies must balance the public interest in government transparency with the rights of private citizens whose personal data may be in the documents.

Larry Yellen, attorney and investigative reporter for Fox News Chicago, moderated an April CBA seminar on recent changes to the Illinois Freedom of Information Act. The panel included Barbara Adams, Senior Counsel, Holland & Knight; Tim Novak, Investigative Reporter, *The Chicago Sun-Times;* Sarah Pratt, Public Access Counselor, Office of the Attorney General; and Matthew Topic, Outside General Counsel, Better Government Association, and Partner at Loevy & Loevy.

All public records are presumed to be open to inspection and copying by the public. A public body has the burden of proving that a record should not be disclosed "by clear and convincing evidence." According to the Illinois statute, 5 ILCS 140, the public body must respond to a request with either an approval or denial within five business days after the receipt of the request. The public body may extend the time to respond by an additional five business days for a variety of reasons. However, Tim Novak , who typically files 10 to 12 FOIA requests a week, said that it is his experience that government bodies automatically ask for an extension. He says delay is used to kill a news story.

Matthew Topic said that people need to know who the government is making deals with and how much money it makes on a deal. He said, "If the government is allowed to act in secret, there will be people who will take advantage of that." Likewise, Novak believes that many government entities he deals with think: Is there a way I can keep this record secret, or at least wait until someone sues me?

Barbara Adams addressed the government's perspective. First, FOIA requests can be burdensome. Some entities see it as an unfunded mandate. Then, there are privacy issues: information relating to medical records or domestic abuse may be disclosed if the public bodies are not careful. She also noted that information might dry up if people know it might be shared, such as in a police report.

In 2010, there were substantial changes to the Illinois FOIA. The panelists said that more information is now available, but governments want a formal FOIA request for "everything." Sarah Pratt's office of the Public Access Counselor provides an alternative to litigation. They don't give legal advice, but do provide advisory opinions. She said, "Usually one letter from us and the government body will respond." She gives public bodies the benefit of the doubt, noting "Some FOIA officers wrongfully believe that they need a formal FOIA request for everything, and that they can't just let someone see [the requested material]."

Another concern for requesters is that some government bodies do a "data dump" on their websites. Novak said that by doing this, the entity seems transparent, but now information seekers have to wade though giant databases to find the one thing they are looking for. However, Pratt says government bodies cannot just say, "Yeah, that's on our website." They must direct the user to the specific record. With over 7,000 government bodies in Illinois (according to Pratt), there's no shortage of information to battle over for years to come. ■

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CBA ALLIANCE FOR WOMEN CELEBRATES WOMEN ADVANCING WOMEN

Attitude and Gratitude

By Sarah King
Clifford Law Offices

In a true celebration of women advancing other women in the law, on May 22, the Chicago Bar Association Alliance for Woman honored Stephanie Scharf and Megan Mathias during their annual luncheon at the Standard Club of Chicago.

Stephanie Scharf, this year's Founder's Award recipient and named partner of Scharf Banks Marmor, LLC, the largest female majority owned law firm in Chicago, addressed a large audience after receiving her award. In addition to her contributions to the Alliance, Scharf is a former President of the National Association of Women Lawyers. Scharf instituted the NAWL Annual Survey of Women in Law Firms, which revealed that there continues to be a disproportionately low number of women who advance into the highest ranks of large firms despite an increase in women law school graduates. The same is true at the level of equity partner. However, Scharf spoke of a sensing a "sea of change" as large firms realize they cannot afford to continue to lose women to private practice. Scharf stated, "the reality is if you lose women, you are losing an enormous talent pool. Firms are grappling with this systemic problem." Scharf suggested that in 10 years these statistics would be very different. Additionally, Scharf shared a deeply personal and touching story of her mother who was orphaned at age 8. Scharf described how by sheer grit and determination she worked her way through high school and college, ultimately landing a job as an executive secretary at an ad agency. Scharf also expressed her gratitude to the numerous members of the Alliance who have shown her incredible support and helped her over the years, including the Honorable Sophia H. Hall, who was in attendance.

Megan Mathias was this year's recipient of the Alta May Hulett Award. The award is named for Illinois' first woman lawyer and is given to women who have recently joined the profession, have significantly contributed to the advancement of women and have practiced at the highest level of professional achievement. Mathias took the stage to be honored for her contributions to the profession including her work with women and minority owned business. She is the founder of Loop Mathias Law Group and has been the lead attorney on over 35 cases. Describing the mix of courage and fear it takes to set out on her own, Mathias thanked the legions of women she has helped over the years that are helping her now stating that, "It takes a village for anyone to succeed." Mathias also shared a piece of special gratitude for her own mother who was present at the luncheon and credited her with teaching her the perseverance to work quietly for causes that are important to her.

Annual luncheon participants with Past CBA President Daniel A. Cotter. Photo by Bill Richert.

The keynote speaker for the event was Ana Dutra, President and CEO of the Executives' Club. Dutra's charismatic personality and seemingly endless supply of confidence made her a perfect addition to the luncheon. Dutra tied the AFW's theme together by describing how attitude and gratitude connect; "[P]eople cannot give what they don't have," stated Dutra. "If I don't have empathy or compassion, I cannot give empathy or compassion; if I don't have self-awareness, how can we ask others to be self-aware?" Dutra went on to describe the power of insatiable curiosity that led her to ask questions that changed her life, including proposing to her own husband. Dutra's final message to all in attendance was to encourage AFW members to define themselves in their careers by what they give back. ■

Watch upcoming issues of the **CBA Record** ***for more information about Alliance for Women activities, special events, and programming. And follow us on social media! www.facebook.com/cbaallianceforwomen, @cbaalliance on Twitter.***

CLE & MEMBER NEWS

Committee Participation–Earn Free MCLE Credit

Over the summer, all committee members were asked to review/change their committee assignments for the new bar year via the online committee sign up form at www.chicagobar.org/committees. If you wish to change your committee assignments, please take a moment to do so now. (Note: All committee members will remain on their current assignments unless they make changes to their committee record.)

Members who are not currently serving on committees are invited to get active this year. A complete description of all CBA and YLS committees, along with their meeting dates and new leadership information is available at www.chicagobar.org/committees. A committee sign-up form is also located there or can be obtained by calling 312/554-2134.

Remember, most CBA and YLS committee meetings qualify for free MCLE credit. The amount of credit depends on the length of the presentation (average credit is 0.75 hours). And many committee meetings are Webcast live so you can earn free credit without leaving your office or home (only live Webcasts count for credit, not archived meetings). Finally, all of our committee meetings are free, thus this is a great way to earn MCLE credits at no cost!

Confirmation of committee assignments and 2015-16 meeting date schedules will be mailed to all committee members in mid-August. Most committees will begin meeting again in September. Questions? Contact Awilda Reyes at 312/554-2134 or areyes@chicagobar.org. **Note:** Members listed on committee rosters will receive direct emails regarding committee meetings, speakers, hand out materials, legislation, etc. However, you do not have to be listed on the committee roster to attend its meetings. Any member may attend any committee meeting. Check your weekly CBA e-Bulletin which is emailed to all members every Thursday or visit www.chicagobar.org, Committees, Meeting Notices for a current list of meeting topics, speakers, MCLE credit and Webcast availability.

Free Daily Practice Area Email Updates

All CBA members are eligible to receive free daily practice area email updates via Lexology. Lexology collaborates with the world's leading lawyers and other thought leaders to deliver tailored updates and analysis to the desktops of business professionals worldwide on a daily basis. With an archive of over 450,000 articles in more than 20 languages covering 50 work areas worldwide.

Lexology is a powerful research platform which allows you to receive tailored legal newsfeed by email, search the archive of articles, follow 80,000-plus authors and blogs, set up RSS feeds and more. If you are not already receiving Lexology emails, contact Catherine Sanders Reach at csandersreach@chicagobar.org ■

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Membership Dues: Last Call

Don't forget to renew your CBA membership this summer. Dues must be received by August 31 to maintain all savings and benefits including: Free CLE, free noon hour committee meetings live and webcast, low cost business management and technology skills training, free solo small firm resource portal, complimentary hands on job search/career development programs, free judicial roundtables, joint events with other professional groups, affordable practice management consulting, members only discount programs and much more.

There is no doubt that these are challenging times for the legal profession. Budgets are tight and time is a precious commodity. The CBA is aware of this and is working hard to meet your needs. Keep up with the latest legal developments. Network with the brightest legal minds in Chicago. Meet future employers, mentors, business contacts and friends. Get job search help. The CBA is where you belong. Make connections, grow your business and enrich your professional future. Renew today via www.chicagobar.org, US mail or call 312/554-2020.

Special Billing Notes: Reduced dues are available for unemployed members and those with financial hardships. Call 312/554-2131 or see dues hardship form at www.chicagobar.org.

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**See complete CLEAdvantage program terms and conditions at www.chicagobar.org. Some restrictions may apply. Plan available to CBA members only. The CBA is an approved provider of MCLE in Illinois. For information on Illinois MCLE requirements, visit www.mcleboard.org.*

Chicago Bar Foundation

Report

CBF Morsch Award Continues to Recognize Extraordinary Legal Aid Attorneys

By Angelika Labno
CBF Administrative & Communications Coordinator

Each year, the CBF awards the Thomas H. Morsch Public Service Award, the premier public recognition for long-time legal aid and public interest law attorneys in Chicago. Recently, Chicago's legal aid community received some great news when Tom Morsch and his family committed to continue their generous endowment of this prestigious award for an additional five years.

Morsch has received much-deserved recognition over the years for his tireless pro bono efforts and exemplary leadership in the legal community on access to justice issues. As a longtime partner at Sidley Austin and pro bono leader within the firm, he was one of the earliest advocates for getting private law firms to commit to pro bono service. Yet Morsch always felt that the private bar received a disproportionate amount of recognition for their pro bono contributions compared to the lawyers who had dedicated their careers to public interest law, often at great financial sacrifice.

More information about the CBA & CBF's Pro Bono Awards luncheon is available at **chicagobarfoundation.org/awards**

During his time as President of the CBF in the mid-1990s, Morsch got to know some of the lawyers doing excellent work at Chicago's pro bono and legal aid organizations every day outside of the spotlight. At the close of his two-year term, Morsch wanted to find a way to recognize extraordinary public interest lawyers. So, in partnership with the CBF, he created the Thomas H. Morsch Public Service Award. The award includes a substantial cash prize to recipients, thanks to a generous endowment from the Morsch family.

"It always annoyed me that the people who did pro bono work at large corporate law firms were doing it on a lark; they were getting a lot of publicity and also were making a lot of money as lawyers," Morsch quipped. "In the meantime, there were people that dedicated their whole lives to this stuff, usually working at nonprofits to help the poor or those discriminated against."

Since 1998, 19 outstanding lawyers from across the public interest legal spectrum have been lauded with the Morsch Award. They are champions for the poor, homeless, or disabled, or have worked tirelessly to ensure basic rights such as access to healthcare or children's safety. Morsch describes the "perfect Morsch candidate" as a top notch lawyer from a pro bono or legal aid organization who has made a demonstrable difference to Chicago's legal community. He or she exhibits traits of perseverance and modesty, and is relatively "unsung" for their exemplary efforts.

On July 14, the most recent name was added to the list of deserving honorees at the CBA and CBF Pro Bono and Public Service Awards Luncheon: Phillip J. Mohr of Chicago Volunteer Legal Services. Mohr has instilled a love for pro bono in thousands of Chicago attorneys and law students and made a significant impact in family law through casework and developing innovative projects.

Rene Heybach of Chicago Coalition for the Homeless, the first recipient of the Morsch Award in 1998, feels a sense of community with other Morsch recipients. "There's a great bond I feel with folks receiving that award, and that feeling of support, collegiality, and collaboration gets renewed every time the award gets presented. None of us can work alone, and none of us wins something alone."

Receiving the award was a like a stamp of validation for Heybach. "During that period, you didn't see your colleagues in public interest getting recognized in a meaningful way. Once the bar had a formal recognition of my

2015 Morsch Award Recipient Phil Mohr, with Tom Morsch. Photo by Bill Richert.

work, it opened the door to consideration for other recognitions and benefits."

Several other recipients are now in leadership or director positions at their respective legal aid organizations. 2001 recipient Meg Benson (now Executive Director at Chicago Volunteer Legal Services) echoed Heybach's sentiment: "The award served as an affirmation that I was doing a good job, which allowed me to move forward and make, at times, hard decisions. This was, and remains, a high point in my career."

Believing that the recipients may be tempted to use the cash prize to do something altruistic with the money awarded or give it back to their organization, Morsch made it very clear that he wants them to spend it on something that might be considered frivolous, like the trip they've always dreamt of taking, but put off for financial reasons.

Several have sent the Morsch family postcards from around the world: Benson's family spent a week in London and Paris and another family traversed Australia. Tom Yates, Executive Director at AIDS Legal Council and the 2013 award recipient, took the opportunity to visit his daughter, who was teaching English in Vietnam at the time. He and his wife were able to explore several parts of the country, including Saigon, the Mekong Delta and Hanoi. Others have put the money towards tangible necessities, like a second car. Heybach, for example, set aside half of the money for herself and invested the other half to help her young nephews through college.

Tom Morsch's son Jim Morsch chairs the selection committee for the award. He noted, "They've spent their whole career being charitable; it's time they were rewarded personally for what they've done." ■

Congratulations to the recipients of the 2015 CBA/CBF Pro Bono & Public Service Awards

Kimball R. Anderson and Karen Gatsis Anderson Public Interest Law Fellowship: Candace Moore, Chicago Lawyers' Committee for Civil Rights Under Law

Exelon Outstanding Corporate Counsel Award: Claire Battle, ArcelorMittal USA

Edward J. Lewis II Pro Bono Service Award: Gabriel A. Fuentes, Jenner & Block LLP

Leonard Jay Schrager Award of Excellence: Mary Bird, Loyola University Chicago School of Law

Maurice Weigle Exceptional Young Lawyer Award: Shauna R. Prewitt, Skadden, Arps, Slate, Meagher & Flom LLP

Richard J. Phelan Public Service Award: Leslie Landis, Domestic Violence Division, Office of the Chief Judge of Cook County

Thomas H. Morsch Public Service Award: Phillip J. Mohr, Chicago Volunteer Legal Services

MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Terrence M. Murphy congratulated newly-inducted CBA President Patricia Brown Holmes and thanked outgoing President Daniel A. Cotter for an outstanding bar year at the CBA's Annual Meeting, which was held at the Standard Club on June 25. Photo by Bill Richert.

We are greatly honored that Justice **John Paul Stevens** (ret.) will be the keynote speaker at this year's Justice Stevens Award Luncheon on Tuesday, October 13, in the Grand Ballroom at the Standard Club. Justice Stevens served as an Associate Justice of the United States Supreme Court from 1975-2010 and is the third longest serving Justice on the U.S. Supreme Court. Justice Stevens resigned as The Chicago Bar Association's Second Vice-President in 1970 upon his nomination to the U.S. Court of Appeals for the Seventh Circuit. Justice Stevens was nominated as an Associate Justice of the U.S. Supreme Court by President Gerald Ford on December 1, 1975 and confirmed by the U.S. Senate on December 17, 1975. Since his retirement from the High Court, Justice Stevens has published the following two books: *Six Amendments: How and Why We Should Change the Constitution* and *Five Chiefs,* a compendium of memories of each Chief Justice he served with from Fred Vinson through John Roberts. The luncheon honors lawyers and judges whose careers best exemplify Justice Stevens' integrity and commitment to public service. Members are encouraged to nominate their colleagues from the bench and bar for the Stevens Award on or before Monday, August 24. Nomination letters should be submitted to Terrence M. Murphy, 321 South Plymouth Court, Chicago, 60604 or tmurphy@chicagobar.org

Tickets for the Justice John Paul Stevens Award luncheon are $70 per person or $700 for a table of ten. Mark your calendar and don't miss this year's Justice John Paul Stevens Award Luncheon. For more information or to make reservations, please contact Events Coordinator **Tamra Drees** at 312/554-2057 or tdrees@chicagobar.org.

92nd Annual Golf Outing

Don't miss the Association's 92nd Annual Golf Outing on Wednesday, September 16 at Harborside International Golf Course, 11001 S. Doty Avenue, Chicago. Harborside International is a favorite golf destination and among Chicago's finest public courses. Harborside has country club fairways and greens. and some monster traps that make it a challenging and fun course to play. The Golf Committee has secured a number of sponsors and wonderful prizes for this year's outing. Golf cart, lockers, lunch and a buffet dinner with cocktails are included in the $195 registration fee ($170 for golf only). The outing will begin with lunch at 12:00 p.m. followed by a shotgun start at 1:00 p.m. Members who cannot golf are encouraged to attend the reception and buffet dinner for $35. Join your colleagues from the bench and bar for an enjoyable afternoon of fall golf. For more information or to make reservations, visit www.chicagobar.org/golf.

Solo Small Firm Law Practice Management Conference

The Association will hold its inaugural Solo Small Law Firm Law Practice Management and Technology Conference at the Chicago Bar Association building on Friday, October 16, (9:00 a.m. to 5:30 p.m. followed by a reception) and Saturday, October 17 (9:00 a.m.–12:00 noon). CBA LPMT Director **Catherine Sanders Reach** has secured an all-star lineup of speakers for the conference which will have four tracks: Startup Boot Camp; ABA Tech Show Roadshow; Hot Topics in Law Firm Management; and IICLE Practice Update. Speakers will cover a wide array of topics that include: Business Entity and Budgeting; Building a Client Base; Litigation Financing; Engagement Agreements; Alternative Fees; Assessing Law Firm Efficiency and much more.

Pricing for the Solo Small Firm Conference is as follows: CLE*Advantage* Members $100; CBA Members $295 (includes access to the recorded programs) and Non-Members $295 which does not include

access to the recorded programs. For more information, visit www.chicagobar.org/cle

CBA Open House/All Bar Reception

The Association is hosting an open house/all bar reception for all members to meet President **Patricia Brown Holmes** and YLS Chair **Matthew A. Passen** on Thursday, September 24, from 5:00–7:00 p.m. at the CBA Building. Patricia Brown Holmes is a litigation partner at Schiff Hardin, LLP; a former federal, state and local prosecutor; and former state court judge whose practice includes: corporate internal investigations, criminal internal investigations, and representation of high-profile individuals and corporations. Holmes is the second African-American Woman to serve as CBA President. Matt Passen is a partner in the Passen Law Group and concentrates his practice in personal injury, wrongful death and medical malpractice matters.

The reception will be held in Corboy Hall and the Winston & Strawn Presidents Rooms on the second floor of the Association building. There is no charge for the reception and cocktails and hors d'oeuvres will be served. RSVP to events@chicagobar.org.

Association Luncheon Featuring Seneca Women Co-Founders Kim K. Azzarelli and Melanne Verveer

The CBA's Alliance for Women Committee, Women's Bar and Black Women Lawyer's Association will co-host a special Luncheon on Monday, October 19, 2015 in the Grand Ballroom at the Standard Club featuring the Co-Founders of Seneca Women, **Melanne Verveer** and **Kim K. Azzarelli.** Our distinguished guests will discuss their new book *Fast Forward: How Women Can Achieve Power and Purpose.* The book features some of the world's most inspiring women who are using their growing economic power to create success and meaning in their lives while building a better world. Verveer is the Executive Director of Georgetown University's Institute for Women, Peace and Security and was appointed by President Obama as the first-ever Ambassador-at-Large for Global Women's Issues at the U.S. State Department. Ambassador Verveer is a member of the Council on Foreign Relations and has served as the 2013 Humanitas Visiting Professor at Cambridge University. She is the recipient of numerous awards, including the U.S. Secretary of State's Award for Distinguished Service. Azzarelli is a business, philanthropic, and legal advisor forcused on advancing women and girls. She is Chair and Co-Founder of Cornell Law School's Avon Global Center for Women and Justice and a partner at Seneca Point Global.

Congratulations

Ann Claire Williams, U.S. Court of Appeals Judge for the Seventh Circuit, recently celebrated her 30th year on the Federal Bench...**Thomas P. Sullivan,** Jenner & Block, received the American Bar Association's prestigious Justice Thurgood Marshall Award at the ABA's annual meeting…U.S. Supreme Court Justice **Sandra Day O'Connor** announced her retirement from office as an Associate Justice of the Supreme Court on June 30... **Paul P. Biebel, Jr.,** Presiding Judge of the Circuit Court of Cook County, Criminal Division, has retired…**Zaldwaynaka L. Scott** received the Jefferson Fordham Advocacy Award from the American Bar Association's Section of State and Local Government…Judge **Leida J. Gonzalez Santiago,** Circuit Court of Cook County, has retired…**Vikram Amar** was named the new Dean of the University of Illinois' College of Law…CBA past president **Daniel A. Cotter** has become a partner at Butler Rubin Saltarelli & Boyd LLP...Chief Judge of the Circuit Court of Cook County **Timothy C. Evans** announced a $150,000 grant from the John D. and Catherine T. MacArthur Foundation to reduce the level of non-violent offenders incarcerated in Cook County Jail...Assistant U.S. Attorney **Carrie E. Hamilton** was appointed a Circuit Court of Cook County Judge in the 12th Subcircuit…**John Fitzgerald Lyke, Jr.** was appointed an at-large Circuit Court of Cook County Judge…**Marci A. Eisenstein** has been elected managing partner of Schiff Hardin LLP...**Patricia Banks,** Presiding Judge of the Elder Law Division, has been appointed Chair of the American Bar Association's Commission on Law and Aging.

Illinois Appellate Court Justice **Michael B. Hyman** and Circuit Court of Cook County Judges **Andrea M. Buford, Judith C. Rice** and **Kristal R. Rivers**, along with Chicago lawyers **Patricia J. Foltz** and **Joseph W. Balesteri,** Power Rogers & Smith P.C., were appointed to the Illinois Supreme Court's new Committee on Equality...**Kirkland & Ellis** received "The Above and Beyond" Award, present by the Employer Support of the Guard and Reserve (ESGR)...Chief Judge **Timothy C. Evans** received the Decalogue Society of Lawyers Hon. Charles E. Freeman Judicial Merit Award…**Diane P. Wood,** Chief Judge of the U.S. Court of Appeals for the Seventh Circuit, received the Decalogue Society Award…John Marshall Law School Professor **Ralph Ruebner** received the Decalogue Society Founder's Award and **Michael A. Strom** received the group's Intra-Society Award… **James S. Montana, Jr.** has opened the law offices of James S. Montana, Jr. focusing on white-collar criminal defense...Circuit Court of Cook County Judge **Diane M. Shelley** is the new treasurer of the Illinois Judges Association...**William B. Oberts,** Tribler Orpett & Meyer, P.C., received the Chicago Chapter of the Federal Bar Association's Pro Bono Award of Excellence...Peck Bloom LLC has changed its name to Peck Ritchey LLC, with **Timothy J. Ritchey** becoming a named partner.

LaShonda A. Hunt is the new president of the Black Women Lawyers' Association of Greater Chicago...**Arlene Y. Coleman** is the new president of the Cook County Bar Association...**Umberto S. Davi** is the new president of the Illinois State Bar Association...Judge **Jessica O'Brien** is the new president of the Women's Bar Association of Illinois...**Jessica T. DePinto** is the new president of the Justinian Society of Lawyers...**Maria T. Gonzalez** is the new president of the Puerto Rican Bar Association... **Michael T. Brody** is the new president of the Seventh Circuit Bar Association… **Deidre Baumann** is the new president of the Decalogue Society of Lawyers...**Perry J. Browder** is the new president of the Illinois Trial Lawyers Association...**John Wagener** is the new president of the Trial Lawyers of

JUSTICE STEVENS NOMINATIONS

DUE AUGUST 24, 2015

The Chicago Bar Association is now accepting nominations for its annual Justice John Paul Stevens Award. The Award is presented to Illinois Attorneys who have shown throughout their careers that they are extraordinary individuals and who have demonstrated extraordinary integrity and service to the public and/or community. The Awards will be presented this year at the Justice John Paul Stevens Award Luncheon on October 13, 2015.

Nominations may be submitted in writing to: The Chicago Bar Association, Attn: Terrence M. Murphy, Executive Director, 321 S. Plymouth Court, Chicago, IL 60604. Fax: 312/554-2042, or tmurphy@chicagobar.org.

America...**Matthew A. Passen,** Passen Law Group, is the new Chair of the Association's Young Lawyers Section...**James R. Figliulo** is the new Chair of the Illinois Supreme Court Rules Committee…West Madison Street between Dearborn and Clark has been named *Honorary Richard J. Elrod Way*…**Peter J. Birnbaum,** President and CEO of Attorneys' Title Guaranty Fund, Inc., was appointed Chief Justice of the Illinois Court of Claims by Governor Bruce Rauner.

CBA/CBF 2015 Pro Bono Public Service Award honorees include: **Candace Moore,** Chicago Lawyers Committee for Civil Rights Under Law, received the Kimball R. Anderson and Karen Gatsis Anderson Public Interest Law Fellowship...**Claire Battle,** ArcelorMittal, USA, received the Exelon Outstanding Corporate Counsel Award…**Gabriel A. Fuentes,** Jenner & Block LLP, received the Edward J. Lewis II Pro Bono Service Award...**Mary Bird,** Loyola University School of Law, received the Leonard Jay Schrager Award of Excellence...**Shauna R. Prewitt,** Skadden Arps Slate Meagher & Flom LLP, received the Maurice Weigle Exceptional Young Lawyer Award...**Leslie Landis,** Domestic Violence Division of the Circuit Court, received the Richard J. Phelan Public Service Award, and **Phillip J. Mohr,** Chicago Volunteer Legal Services, received the Thomas H. Morsch Public Service Award.

Paul I. Choi, Sidley, Austin, LLP was elected president of Harvard's Alumni Association…**Louis A. Lehr, Jr.** and **John L. Ropiequet** were speakers at Loyola University's School of Law externship program…**Robert P. Cummins** served as a judicial ethics expert to USAID's Justice Project in Bosnia and Herzegovina...**Brett August,** Pattishall McAuliffe, was made a Knight of the French Legion of Honor... **Mike Barnicle,** Duane Morris associate, helped found the first Veteran Court Summit which strengthens the network of existing Veterans Treatment Courts in Illinois.

Shanna F. Purcell is a partner at Kamerlink Stark Powers & McNicholas, LLC... **Christian C. Damon** is an associate at Fitch EvenTabin & Flannery LLP…**Claire Gorman Kenny** is a founding partner in Moirano Gorman Kenney LLC...**John C. McDonnell** was added to Taft Stettinius & Hollister LLP's real estate practice group... John Marshall Law School Professor **Ann M. Lousin** received the Illinois State Historical Society's Certificate of Excellence...**Claudia H. Allen** and **Herbert S. Wander,** Katten Muchin Rosenman LLP, were elected to the American College of Governance Counsel...**David A. Berek** is added to Horwood Marcus & Berk Chartered's Trust and Estates practice... **Judith L. Grubner** received the Chicago Chapter of the Federal Bar Association's Award of Excellence for Pro Bono Service... **Michelle E. Kohut,** Corboy & Demetrio, P.C., was the keynote speaker at the Lake County Association of Women Attorney's installation dinner...**Christopher P. Carr** is managing the Chicago office of Schouest Bamdas Soshea and BenMaier PLLC... **Jon M. Spanbauer** has become a partner at Quarles & Brady LLP...**Robert M. Morgan,** Much Shelist P.C., has become special counsel to the firm's health-care law practice...**Candace Meyers** has become a partner at Boyle & Feinberg...**Joel J. Levin** has relocated his office to 180 N. LaSalle Street...**Daniel T. Coyne,** IIT Kent College of Law Professor, was appointed by Chicago's City Council to evaluate new claims in the Burge Reparation Ordinance... **Emily Anne Mattison** is of counsel to Greenberg Traurig LLP's global gaming practice...**Peter V. Baugher,** Honigman Miller Schwartz & Cohn LLP, spoke at Princeton University commemorating the 50th Anniversary of the Voting Rights Act...**John F. Schomberg** has become senior counsel at Clark Hill PLC...**Lori E. Lightfoot** was appointed by Mayor Rahm Emmanuel as Chair of the Chicago Police Board...Reed Smith has opened an office in Frankfurt Germany...**Charles B. Lewis,** Duane Morris, LLP, was appointed to the American Arbitration Association's Midwest Master Mediator Panel...**Jeffrey J. H. Koh** was elected to Ropes & Gray, LLP's board of directors…Schiff Hardin LLP received the Women in Law Empowerment Forum's 2015 Gold Certification.

Kenneth T. Lumb and **Edward G. Willer** were named partners at Corboy & Demetrio, P.C…**F. Michael Alkaraki,** Leahy & Hoste, **Patrick E. Dwyer III,** Law Offices of Patrick E. Dwyer III, **Peter C. Nozicka,** Lucas and Cardenas P.C., **Bruce R. Pfaff,** Pfaff Gill & Ports Ltd. and **Leslie J. Rosen,** Leslie J. Rosen P.C., received the Illinois Trial Lawyers Association's William J. Harte Amicus Volunteer Award... **Manuel Sanchez,** Sanchez, Daniels & Hoffman LLP, was honored by the Chicago Father's Day Council and the American Diabetes Association...**Tammy L. Wade,** Johnson & Bell, Ltd, was a featured speaker at the American Conference Institute's forum on obstetric malpractice claims... **Charles M. McMahon** has become a partner at McDermott Will & Emery, LLP, in the firm's Intellectual Property Group... **Julie Nichols Matthews** has become an IP partner at Parker Ibrahim & Berg LLC... **Manisha Chakrabarti** is of counsel to Taft Stettinius & Hollister LLP...**Ethan E. Rii** was named a Shareholder in Vedder Price's health-care and health-care finance group…**Mark C. Sampson, Jr.,** Segal, McCambridge, Singer & Mahoney, Ltd. is sponsoring the Legal Assistance Foundations 2015 Veterans' Rights Project Charity Challenge…**Michael Paul Cogan**

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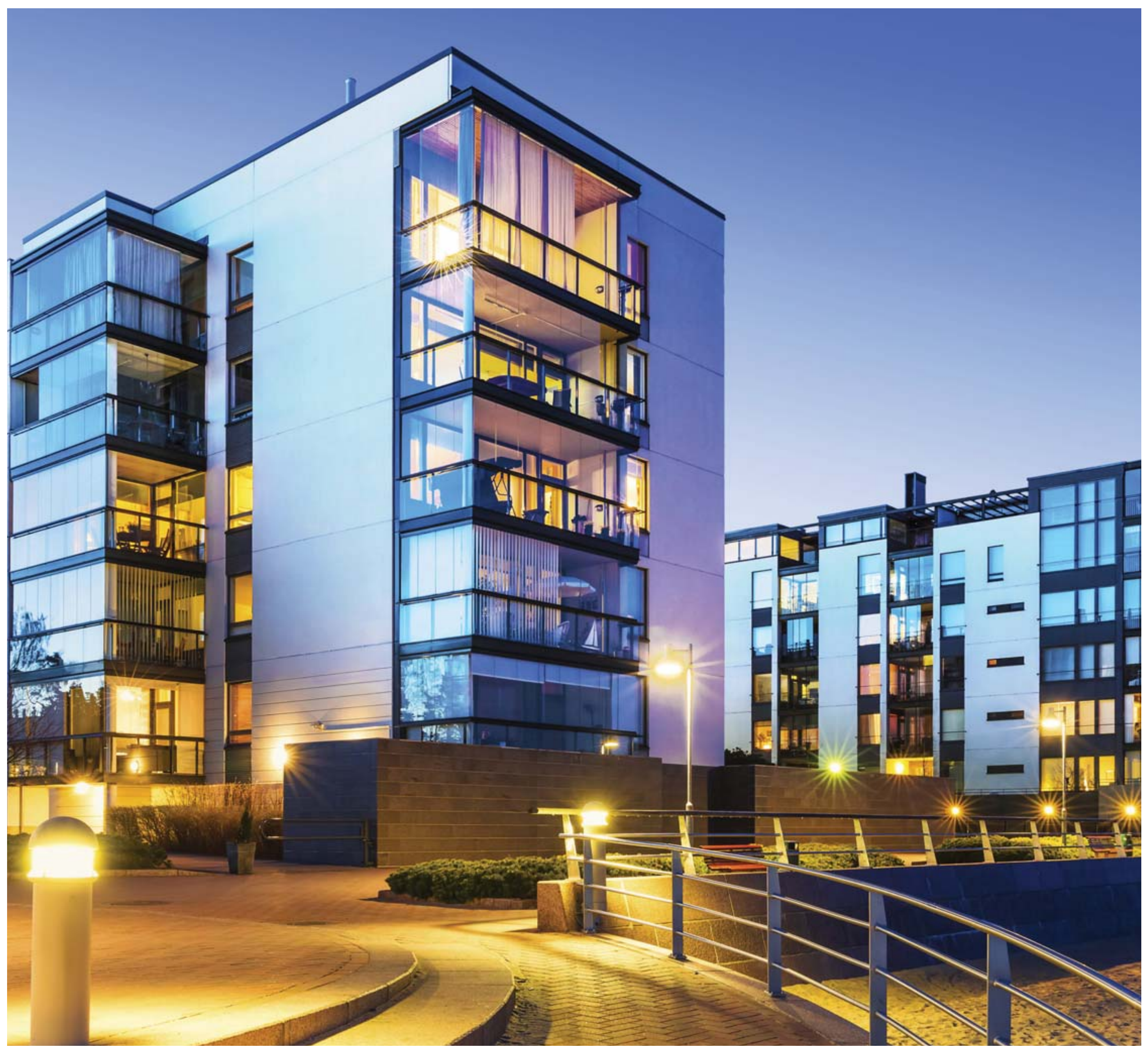
By Richard Douglass

Condominium Association Standing

Interpreting Section 9.1(b) of the Illinois Condominium Property Act



When condominiums first appeared in Illinois, there was some controversy over who could file suit for construction defects in the common elements. Did the individual owners have to bring suit based on their respective ownership interest in the common elements, or could the condominium association file suit on its own? This question was answered in 1979, when the Illinois General Assembly amended the Illinois Condominium Property Act.

THE LEGISLATURE RECOGNIZED THAT THE QUESTION of who could sue was acting as an unjustified barrier to enforcing warranties. This was because individual unit owners, who held small, fractional shares in the common elements, lacked the financial incentive to bring suit to enforce warranties. In response, Illinois enacted Section 9.1(b) of the Act, as follows:

> The board of managers [of a condominium association] shall have standing and capacity to act in a representative capacity in relation to matters involving the common elements or more than one unit, on behalf of the unit owners, as their interests may appear.

765 ILCS 605/9.1. This amendment made it clear that the individual owners did not themselves need to bring suit to enforce warranties as to common elements. But this provision raised other questions, two of which are addressed in this article.

First, if Section 9.1(b) applies, and an association does have standing to assert a claim, do the individual unit owners also have standing? The answer to this question–at least in the First District–is a clear "no." Under the guiding authority, when Section 9.1(b) confers standing on an association, that standing is exclusive.

Second, what is the scope of Section 9.1(b)? The answer to this question is less clear. But the resolution of the question should be informed by the answer to the first. The language of Section 9.1(b) could be read very broadly to cover a much broader swath of claims than the warranty claims the legislature had in mind. Yet, if Section 9.1(b) grants standing to an association, it takes it from the individuals who otherwise would own the claims. Thus, as developed more fully below, it seems that Section 9.1(b) should not be liberally expanded. Rather, it should be limited in its application to those situations where it is necessary to allow an association to bring suit to enforce rights that the individual unit owners would not have sufficient incentive to enforce on their own.

This second question has not yet been decided by the Illinois Supreme Court. Worse, it has engendered a conflict between the First and Second Districts of the Illinois Appellate Court. Briefly stated, the First District has adopted an interpretation of Section 9.1(b) that limits it to claims that arise from rights held in common, rather than individual rights. Whereas the Second Circuit appears to have interpreted Section 9.1(b) much more broadly, and included claims arising out of individual rights–such as fraud–within its scope. The uncertainty resulting from these conflicting interpretations of Section 9.1(b) creates problems in litigating and settling disputes that arguably are covered by Section 9.1(b). We believe that the Illinois Supreme Court should, therefore, take the next opportunity to resolve this conflict and, as shown below, should endorse the interpretation accepted by the First District

History of Section 9.1(b)

Under common law, it was frequently held that unincorporated condominium associations could not sue on behalf of their members. As a result, if there was a construction defect in a common element of a condominium, there was often no one willing to incur the expense to bring a lawsuit to require it be corrected because each unit owner individually owned only a small portion of those common elements. Thus, a unit owner suit would bear the entire burden of a lawsuit, but reap only a fraction of the benefit. This created a category of warranty rights that were particularly difficult to enforce.

This concern appears to be what drove the legislature to enact Section 9.1(b). The historical notes to the amendment specifically mention that the types of suits that the legislature believed would fall within the scope of Section 9.1(b) were generally construction defect cases, where the defect affected multiple unit owners in the building. These are the types of cases that were economically de-incentivized by the fractional ownership structure of a condominium.

The First District's Interpretation

The year after it was enacted, the Illinois Appellate Court had its first opportunity to interpret the scope and meaning of Section 9.1(b) in *Tassan v. United Development Corp.*, 88 Ill App. 3d 581 (1st Dist. 1980). The *Tassan* case, interestingly, did not involve a condominium association that was trying to invoke Section 9.1(b) to establish its standing. Rather, Section 9.1(b) was being used defensively by a developer that was trying to defeat the standing of individual unit owner plaintiffs.

In *Tassan* several individual condominium unit owners brought a purported class action on behalf of the unit owners against the developer of the building, alleging that the developer breached the warranties in each unit owner's purchase contract by failing to properly construct certain common elements. Plaintiffs sought a lump sum award of damages on behalf of the class. The defendant-developer argued that claims like these–for defects in the common

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- ☐ Social Security Law (3rd Thursday)
- ☐ Sports Law (As Called)
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- ☐ Family Law (1st Wednesday)
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elements–were exactly the type of claims Section 9.1(b) was intended to address and, therefore, they could only be brought by the condominium association.

The *Tassan* court agreed that, where Section 9.1(b) applied, it granted exclusive standing to the association. However, the court found that the claims at issue were not within the scope of Section 9.1(b). The court noted that the mere fact that the claims at issue related to the common elements was not enough to trigger Section 9.1(b). Instead, the court looked to the source of the rights that were being asserted by the plaintiffs. It found that the warranty claims at issue arose, if at all, out of "the contracts between United [the developer] and the individual buyers." Thus, the court continued:

> [I]t is not the association's rights that are being asserted here but the contract rights of each individual purchaser of the condominium units… We find nothing in the Condominium Property Act that indicates an intent on the part of the legislature to transfer the unit owners' contract rights to the condominium association.

Tassan, 88 Ill. App. 3d at 596-97. Accordingly, the court rejected the developer's argument and ruled that the individual unit owners had standing despite Section 9.1(b).

Tassan thus established two critical rules regarding Section 9.1(b). *First*, it established the test to be applied in deciding whether Section 9.1(b) should be applied to a claim. Specifically, the relevant inquiry was the nature of the rights that gave rise to the claim. Section 9.1(b) should be applied where the rights given rise to the claim are of a collective nature, like the unit owners collective rights to the common elements in a condominium. Conversely, Section 9.1(b) should not be applied if the rights are individual in nature, like the contract rights that gave rise to the claims in *Tassan*.

Second, the case confirmed that, where Section 9.1(b) granted standing to the condominium association, that standing was exclusive -- the individual unit owners could not also sue. In other words, standing is a "zero sum" game.

The First District applied the same test two years later, in *St. Francis Courts Condominium Association v. Investors Real Estate,* 104 Ill. App. 3d 663 (1st Dist. 1982). There, a condominium association filed suit challenging the developer's amendment of the condominium declaration which purported to annex five parking spaces previously designated as common elements. The developer, relying on *Tassan*, argued that Section 9.1(b) did not give the plaintiff-association the right to bring claims based on the unit owners' interest in the common elements. The court disagreed. Unlike *Tassan*, in which the claims were based on the individual contract rights of unit owners, the *St. Francis* court found that the claims at issue were based on "the common ownership rights of the individual unit owners in the basement area." That is, the court held that the rights asserted in *St. Francis* did not arise out of the separate (even if similar) purchase contracts of the individual unit owners. Instead, they arose from a common pool of rights that the unit owners shared by reason of their ownership of condominium units. Thus, the court allowed the association to assert the claims pursuant to Section 9.1(b).

More recently, the First District has reaffirmed these principals in *Poulet v. H..F.O., L.L.C.*, 353 Ill. App. 3d 82 (1st Dist. 2004), *appeal denied* 214 Ill.2d 551 (2005). There, a condominium association pursued a suit against the developer related to mishandling of finds in the association's account. As the association was poised to settle, a class of individuals also sued a condominium developer alleging claims for conversion and constructive fraud related to the same association funds. Applying the test developed in *Tassan*, the court held that the claims arose out of the rights held in common by the unit owners in the association and, therefore, the association had standing to assert the claims pursuant to Section 9.1(b).

Poulet then reaffirmed that standing is exclusive. After considering several cases from other states with similar standing statutes, the court was persuaded that:

> [A]llowing lawsuits by individual unit owners in cases such as this would be detrimental to any hope of settlement negotiations between developers and an association and, in turn, would hinder an association from speaking with one voice when dealing with third parties in carrying out its functions provided by the Act.

Poulet, 353 Ill. App. 3d at 99. The court went on, condemning the possibility of "piecemeal litigation brought by individual unit owners" and the potential "multiplicity of lawsuits" that would result from allowing dual standing.

The Second District Repudiates *Tassan*

The first indication that the Second District would part ways with the First District on the interpretation of Section 9.1(b) came in its 1983 decision in *Briarcliffe West Townhouse Owners Ass'n v. Wiesman Const. Co.,* 118 Ill. App. 3d 163 (2nd Dist. 1983). Ironically, *Briarcliffe* did not involve condominium association; it actually addressed the standing of an incorporated homeowner's association. Specifically, in *Briarcliffe* the plaintiff-homeowners' association brought suit against the developer for breach of warranty based on alleged construction defects in a clubhouse owned by the association itself. The developer argued that the homeowners' association lacked standing to pursue the claims because, unlike condominium associations, which had been granted standing to bring certain claims by Section 9.1(b), there was no such statutory authority granted to townhome owners' associations.

The Second District determined that the homeowners' association did not need statutory authority to sue. In reaching this conclusion, the court noted that the standing doctrine "has been given an increasingly broad interpretation," which appears to be a reference to expansions to the organizational standing doctrine under federal law. For instance, *Briarcliffe* cited *Maiter v. Chicago Board of Education*, 82 Ill.2d 373 (1980), in which the Illinois Supreme Court affirmed permissive intervention by community organizations in a suit regarding the selection of school principals. Although the issue of organizational standing does not appear to have been contested, the *Maiter* court noted that "[i]t has been held that an organization has standing to assert the concerns of its constituents." A thorough review of *Maiter* and the cases upon which it relies, however,

reveal that this statement was based on civil rights and other cases, not cases involving homeowners or condominium associations.

Regardless, *Briarcliffe* held that the homeowners' association did not need an analog to Section 9.1(b) to have organizational standing. Nevertheless, the court went on to reject "source of the rights" test developed by the First District. Specifically, the *Briarcliffe* defendant argued that the rights being asserted were outside the scope of the statutory grant of standing to condominium associations, and so should likewise lie outside the scope of presumably more limited common law standing. *Briarcliffe* rejected this argument. It concluded that *Tassan's* ruling regarding the source of the rights test was mere "dicta," and rejected it based on its expansive interpretation of common law association standing. Thus, the stage was set for a conflict between the First and Second Districts.

The First District Distinguishes *Briarcliffe*

The First District substantially disagreed with *Briarcliffe* in *Spring Mill Townhomes Ass'n v. OSLA Fin. Servs., Inc.,* 124 Ill. App. 3d 774 (1st Dist. 1983). *Spring Hill* involved a townhome owners' association which, like the homeowner's association in *Briarcliffe*, brought claims for breach of warranty against the developer due to alleged defects in the construction, specifically in the design of the townhome roofs. The First District held that the association lacked standing based on its more limited view of common law association standing:

> Under Illinois case law, absent a statutory grant of standing, a not-for-profit corporation in order to establish standing to sue on behalf of its members must allege and prove that it has suffered an injury in its individual capacity to a substantive legally protected interest.

Spring Hill, 124 Ill. App. 3d at 777. In reaching its decision, the *Spring Mill* court acknowledged that *Briarcliffe* had involved a "similar" situation, but said it was "critical" to the *Briarcliffe* decision that the plaintiff-association there actually owned the clubhouse at issue and was under a contractual obligation, pursuant to the declaration, to manage it. Thus, the court reasoned that the association in *Briarcliffe* was in a materially different position than the association in *Spring Mill* "under the particular circumstances of the case."

Nevertheless, *Spring Mill* went on to consider, and reject, one of the foreign authorities upon which *Briarcliffe* had placed much emphasis. In so doing, the *Spring Mill* court noted that, because the association was attempting to assert individual rights to damages, it could not even pass the more lenient federal test for standing. Thus, even though Section 9.1(b) was not at issue in *Spring Mill*, the First District expressed its disagreement with *Briarcliffe*, and again stressed the importance of analyzing for standing purposes whether the claims that an association is attempting to bring are common or individual.

The Second District's *Sandy Creek* Ruling

Based on the foregoing, just a few years after Section 9.1(b) was enacted, there were already rumblings that the First and Second Districts disagreed over its import. This disagreement came to a head in 1994, when the Second District decided *Sandy Creek Condo. Ass'n v. Stolt & Egner, Inc.*, 267 Ill. App. 3d 291 (2nd Dist. 1994). There, the plaintiff was a condominium association that brought suit against the developer for fraud, claiming standing under Section 9.1(b). Specifically, the plaintiff-association alleged that the developer made misrepresentations to the unit purchasers about the quality of the construction of the buildings. Defendant argued that the plaintiff lacked standing to assert such claims for fraud.

The Second Circuit disagreed, holding that Section 9.1(b) "statutorily grants the Association standing to bring an action if more than one unit is affected" and, therefore, that association boards "have standing to sue on all matters affecting more than one unit." *Sandy Creek*, 267 Ill. App. 3d at 296. It does not appear that the court considered the source of the rights at issue, whether Section 9.1(b) standing is exclusive, or otherwise address the First District's cases. Indeed, the analysis is quite brief. This may be due to the fact that *Sandy Creek* ultimately dismissed the fraud claim based on the failure of plaintiff's proof. Thus, the standing ruling was not essential to the ultimate disposition of the case.

The Current Split of Authority

The Source Of The Rights Test. The First District's interpretation of Section 9.1(b) is a formalistic approach based on what sorts of rights are subject to the Act. The First District's source of the rights test attempts to confine the scope of Section 9.1(b) to claims that arise as a result of each unit owner's ownership of the condominium–the collective rights.

The formalism of this test also informs the First District's view that Section 9.1(b) standing displaces the individual standing that would have existed, but for the Act. Because the rights are held in common as a result of the ownership of a unit and corresponding membership in the association, the only entity that can assert those rights as on behalf of everyone is the association itself. While there is also a practical aspect to the exclusive standing principal–avoiding multiplicity of suits–the primary justification is rooted in the First District's determination that the legislature meant for the association to be the entity responsible for the exercise and vindication of collective condominium rights.

There are several strengths to this approach. Focusing on only claims arising out of collective rights addresses the concern raised by the legislature that some rights were not being enforced. Where a right is collective, each individual unit owner will have less incentive to pursue it on their own. Allowing the association to assert it resolves that problem. Conversely, by excluding claims based on individual rights, the test prevents Section 9.1(b) from over-incentivizing personal claims. In other words, the source of the rights test prevents a condominium association from becoming an automatic de facto class representative for any wrongs suffered by more than one unit owner.

Limiting the claims to those arising out of collective rights also prevents associations from asserting individual claims on behalf of people that do not wish to sue. For instance, unless an association gets an affirmative vote of 100% of its unit owners to pursue a claim for fraud, like that brought in *Sandy Creek*, there is a strong possibility that some of those unit owners are essentially asserting a claim without their

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consent. If the claim is a collective one, then the majority consent justifies overriding the dissenters. But, if the claims are individual, there is no rationale for allowing others to compel a dissenter to sue.

Further, the exclusive standing corollary prevents the problem of multiple lawsuits, and ensures that a defendant can be confident in knowing that a settlement with the association will bind the unit owners. But, by limiting the scope of Section 9.1(b), the unit owners are not forced to give up their standing more than is necessary for the enforcement of the rights peculiar to the unit owners as a result of their ownership.

Finally, the First District's interpretation is consistent with general principals of statutory construction. Statutes, of course, are to be given effect according to the "plain meaning" of their specific language. And because Section 9.1(b) grants standing in derogation of the common law, its express language "must be strictly construed and nothing is to be read into [the statute] by intendment or implication." The restrictive test employed by the First District is in harmony with these general principles.

The weakness of the First District case is essentially the same weakness that comes from any bright line rule. There may be situations where analyzing the source of the rights is not enough. It would be possible to address this concern by supplementing the source of the rights analysis as necessary with a practical test. For instance, in close cases, courts could also consider whether the claim at issue is one which faces undue economic barriers, such that it would likely not be bought by the individual unit owners. Such a supplemental analysis could help resolve any tough cases.

The More Than One Unit Test. The Second District's interpretation of Section 9.1(b) is much broader. This may be due to the Second District's expansive interpretation of association standing in general. It seems likely that the Second District could have reached the same result in *Sandy Creek* even in the absence of Section 9.1(b). Regardless, *Sandy Creek* seems to stand for the proposition that Section 9.1(b) standing arises when the claims at issue involve more than one unit.

The strength of this test is that it gives the maximum effect possible to Section 9.1(b). Unlike the First District test, it is hard to conceive of a claim that an association would not have standing to bring under this test and, thus, there is little chance that a claim the legislature meant to cover will be missed.

Unfortunately, the expansiveness of this test is also a weakness. This test fails to provide clear boundaries for what is within and without the scope of Section 9.1(b). And, by maximizing the scope of Section 9.1(b), there is a significant risk that it would grant a condominium association standing in many situations that could not possibly have been foreseen by the legislature.

A more practical problem, however, is that the *Sandy Creek* test casts doubt on who can litigate and settle a claim. The Second District has not spoken on the issue of whether Section 9.1(b) is exclusive. Nevertheless, it rejected the *Tassan* holding from which the First District's exclusivity principal derived. Indeed, *Sandy Creek* itself involved fraud claims and held that they could be pursued by the association. It is highly doubtful that any court would subsequently hold that the association's standing to pursue fraud claims displaces the individual's right to sue. Thus, exclusive standing seems to be inconsistent with the *Sandy Creek* rule.

Because the Second District's test extends to claims beyond the reasonable bounds of exclusive standing, it must be non-exclusive. This, in turn, gives rise to a host of potential problems. There could be multiple lawsuits over the same claims. Indeed, in a 100 unit building, there could be 101 lawsuits for fraud -- one for each unit purchaser plus the association. Likewise, it thwarts settlement efforts. A defendant in the Second District settles with the association at its peril, because the individual unit owners might bring a subsequent suit denying that the association had authority to represent them.

In sum, the *Sandy Creek* test may *over*-incentivize lawsuits against developers, particularly lawsuits based on individual rights that are independent of condominium ownership, like fraud claims. Further, the apparently lack of exclusive standing causes confusion over who is the proper party to bring those suits, and may result in associations bringing individual claims that the individuals themselves do not wish to pursue. This confusion can further complicate the litigation and settlement process, and ultimately make it more difficult for associations to resolve claims based on collective rights, which is contrary to the legislative intent.

Conflict Needs Resolution

Based on the foregoing, there is currently a disagreement among the Second and First Districts regarding the scope of standing under Section 9.1(b). If and when this conflict is addressed by the Illinois Supreme Court, this author suggests that the Court should adopt the source of the rights test espoused by the First District, and potentially supplement that test with a practical analysis of whether the claims at issue are economically disadvantaged as a result of communal ownership. Until the issue is resolved, however, it is likely to give rise to many disputes in the Circuit Courts, and potentially increase the costs of litigation. ■

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By Goli Rahimi

The Illinois Whistleblower Act

Defending Against a Retaliation Claim

John, a low-level employee, is not having a good day. His boss is standing over his shoulder, demanding that he sign a document he has not reviewed. Company protocol requires a supervisor with direct knowledge about the document's contents to review the document before signing it. John is neither a supervisor nor familiar with the paper before him. John is worried; by not signing the paper, he may be headed straight for unemployment. Should he blow the whistle on his boss?

FOR MANY, THE ILLINOIS WHISTLEBLOWER ACT casts a shadow over employers and their defense counsel. In fact, the act affords "far greater relief than the common law to employees retaliated against in violation of its provisions." *Callahan v. Edgewater Care & Rehab. Ctr., Inc.*, 374 Ill. App. 3d 630, 634, 872 N.E.2d 551, 553 (1st Dist. 2007). Illinois encourages the reporting of unlawful behavior, and many interpret this policy to mean that Illinois welcomes whistleblowers with open arms.

This article will address that concern and provide employers sturdy defenses and supportive case law to overcome employee whistleblower claims in Illinois.

Illinois Whistleblower Act

Illinois is an at-will employment state, allowing employers to terminate their employees at any time for any reason or no reason. In recent years, several exceptions to the at-will employment rule have emerged, among them a public policy exclusion known as the Illinois Whistleblower Act (IWA).

The IWA is a guardian of employees, providing workers three types of protection when it comes to whistleblowing. First, it prohibits employers from adopting policies that prevent employees from disclosing suspected violations of state or federal law to a government or law enforcement agency. Rarely is this an issue, and, therefore, will not be the focus of this article. Second, the IWA forbids an employer from retaliating against an employee who refuses to participate in an activity that violates state or federal law. Finally, the statute prohibits employers from retaliating against an employer for disclosing information to a government or law enforcement agency. For this third protection, the employee need only have a reasonable belief that the information discloses a violation of a state or federal law, rule, or regulation.

Section 15: External Disclosure

Section 15 of the IWA provides that an employee may not be retaliated against for disclosing information to a government or law enforcement agency. 740 ILCS 174/15. The employee need only have a reasonable belief that a violation of a state or federal law, rule or regulation occurred; the employee's suspicion does not need to be true. However, the statute requires the disclosure to be made to a government or law enforcement agency, as disclosures to other individuals are not protected under this section of the law. *See Brame v. City of N. Chi.*, 2011 IL App (2d) 100760, ¶ 9, 955 N.E.2d 1269, 1272 (noting that courts that have interpreted Section 15 "have consistently found that an employee reporting within that employee's own company about an alleged criminal violation falls outside the Act."); *Washington v. Ass'n for Individual Dev.*, 2009 U.S. Dist. LEXIS 101591, *9 (N.D. Ill. Oct. 29, 2009) (finding that the plaintiff failed to plead a violation of the IWA because his complaint "does not allege that he reported any information to a government or law-enforcement agency.").

The language of this section "focuses on the employee's belief; the focus is not on what the government agency already knows or could discover." *Willms v. OSF Healthcare Sys.*, 2013 IL App (3d) 120450, ¶ 14, 984 N.E.2d 1194, 1196. In addition, "[t]here is no language in the statute to support an interpretation that the employee's disclosure has to be the first, or only, disclosure of the violation."

Pignato

Regrettably for employers who find themselves in the midst of an IWA Section 15 lawsuit, it is easier for a plaintiff to prove retaliation under this section than other provisions of the statute. Nevertheless, the plaintiff still bears the initial burden of showing the court that his disclosure was the reason behind the adverse employment action taken by the employer.

In *Pignato v. Givaudan Flavors*, the Northern District of Illinois emphasized the plaintiff's burden in alleging an IWA violation. In granting summary judgment in favor of the defendant employer, the court stated that plaintiff had not met his burden in establishing an IWA violation. Specifically, the court stated "although [Pignato] has submitted evidence that defendant *might* have had knowledge of his call to the customer, he does not offer any circumstantial evidence that defendant *knew* of his call to the FDA. Plaintiff therefore has not provided circumstantial evidence in support of a violation of 740 ILCS 174/15." *Pignato v. Givaudan Flavors Corp.*, 2013 U.S. Dist. LEXIS 34431, *13 (N.D. Ill. Mar. 13, 2013) (emphasis added).

Defenses under Section 15

It is important for employers and their counsel to be aware that

it is not a valid defense that the outside agency learned of the employer's supposed violations by someone other than the plaintiff; the plaintiff can disclose information to the outside entity at anytime before the retaliatory action to have a plausible cause of action. Nonetheless, as evidenced by *Pignato*, absent clear evidence that an employer had actual knowledge of the plaintiff's disclosure to an outside agency, a plaintiff's IWA Section 15 claim will most likely wither.

While Section 15 may seem all-encompassing, employers can draw their defense from the "reasonableness" standard required under the Act. Employees who wish to seek refuge under section 15 assume the responsibility to consider the reasonableness of their belief before disclosing such belief to an outside entity. Employers sued under this section should attack the reasonableness of the plaintiff's belief, and argue that such belief was not possessed in good faith. *See e.g. Woodley v. RGB Grp., Inc.*, 2006 U.S. Dist. LEXIS 43862, *19 (N.D. Ill. June 13, 2006) (denying plaintiff's motion for summary judgment because plaintiff's "convoluted" argument did not clearly establish reasonable belief); *Sicilia v. Boeing Co*., 775 F. Supp. 2d 1243, 1254 (W.D. Wash. 2011) (granting defendants summary judgment under the IWA because the plaintiff's belief that his employer was engaged in fraud was "objectively unreasonable.").

Section 20: Internal Disclosure

The majority of the complexities of the IWA arise from the single paragraph that is Section 20, which specifies that an employer "may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation." 740 ILCS 174/20

To state a cause of action under Section 20, the employee must (1) clearly **refuse** to participate in the activity; (2) the refused activity would result in a **violation** of a state or federal law, rule, or regulation; and (3) the employee was **retaliated** against because of her refusal to participate. *Sardiga v. N. Tr. Co.*, 409 Ill. App. 3d 56, 62, 948 N.E.2d 652, 657 (1st Dist. 2011) (emphasis added). The term "refusing" under section 20 of the Illinois Whistleblower Act means "refusing; it does not mean 'complaining' or 'questioning.'" *Sardiga*, 409 Ill. App. 3d at 62.. Also, the activity must actually violate a state or federal law, rule, or regulation. *Lucas v. Cnty of Cook*, 2013 IL App (1st) 113052, ¶ 28, 987 N.E.2d 56, 67 (finding that plaintiff did not have a cause of action under the IWA because the activity in which she refused to participate was not illegal or prohibited by the Illinois Administrative Medical Code).

While there is no clear test as to what constitutes a "refusal" to participate, courts interpreting the IWA have found that "refuse" as used in the statute is unambiguous and is given its plain and ordinary meaning. *See Collins v. Bartlett Park Dist.*, 2013 IL App (2d) 130006, ¶ 28, 997 N.E.2d 821, 828 (dismissing plaintiff's whistleblower claim where plaintiff only showed that he complained about defendant's operation of a defective chair lift and failed to allege that the defendant ordered him to do something he had refused to do); *Brandl v. Superior Air-Ground Ambulance Serv*., 2012 U.S. Dist. LEXIS 72078, *16 (N.D. Ill. Apr. 25, 2012) (granting summary judgment for the employer as the plaintiff "never said anything about refusing a direction from [her supervisor] to submit improper bills."); *Robinson v. Alter Barge Line, Inc.,* 513 F.3d 668 (7th Cir. 2008) (finding that plaintiff did not have a cause of action under the IWA even though he was fired after making three complaints of coworkers using illegal drugs. The court stated that the "point is that he did not refuse to use [the drugs]."); *Sardiga,* 409 Ill. App. 3d at 62 ("An employee who does not perform either of the specifically enumerated actions under the Act cannot qualify for its protection.").

In addition, there can be no claim under Section 20 if the activity at issue is not actually unlawful. Indeed, courts routinely dismiss IWA claims where the refused activity is not unlawful. *See e.g.*, *Day v. Inland SBA Mgmt. Corp.*, 2013 U.S. Dist. LEXIS 133605, *17 (N.D. Ill. Sept. 18, 2013) ("The loan which [the plaintiff] refused to approve was investigated by the Office of Credit Risk Management and no fraud or illegality was found."); *Lucas*, 2013 IL App (1st) 113052 at ¶ 28 ("Here, [the plaintiff] failed to establish that either treating male patients or attending training to treat male patients violated a law, rule, or regulation," and therefore, the court found that the plaintiff did not have a cause of action under the IWA because the activity in which she refused to participate was not illegal or prohibited by the Illinois Administrative Medical Code); *Ulm v. Mem'l Med. Ctr.*, 2012 IL App (4th) 110421, ¶ 29, 964 N.E.2d 632, 639-40 (granting summary judgment in favor of the defendant because the "plaintiff fail[ed] to persuade [the court that] defendant breached the Whistleblower Act because she cites no law, rule, or regulation which she would have violated by participating in the refused activity."); *Baham v. Packaging Corp. of Am.*, 2013 U.S. Dist. LEXIS 10483, *8 (W.D. La. Jan. 25, 2013) (in analyzing the IWA, the court stated that "Illinois' Whistleblower Statute requires that a plaintiff demonstrate that plaintiff refused to participate in an *actual* violation of state or federal law, rule or regulation.") (emphasis added).

Sardiga

Sardiga v. Northern Trust Co. demonstrates the two key elements of a Section 20 IWA claim: refusal and actual violation. In *Sardiga*, the plaintiff brought suit under the IWA alleging that he was fired as a result of "his repeated complaints and questions to supervisors which expressed his belief that Northern Trust was engaged in deceptive illegal practices." *Sardiga,* 409 Ill. App. 3d at 56.

The court rejected Sardiga's claim under the IWA, stating:

> Here, the language of the statute is unambiguous. "Refusing to participate" means exactly what it says: a plaintiff who participates in an activity that would result in a violation of a state or federal law, rule, or regulation cannot claim recourse under the Act. 740 ILCS 174/20 (West 2004). Instead, the plaintiff **must actually refuse to participate**.
> (emphasis added).

The court also found that Sardiga failed to satisfy the other elements of a Section 20

IWA claim, as the "pleadings, briefs, and the evidentiary material in the record" did not establish that Northern Trust's actions violated any state or federal law, rule or regulation. In fact, a simple "[r]efusal to participate in a poor business practice is not sufficient to satisfy the requirements of the Act." *See also Klinger v. BIA, Inc.*, 2011 U.S. Dist. LEXIS 119842, *18 (N.D. Ill. Oct. 18, 2011) ("[L]iability under the Act is civil in nature, not criminal, and in order to be held liable under the Act, an employer must know that the employee refused to participate in the illegal activity.").

Defenses under Section 20

Employers should take note of a major nuance between each section: "reasonable belief" was only included in the IWA where the employee reports an activity to an outside agency or organization. Section 20 of the IWA is silent on "reasonable belief." In other words, it is to the employer's, and its counsel's, advantage to discover whether the activity reported violates any laws or rules, or whether it is simply a poor business practice or plaintiff's less-than-ideal responsibility. Section 20 also provides an additional safeguard, as it requires the employee to actually refuse to participate. Complaints are insufficient, and so a plaintiff who voices her disagreement with an activity, but grudgingly continues to perform it, will most likely lose in a court. *See Sardiga*, 409 Ill. App. 3d at 62 ("'[R]efusing' means refusing; it does not mean 'complaining' or 'questioning.'").

Employer Defenses

The Illinois Whistleblower Act is more intricate than its rather simple title lets on. While the two sections providing a cause of action both prohibit retaliation, Section 15 prohibits retaliation against an employee who discloses information reasonably believed to be unlawful, while Section 20 prohibits retaliation against an employee for refusing to participate in an activity that would violate the law. Each section supports specific arguments, and, at times, a defense under Section 20 is irrelevant under Section 15. Nevertheless, defenses available under common law retaliatory discharge will often be appropriate to defend a whistleblower claim, as it is the plaintiff's responsibility to prove causation. This burden can often be rebutted by showing that the employer had no knowledge of plaintiff's disclosure or by providing valid, non-pretexual reasons for the adverse employment decision.

Employers and defense counsel alike should familiarize themselves with the nuances embedded within the Illinois Whistleblower Act. One error on plaintiff's part, whether it's the fact that the activity complained of is not unlawful or that the plaintiff was a bad employer, can tip the scales strongly in defendant's favor. ■

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The Complete Lawyer

By Matthew A. Passen YLS Chair

As has become custom for new Chairs of the YLS, I have chosen a theme for this bar year: The Complete Lawyer. At some point in our careers, we often come to the realization there is more to professional and personal success than simply billing hours or keeping our heads down in the comfort of our own offices.

A "complete" lawyer is one who distinguishes herself–not just by her professional accomplishments–but in other areas such as public service, business development, writing, speaking, and community leadership. This year we will focus on providing our members with as many of these opportunities as possible to add depth and balance to their careers, with the overall goal of becoming more complete lawyers.

A complete lawyer must possess a high level of professional skill and legal expertise. To that end, we have more than 20 committees with leadership dedicated to providing young lawyers with relevant, cutting-edge, substantive legal education and training. We will also introduce innovative professional development seminars on topics such as "Storytelling for Lawyers" and "Turning Your Witness into a Star."

As for public service, we are excited to introduce a new program, End Distracted Driving (www.endDD.org), which addresses the epidemic of distracted driving among teenagers. The program will involve lawyer-volunteers giving presentations to Chicagoland high school students on the legal and social hazards of texting-while-driving and other forms of distracted driving.

Finally, we will offer ongoing business development skills training for our members. In addition to a new program targeted at young lawyers at large law firms, we will provide seminars on topics such as "How to Work a Room at a Networking Event" and "Networking Skills Development for Lawyers of Diverse Cultures and Ethnicities." Our monthly socials will continue to provide members the opportunity to network and build relationships with one another.

This is just a taste of what we hope to accomplish this year. There is no shortage of ways to get involved with the YLS—write an article, plan a project, volunteer for a program—and in the process move farther along on the path to becoming a more complete lawyer. Please let me or the CBA staff know if you need help getting started. ■

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WHY NOT-FOR-PROFITS MAY NOT CALL INTO ILLINOIS WITH IMPUNITY

Careful Who You Call

By Fitzgerald T. Bramwell

We have all been there: you drop what you're doing to run to answer a phone call only to have a solicitor try to get you to donate money to some "good cause." Charity is a virtue, of course. But an ill–timed phone call can make even the most sympathetic recipient see red. What if, for example, the telephone subscriber had just put a child down for a nap and the phone call woke her up? Moreover, given the proliferation of for–profit fundraisers—*i.e.,* for–profit companies that call on behalf of the not–for–profit and that take the lion's share of any donation made—how much good are these solicitors actually doing? Too often, when a consumer challenges a not-for-profit solicitor, that solicitor offers the functional equivalent of a verbal shrug and merely states that the call is not illegal. But when it comes to activity in Illinois, that apathetic response is only half right.

The federal Telephone Consumer Protection Act of 1991 (the "TCPA") represented a first major step with respect to restricting unwanted solicitation calls. Principally, the TCPA restricts junk faxes, calls to cell phones, and telephonic solicitations made by for–profit corporations. *See generally* 47 U.S.C. §227(b), (c). Case law has expanded the plain language of the TCPA to protect against unwanted solicitation via text message. *See, e.g., Gomez v. Campbell-Ewald Co.,* 768 F.3d 871, 874 (9th Cir. 2014). Because the TCPA provides a private right of action and statutory damages to aggrieved consumers, 47 U.S.C. §227(b)(3), (c)(5), there has been a significant amount of TCPA litigation over the past several years. The TCPA's current regulations, however, generally exempt not–for–profit companies and entities calling on their behalf. *See* 47 C.F.R. §64.1200(a)(2), (3).

If federal law provided the only regulatory regime, solicitors acting on behalf of not–for–profits could rest easy. But as the Seventh Circuit recently explained, the TCPA is not the only game in town. *See Patriotic Veterans v. Indiana*, 736 F.3d 1041 (7th Cir. 2013). At issue in *Patriotic*

Veterans was whether an Indiana statute that regulated *all* calls made using a prerecorded or synthesized voice would prevent an Illinois not–for–profit's ability to make political calls into the state of Indiana. Because political robocalls are not regulated under the TCPA, the plaintiff not–for–profit sought a declaratory judgment that the Indiana law was unenforceable against it. More specifically, because it planned on making all calls from outside of Indiana, the not–for–profit argued that the TCPA preempted the Indiana law. The Seventh Circuit disagreed: "[i]t is clear that the TCPA does not expressly or impliedly preempt the Indiana statute and we so hold."

So what should we learn from *Patriotic Veterans*? The short version is that anyone planning a telemarketing campaign should understand the laws of the states in which they plan to solicit. In Illinois, this means understanding the Restricted Call Registry Act, 815 ILCS 401/1, *et. seq.*, which is the principal Illinois statute regulating telephonic solicitation. The Restricted Call Registry Act's definition of "telephone solicitation" is broader than its federal counterpart's. While the TCPA defines "telephone solicitation" merely as the initiation of a call or message "for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services," the Restricted Call Registry Act's expanded definition includes calls to encourage "the purchase or rental of, or investment in, property, goods, or services, *or for the purposes of soliciting charitable contributions*." *Compare* 47 U.S.C. §227(a)(4) *with* 815 ILCS 401/5(e) (emphasis added). Anyone conducting telephonic solicitations in Illinois must purchase a copy of the restricted call registry—the same do–not–call registry established for purposes of the TCPA—at least once a quarter. 815 ILCS 402/20.

While the Restricted Call Registry Act does not *prohibit* solicitation calls by or on behalf of not–for–profits, it imposes significant regulations. Immediately upon "making contact with the consumer," a solicitor acting on behalf of a not–for–profit must disclose *all* of the following information: (1) the caller's true first and last name, and (2) the name, address, and telephone number of the organization. 815 ILCS 401/5(e)(4). The courts have yet to determine whether "the organization" means the not–for–profit itself or the organization of the solicitor calling on behalf of the not–for–profit.

Enforcement and Penalties

Failure to disclose the information required by section 815 ILCS 401/5(e)(4) means that the caller has made a solicitation under the Restricted Call Registry Act and is potentially liable for penalties. Like its federal counterpart, there are two enforcement regimes under the Restricted Call Registry Act. As an initial matter, an aggrieved consumer may file a complaint with the Illinois Commerce Commission, which may then initiate administrative proceedings against the telephonic solicitor. 815 ILCS 402/35. However, despite the availability of administrative remedies, it seems few consumers are taking advantage. In response to a Freedom of Information Act request, the Illinois Commerce Commission reported only 31, 31, and 28 informal complaints in calendar years 2012, 2013, and 2014, respectively. And the vast majority of these complaints were referred to the Federal Trade Commission. Contrast this to the hundreds of thousands of complaints that the Federal Trade Commission receives every *month* for TCPA violations. *See Patriotic Veterans*, 736 F.3d at 1004.

The greater potential concern for telephonic solicitors is that the Restricted Call Registry Act provides a private right of action, and statutory damages of $500 per violation. 815 ILCS 405/50. While the Restricted Call Registry Act's maximum exposure is one–third of that under the TCPA, *see* 47 U.S.C. §227(b)(3), there is the potential for significant liability in the event of a class action.

The requirements of the Restricted Call Registry Act should cause not–for–profit companies, and those soliciting on their behalf, to question whether the proverbial juice is worth squeezing the fruit. Certainly, the required disclosures can be a mouthful for a solicitor trying to establish rapport with a potential donor; however, weighed against the potential for expensive litigation counsel may be wise to advise their clients to adopt a script that discloses all of the required information up front. If experiences with the TCPA are any indication of the disdain that the plaintiffs' bar has for unwelcome phone calls, failing to make required disclosures under the Restricted Call Registry Act could start a new wave of telemarketing litigation in Illinois. ■

Fitzgerald T. Bramwell is the principal at the Law Offices of Fitzgerald Bramwell, a litigation firm serving clients in consumer fraud litigation, employment litigation, and general commercial litigation in the Chicago metropolitan area.

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THE PURSUIT OF AGENCY IN TORT

Creative Thinking and Practical Strategy

By Glennon F. Curran

Before filing a complaint, agency should be a routine part of your case assessment. Though it will not always be a viable theory, it is nonetheless an important part of your strategic toolbox. This article will provide a basic framework for identifying and pursuing an agency theory in tort.

Agency is useful because it allows you to access deeper pockets when the same is necessary for your client to be made whole. A hypothetical is instructive. Your client is the victim of a severe motor vehicle accident causing hundreds of thousands of dollars in personal damages. The defendant has the minimum liability insurance coverage required under Illinois law—twenty thousand dollars. You win a huge negligence verdict for your client. The defendant's insurance carrier hands you a $20,000 check. You file a separate action to collect the excess verdict from the defendant, but she subsequently declares bankruptcy. You and your client never collect the excess verdict because it is discharged as part of the bankruptcy proceeding.

It is usually difficult, sometimes impossible, and always expensive to collect an excess award from an individual defendant. Thus, where the tortfeasor's liability insurance is insufficient to cover your client's damages, it is vitally important–at the outset of the case–to identify and pursue all potential sources of recovery, one of which might be an agency theory that imputes vicarious liability to a third party. At the same time, you have an ethical obligation to file claims in good faith. Therefore, you cannot merely start naming your client's employer, other persons, and entities; you must identify some kind of factual basis for agency.

Identifying a Potential Agency Theory with Creative Thinking

Agency is an amorphous legal concept. It comes in many shapes, sizes, manners, and degrees. It is the concept's innate legal flexibility that opens itself to your own creative interpretation; that is its strength. Keep in mind that the absence of an employment relationship is not tantamount to the absence of an agency theory. For example, agency can be imputed to a volunteer, a business relation, or someone who tasks another to act on their behalf under any number of different circumstances.

Thinking creatively requires viewing the tortfeasor's conduct *as economic activity in-itself*. Think of the economy as a web of relationships between people and entities. A person's conduct is often woven in contractual obligations, actual and implied sources of authority, actual and implied rights of control, responsibilities, policies, procedures, customs, practices, norms, benefits, gains, losses, courses of conduct, and understandings. Picture a tortfeasor as being tangled in such a web at the exact moment of the occurrence giving rise to your client's claim. Lurking at the periphery of what may initially appear to be an ordinary occurrence is the economic interest and activity of third parties who may be directly involved. It is your job to define the unique contours of the tortfeasor's economic web. If you can understand the occurrence as a manifestation of some third party's economic interest, you can often meet the threshold to create a question of fact about a that party's vicarious liability for the tort. You must then ground your budding theory in exhaustive research.

Grounding Your Theory in the Law

Your pursuit of vicarious liability must at all times be informed by the legal standards relating to agency. In order to prove an agency theory, the plaintiff must prove two elements: (1) a principal-agent relationship existed; and (2) the agent was acting within the scope of her authority at the time of the tortious conduct.

If the suspected agent is an *employee* of the suspected principal, your analysis under the first prong is straightforward. An agency relationship certainly exists between employer and employee, and the second prong of the analysis ("scope") usually becomes the contested issue. Frequently though, you will be required to distinguish an employee from an independent contractor (who is typically not an agent). The Illinois Supreme Court has looked to the criteria set forth in § 220 of the Restatement (Second) of Agency (1958) to distinguish the two. See *Hills v. Bridgeview Little League Ass'n*, 195 Ill.2d 210, 235 (2000).

However, an employer-employee relationship need not exist. Illinois case law understands that an agency relationship is "not capable of exact definition" and requires a highly fact-specific analysis in each situation. See *Hills*, 195 Ill.2d 210 at 235 (citing the Restatement (Second) of Agency § 220, Comment *c*). An agent is generally someone whose physical conduct is controlled or is subject to the right of control by the principal, though control is not by itself determinative. The right to control may be attenuated (especially in volunteer situations) or the relationship may even include an understanding that the agent is not to be controlled. Hence, there are a host of other factors that courts consider and a number of decisions focusing on varying aspects. For example, some decisions emphasize whether the agent can affect the legal relationships of the principal. It is worth noting that the case law concerning non-employee agents in tort is generally less voluminous compared to the body of law regarding employees and relies on the application of broad concepts. *See, e.g., Alms v. Baum*, 343 Ill.App.3d 67, 71-78 (1st Dist. 2003) (discussing the attenuated nature of "control" in the context of a volunteer). A good starting point for the non-employee agency relationship is the definition contained in Illinois Pattern Jury Instruction 50.05 (titled "Agent–Definition").

The plaintiff will next need to establish the second prong of the analysis–that the tortfeasor was acting within the scope of his authority as an agent during the occurrence. Case law regarding scope of authority in the employment context has developed with more specificity given the prevalence of the relationship in society. To establish scope of employment, the plaintiff must prove the three prongs of § 228 of the Restatement (Second) of Agency: that the conduct (1) was the type the employee was employed to perform; (2) occurred substantially within the authorized time and space limits of the employment; and (3) was actuated, at least in part, by a purpose to serve the employer. In the absence of an employment relationship, courts are guided by more general applications of the concept of authority. The Illinois Pattern Jury Instructions are once again a good starting point for that analysis (See IPI 50.06: "Agent–Issue as to scope of Authority of Agent Only").

Remember that the evidence in your client's case may obviate one or both of the elements. If your client is hit by a commercial vehicle, there may be no question about whether the driver was an agent of the company, or whether she was acting within the scope of her authority at the time of the accident. Other times, scope of authority/ employment might be the only question. Each case requires an analysis of its own unique facts and–in the atypical scenarios–a creative effort on your part to fit those facts into the rubric of existing law. Use research to formulate your theory before, during, and after discovery of all the facts.

Targeting the Issue of Agency during Investigation and Litigation

What follows are some practical steps to take during the pre-litigation and litigation phases of your client's claim. As you encounter agency fact patterns in your practice, experiment with different strategies and note the practices that work for you. The following practice tips are by no means exhaustive, but they are a good place to start.

First, shortly after taking the case, assess the balance between your client's damages and the limits of available recovery. Obtain information about your client's bills and

injuries, and make an informed decision about the potential value of her damages. Then, determine the limits of recovery. Requesting the limits of insurance coverage from the appropriate liability insurance providers usually informs this determination. However, this step may vary depending on the nature of the defendant. Perhaps you will need to make an assessment of a defendant company's liquidity, assets, or some other measure. It is important to note that agency is not something that should be pursued only if there is an insufficient source of recovery. If a commercial vehicle hits your client, you might want to sue both the driver and the company for various reasons. But in a situation where there is an insufficient source of recovery for the damages–especially where agency is not obvious–it will serve your client well to start investigating an agency theory.

Second, pursue any investigative inroads that might support an agency theory prior to filing the complaint. Show up to the hearings in the underlying criminal violation. Talk to the attorneys involved in that proceeding and show up for the statements of the defendants and other witnesses. Locate publicly available information about the defendant. For example, you can often identify a person's employer, and even their job duties, from diligent internet research. Look for information in any investigative reports of the occurrence. You want to learn as much as you can about the economic web attached to the defendant's conduct prior to the time you seek that information directly during discovery so that you can target issues as specifically as possible.

Third, file early. Your client's case is subject to a statute of limitations, so your investigative window is limited. You should file the case as early as possible so that you have enough time to discover and name any new parties prior to expiration of the statute of limitations. Obtain leave of court to amend your complaint and add any suspected principals under a theory of vicarious liability.

Fourth, aggressively target the issue of agency in discovery. Design specific interrogatories to shed light on the nature of the defendant's conduct at the time of the occurrence. Where does she work? Where was she coming from? Going to? Was she carrying anything in her vehicle? Transporting anything? Did she have tools? Was she being compensated at the time of the accident? Did she attend, or intend to attend, any work related events on that date? Request or subpoena any documents that could shed light on agency. Cell phone records, for example, will show whom the defendant was talking with on the date of the accident. Employment contracts and documents may give you reason to characterize the defendant's conduct as incident to employment, regardless of how she or anyone else characterizes her job duties during deposition. Union agreements often impart rights and obligations that color the defendant's conduct and relationships. Use the vast paper trail of modern American business to your advantage. Read the fine print, literally.

Exhaust the issue of agency during the defendant's deposition. Ask every question you can think of in an attempt to uncover the economic web. Talk to witnesses and take their depositions pursuant to subpoena. Let the information you discover guide your investigation, and let your investigation be shaped by the applicable legal standards. Ask questions during the deposition that are designed to ascertain information responsive to the legal standards and tests. Ask questions that frame the facts in the same light as the facts in benchmark cases. As your theory begins to take shape, relentlessly ask yourself why your theory meets the demands of the law.

Finally, realize that your efforts are undertaken to be victorious in two essential battles: the inevitable motion for summary judgment, and trial. Remember that your ability to beat summary judgment on the agency theory will often create settlement leverage that you did not previously have. And even if the defendant refuses to come to the table, your efforts will enable you to present a strong and cohesive theory to a jury. Either way, you can be confident that you have put your client and their family in the best possible position for success. ■

Glennon F. Curran is a Partner and civil litigator at Alberts Curran & Eiler, P.C. in Chicago. Glennon is a Plaintiff's attorney focusing his practice on personal injury, wrongful death, nursing home abuse and neglect, construction negligence, and a variety of other torts.

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LEGAL ETHICS

BY JOHN LEVIN

Sole Practitioners and Serving the Middle Class

This is part three of a three-part series. The previous two columns discussed the surplus of law school graduates unable to find work and the lack of affordable legal services for the middle class. One possible way to ameliorate this problem is to license non-lawyer legal practitioners to provide some of these services. (This solution is under consideration in a number of venues creating the predictable furor.) Another is for the surplus lawyers currently graduating from law schools to provide these services either as lower paid employees of firms or as sole practitioners. It is the latter alternative that prompted this column.

The April 26 edition of the *Chicago Daily Law Bulletin* ran an article by John Flynn Rooney reporting that sole practitioners had more disciplinary matters before the Illinois ARDC than did attorneys working within firms. Some of the reasons given were the increasing complexity of running a law office and the lack of back-up in a solo practice. The statistic also reminded me of statements made by George Overton, who wrote this column for the *CBA Record* for many years. He said that a sole practitioner who tried to take on every case ran a high risk of malpractice. The law had become so complex and specialized that there was no way to do it all.

For example, imagine someone walking into an office with a question about his or her pension benefits. There is no practical way a lawyer could effectively answer the question unless that lawyer were an expert or had the time to do the necessary research (and a client willing to pay for it). The law is simply too complex. Recent changes in Illinois regarding handling of retainers and client funds, while not complex, add a level of administration which impacts the sole practitioner more than the firm lawyer. To make matters even harder, Rule of Professional Conduct 1.1 (competence) has been interpreted to include technological competence and the understanding and use of social media. These topics require special training and evolve almost daily.

Some of these problems are the unintended consequences of actions of the legal profession. As a society we try and correct problems and perceived injustice through laws and regulations. As lawyers, we are only too willing to help. However, as a consequence, minor personal matters affecting ordinary middle class people become enmeshed in seemingly Byzantine regulations that should only realistically apply to complex institutions. And lawyers have to master these regulations to properly advise their clients.

So what are possible remedies? The simplest is to change the law to make it more workable when applied to ordinary middle class people–but this is hopelessly aspirational. For lawyers, the best advice is to work within your competency or areas in which you can quickly learn the law. Otherwise, pass the matter on to the experts. For the middle class client, there is no easy answer. There will simply be questions that can only be handled by high-priced firm attorneys–and these questions will likely go unanswered. ■

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

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

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ETHICS EXTRA

BY BRANDON DJONLICH

Attorney Malpractice Statute of Repose: Applies to Non-Clients and Clients

The law was well–settled before *Evanston Insurance v. Riseborough, 2014 IL 114271*, that the statute of repose in Section 13-214.3 of the Illinois Code of Civil Procedure (735 ILCS 5/13.214.3) applied to claims against lawyers for professional misconduct asserted by clients. Whether the statute applied to claims against lawyers for professional misconduct asserted by non-clients was unsettled. That issue is no longer unsettled. In *Evanston Insurance* the Illinois Supreme Court rejected the holdings of Illinois appellate courts and federal courts that limited the statute of repose to claims against lawyers for professional misconduct asserted by clients. *Evanston Insurance* held that the statute of repose applies to claims against lawyers for professional misconduct by both clients and non-clients.

Section 13-214.3, is both a statute of limitations and a statute of repose. A cause of action for professional misconduct by lawyers accrues for purposes of the statute of limitations when the potential plaintiff knows or reasonably should know that a wrong was committed and thus must make inquiry as to whether the potential plaintiff has a cause of action. A cause of action accrues for purposes of the statute of repose when the lawyer commits the misconduct. Under *Evanston Insurance*, the statute of limitations and statue of repose under Section 13-214.3 applies to both clients and non–clients.

Brandon Djonlich is a 2015 graduate of The John Marshall Law School, where he was a Morrissey Scholar

Brief Summary

In *Evanston Insurance*, in 1996, an employee of a subcontractor for the construction of a warehouse was injured. The injured workman brought a personal injury action against general contractor, Kiferbaum Construction (the Corporation) for the injuries incurred on the job. Defendant law firm, Jacobson & Riseborough (Riseborough) represented the Corporation. At the time of the accident the Corporation was a named insured under a number of insurance policies. Evanston Insurance Company had named the Corporation as an additional insured under the subcontractors' policies. *Evanston Insurance Company, 2014 IL 114271* at 2.

In 2000, the parties reached a settlement in the personal injury case. The insurers, however, disagreed as to who was responsible under the various policies. The insurers entered into an agreement, referred to by the parties as the "Fund and Fight Agreement," in which they agreed to contribute their respective policy limits to the fund settlement. Riseborough signed the agreement as the "duly authorized agent and representative of [the Corporation]." *Id.* at 2.

In 2003, the Corporation's president filed an affidavit stating that he had no knowledge of the "Fund and Fight Agreement" at the time of its creation and that the attorney, George Riseborough, lacked authorization to sign the agreement on behalf of the Corporation. *Id.* at 3. In 2009, the Corporation moved for summary judgment on the coverage issue. The trial court entered judgment in favor of the Corporation and against the insurer, finding that the Corporation had not given authority to Riseborough to sign the "Fund and Fight Agreement" on its behalf. *Id.* While the insurance coverage proceedings were still pending, on December 22, 2005, insurer Evanston filed a complaint against Riseborough. Evanston alleged breach of an implied warranty of authority, fraudulent misrepresentation, and negligent misrepresentation based on Riseborough's wrongful execution of the "Fund and Fight Agreement." *Id.* The trial court dismissed Evanston's complaint without prejudice because the insurance coverage proceedings were still pending. *Id.* at 4.

In 2009, Evanston filed an amended complaint reasserting its claims against Riseborough. Riseborough filed a motion for summary judgment, which the trial court granted on the basis that the action was barred by the six-year statute of repose. *Id.* The Appellate Court reversed. *Id.* The Supreme Court reversed the Appellate Court and affirmed the trial court's dismissal. It held that the statute of repose of Section 13-214.3 is not limited to claims asserted by a client, but also applies to claims asserted by non-clients. *Id.* at 14.

Statute of Repose: Client and Non-Client Claims

Under Section 13-214.3, an action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services *** may not be commenced *** more than six years after the date on which the act or omission occurred." 735 ILCS 5/13-214.3 (b), (c) (West 2008).

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LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

Super Search Tips

You can be as organized as you want to, but having good search tools on hand is an essential element to a digital office. Understanding how to use what you have built into your operating system is key. However, there are more robust options that let you search farther and better that might be appealing.

Windows 7/Vista/8/10 and Mac OSx have good search tools built in. Windows users with Microsoft Office, including MS Outlook, can search local drives, network drives and email folders with a few clicks. Click on the Start button and type your keywords into the space labelled "Search Programs and Files". Don't forget you can use Boolean filters in your search such as AND, NOT, OR in all capital letters, or search for phrases by using quotes around the phrase. You can also combine Boolean filters and file properties to further narrow your search, such as looking for terms in a file with a specific author such as *author: Catherine (encryption AND email)*. You will begin to get results and can quickly narrow your search to specific indexes by choosing to limit to MS Outlook, files, pictures, etc. Or choose "More Results" to see all results and then limit and sort your search results by document type, date, author, location.

Catherine Sanders Reach is the Director, Law Practice Management & Technology at the CBA. Visit www.chicagobar.org/lpmt for articles, how-to videos, upcoming training and CLE, services and more.

You will need to be in "detail" view to see the column headers to click on to sort and limit your results. If you want to be able to search specific files and folders in the default search you will need to change your indexing and search options in Windows 7. In the Start menu click "Control Panel" and choose "Indexing Options". This will show you what information is being indexed and available when you search from the Start menu. If you want to add a new location click on "Advanced" and scroll to add another folder.

Enhanced Searches

A limitation of the Windows search is that it only indexes limited file types, primarily Office documents and PDFs. If you need to be able to index more file types, or are seeking enhanced search check out third party desktop search engine, such as Copernic Desktop Search or X1. These programs can search within multiple file formats, at the speed of light. Of course, the added bonus is that these desktop search tools not only search the research folder, but also your entire hard drive or specified network drives. You will have a fighting chance at finding files, emails, and more on your desktop, even if you haven't been very organized.

X1 and Copernic are two sophisticated desktop search engines that make finding content on your local machine, networked drives, or external drives a snap. Superfast, imbued with bells and whistles, and reasonably priced, these tools have been around for some time. But, the developers have not rested on their laurels. Both of these super powered search tools now offer mobile apps, to let you search your data on the go.

LPMT Tip of the Month

To Allow or Not to Allow Client Reviews on Facebook: Choose Your Category Wisely

Whether or not a person can leave a review of your law firm on Facebook is determined by how you are categorized. Only pages categorized as "Local Businesses" have the ratings and reviews section. If you'd rather not let clients leave reviews, switch the category to "Companies & Organizations." (Please note, "Local Business" pages also have a map feature and defined subcategories, whereas "Companies and Organization" pages do not).

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X1 Mobile Search

A native app for iPhone or iPad, this free app will let users search their Macs or Windows PC with or without having X1 Professional Client installed (although they do mention it works *best* with X1 search). X1 Mobile Search also lets you view and display files, share files, and download files for offline use. Setup includes downloading the X1 Mobile Search app from the iTunes store and installing the Windows or Mac version of X1 Mobile Connect. Connections are protected by x.509 PKI based two-factor authentication and RSA powered SSL/TLS.

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Speakers: Judge Maryam Ahmad, Circuit Court of Cook County, Maurice Grant, Grant Schumann LLC, Judge Thomas R. Mulroy, Circuit Court of Cook County, and Andrew W. Vail, Jenner & Block.

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A PERSON OF INTEREST

BY GEOFFREY BURKHART

Getting to Know...Amy Campanelli

Congratulations on your appointment as Cook County Public Defender. What will you do first?

Right now I'm filling leadership positions. I'm also enhancing our training program. We have a young office, so we'll be doing heavy training on trial skills, mitigation, and collateral consequences. Later this year, I plan on launching our Department of Community Affairs. We'll go to local high schools, explain what we do, teach kids about their legal rights, and address issues like sexting and cyberbullying.

Most recently you were Deputy Assistant for Suburban Operations. Is it difficult to step away from the courtroom?

I've been in management since 2003. When I was in charge of Suburban Operations, most of my time was spent out of the courtroom, so this isn't a big change in that sense. I made an effort to be in court as often as possible, and I plan to do that in this position. But when I talk about the people we represent, I still call them *my clients*, because as the Public Defender *they are my clients*. I have a duty to protect their rights and to ensure that their lawyers are well trained.

There's a long-standing myth among clients that public defenders aren't attorneys. How did that start?

I'm not sure how it started. It may stem from our services being free. A lot of people also distrust government agencies. But we chip away at that myth every day by fighting hard for our clients and earning their respect. Our community outreach program will also help educate the public about who we are and what we do, but it takes a while.

Is the Public Defender an equal partner in the justice system in Cook County?

I think so. I've been doing this a long time, and the other people in the justice system know me. I was at a meeting today with judges, prosecutors, and police, and was definitely treated as an equal partner in this system. We want parity with prosecutors, and the public shouldn't want it any other way.

You're entering this position at an interesting time for criminal justice. Do you think the criminal justice system will look different in the coming years?

This is an exciting time to be here. We can really make a difference. Governor Rauner wants to reduce the prison population in Illinois. I'm right there with him, so long as it leads to us treating people fairly. Right now, it's costing too much money, and it's not protecting the public. President Preckwinkle is urging the Illinois General Assembly to end automatic transfer of juveniles to adult courts. I agree. Children don't stop being children just because they've committed a crime—they still need to be treated as children. Plus, we have to have faith in our judiciary. We need to allow our judges to use discretion. Automatic transfer laws and mandatory sentence enhancements take that discretion away.

How did you become a public defender?

I knew from a young age that I wanted to be a lawyer. I was a leader in my high school, and I always liked public speaking. I thought I would go into international commercial law because I speak French, and it seemed interesting. But I worked for an attorney in that area during law school and knew I wanted something else. Then I had a chance to work on a serious murder case while clerking with the Cook County Public Defender. I knew then that I wanted to stay at the office.

Are there any other lawyers in your family?

Other than my husband, I'm the only one. He and I met at a softball game: defenders versus prosecutors. I have a sister who worked at Misericordia, another who is a special education teacher, and two brothers who work with computers. But my parents certainly affected my decision to become an attorney. They taught us from a young age that everyone should be treated equally—that we should speak out instead of remaining silent and say uncomfortable truths. My mom lost a few friends over the years when talking about social justice issues, but she was right.

You took a leave from the office a few years ago. Why did you leave?

Geoffrey Burkhart is Attorney Project Director at the American Bar Association and a member of the CBA Record Editorial Board.

A PERSON OF INTEREST

"A Person of Interest" is the **CBA Record's** attempt to acquaint you with someone we think you will enjoy getting to know. If you have an idea for someone we should feature, we'd love to hear from you! Send an email to publications@chicagobar.org.

When I left, I had 150 felony cases at any given time. About 25% of those cases were drug cases, but that caseload also included sexual assaults and death penalty work. We'd have jury trials until 8 or 9 at night and do bench trials during lunch breaks—I was never home. My youngest child was two years old and I wanted to have another child. It was taking a toll on our family, so I decided to take a break. I was away from the office from 1998 through 2003. I still worked on cases with my husband during that time, but I spent a lot of time with my family.

Justice Ginsburg recently said that perhaps men and women can have it all, but not all at once.

I think that's right. Attorneys, especially women, are expected to run households while practicing law. I know what it's like: you don't want to give up your career. You can do both, but none of us are Wonder Woman. I'm mindful of that when I'm setting policies in our office.

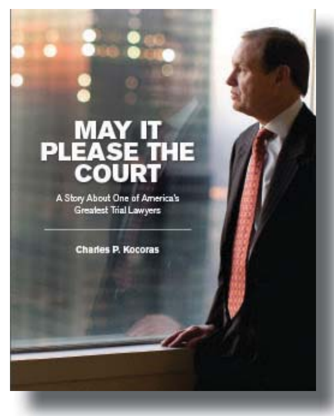
Are public defender caseloads better now than in the past?

They're better now. We had only two attorneys per courtroom at 26th Street up until 2000. Now, most courtrooms have three attorneys, so our caseloads aren't what they used to be. Still, the caseloads for some felony attorneys are creeping up toward 100 cases or more. We have no caseload limits in Cook County. There's no question that when caseloads are too high, they take longer to resolve, increasing the time a client spends in jail. When that happens, everyone suffers—the client, his family, and our community. ■

SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

May It Please The Court



May It Please The Court
By Charles P. Kocoras
Law Bulletin Publishing Company, 2015

Reviewed by Bonnie McGrath

I must admit that when I was sent a copy of "May it Please the Court" and asked to review it for the *Record*, I was a bit skeptical. Judged by its cover, the book seemed to be a personal love letter in praise of the life and career of Chicago attorney Dan Webb--"the greatest trial lawyer in America these past 40 years"–from U.S. District Court Judge Charles P. Kocoras.

I thought the book would be filled with platitudes about Kocoras' famous friend and colleague. A list of compliments. I thought I would be drifting off. Bored. Maybe even giggling a bit at a tome that seemed to idolize a present day Perry Mason or a new-fangled Clarence Darrow–or both rolled into one.

But I was completely wrong. And completely surprised. Once I started reading, I was hooked. I learned a lot. I couldn't wait to get through the 200-plus pages. The writing was good, the research well done. And I have to confess that I haven't enjoyed a work of nonfiction (or fiction, for that matter) about the legal profession this much in a long, long time.

Kocoras says he always wanted to write a book and finally settled on Dan Webb as a subject. They worked together in the U.S. Attorney's Office, Northern District of Illinois. When Kocoras became a judge, he experienced Webb's gifts from another angle. Yes, the book is a love letter, but one that has a tremendous amount to offer.

As a Chicago history buff, I found the book a gem. Some of the best stories about Chicago emanate from its courtrooms. They help explain who we are and where we come from. The stories of *Greylord*, crooked City Clerk Edward J. Barrett, the Koschman/Vanecko situation and infamous police corruption cases such as *The Marquette 10* are well told in the book--again, all centering around Webb's lawyering. His skill is described in great detail; transcripts are often provided to illustrate that skill, thus making the book an ideal one for law students as well. And for those of us Chicagoans who haven't thought of these kinds of cases for a while, a refresher is indeed welcome.

The book also provides insight, detail and inside information about cases that may have been confusing, complex and hard to keep up with at the time: *Iran-Contra, Microsoft, Phillip Morris* and Governor George Ryan, for example. They are clarified, discussed and summarized very well. The reporting centers on Webb's role in those cases--and that winds up pushing the reader very uniquely into the back stories. Regarding cases that may not be remembered very well, or maybe even misremembered over time, Kocoras becomes a recollection refresher, so to speak--and I was led to a perspective regarding several historic cases that I never could have imagined. With Kocoras providing the way via his beloved friend, the cases take on new life and provide a different view of politics and business.

Never was I bored or giggling or even the least bit skeptical once I got into this book. Kocoras has done a remarkable job in expressing his deep admiration for a friend, but he also has provided plenty of ammo to back it up. This book is no dreary cliche, no undeserved reward, no platitudinous balloon full of hot air. This book is the real deal not only as far as historic storytelling and courtroom drama, but in its praise for Dan Webb's career. Who knew? ■

Bonnie McGrath is a sole practitioner and a member of the CBA Record Editorial Board.

Note: **CBA Record** *Editor-in-Chief Amy Cook was one of the editors of the Kocoras book, but was not involved in writing or editing of this review.*

Supreme Court Group Bar Admission Excursion

The CBA will host an exclusive group admission to the Bar of the Supreme Court of the United States from October 12-14. Our group will enjoy 3 days of festivities in Washington D.C. including a gourmet reception, a swearing-in ceremony before the Supreme Court sitting en banc with the Oath administered by the Chief Justice, oral arguments before the Court, a VIP tour of the Library of Congress, and more.

Go to www.chicagobar.org for the trip itinerary, requirements, and more. For reservations and more information, contact Terry Berger at 410-840-5050. *Trip will be conducted by the Supreme Court Group.*

Murphy's Law
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received The John Marshall Law School's Distinguished Service Award...**Matthew G. Jones** is practicing with Kelley Kronenberg in the firm's employment and labor law group...**Katherine A. Neville** is an associate at Barack Ferrazzano Kirschbaum & Nagelberg LLP...**Daniel A. Cotter** has been appointed by the board of managers to replace Kevin P. Durkin as one of the CBA's two representatives to the American Bar Association's House of Delegates... **Gery Chico,** Chico & Nunes, has been appointed to the board of directors of the Illinois Equal Justice Foundation… **Aurora Abella-Austriaco,** Austriaco & Associates has been appointed, and **Terri L. Mascherin,** Jenner & Block has been reappointed to the board of directors of the Lawyers Trust Fund of Illinois…**Ernesto R. Palomo,** Locke Lord Edwards LLP, has been named to the board of directors of the Chicago Committee…**Paul B. Provaznik** is now at Davis McGrath, LLC…**Kevin H. Morse,** Arnstein & Lehr LLP, will participate in the National Conference of Bankruptcy Judges in September… **Keith A. Hebeisen,** Clifford Law Offices, received the Award for Excellence in Pro Bono Service from the U.S. District Court and Chicago Chapter of the Federal Bar Association…**Holly E. Snow** of Paul Hastings has been appointed to the board of directors of the Legal Assistance Foundation of Chicago…**Rick Berman,** Illinois Appellate Court Justice **Cynthia Y. Cobbs, Marvel Johnson-Hines, Melissa B. Hirst, Leanne Levy, Sarah E. Reynolds, Matthew T. Jenkins**, **Allison Wood** and **Matthew A. Passen** were appointed to the board of directors of the Center for Conflict Resolution.

Best wishes to longtime CBA members **Sonja Johnson** and **Corey Berman** on their retirement and relocation to Washington State...U.S. District Court Judge **Milton I. Shadur** and his wife on their 50th Anniversary...**Jack Joseph** on celebrating his 65th year as a CBA member... **Jeffrey Becker,** Swanson, Martin & Bell LLP, was a recent speaker at the Dramatists Guild at Porchlight Music Theatre's educational program…**John C. Ellis** has opened Ellis Legal P.C....**Lindsay A. Todnem** is an associate at Goodsmith Gregg & Unruh… **Genita Robinson** is retiring as Executive Director of Lawyers Lend-A-Hand to Youth.

Birthdays

Birthday wishes to Hon. **William J. Bauer** (ageless) and to **Thomas A. Demetrio.**

Condolences

Condolences to the family and friends of longtime member and star of the Association's Annual Christmas Spirits Show **John H. McDermott.** ■

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Send your views to the **CBA Record,** 321 South Plymouth Court, Chicago, IL 60604. Or you can e-mail them to dbeam@chicagobar.org. The magazine reserves the right to edit letters prior to publishing.

Justice Stevens
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In 1970, President Nixon appointed Justice Stevens to a seat on the Seventh Circuit, based upon the recommendation of Senator Charles Percy, Stevens's friend and former classmate at the University of Chicago. Five years later, President Ford nominated Stevens to succeed retiring Justice William O. Douglas on the Supreme Court, and Stevens won unanimous Senate approval only 19 days after his nomination.

During his lengthy tenure on the Court, Justice Stevens gradually emerged as one of its leading, liberal voices, even though he had twice been appointed by Republican presidents. In his own view, however, it was the Court that changed more than he did, becoming far more conservative over time. Nonetheless, Judge Williams questioned Justice Stevens about several areas of the law in which his views clearly evolved during his decades on the Court, such as affirmative action programs, of which he grew more accepting, and the death penalty, which he ultimately concluded was unconstitutional.

In his later years on the Court, Justice Stevens voted to expand the rights of detainees at Guantanamo Bay, Cuba, and he now believes those who have been held in captivity but are not deemed a security threat should receive some form of reparations from the federal government, without having to first proceed through the U.S. legal system.

Since his retirement from the Court in 2010, Justice Stevens has remained extremely active. In addition to exercising regularly and delivering speeches throughout the country, Justice Stevens has written two books and is currently working on his memoirs. His first book, "Five Chiefs," discusses the history of the Supreme Court under the past five Chief Justices, including Justices Burger, Rehnquist and Roberts, with whom he served on the Court. His second book, "Six Amendments: How and Why We Should Change the Constitution," proposes six amendments to the United States Constitution, including limiting the scope of the Second Amendment, abolishing the death penalty, imposing restrictions on campaign financing, and restricting the practice of political gerrymandering. Not surprisingly, Justice Stevens believes strongly that many of the nation's most serious problems could be alleviated by adopting the six amendments proposed in his book.

The program concluded with Justice Stevens offering some practical advice on life and lawyering. For example, he believes that lawyers should adopt a unique practice, always be prepared, perform a significant amount pro bono work, take a personal interest in people, and express appreciation for others' hard work. These lessons have obviously served Justice Stevens well, as he remains a revered figure among his former law clerks and many in the Chicago legal community. ■

Ethics Extra
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The precise scope of Section 13-214.3 had been a key area of confusion. In this case, Riseborough committed the malpractice when he signed the "Fund and Fight Agreement" without authority on October 23, 2000. Evanston filed its complaint on December 23, 2009. If the statute of repose of Section 13-214.3 applied to a non-client, it would bar Evanston's suit as having been filed more than three years after the expiration of the six-year period of repose.

Courts had interpreted the statute of repose to apply only to claims brought by clients. Under *Evanston Insurance*, Section 13-214.3 is not limited to claims asserted by a client, but also applies to claims asserted by non-clients. In reaching its holding, the Illinois Supreme Court also stated that under the express language of the statute, "it is the nature of the act or omission, rather than the identity of the plaintiff, that determines whether the statute of repose applies to a claim brought against an attorney."

Commentary

Evanston Insurance re-emphasized two important thoughts for practitioners: First, the statute of repose is unforgiving; second, unsettled questions of law are hazardous. Evanston Insurance knew or should have known that Section 13-214.3 of the Code of Civil Procedure applied to its claim against Riseborough and that it was ambiguous, thus unsettled. It should have protected itself. Initially it did protect itself but then apparently failed to do so. The opinion provides a reminder to practitioners that they must exercise caution in unforgiving and unsettled areas of the law. ■

Don't Miss The Centenarians

On October 16, the Barristers Big Band will swing to the "The Centenarians," a free concert celebrating the lives and music of three giants of jazz born 100 years ago: Billie Holiday, Billy Strayhorn, and Frank Sinatra. Starting at 6:00 pm at the Harold Washington Library Center's Cindy Pritzker Auditorium, the band will take you on a wondrous journey, with tunes including: Billie Holiday's Lover Man, God Bless the Child, and Strange Fruit; Billy Strayhorn's Lush Life, So This is Love, and Blood Count; and Frank Sinatra's Come Fly With Me, All of Nothing at All, and You Make Me Feel So Young. Mark your calendars and plan for a fabulous evening of music!

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