

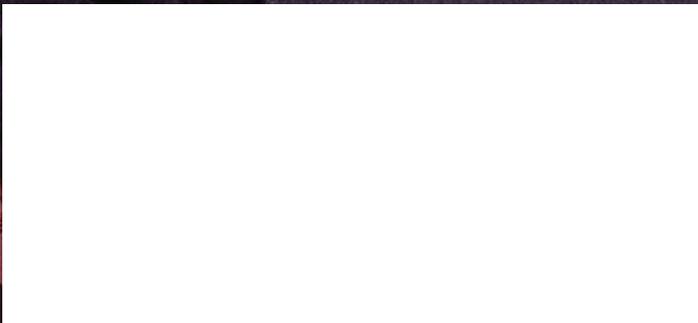
SEPTEMBER 2015

# CBA

# RECORD

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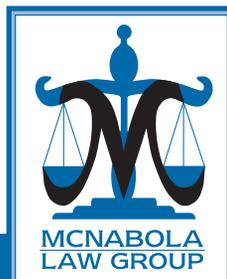
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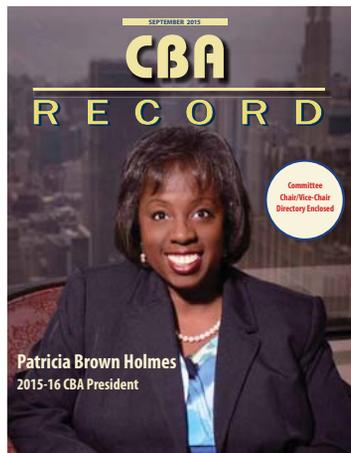
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This month's cover photo of CBA President Patricia Brown Holmes was taken by Bill Richert.

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# PRESIDENT'S PAGE

BY PATRICIA BROWN HOLMES

## Access to Justice—A Global Crisis



This past July, I hosted a meeting at the Association with the leaders of the Bar Council of England and Wales and the Paris Bar Association. The CBA is an active member of the Conference of World City Bar Leaders which was founded in 2000 and through the years, we have participated in several international programs with each of these Associations. The Conference of World City Bar Leaders meets every 18 months to discuss common issues, concerns and specific programs of interest to city bar associations. The World City Bar Leaders is comprised of the largest city bar associations in the world including: London, Paris, Tokyo, Rome, Montreal, Madrid, Barcelona, Brussels, Beijing, Shanghai, Ho Chi Minh City, Seoul, Frankfurt, New York City, Chicago, Philadelphia and Los Angeles.

Alistair MacDonald, Chair of the Bar Council of England and Wales, and Gerard McDermott also from the Bar Council asked that the meeting focus on the major access to justice issues facing the legal and judicial systems in each of our countries. I invited the Paris Bar to attend the meeting

and we were honored to have President-Elect Dominique Attias, Jacques Bouyssou, Denis Chemla, and Emile Vasseur join us.

Our discussion included some of the following topics:

- Private for-profit legal service providers.
- The U.K.'s legal aid crisis and pro bono programs/initiatives to help serve the growing legal needs of people who cannot afford legal services. The U.K.'s "Pupillage" program—both the U.K and Paris Bar Leadership—were interested in the Chicago Bar Foundation's "Justice Entrepreneur's Project" (JEP) and visited the project later that afternoon.
- Women in the legal profession and global diversity initiatives.
- Court programs to provide greater access to justice for pro se litigants.

### Regulatory Oversight of the U.K.'s Legal Profession

Alistair MacDonald explained the mission of the U.K.'s Bar Council and gave us an overview of the Bar Standards Board and the Legal Standards Board which, pursuant to action by parliament, have regulatory oversight of the U.K.'s legal profession. Barristers now pay a fee to cover the costs of the new regulatory board. McDermott felt that the lay people who serve on the board don't understand the legal profession and are often too ambitious with disciplinary matters. It's clear that the government's new regulatory role has created tension among the U.K.'s 15,000 practicing barristers.

### Pupillage Program

The U.K.'s "Pupillage" program is a compulsory 12 month training program that must be completed before a new member of the bar is authorized to practice. The Pupillage program must be taken at a bar-

16<sup>th</sup> Annual

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## WATCH THE INTERVIEW

For more information about the work of the Bar

Council of England and Wales see my YouTube

interview with Alistair MacDonald on the CBA's

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risters chamber or through another Bar Standards Board approved legal environment and has to be completed within five years. It is akin to an apprenticeship program and is very competitive. Recent law school graduates who are selected to work in Chambers receive a stipend of approximately \$7,000 pounds. Pupils are assigned to a supervisor and may not practice for the first six months. During this period they attend court with their supervisor, do research and complete assigned written work. During the second six months pupils can conduct cases in court and begin to develop a practice.

### U.K's Legal Aid Crisis

The most serious problem facing the Bar Council and The Law Society of England and Wales involves action by the government last April, which massively reduced funding for legal aid in the U.K. Alistair MacDonald told us that there is virtually no legal aid remaining for civil and family justice in England. Moreover, he said that recent increases in the court filing fees will create a major access to justice issue for small businesses seeking to pursue simple collection matters or contract grievances in the courts. The new filing fees, according to MacDonald, are approximately, 10,000 pounds—which is prohibitive—and is already driving small business owners away from the court system.

MacDonald said that the Bar Pro Bono Unit (BPBU) involves 3,600 volunteer members with approximately one-third being barristers. The BPBU is funded almost entirely by the profession, and provided services to more than 1,000 people in 2014. Also assisting is the London Legal Support Trust (LLST), which is an

independent charity that raises funds for free legal services in London. MacDonald is active in the work of the LLST and said “We see first-hand the impact the austerity measures have had on access to justice for ordinary people who struggle to find legal advice and support they can afford.” MacDonald concentrates his practice in criminal law, and estimated that some 37,000 defendants are now self-represented because of the cuts introduced by the Legal Aid Sentencing and Punishment Offenders Act.

In a published message to the Bar Council members, MacDonald said, “We cannot waive a magic wand and wish austerity away, but why does justice remain unprotected from further cuts? This fact will be disappointing to thousands of men and women across the country who now have no effective access to justice. Instead they grapple, often in vain, with complex legal problems the outcomes of which will fundamentally change their lives. Politicians are not taking justice seriously. Justice is not a benefit or a tax break, it underpins our way of life and protects everything for which we work so hard. Yet this point has not been articulated by party politics today.” More recently, Chairman MacDonald issued the following statement: “The two main parties have published their manifestos but there is still no sign of a commitment to restoring access to justice for the hundreds of thousands of individuals and families left excluded by legal aid cuts.”

It was no surprise that the U.K's access to justice issues dominated the meeting and left little time to address all of our agenda items. In the United States, we continue to see some disturbing trends and parallels with the access to justice crisis in the U.K. Public access (regardless of one's financial means) to an independent justice system is not a privilege, but a fundamental right for all citizens in a democratic society. We must be vigilant in protecting this right while continuing to improve public access to our judicial system. ■

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# CBA NEWS

## Eight Leaders to be Honored with Stevens Awards

By Linda Heacox  
Public Affairs Director

**R**etired U.S. Supreme Court Justice John Paul Stevens will join the Chicago Bar Association as it honors eight outstanding attorneys at the 16th annual John Paul Stevens Award Luncheon, Tuesday, October 13, at The Standard Club, 320 S. Plymouth Court.

This year's honorees include Peter J. Birnbaum, President and CEO of Attorneys' Title Guaranty Fund, Inc.; James R. Figliulo, founding partner, Figliulo & Silvermen P.C.; Edward I. Grossman, co-founder and Executive Director of the Chicago Legal Clinic, Inc.; Illinois Appellate Court Justice Shelvin Louise Marie Hall; Paula H. Holderman, Chief Attorney Development Officer, Winston & Strawn; Mary Meg McCarthy, Executive Director of Heartland Alliance's National Immigrant Justice Center; Daniel E. Reidy, partner, Jones Day; and William A. Von Hoene, Jr., Senior Executive Vice President and Chief Strategy Officer, Exelon Corporation.

CBA President Patricia Brown Holmes said, "These honorees share with Justice Stevens standards of the highest personal integrity and devotion to public service. We are thrilled that he will join us as we honor them with this award given in his honor."

Named for Chicago native Stevens, who retired from the High Court in 2010, The Stevens Award recognizes lawyers and



Birnbaum



Figliulo



Grossman



Hall



Holderman



McCarthy



Reidy



Von Hoene

judges who have demonstrated outstanding character and commitment to community throughout their careers.

### The Recipients

Serving as President and Chief Executive Officer of Attorneys' Title Guaranty Fund, Inc. (ATG) since 1991, **Peter Birnbaum** has led his company through its development into a leading lawyer service organization with annual revenues in excess of \$100 million.

In 2014, he received the Illinois Bar Foundation Distinguished Award for Excellence. In 2011, Birnbaum was also inducted as a Laureate in the Academy of Illinois Lawyers, the highest honor bestowed by the Illinois State Bar Association. In 2013, he received the Chicago Bar Association Vanguard Award for promot-

ing diversity in the profession. He received the Abraham Lincoln Marovitz Lend A Hand Foundation "Making a Difference" award. He is currently president of the Jesse White Foundation and is leading the effort to build the Jesse White Community Center.

Birnbaum is a frequent author and interviewee in dozens of regional and national newspapers and trade publications, including: *The Washington Post*, *Chicago Tribune*, *Chicago Sun-Times*, *Illinois Bar Journal*, *Crain's Chicago Business*, *Chicago Daily Law Bulletin*, and many other real estate and legal trade publications. He is a frequent expert interviewed as an expert on news broadcasts. He has testified in the U.S. Congress, the Illinois Senate, and the Illinois Supreme Court Rules Committee. He speaks to audiences from legal or real

**Tickets to the Stevens Award luncheon are \$70 per person. RSVP to [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org) or 312/554-2057.**

estate trade associations across the country.

In January 2004, Birnbaum was appointed a judge to the seven-member Illinois Court of Claims. The Court hears cases *en banc* and rules on claims against the State. He was appointed Chief Justice in 2015 by Governor Bruce Rauner.

A founding partner at Figliulo & Silverman P.C., **Jim Figliulo** is a trial lawyer who practices in business-related litigation. He was recently honored by the *Chicago Daily Law Bulletin* as one of the “Ten Attorneys Who Raised the Bar” in Illinois for making extensive contributions to the legal profession in the last decade. He has also been featured in *Leading Lawyers’ 2009* “Business Litigation” edition.

Figliulo served as president of the 7th Circuit Bar Association in 2005-06. He also served as co-chair of the 7th Circuit American Jury Project with Chief Judge James F. Holderman of the U.S. District Court for the Northern District of Illinois. He has chaired and served as a member of Federal Magistrate Judge Merit Selection and Review Panels for the U.S. District Court for the Northern District of Illinois for 10 years.

A co-founder of the Chicago Legal Clinic, Inc. in 1981, **Edward Grossman** has been serving as its Executive Director since 1985. In this capacity, he has provided legal services in Southeast Chicago, Pilsen, Austin and the downtown areas, serving over 375,000 people.

The St. Louis native is active in several bar associations including the Federal Bar Association, the Chicago Bar, the Illinois Trial Lawyers and the Federal Trial Bar. He is an arbitrator of the Circuit Court of Cook County, and a special commissioner for the Federal Courts–Northern District of Illinois.

Grossman is a charter member of the Ad Hoc Committee on Agency/Court Related Senior Citizens Issues and co-authored the Illinois Senior Citizens Bill of Rights, the first bill of its kind in the United States, which was adopted by Illinois Legislature in 1993.

Justice **Shelvin Louise Marie Hall** was the first African-American female Chair of the Executive Committee of the First District, Illinois Appellate Court. After training in Civil Rights Law by the NAACP Legal Defense and Educational

Fund, Inc., she entered private practice in Houston. She spent six years in the firm she founded with four others, which was the first all-black, all-female law firm in the country. In 1980, she went to Washington, D.C. as Legislative Director to U.S. Congressman Mickey Leland (D-TX). In 1982, she returned to her hometown of Chicago to serve as General Counsel to the Illinois Department of Human Rights, where she directed a staff of 12 attorneys and six administrative personnel.

Hall was appointed to the Circuit Court of Cook County in 1991 and was assigned to the Domestic Relations Division. In 1992, she was elected to a six-year term. In 1995, she joined the Law Division, presiding over civil jury trials. She was retained for a second six-year term in November of 1998. The Illinois Supreme Court then assigned her to a two-year term as a Justice of the Illinois Appellate Court. She was elected to a full 10-year term on the Court in November 2000 in a contested race, and was retained for a second 10-year term in November of 2010. She has served as Presiding Justice of both the First Division and Fourth Division of the First District Appellate Court, on the Mediation Committee and as Chair of the Court’s Executive Committee.

As Winston & Strawn’s Chief Attorney Development Officer, **Paula Holderman** has global responsibility for the firm’s professional development and all facets of attorney education, careers and training. She has been a trial lawyer, educator and leader throughout her 36 year legal career.

Holderman was the 2013-14 President of the 32,000 member Illinois State Bar Association. She is only the fourth woman to be elected president of the organization in its 140 year history. She served on the ISBA Board of Governors and its Assembly for more than 25 years. She served as president of the bi-partisan lobbying organization, LAW PAC and on the Illinois Bar Foundation Board of Directors for 16 years.

She currently serves on the Chicago Bar Foundation Board; the ISBA Mutual Insurance Company Board; the John Marshall Law School Board of Trustees, and the Illinois Supreme Court MCLE Board. She is also the elected Illinois State Delegate to

the ABA House of Delegates where she has served since 2010.

**Mary Meg McCarthy** has served as Executive Director of the Heartland Alliance’s National Immigrant Justice Center (NIJC) since 1997, where she leads a legal services program providing counsel and representation to 10,000 low income immigrants, refugees, and asylum seekers each year. Prior to joining the NIJC, she was an attorney at Horvath and Lieber, P.C. where she was a civil litigator, representing individuals and corporations in Federal and state court in Title VII lawsuits, professional liability lawsuits, breach of contract, and general litigation. In 1989, she served a law clerk externship to the Illinois Human Rights Commission serving Judge Rebecca Pallmeyer.

McCarthy is an active member of the American Bar Association, where she chairs the Commission on Immigration. She is also a member of the Working Committee on Migrant Children and Youth, Midwest Coalition for Human Rights, Steering Committee Member, Migrant Children’s Defense Collaborative, Founding Member, The Chicago Network.

**Daniel Reidy** is a partner at Jones Day practicing in corporate criminal investigations, business and tort litigation, securities litigation and SEC enforcement, health care, antitrust and competition law.

Reidy represents companies and individuals involved in criminal and other enforcement investigations. Dan also represents companies in complex civil litigation of all kinds, including patent, product liability, securities, False Claims Act, antitrust, post-acquisition, labor and employment, and commercial disputes.

He served as Law Clerk to Judge Walter J. Cummings, United States Court of Appeals, Seventh Circuit in the 1974 term and as First Assistant U.S. Attorney (1985-1987) and Assistant U.S. Attorney, before joining Jones. As a prosecutor and ultimately as first assistant in the Chicago U.S. Attorney’s Office, he focused on matters involving allegations of complex financial crimes. He was the lead prosecutor in the “Greyford” judicial corruption project and

*continued on page 13*

# The Revolution in Your Backyard

By Kathleen Dillon Narko  
Editorial Board Member

**S**ong lyrics from musician Steve Earle “the Revolution starts now, in your own backyard, in your own hometown” set the theme for the 17<sup>th</sup> Annual Pro Bono and Public Service Awards Luncheon July 14, hosted by the Chicago Bar Association and the Chicago Bar Foundation. As CBF Executive Director, Bob Glaves, stated, “this revolution involves how we all think about and prioritize the cause of ensuring the justice system is fair and accessible to everyone regardless of their income or circumstances.”

The seven individuals who received awards exemplified the theme of this year’s luncheon. They have all made a difference in providing legal services to the most in need. Their stories are inspiring and compelling.

Shawna Prewitt drew from her personal experience to advocate for women who decide to raise a child conceived through rape. She has helped to pass both state and federal legislation protecting the custody rights of these women. In emphasizing how honored she is to represent these clients, Prewitt stated, “I have never forgotten what it’s like to sit in the client seat [in the court room].” She remembers “the fear, the powerlessness” of sitting in the court room and placing her trust in her attorney. She described how these women’s lives were divided into “before” and “after” their attacks. In moving remarks that drew the crowd to its feet, she stated, “Maybe the person I have become ‘after’ is valuable, too. Nothing could mean more to me.” Prewitt, an associate at Skadden, Arps, Slate, Meagher & Flom, received the Maurice Weigle Exceptional Young Lawyer Award.

Candace Moore, recipient of The Kimball R. Anderson and Karen Gatsis Anderson Public Interest Law Fellowship, also credits her personal experience for her devotion to the public interest. Her mother always told her to pursue her education, despite any obstacles she might encounter. She continues her work on educational access today with the Chicago Lawyers’ Committee for Civil Rights Under Law.

The awards also recognized lawyers in the private sector who have donated significant hours to pro bono legal work. ArcelorMittal USA in-house attorney, Claire Battle, received The Exelon Outstanding Corporate Counsel Award for her dedication to helping indigent tenants through the Lawyers’ Committee for Better Housing. The Edward J. Lewis II Pro Bono Service Award went to Jenner & Block partner, Gabriel A. Fuentes, who has dedicated thousands of hours to First Amendment and other pro bono work.

Professor Mary Bird, Director of Public Service programs at Loyola University School of Law, received The Leonard Jay Schragger Award of Excellence for attorneys in academia who have made a significant contribution to increasing the access to justice. Professor Bird thanked her students stating, “History has been changed in positive ways by young people.”

For more than 30 years, Leslie Landis has served victims of domestic violence. She received The Richard J. Phelan Public Service Award for her long career in the public sector, increasing access to justice for all Chicagoans. She currently is the Chief Court Administrator in the Domestic Violence Division of the Circuit Court of

## UPDATE YOUR MEMBER

### PROFILE

If you recently moved to a new firm, got a new email address or added a new practice area, please take a moment to update your member profile at [www.chicagobar.org](http://www.chicagobar.org). And while you’re at it, add yourself to the CBA’s online member directory, a great new way to connect with fellow members, market your law practice, find law school classmates and more.

Cook County. While noting that much has improved over the last 30 years, she urged the audience to “keep up the fight” against domestic violence.

Finally, Philip J. Mohr received The Thomas H. Morsch Public Service Award. As Deputy Director of Chicago Volunteer Legal Services, Mohr has helped thousands of pro bono attorneys help others, often instilling a lifelong commitment to pro bono work. Mohr stated, “I like to mentor, teach, and assist.”

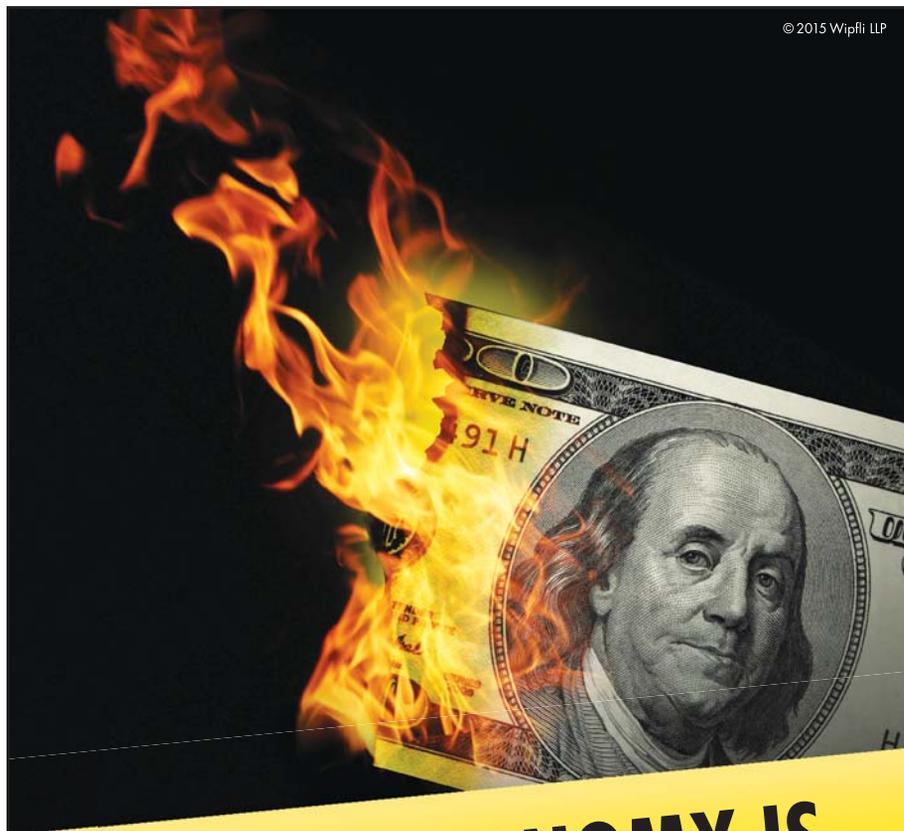
Glaves closed the meeting by reminding all to work “to ensure the [legal] system is fair and accessible to everyone.” “Lest any of us doubt that we can make a difference individually, we’ve got seven great examples here again today who emphatically show us that is not true--no matter where you are in the legal community you have the power to make a huge impact.” ■

## Stevens Award Recipients continued from page 11

personally prosecuted a number of judges, lawyers, and court personnel.

As Senior Executive Vice President and Chief Strategy Officer of Exelon Corporation, **William A. Von Hoene, Jr.** oversees corporate development, corporate strategy, legal, regulatory, government affairs, investments and communications for Exelon, the nation's number one competitive energy provider. He previously served as executive vice president, Finance and Legal, of Exelon. Before joining the company in 2002, he was a senior partner at Jenner & Block, specializing in complex civil and white-collar criminal litigation. While at Jenner, he served on the management committee and, at various times, as hiring partner and chairperson of the firm's pro bono and diversity committees.

He is past president of the Chicago Lawyers Committee for Civil Rights Under Law, Inc., and past general counsel to the Leadership Council for Metropolitan Open Communities. He currently serves on the boards of directors of the Legal Assistance Foundation of Chicago, Northwestern Memorial Hospital (for which he serves as the Chairman of the Professional Standards Committee), the Chicago Symphony Orchestra, the Civic Consulting Alliance and the Diversity Scholarship Foundation. He previously has served on the boards of directors of the Chicago Legal Clinic, the Chicago Bar Foundation and the Joffrey Ballet. He also serves on the Visiting Committee of the University Of Chicago Law School, and is a member of the Economic Club of Chicago and the Executives' Club of Chicago. In 2010, he was appointed to the Department of Commerce National Advisory Council on Minority Business Enterprise. The council served to provide advice and recommendations to the Secretary of Commerce and the President on a broad range of policy issues affecting the minority business community. In 2011, he was appointed to Mayor Rahm Emanuel's Supplier Diversity Task Force, a procurement initiative designed to help strengthen small and minority and women-owned businesses in Chicago. ■



## A TOUGH ECONOMY IS FUEL FOR FRAUD.

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# CLE & MEMBER NEWS

## New Chair/Vice-Chair Directory

It's that time of year again...All CBA and YLS committees began meeting in September. Enclosed in this issue of the **CBA Record** is a booklet listing our new committee chairs and vice-chairs, along with standard meeting dates and contact information. Weekly committee speakers, topics and MCLE credit is sent to all members via the weekly *CBA eBulletin* which is emailed every Thursday. This information can also be found at [www.chicagobar.org/committees](http://www.chicagobar.org/committees). Members may attend any meeting that interests them (i.e., you do not have to be on the committee roster to attend the meeting).

Remember! You can receive free Illinois MCLE credit by attending committee meetings. Most practice area committee meetings qualify for one hour of credit. Attend in-person or view select committee presentations via live webcast at [www.chicagobar.org](http://www.chicagobar.org). Note: Archived committee meetings do not qualify for credit.

To join a committee, call 312/554-2134 or sign-up at [www.chicagobar.org/committees](http://www.chicagobar.org/committees). New members are always welcome. You and your firm will benefit from the knowledge, experience and business contacts you will gain. ■

## Is This Your Last Issue?

It could be if your membership dues have not yet been paid or you have outstanding charges more than 90 days. In accordance with the Association's By-Laws, cancellation notices were sent to all members who failed to submit payments by August 31, 2015. If you received a cancellation notice, we want you back! Please take a moment to renew now.

Here's just a sample of what you will miss if you do not renew: FREE CLE seminars—enough to fulfill your MCLE requirements, live and webcast options; free Illinois MCLE credit through noon hour committee meetings—attend in-person or via live webcast; FREE online MCLE credit tracker: unlimited CLE of your choice only \$150 now through May 2016: NEW law practice management and technology software training, web resources and low cost office consulting; FREE practice

area email updates: networking and business development opportunities; FREE solo/small firm resource portal; career resources; member discounts and more. Plus, your membership helps strengthen the CBA's efforts to improve the administration of justice in Illinois and provide legal services to the disadvantaged.

Renew your membership now to activate your savings and benefits. Renew by mail, online at [www.chicagobar.org](http://www.chicagobar.org) or by phone 312/554-2020. Reduced dues are available for unemployed members and those with financial hardships. For more information regarding dues and other Association charges, call 312/554-2020.

To the many members who have already renewed: Thank You! We look forward to serving you in the coming bar year. ■

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## CBA Offers Reduced Dues Option

Members who are currently unemployed or experiencing financial hardship may apply for reduced dues of \$50 (applies to current annual billing period; cannot be combined with CLE Advantage membership). Request forms and further details can be found at [www.chicagobar.org](http://www.chicagobar.org) under the Membership Tab or call 312/554-2131.

## Wanted: Your Email Address

We need your email address! By providing us your email address, you will:

- Receive the CBA eBulletin every Thursday containing a list of the following week's committee meetings and speakers noting MCLE credit, upcoming seminars, networking events and important news about the Association.
- Receive timely notices of your committee meetings, topics & speakers.
- Cut down on the amount of mail and faxes the CBA sends, which lowers expenses and saves trees!

To notify us of your email address, call 312/554-2137 or send an email to [info@chicagobar.org](mailto:info@chicagobar.org) including your name, phone, email address and CBA member number. Please note that the CBA does not provide or sell member email addresses to outside entities.



## THE CHICAGO BAR ASSOCIATION

Continuing Legal Education

**How to Form an Illinois Business Entity Part 1**  
October 1 • 2:00-5:00 p.m.

**Intellectual Property Law Basics for Non-IP Attorneys**  
October 6 • 3:00-6:00 p.m.

**Encryption for Lawyers**  
October 7 • 12:00-1:30 p.m.

**Running for Public Office: How to Get on the Ballot & Win**  
October 7 • 3:00-6:00 p.m.

**How to Form an Illinois Business Entity Part 2**  
October 8 • 2:00-5:00 p.m.

**How To... Manage IT and Cloud Services**  
October 13 • 1:45-2:45 p.m. (complimentary)

**Hands-on Training: Easy Excel**  
October 14 • 2:00-5:00 p.m.

**Post-Judgement Issues in Illinois Law**  
October 15 • 3:00-6:00 p.m.

**The Business of Law: Solo/Small Firm Conference**  
October 16 & 17

**Mastering Section 2-615 Motions to Dismiss**  
October 20 • 12:00-1:30 p.m.

**How To... Create a LinkedIn Firm Page**  
October 21 • 1:45-2:45 p.m. (complimentary)

**The Judicial Perspective on Motion Practice**  
October 21 • 3:00-6:00 p.m.

**Evidence & Objections**  
October 22 • 3:00-5:00 p.m.

**Practice Basics: Wait! Is that a Class Action Case?**  
October 23 • 12:00-1:00 p.m. (complimentary)

To register, call 312-554-2056 or visit [www.chicagobar.org](http://www.chicagobar.org). Programs are held at the CBA Building, 321 S. Plymouth Ct., Chicago, unless otherwise indicated above.

Seminars are also Webcast live (as well as archived) at [www.chicagobar.org](http://www.chicagobar.org) and West LegalEdcenter. Visit [www.chicagobar.org](http://www.chicagobar.org) for more information. The CBA is an accredited continuing legal education provider in Illinois.

The Chicago Bar Association

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# Chicago Bar Foundation Report



## A Fundamental Responsibility of Our Government and Our Legal Community's Responsibility to Hold Them to It Justice for All

**By Angela Inzano**  
CBF Program Manager

*Liberty and justice for all is one of America's most cherished principles, and a fundamental part of the very fabric of our nation. Our founding fathers fought a revolution for it. Thousands of brave men and women since then—from Abraham Lincoln to Susan B. Anthony to Martin Luther King and all who fought with them—risked their lives to ensure that the principle of justice for all truly applied to all Americans.*

*Justice for all knows no political exclusivity. It is not a Democratic or Republican value, but an American value. At the opening of each and every session of this Senate, we stand together and pledge our allegiance to this founding principle. Millions of schoolchildren pledge their allegiance every day to this fundamental tenet of our country.*

For more information on how you can get involved in legislative advocacy on behalf of access to justice, and to sign up for CBF advocacy updates and alerts, visit [www.chicagobar-foundation.org/get-involved/influence](http://www.chicagobar-foundation.org/get-involved/influence) or contact Angela Inzano, CBF Program Manager, at [ainzano@chicagobar.org](mailto:ainzano@chicagobar.org) or 312/554-4952.

*Yet today in Illinois and throughout the United States, we are falling far short of fulfilling our nation's promise of justice for all.*

### **Our Common Cause**

Illinois Senator Dick Durbin, a long time champion for equal access to justice, made these remarks as part of a Senate floor debate in 2006. They are still true today.

The CBF's mission recognizes that as trustees of the justice system, lawyers have a responsibility to take a lead role in ensuring that system is fair, accessible, and efficient for everyone, not just people who can afford to hire an attorney. As the CBF's new Justice Pledge (see page 17) underscores, fulfilling that responsibility requires us to use a mix of our time, money, and influence for the fundamental principle of equal justice under the law to become a reality for everyone in our community.

One way that all of us as CBA members can use our influence in this regard is by contacting your elected officials on access to justice issues. The CBF is your central resource for information on key policy issues impacting access to justice and how you can help. (Check out the text box at the left for how you can sign up for advocacy updates and alerts). Legislators don't hear much from their constituents on access to justice issues, and you make a real difference when you let them know these issues are important to you and your community.

Your support of the CBF also gives you a vehicle to come together with your colleagues in the CBA and larger legal community to speak with one powerful, collective voice on these issues with the federal, state, and local government. The CBF staff and volunteers work closely with the CBA's legislative counsel and staff as well as the ISBA, ABA, and other local and national partner organizations to provide a consistent voice on these issues.

Key issues the CBF regularly prioritizes at all levels of government are funding for legal aid and the courts, and loan forgiveness and repayment assistance for lawyers and advocates in public service. The CBF also advocates on a range of other issues that significantly impact access to justice, and these collective efforts have made a real impact over the years.

Two recent examples of where your advocacy, individually and through the CBF, made an impact on the state level this past year were the passage of key amendments to the Access to Justice Act and a new law requiring civics education for high school students.

### **Access to Justice Act**

Originally passed in 2013 with broad bipartisan support, the Access to Justice Act created a pilot program to develop and support a much-needed hotline and network of legal assistance to help thousands of veterans and military families in need

I pledge allegiance  
to the Flag of the  
United States of America...

...with liberty and  
justice for all

*people who  
can afford it*

That is not who we are  
as Americans, yet that's the  
reality for most people in  
our community today. And it  
is up to us as lawyers and  
legal professionals to take  
the lead in doing something  
about it.



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Representatives from the CBF, CBA, ABA and ISBA meet with Sen. Durbin and Sen. Mark Kirk to advocate on access to justice issues at the annual ABA Day in Washington.

throughout the state. Due to a technical problem identified after the original version of the Access to Justice Act had been signed into law, the implementation of this pilot program was on hold.

One of the CBA and CBF's main advocacy priorities this year was to help pass a legislative fix for this technical problem so the pilot program could proceed. With the leadership of Representatives Emily McAsey and Al Riley and Senator Kwame Raoul, the bill to provide that technical fix, HB 3933, passed the House and Senate by unanimous votes and was signed into law by Governor Rauner in August. The pilot program will be designed, evaluated and overseen by a special statutorily created council that will operate under the auspices of the Illinois Equal Justice Foundation (IEJF). The five-year program will be funded by a temporary \$2 add-on to civil filing fees that will sunset at the conclusion of the pilot program in 2020.

This innovative new program already has been touted as a potential national model for providing critical legal services to the men and women who have served our country. By providing this much-needed

legal help for thousands of people in need, the new program will make the justice system in Illinois more fair, accessible and efficient for all Illinoisans.

#### **Civics Education Bill**

In 2014, the Illinois Task Force on Civic Education, established by the legislature to study the status of civic education in our state and make recommendations on how to improve it, found a strong need to strengthen civic education in Illinois. At that time, Illinois was one of just 10 states in the country that did not require a civics or government course to graduate from high school.

HB 4025 grew out of these efforts, and strengthens civics education in Illinois and promotes greater civic learning through a required civics course for all Illinois high school students. The CBF made supporting this bill one of our advocacy priorities this year because it will promote greater understanding of the role and functioning of the justice system in our democracy, an important component of the CBF's broader efforts to make the legal system more fair and accessible for people in need.

The Illinois Civic Mission Coalition played the lead role in this legislative effort, and the CBF was one of dozens of organizations to support the bill. The bill passed the House and Senate with overwhelming bipartisan support and was signed into law by Governor Rauner last month. Beginning in the Fall of 2016, a semester of hands-on civics education will be part of the required core curriculum for high school graduation in Illinois.

These bills are just two examples of the impact you can make both individually and through the CBF in the policy advocacy process. It is easy to get involved and our leadership as a legal community in advocating on these issues has never been more important. ■



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# MURPHY'S LAW

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR



Alistair MacDonald, Chair of the Bar Council of England and Wales and CBA President Patricia Brown Holmes met in July to discuss access to justice issues facing the legal systems in each of our countries, and prepared a video providing an overview. Subscribe to the CBA's YouTube channel for free to learn more.

**T**he Justice John Paul Stevens Award luncheon will be held on Tuesday, October 13 in the Grand Ballroom at the Standard Club. We are greatly honored that Justice Stevens will be the keynote speaker at this year's Awards luncheon. A reception for Justice Stevens and the 2015 honorees will begin at 11:30 a.m. second floor Living Room followed by the luncheon at noon in the Grand Ballroom. The 2015 Justice Stevens honorees are: **Peter J. Birnbaum**, President and CEO of Attorneys Title Guaranty Fund, Inc.; **James R. Figliulo**, Figliulo & Silverman; Illinois Appellate Court Justice **Shelvin Louise Marie Hall**; **Paula Hudson Holderman**, Winston & Strawn; **Edward I. Grossman**, Executive Director of the Chicago Legal Clinic; **Mary Meg McCarthy**, Director, National Immigrant Justice Center Heartland Alliance; **Daniel E. Reidy**, Jones Day; and **William A. Von**

**Hoene, Jr.**, Sr. Executive Vice President and Chief Strategy Officer, Exelon Corporation. For more information or to make reservations contact Events Coordinator, **Tamra Drees** at 312/554-2057 or [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

## **The Business of Law: Starting Up, Staying Strong**

The Association's Conference for Solo and Small Firm Practitioners, *The Business of Law: Starting Up, Staying Strong* will be held at the CBA Building on Friday, October 16, from 8:30 a.m.–6:30 p.m. and Saturday morning, October 17. The Conference features an outstanding group of speakers on a wide variety of topics that include practice updates, technology, and fundamentals for startups. Members can choose from 18 breakout sessions and several plenary sessions that include 30 Tips in 30 minutes, Alternative Fees,

and Reaching the Latent Legal Market. A networking reception will follow Friday's programming and is included in the \$295 conference registration fee. Attendees will receive up to 9.25 hours of Illinois MCLE Credit and will have access to additional hours of MCLE credit by reviewing archived webcasts.

More than 22 speakers will participate in the Conference which promises to be among the best solo/small firm conferences in the Midwest. For more information or to register, visit [www.chicagobar.org/cle](http://www.chicagobar.org/cle).

## **Alliance For Women Association Luncheon**

The CBA's Alliance For Women is co-sponsoring an Association Luncheon on Monday, October 19, featuring **Melanne Verveer** and **Kim K. Azarelli**, Co-Founders of Seneca Women. The luncheon is co-sponsored with the Women's Bar Association of Illinois, The Black Women Lawyers Association and the Kellogg Executive Women's Network, and will be held in the Grand Ballroom at the Standard Club. Verveer and Azarelli will discuss their new book, *Fast Forward: How Women Can Achieve Power and Purpose*. A reception for these two extraordinary women will begin at 11:30 a.m., followed by the luncheon in the Grand Ballroom at noon. Tickets for the luncheon are \$65 per person or \$650 for a table of ten. For more information or for reservations contact Events Coordinator Tamra Drees at 312/554-2057 or [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

## **92nd Annual Bar Show**

The 92nd Annual Bar Show, titled *A Christmas Quarrel: A Tale of Two Parties* will open at DePaul's Merle Reskin Theater on Wednesday, December 2 and will close with a matinee performance on Sunday, December 6. The bar show is a holiday tradition and a great way to entertain your family, friends, and clients. Lawyers and judges— aspiring actors—shamelessly parody in song and dance global, national, and local personalities in the news. The cleverly written lyrics, harmoniously performed in a variety of skits by very talented members of the bar, lampoon international, national, and local personalities, many of whom are politicians. This year provides a ripe harvest

of characters and the writers of the bar show have a plethora of material. The bar show has been known to bring on a smirk from even the most staid of personalities. This year's show is guaranteed to generate smiles, chuckles and even uproarious laughter which is a wonderful tonic for the soul. So get ready for a hearty holiday belly laugh and order your tickets now for this one of a kind and truly unique Chicago Bar show.

Tickets for the main floor are still only \$50 (group discounts for orders of 20 tickets or more) with mezzanine seats available at \$30 per ticket. For more information or to make early reservations, contact **Awida Reyes** at 312/554-2134 or [tickets@barshow.org](mailto:tickets@barshow.org).

### Barristers Big Band Concert

Members are invited to relax and enjoy a free concert sponsored by the Barristers Big Band on Friday, October 16 at 6:00 p.m. in the Pritzker Auditorium at the Harold Washington Library. The concert is a tribute to centenarians Billy Holiday, Billy Strayhorn, and Frank Sinatra. The Association's Big Band is led by Clarinetist extraordinaire **John Vishneski**, who is a partner at Reed Smith. More than 35 members, who also happen to be very accomplished musicians, make up the Big Band. Admission is free, but it's wise to arrive early as seating is limited.

### CLE in Switzerland

This year's Continuing Legal Education will be held in conjunction with the Institute for Inclusion in the Legal Profession and will be held in Lausanne, Switzerland on Tuesday, March 29 and Wednesday, March 30, 2016. The Chairman of the Institute, **Mark Firestone**, who is Executive Vice-President and General Counsel of Philip Morris International, will co-host the conference with CBA President **Patricia Brown Holmes**. The conference will feature an outstanding array of speakers on diversity, equality and inclusion from the United States, the U.K., European Union and Switzerland and will include a roundtable discussion with global GC's. Look for more information in our save the date flyer, which will be e-mailed to the members in the near future, and on the Association's website, [www.chicagobar.org](http://www.chicagobar.org).

### Congratulations

Congratulations to U.S. District Court Judge **Matthew Kennelly**, the 2015-16 President of the Federal Bar Association... Justice **Mark Kay Rochford** of Illinois Appellate Court has been appointed Chair of the Illinois Supreme Court's Commission on Access to Justice... Cook County Circuit Judge **LeRoy K. Martin, Jr.** is the new Presiding Judge of the Criminal Division... **Chung-Han Lee** is the 2015-16 president of the Asian American Bar Association... **Christina M. Tchen**, Assistant to President Obama and Chief of Staff to First Lady Michelle Obama, was the keynote speaker at the Asian American Bar Association's 28th Annual Installation dinner... Judge **Dominique C. Ross** is the 2015-16 Chairperson of the Illinois Judicial Council... **Lisa Emerson**, McDonald's Corporation V.P. for Global Compensation, received the Justinian Society of Lawyers' Helen M. Cerrise Outstanding Leadership Award and Loyola University Chancellor Reverend **Michael J. Garanzini, S.J.** received the Justinian Society's Award of Excellence.

**Daniel A. Trevino**, a partner at Hinshaw & Culbertson, LLP, is the 2015-16 president of the Hispanic Lawyers Association of Illinois... Judge **Timothy C. Evans**, Chief Judge of the Circuit Court of Cook County, received the Liberty Award from the ABA's Tort Trial and Insurance Practice Section... **Daniel Kotin** was elected to membership in the American Board of Trial Advocates... Judge **Sophia Hall** and **Michael A. Pope** will receive the National Judicial College's Advancement of Justice Award... **Jesse H. Ruiz**, a partner at Drinker Biddle & Reath and CBA Secretary, participated in the City Club of Chicago's program "Chicago Public Schools: Is Bankruptcy Inevitable"... **Patricia S. Spratt** was appointed a Cook County Circuit Court Judge... U.S. Magistrate Judge **Susan E. Cox** was unanimously elected by the District Court Judges to a second eight year term... Cook County Circuit Court Judge **Mary Colleen Roberts** is the new President of the Alliance of Illinois Judges... **Robert A. Clifford**, U.S. District Court Judge **Virginia M. Kendall**, and Cook County Circuit Court

### MARKET YOUR LEGAL PRACTICE

### WITH SOCIAL MEDIA

Check out the CBA's social media resources and see how you can stay in touch with colleagues, current clients and reach new clients online. Find valuable social media tips at [www.chicagobar.org](http://www.chicagobar.org) under the Resources tab.

Judge **Carrie E. Hamilton** participated in the ABA's panel discussion entitled: "Beginning with the End in Mind—Classic Chicago Closings"... Illinois Appellate Court Justice **Laura Liu** and Judge **Grace Dickler** received the President's Award from the Advocate Society of Lawyers.

**Matt Piers** was named a legal legend by the American Constitution Society... **Lindsay E. Morgan** of DLA Piper received the Lawyers Lend-A-Hand to Youth Making a Difference Award... Illinois Appellate Court Justice **Maureen Connors** received Lend-A-Hand's Judge Abraham Lincoln Marovitz Mentoring Award, and McDermott Will & Emery and Mayer Brown received Lend-A-Hand's Law Firm/Corporate Sponsorship Award... Retired Judge **Gloria Coco** received the Medal of Merit Award from the Sicilian American Cultural Association... **Devlin Joseph Schoop** was appointed an at-large Circuit Court Judge... **David Sosin** is the Illinois State Bar Association's new Treasurer... **Evan D. Blewett** has become an associate at Chuhak & Tecson, P.C.... **William J. Nissen**, a partner at Sidley & Austin, LLP, was elected Second Vice President of the Union League Club of Chicago... **Carmen D. Caruso** spoke at the American Association of Justice's Montreal meeting... **Jim Pretlow** is CARPLS volunteer of the month.

**Carrie E. Davenport** has become a member of Shaw, Fishman, Glantz & Towbin, LLC... Clausen Miller Partners **Ilene M. Korey**, **Don Ray Sampen**, and **Margaret Hupp** presented a Construction Defect Crash Course to the firms property casualty clients... **Bruce R. Pfaff** received

## JOIN THE CBA CHORUS

The CBA Chorus is seeking experienced choral singers to join them on Wednesday evenings from 6:00-8:00 p.m. on the second floor of the CBA Building. For further information, please contact Rebecca Burlingham at [rebeccaburlingham@att.net](mailto:rebeccaburlingham@att.net) or at 312/814-3776 or 312/554-2133. The Chorus will perform a concert of American music jointly with the New York Bar Association in November.

the ABA Tort Trial and Insurance Practice Section's "Pursuit of Justice" Award...**James E. Olguin, William M. Brennan** and **Sara L. Spitzer** have become partners at Goldstine, Skrodzki, Russian, Nemecek and Hoff Ltd....**Kenneth T. Lumb** of Corboy & Demetrio P.C. spoke about Federal Tort Claims at the American Association for Justice's annual meeting...**Zachary Hendricks** was added to Howard and Howard's Corporate Tax Department...**Patrick A. Salvi II** received the American Bar Association for Justice's 2015 Scott Baldwin Award...General Mills former Executive Vice President, General Counsel, and Chief Compliance & Risk Management Officer **Roderick A. Palmore** has joined Denton's as Senior Counsel...**Darren Van Puymbrouck** has become a litigation partner at Freeborn & Peters...Carlson partners has merged with Nissen & Elliott, LLC...**Alexis M. Dominguez** has become an Associate in Neal Gerber & Eisenberg's labor and employment practice group...**Matthew L. Williams** has become managing partner of Salvi, Schostok & Pritchard's Waukegan office...**Theodore T. Eidukas** has become a partner at Quarles & Brady in the Energy Practice Group...**W. Matthew Bryant** was a featured speaker at the Illinois Institute of Technology on "Legal Issues for Illinois Civil Engineers and Land Surveyors".

**Christy J. Benton** has become a partner at Swanson, Martin & Bell LLP...**Steven A. Weiss** is the new Chair of the ABA's

Section of Litigation...**Tinos Diamantatos** was elected a partner at Morgan, Lewis & Bockius LLP...**Kristen E. Hudson** was elected a principal at Chuhyak & Tecson, P.C....**Joseph E. Tilson** was elected Vice-Chair of the ABA's Section on Labor and Employment Law...**Aharon S. Kaye, Patrick M. Smith** and **Neil G. Shelton** were elected partners at Katten, Muchin, Rosenman, LLP...**Antonio M. Romanucci** was appointed Chair of the American Association for Justice's police misconduct litigation group...**John M. Rafkin** and **David E. Woods** were added to Jones Day's Real Estate Finance practice...Seventh Circuit Court of Appeals Chief Judge **Diane P. Wood**, Illinois Supreme Court Justice **Mary Jane Theis** and Lake County Chief Circuit Court Judge **John T. Phillips** were honored by the Illinois Judges Foundation at the groups summer reception...**Nancy A. Peterman**, shareholder at Greenberg Traurig, LLP, moderated a panel discussion hosted by the American College of Bankruptcy Seventh Circuit Education Committee at IIT Chicago-Kent College of Law...**LaKeisha C. Marsh** has become a partner at Ackerman, LLP...**Susan J. Schwartz** of Corboy & Demetrio P.C. received the Volunteer Extraordinaire Award from Almost Home Kids...**Julianne M. Hartzell** of Marshall, Gerstein & Borun, LLP was a keynote speaker on U.S. and Canada Trade Secret Protection at the Licensing Executives Society International Pan-American Young Members Congress.

**Michael G. Bergmann** was named Chair of the ABA's Judicial Division...U.S. District Court Judges **Edmond E. Chang, Thomas Durkin, Amy J. St. Eve, Manish S. Shah**, Mayer Brown partner **Vince J. Connelly**, and U.S. Magistrate Judge **Jeffrey Cole** participated in the Federal Bar Association's program on Admitting and Excluding Evidence in Federal Cases...**David R. Barry** of Corboy & Demetrio, P.C. spoke at the American College of Surgeons' 2015 Clinical Congress...**Mark D. Anderson** was named to the Board of Directors of the Edward Foundation...**Mary Anne Phelan** was named a principal at Much Shelist, P.C., and **Urska P. Magajne** became an associate at the firm...Johnson & Bell, Ltd. is celebrating its

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40th anniversary...**Geoffrey M. Pipoly** has become an associate at Williams, Montgomery & John, Ltd....**Manuel Flores**, former Illinois Department of Financial and Professional Regulation, has become a partner at Arnstein & Lehr, LLP...**Andrew W. Vail, Maurice Grant** and Cook County Circuit Court Judges **Maryam Ahmad** and **Thomas R. Mulroy, Jr.** presented at the CBA/YLS seminar "Sharpen Your Trial Skills"...**James Wascher** has been appointed Hearing Office, Chief Administrative Law Judge of the Social Security Association's Evanston office.

### Condolences

Condolences to the family and friends of: **Leonard Kravets**, who served as Chair of the Entertainment Committee and performed in the Bar Show for many years, **Jeffrey T. Kubes**, who served on the board and as a shareholder in Schuyler, Roche & Crisham, **Thomas Ronald Jasinski Herbert**, a distinguished past president of the Advocates Society of Lawyers, and **Terrence Hutton**, longtime member and founding partner of Howe and Hutton. ■



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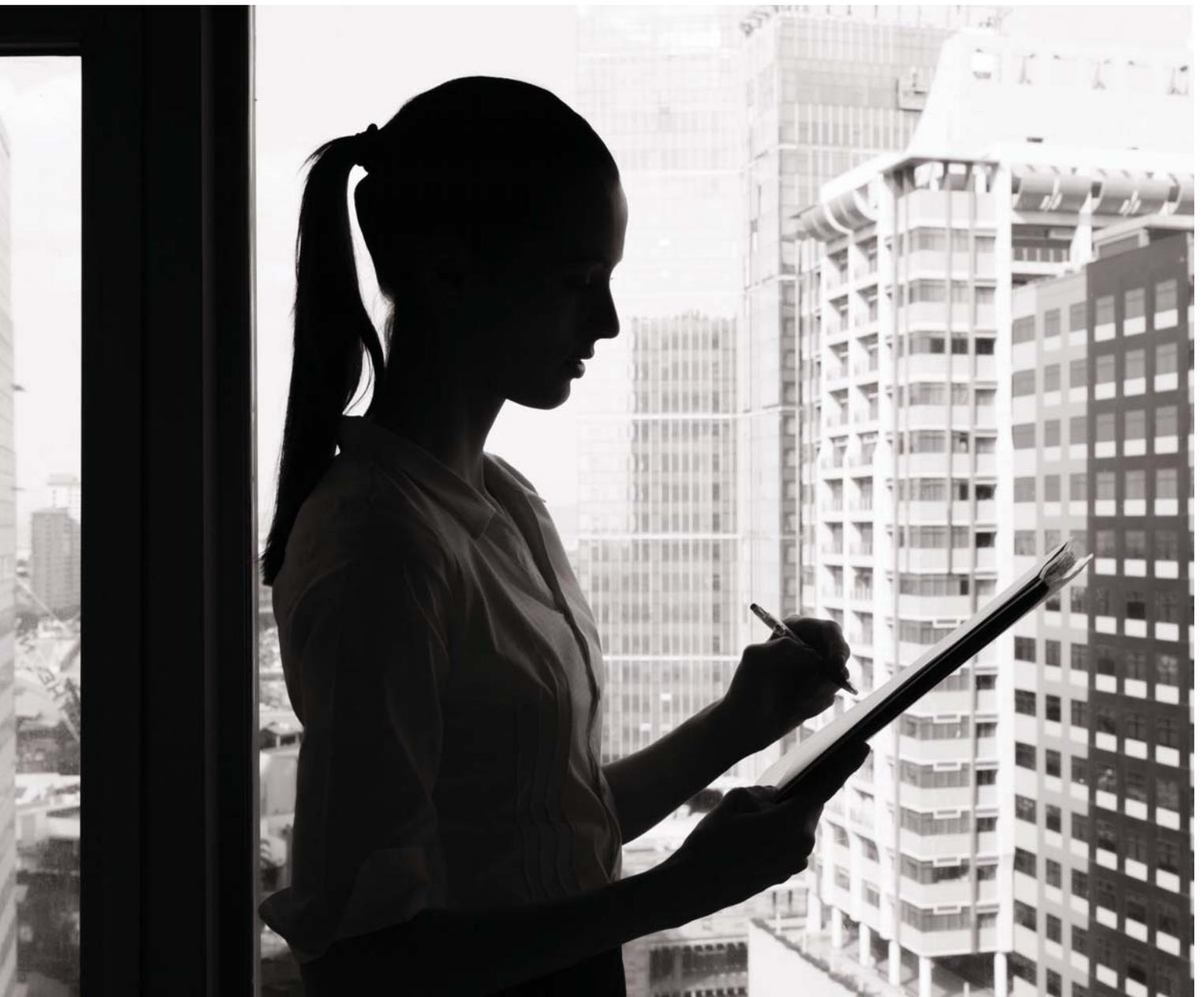
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By Timothy J. Miller and Matthew J. Singer

Defining the Boundaries

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# Ethical Limits on Witness Preparation



For American litigators, witness preparation is an important part of the job. Before deposition, trial, or hearing, lawyers typically meet with witnesses to discuss their recollections, go over key documents, rehearse testimony, and explain appropriate attire, demeanor and potential pitfalls. *See generally* John S. Applegate, *Witness Preparation*, 68 Tex. L. Rev. 277, 298-324 (1989). Although these are everyday activities for litigators, there are surprisingly few authorities—in Illinois and nationwide—addressing the ethical boundaries governing such activity. Which tactics cross the line from acceptable witness preparation to unacceptable witness coaching? Is it permissible for lawyers to suggest that witnesses use certain words, instead of others, to describe their recollections? To recommend that witnesses adopt a confident demeanor in the courtroom? To aggressively challenge a witness’s initial recollection of certain facts, in hopes of securing more favorable testimony?

**D**RAWING THE LINE BETWEEN ETHICAL AND unethical witness preparation is more than just an interesting theoretical question; a lawyer who errs in placing the line may face real-world consequences that include sanctions, bar discipline, disqualification, or even prison. *See, e.g., Knox v Hayes*, 933 F. Supp. 1573, 1575 (S.D. Ga. 1995) (sanctions); *In re Foley*, 439 Mass. 324, 339 (2003) (bar discipline); *Ibarra v. Baker*, 338 F. App’x 457, 460 (5th Cir. 2009) (unpublished) (disqualification); *Sheriff, Clark County v. Hecht*, 710 P.2d 728 (Nev. 1985) (criminal prosecution).) Indeed, an Illinois criminal defense attorney recently was indicted by a federal grand jury based on allegations that he coached a witness to lie in a drug prosecution. *See* Indictment, *United States v. Brindley*, (No. 14 CR 468) (filed August 21, 2014); Jason Meisner, *Defense Attorney Indicted on Perjury, Obstruction Charges*, *Chicago Tribune*, Aug. 21, 2014, available at <http://www.chicagotribune.com/news/local/breaking/chi-defense-attorney-indicted-on-perjury-obstruction-charges-20140821-story.html>.

This article will examine existing authorities and attempt to distill some of the key takeaways for litigators seeking to effectively represent their clients without running afoul of ethical and legal prohibitions.

### Illinois Rules of Professional Conduct

The Illinois Rules of Professional Conduct provide only slight guidance to Illinois attorneys about the ethics of witness preparation. Rule 3.4(b) states what should be obvious: lawyers may not “counsel or assist a witness to testify falsely.” Ill. R. Prof. C. 3.4(b). Illinois lawyers also are barred from offering “evidence that the lawyer knows to be false.” Ill. R. Prof. C. 3.3(a)(3). When the lawyer “reasonably believes” that a witness’s planned testimony is false, however, the lawyer has the option to refuse to offer the testimony (unless the testimony is of a criminal defendant). Ill. R. Prof. C. 3.3(a)(3). Because this rule gives an attorney the choice to refuse to offer the testimony, it suggests by implication that a lawyer is ethically permitted to offer testimony that he reason-

ably believes (but does not know) is false; indeed, in the case of a criminal defendant’s testimony, the lawyer may be obligated to offer such testimony. *See People v. Calhoun*, 351 Ill. App. 3d 1072, 1081-82 (4th Dist. 2004) (criminal defense attorney who refused to present his client’s testimony provided ineffective assistance of counsel where he did not have good-faith basis for believing client would commit perjury); Gerald L. Shargel, *Federal Evidence Rule 608(b): Gateway to the Minefield of Witness Preparation*, 76 Fordham L. Rev. 1263, 1285-88 (2007). In addition, Rule 8.4(c) establishes that it is professional misconduct to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” Ill. R. Prof. C. 8.4(c). Yet, apart from directly encouraging a witness to lie, it is not readily apparent which witness preparation tactics could be deemed to involve “dishonesty, fraud, deceit, or misrepresentation.”

Significantly, the Rules of Professional Conduct also establish that a lawyer has a duty of competence. Ill. R. Prof. C. 1.1. This duty certainly includes a responsibility to adequately prepare witnesses. *See, e.g., United States v. Rhynes*, 218 F.3d 310, 319 (4th Cir. 2000). Thus, a lawyer cannot avoid the ambiguities involved in witness preparation by refusing to prepare witnesses.

### Scholarly Articles

Illinois’ lack of ethical guidance on witness preparation is typical of jurisdictions across the nation. Given the dearth of authority, scholars and practitioners have weighed in and attempted to provide guidelines for proper witness preparation. These sources reflect a fundamental tension between a lawyer’s responsibility to provide the best possible representation and the justice system’s truth-seeking function. Indeed, the very tactics identified by some as best practices for effective witness preparation are criticized by others as potentially unethical. Illustrative examples include:

**Appearance and Demeanor.** Lawyers preparing witnesses typically instruct witnesses about appropriate courtroom attire and behavior and encourage witnesses to adopt a calm, confident demeanor. *See* Restatement (Third) of Law Governing Lawyers § 116, cmt.



n.b; Applegate, *supra*, at 298-300; Brian Haynes, *Preparing Your Witness for Deposition*, 28 *The Advoc.* (Texas) 6, 10 (2004). Yet, some criticize these practices because they may mislead the fact-finder by inaccurately portraying the witness and exaggerating the witness's level of confidence in the testimony. See Roberta K. Flowers, *Witness Preparation: Regulating the Profession's "Dirty Little Secret"*, 38 *Hastings Const. L. Q.* 1007, 1020-21 (2011); Liisa Renée Salmi, *Don't Walk The Line: Ethical Considerations in Preparing Witnesses for Deposition and Trial*, 18 *Rev. Litig.* 135, 163-65 (1999); Joseph D. Piorkowski, Jr., *Professional Conduct and the Preparation of Witnesses for Trial: Defining the Acceptable Limitations of "Coaching,"* 1 *Geo. J. Legal Ethics* 389, 404-09 (1987).

**Suggesting Word Choice.** Witnesses can be sloppy with their word choice or imprecise in their recounting of events. So, according to the Restatement of the Law Governing Lawyers, a "lawyer may suggest choice of words that might be employed to make the witness's meaning clear." Restatement (Third) of Law Governing Lawyers § 116, cmt. n.b. But, some believe that this tactic can amount to encouraging false testimony because the witness is using the lawyer's words rather than the witness's own. See Salmi, *supra*, at 160-63; Piorkowski, *supra*, at 402.

**Reviewing Relevant Documents.** In a witness preparation session, a witness often

will review relevant documents. This exercise both refreshes a witness's recollection of events and ensures that a witness is not blindsided by an unexpected document during cross-examination. See Restatement (Third) of Law Governing Lawyers § 116, cmt. n.b; Applegate, *supra*, at 304-07; Haynes, *supra*, at 8; John M. Maciejczyk, *Effective Deposition Witness Preparation*, 39-Mar *Res Gestae* 28, 30-31 (1996). Critics note that this approach risks that a witness will testify based on the documents and not an independent recollection of the events at issue. See Salmi, *supra*, at 144-45.

The bottom line is that virtually all witness preparation tactics—even those routinely utilized by lawyers—can raise ethical questions. But, as discussed above, simply punting the issue by refusing to engage in serious witness preparation is not an option either; such behavior would violate an attorney's duty to provide competent representation.

### Key Case Law

Despite the concerns raised in the scholarly literature, the few cases to directly address the issue of witness preparation generally set a high bar for what constitutes improper witness coaching. Because there are no Illinois authorities directly on point, this article will examine relevant cases from other jurisdictions.

The prototypical example of improper witness preparation is directly encouraging

or enabling the witness to offer false testimony. *Knox v. Hayes*, 933 F. Supp. 1573 (S.D. Ga. 1995), illustrates this kind of misconduct. In *Knox*, the estate of a bicyclist killed in a collision with a truck filed a civil suit against the truck driver. *Knox*, 933 F. Supp. at 1575. The truck driver's attorney prepared an affidavit for a witness to the accident that included a statement averring that the bicycle had attempted to pass the truck. When the witness reviewed the affidavit, he told the attorney that he had never seen the bicycle. In response, the attorney told the witness that "we can change [the statement] now, or we can just leave [it] like that." The witness did not object to leaving the statement as it was, but told the attorney that if he was later asked about whether he saw the bicycle attempting to pass the truck, he would deny that he saw the bicycle. Nonetheless, the attorney said it was appropriate to leave the statement in the affidavit, the witness signed it, and it was notarized.

The court sanctioned the attorney, ordered him to pay plaintiff's fees and costs spent litigating the false affidavit issue, and disqualified the attorney and his law firm from further representing defendants in the case. Although the attorney argued that the affidavit relied on the witness's "impressions" of the scene of the accident, and therefore was not false, the court determined that the affidavit was worded as "the testimony of a person who witnessed an event" and concluded that the attorney "knew that [the witness] witnessed no such thing, but drafted [the affidavit] as if he had." The court concluded that the affidavit contained "a blatant falsehood of which" the attorney was aware. The court emphasized that the lawyer's interaction with the witness after the witness disputed the statement in the affidavit was especially inappropriate. Once the witness pointed out that the statement was false, the attorney "had a professional obligation to prevent [the witness] from signing the affidavit" that included the false statement. Instead, the lawyer inappropriately "helped the process along" by giving the witness a choice between changing the affidavit or leaving it as is.

Two Fifth Circuit cases emphasize

the ambiguous line between proper and improper witness preparation. In *Ibarra v. Baker*, 338 F. App'x 457 (5th Cir. 2009) (unpublished), an attorney was sanctioned for improperly coaching a witness even though the attorney never directly met with the witness. The plaintiffs in *Ibarra* were arrested after recording and photographing the execution of a search warrant at a neighboring home. After they were acquitted of resisting arrest they brought a false arrest suit against the arresting officers. *Ibarra*, 338 F. App'x at 461. The attorneys for the officers hired an expert witness who prepared a preliminary report opining, among other theories, that the officers had reasonable suspicion because the arrests occurred in a "high-crime area." Significantly, this theory was unsupported by any prior testimony in the suit or the criminal case against plaintiffs.

The expert met one-on-one with a defendant officer the day before the officer's deposition. The officer then showed up at his deposition with a set of notes prepared during his meeting with the expert that tracked the expert's preliminary report, point-by-point, including the "high crime area" theory. The officer's deposition testi-

mony about his meeting with the expert was evasive, and he claimed not to remember details of the meeting that occurred just one day prior. Moreover, although the officer testified that he had been briefed before the arrest that the relevant neighborhood was a "high crime area," he "was unable to provide even a single detail" about that briefing.

After the deposition, the plaintiffs moved for sanctions, and they later discovered billing records indicating that defendants' attorneys had met with the expert the day before he met with the officer. After holding two hearings, the district court concluded that the purpose of the meeting between the expert and the officer was to "coach" the officer to testify consistently with the expert's report. Based on the attorneys' meeting with the expert the previous day, the court also concluded that the attorneys were involved in the witness-coaching scheme, sanctioned them \$10,000, and disqualified them.

The Fifth Circuit affirmed the district court's decision to sanction the attorneys for improper witness coaching. The court emphasized that there was no factual support for the "high crime area" theory

prior to the officer's deposition testimony; that theory first appeared in the expert's report, and then the officer—with the aid of the notes from his meeting with the expert—mentioned it for the first time in his deposition. The court held that the sudden appearance of this theory in the officer's deposition testimony, based on a purported briefing of which the officer could not recall "a single detail," supported the district court's conclusion that the expert had improperly coached the officer to falsely testify consistently with his expert report. The court acknowledged that the evidence of the attorneys' involvement was a "bit scant," but emphasized that the attorneys met with the expert the day before his meeting with the officer. Applying a deferential standard of review, the court refused to overturn the district court's ruling that the attorneys, "acting through [the expert], improperly" coached the officer to testify consistently with the expert's report.

In contrast, another Fifth Circuit case, *Resolution Trust Corp. v. Bright*, 6 F.3d 336 (5th Cir. 1993), determined that attorneys had not crossed the line into improper witness coaching. Plaintiff's



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## KEY TAKEAWAYS

Although the above authorities hardly provide comprehensive guidance for attorneys who are preparing witnesses, there are some key lessons to be gleaned:

- An attorney should **never** encourage a witness to provide testimony that the witness says, or the attorney knows, is false. This is the golden rule of witness preparation and one that even the vague ethical rules make clear.
- An attorney should emphasize repeatedly that the witness must tell the truth. Attorneys who are interviewing and preparing witnesses should emphasize explicitly and repeatedly that the witness should tell the truth and then act in accordance with that instruction. By doing so, the risk that ordinary witness preparation techniques could lead to false testimony can be minimized. See Haynes, *supra*, at 8; Maciejczyk, *supra*, at 33. And this is a key distinction between *Knox* and *Resolution Trust*. In *Knox*, after the witness identified an untrue statement in the draft affidavit, the attorney gave the witness the option of signing the affidavit containing the untrue statement or changing it. Meanwhile, in *Resolution Trust*, the lawyers repeatedly emphasized that the witness must tell the truth, even while aggressively challenging the witness's perception of events and asking her to change the substance of her affidavit. The lawyers' emphasis on candor—even as they attempted to persuade the witness to make changes to her affidavit—was a key consideration in the court's decision to overturn sanctions against the lawyers.
- An attorney should work to ensure that witnesses are well prepared to testify. An attorney must not encourage a witness to lie, but an attorney generally "enjoys extensive leeway in preparing a witness to testify truthfully." *Ibarra*, 338 F. App'x at 465. Thus, for example, an attorney can, and should, critically examine a witness's testimony, discuss with the witness other relevant evidence, work to refresh the witness's recollection, and prepare the witness for questioning on direct and cross-examination. Moreover, it is appropriate to prepare a witness to testify by emphasizing appropriate demeanor and behavior in the courthouse, working with the witness to choose words that accurately reflect the witness's intended meaning, and reviewing key documents so the witness can give thoughtful and informed testimony. The ethical concerns that some scholars have raised about these tactics—or the possibility for abuse in the hands of an unscrupulous lawyer—can be reduced by emphasizing to the witness the need to testify truthfully. Moreover, these concerns should not prevent an attorney from doing what is necessary to effectively prepare a witness. Indeed, a lawyer would not be providing competent representation if the lawyer did not fully prepare witnesses to testify.

attorneys conducted a series of interviews with a witness, and after the last interview, they prepared an affidavit for the witness to sign. The attorneys specifically told the witness that the affidavit contained a few assertions that the witness had not previously made, but that the attorneys believed to be true; they also instructed the witness to "very carefully" review the affidavit. The witness made several changes to the draft affidavit, and deleted certain facts of which she believed she did not have personal knowledge. The attorneys aggressively attempted to persuade her to include the facts in her affidavit by describing their understanding of the course of events and showing the witness independent evidence supporting their theories. After the witness refused to alter her revisions to the affidavit, the attorneys prepared a final affidavit incorporating the witness's changes. When defense counsel

became aware of the situation, they moved for sanctions. The district court granted the motion based on its conclusion that plaintiff's attorneys had improperly attempted to tamper with or manufacture evidence against defendants.

The Fifth Circuit reversed, concluding that plaintiff's attorneys did not engage in sanctionable misconduct. The court emphasized that plaintiff's attorneys did not ask the witness to make statements that they knew were false; instead, they attempted to convince her to adopt statements that they believed were true. Given the attorneys' good faith basis for believing in the truth of the statements, the court determined that the attorneys' conduct could not accurately be described as manufacturing evidence or encouraging false testimony. Moreover, although the attorneys were "persistent and aggressive

in presenting their theory of the case to [the witness]," they "nevertheless made sure that [the witness] signed the affidavit only if she agreed with its contents." In fact, the court emphasized, the attorneys specifically brought to the witness's attention that their draft affidavit contained some new statements, and instructed her to read them carefully. Ultimately, the court concluded that the attorney's actions were permissible advocacy and it reversed the district court's sanctions order. ■

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*Timothy J. Miller, General Counsel at Novack and Macey, is experienced in matters concerning attorneys' and other professionals' liability. Matthew J. Singer is an Associate at Novack and Macey, concentrating in commercial litigation.*



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Judge Patricia Brown Holmes is everything you would hope for in a leader: warm, funny, and welcoming. The second African American female president of the CBA, her life, struggles, and the philosophy imparted by her parents all inform her leadership of the bar. A self-described rabble-rouser, Holmes brings a spirit and energy to her office, and, as is clear from the stories of her youth and legal career, she is a member of the vanguard on issues of race, justice, and inclusion.



## Running from the Police

Holmes was born in San Diego, California, and moved to Chicago at a young age. She grew up the oldest of five children in a five-bedroom house in the south side Morgan Park neighborhood. Just at the end of her block was Calumet City, Illinois. When they moved in, her family was the first African American family on the block—a fact that triggered some violent reactions in some of her neighbors. “I can tell you stories,” Judge Holmes says, “[but] I won’t tell you.”

Eventually, the neighborhood, as she describes it “turned over,” and filled with children playing softball in the street. “Our big kick,” Holmes says, “was at 10 o’clock at night, we would go to the end of the block and cross the street because the curfew in Calumet City was 10 o’clock, but the curfew in Chicago was 10:30. So we would cross the street, and the Calumet City police would come and turn on the lights and we’d run back across the street. And we literally would do that, you know, for a half an hour.”

She later learned that the officer who chased her and her siblings across the street was the husband of Holmes’ sixth grade teacher. “He was having just as much fun as we were.” Even so, when her mother found out about Holmes’ nightly shenanigans, the game quickly ended. Holmes describes her mother as an activist and a rabble-rouser—a title which Holmes also proudly claims. Holmes’ mother had graduated from high school at 16 years old and went straight to college. She became a buyer for Sears & Robuck, located in the now-named Willis Tower, where Holmes’ current office is.

## The Education of a Rabble-Rouser

Holmes graduated valedictorian from Edward H. White elementary school. Her mother fought hard to get her into the then-new George Henry Corliss High School. In her freshman year of high school, Holmes sat front and center in her advanced placement English class. The teacher took one look at her and asked, “Why are you sitting in the front of my class? You’re too black, too dumb to be in front of my class. Get up and go



At the CBA’s Annual Meeting, shortly after receiving the gavel of leadership from Daniel A. Cotter of Butler Ruben (right), with CBA Executive Director Terrence M. Murphy.

back.” Holmes, as she describes her skin color, is “chocolate.” Because it was the only advanced placement English section offered, Holmes couldn’t switch out of the class. “Which meant that me and the teacher were going at it over every comma,” Holmes recalled, “every period, every noun. But it made me a better writer. Not that that’s the way you go about it.”

Judge Holmes graduated co-Valedictorian from Corliss High School, tied in almost every respect with another student. Holmes recalls arguing with the school about whether she should have to share the title at all, noting that she had a perfect attendance record while her so-called co-valedictorian did not. “I think that was my first legal argument,” she quips.

For college, though she was accepted or waitlisted at Stanford, Harvard, and other top schools, Holmes chose the University of Illinois because it was the least expensive and close to home. She started off in engineering, but later switched to the liberal arts. “I was the only minority, only African American, only female [in Engineering]. I couldn’t get anybody to study with me. I was lonely...so I switched out.”

On campus, Holmes came into her role

as a rabble-rouser like her mother, never letting injustice pass by unchecked. “I had to learn how to stick up for myself,” she says. During her freshman year rhetoric class, Holmes was “the only black person in the class, the only visible minority.” One story from that class has stayed with her. Papers in the class were graded anonymously, with only social security numbers identifying the students. When handing back graded papers in class, Holmes’ professor slid her a paper without reading off any of the identifying numbers. Holmes remembers the moment clear as day. “How did she know this was my paper?” She thought, “She must know my social security number... Then I looked at the paper and it said ‘F’ ... I’ve never failed anything in my life.” The paper wasn’t hers. Holmes had actually received an A+, and the professor had even written on Holmes’ paper *Use as example*.

Before giving Holmes her actual paper, the professor asked her, “Who helped you with this?” Holmes promptly switched out of that section. “Dealing with situations like that... always made me the person who says ‘That’s not right. That’s not fair. We’re standing up.’”

Her college friends dared Holmes to take the LSAT. Though she didn’t study



Holmes, with friend, mentor, and “Board of Director” Judge Ann Williams of the U.S. Court of Appeals for the Seventh Circuit

for the test, she did well and was inundated with letters from law schools across the country, soliciting her application. But the University of Illinois College of Law offered her a full scholarship with room and board, which she readily accepted. She also admits that she didn’t want to leave Michael—her then boyfriend and future husband.

In law school, Holmes landed a summer job with the City of Chicago at a time of change for the corporation counsel’s office. “Jim Montgomery became the first black City of Chicago corporation counsel under Harold Washington,” Holmes recalls. “I can’t even begin to tell you how proud I was....He and Eugene Pincham were bigger than life.” In Holmes’ eyes, Montgomery set an example for the profession, and one that she could model.

### Early Career as a Prosecutor

Graduating from law school, the market for minority attorneys was markedly different from today. Holmes recalls, “At that point in time, if you had one minority lawyer in your firm, then you were good.” Most law firms at that time did not hire multiple attorneys of color. “People were trying to be that one,” Holmes said, “but...once you’re in, people stuck around for a while.

So there’s no room for number two!”

So Holmes began her legal career where many diverse young attorneys did: at the State’s Attorney’s office in the appeals division. When she wrote her first appellate brief, the brief supervisor asked her a familiar question. “Who helped you with this?” Undeterred, Holmes quickly became a brief supervisor in the appeals division and eventually ended up in the felony trials division. “I tried hundreds of cases.” She recalls sometimes taking three cases a day to trial. “You figure out how to get to the point real quick,” she notes. A quality she has retained to this day.

After five years in the state’s attorney’s office, she applied and interviewed for a job with Fred Foreman, the then recently-named U.S. Attorney for the Northern District of Illinois. Foreman offered her the job at the end of the interview, and Holmes spent five years as an Assistant United States Attorney. She tried 25 cases in that time. Holmes credits her experience with the state’s attorney and U.S. attorney for her courtroom demeanor. “It helped me be fearless in the courtroom.”

### On to the Bench

Holmes’ next career move may seem baffling to some. She applied for the position of Chief Assistant Corporation Counsel in charge of municipal prosecutions for the City of Chicago. While the position itself was exciting, the prospects it created were even more so. Almost everyone who had served in that position eventually joined the judiciary. “I had always wanted to be a judge.”

She applied and got the job, and within two years, the County had reopened the appointment process for associate judges after having suspending it for budgetary reasons. Holmes was encouraged to apply, but with 365 applications for 18 positions, “it was like a feeding frenzy.” When the Chief’s Judge’s office called Holmes to tell her that she made the short list of 36 candidates, she thought it was a joke. “I’m like, what’s the number. I’ll call you right back.” It was not a joke, and over the next two weeks, she put on her walking boots, and met with over 400 circuit court judges across the County. She was appointed as an associate judge, and at the time was the youngest African American female ever appointed. She was 36.

She began hearing cases in the juvenile court, where she and a group of new judges reinvented the juvenile court system. “We reduced the number of cases... We were saving lives and helping children. It was great.” Holmes eventually took over the Benchmark Permanency Hearings Program, which, according to the court website, “assists teen wards approaching emancipation to prepare for independence.” The program became a national exemplar.

But her success on the bench was interrupted. One day, her law clerk found Holmes unconscious on the floor in chambers. The clerk and another judge rushed Holmes to the hospital, where the doctors diagnosed her with cancer and gave her six months to live. She reacted, telling the doctor, “I have a six-month old, a four-year old, and a sixteen-year old step son! I don’t have time for this! What do we need to do here?” She fought the cancer for two years, and took another two before she fully recovered from the chemotherapy.

Cancer changed Holmes’ perspective

on life. “Why not take a chance and go do something different.” Around that time, corporations began to issue a “call to action” for firms to not just hire but to retain minority attorneys. “The idea of retaining one or two [diverse attorneys] every year and waiting to see what happened just wasn’t working,” Holmes notes. “You need someone at the top to role model, to mentor, to advise while you’re recruiting from the bottom.” Multiple law firms began soliciting Holmes to join private practice. She was disinclined to leave the bench, “[b]ut it just kept coming.”

### **The Move to Schiff Hardin**

Holmes eventually realized that in private practice she would have an opportunity to change the face of a law firm and maybe eventually the profession.

When asked what appealed to her about Schiff Hardin, her first answer is one word: “Ron.” Ronald Safer, the then managing partner was on a mission in 2005. Holmes recalls, “They seemed like they wanted to do something.” As Safer describes it, “I agreed to become managing partner because we [Schiff Hardin] needed urgently to improve our diversity. I reflected on what we needed to do that most effectively. We needed to begin at the top. It would be easy to swell the numbers by hiring a number of diverse lawyers, but that would not be enduring.” Judge Holmes was key. “With all my might, I grabbed her with both hands and dragged her off the bench,” Safer said. He emphasizes that Holmes is an effective, vibrant, committed role model, not just for diverse attorneys, but for all people.

Holmes teases that she warned Safer that she might cause him some headaches, a warning which she reminded him of often when she stormed into his office. But Safer has never regretted bringing Holmes aboard: “I’m blessed to know a number of extraordinarily talented diverse attorneys. But there’s no one like Judge Holmes. She is a unique bundle of talent. She is a uniquely talented trial lawyer, an analytical thinker, and the most emotionally intelligent person I know. She gives of herself, of her time and

## **From Her Peers**

### **A Special Place**

Judge Holmes holds a special place in the hearts of BWLA members. As a founding member and Past President, she is certainly woven into the fabric of BWLA’s rich history. But nearly 30 years later, her commitment and dedication to the success of BWLA remains strong. She is still a mentor, teacher, guide, sponsor, friend; essentially whatever we need. We are so grateful for her support.

—LaShonda A. Hunt, President, Black Women Lawyers’ Association of Greater Chicago, Inc.

### **Leading for Success**

Just The Beginning—A Pipeline Organization is thrilled to have such a respected judge (ret.) share her time and leadership talent with us. We know that her time and expertise is critical to our success. Judge Holmes is another great example of members of the legal community dedicated to increasing diversity in the pipeline to the legal profession and judiciary.

—Marla R. Shade Harris, Interim Executive Director, Just The Beginning—A Pipeline Organization

### **Her Generosity of Spirit is Boundless**

I have known Judge Holmes since we were both ASAs in the Cook County States’ Attorney’s Office and were trial partners there. She has always been one of the smartest, most thoughtful and empathetic attorneys that I have ever had the pleasure of working with. She never hesitates to help others out and to share her wisdom and commitment to excellence with all those she comes in contact with. She is a superior attorney and has paved the way for many attorneys who will and have come behind her. Her generosity of spirit is boundless.

Judge Holmes has been at the forefront of diversity initiatives not just at Schiff Hardin but locally in Chicago, as well as nationally. I joined Schiff Hardin in 2012, a diverse attorney with over 20 years of corporate in-house experience without any law firm background, so to say that she has been a mentor to me in my law firm experience would be an understatement. In her role as Chair of the Diversity committee at Schiff Hardin, Judge Holmes continues to provide outstanding service to the Firm by bringing invaluable insights, perspective and judgment to the table.

In addition to being a topnotch attorney, Judge Holmes is a devoted wife and mother and a dear friend to countless others.

—Alison W. Jackson, Counsel, Schiff Hardin

caring indefatigably. She is forgiving, as she has had to be. When you’re blazing a trail you get bruised. Nobody would have faulted her if she had given up a hundred different times. But she never did. She came back from every insult, every slight, every challenge stronger, more determined, more committed.”

When Holmes landed at Schiff Hardin, it was a right fit. “I’ve never been told ‘no,’” she says, “and as a result, we went from no diversity to getting awards. We went from not on the radar screen to on the radar

screen, big time. Which to me, meant that it was the right decision.”

Her 10th anniversary at Schiff Hardin was on August 1, 2015.

### **Holmes’ “Board of Directors”**

Nowadays, if you ask Judge Holmes “Who helped you with this?” the list is long. Throughout her life, Holmes has surrounded herself with trusted advisers and friends. “I have a board of directors, so to speak. My husband [Michael] is the chairman.” Michael Holmes is the Head



Another close friend and mentor of Patricia Brown Holmes is Former CBA President and Appellate Judge Joy V. Cunningham of the First District, 1st Division.

Football Coach and Vice President at Leo Catholic High School. Holmes describes their relationship as one of mutual support.

Other members of her board include girlfriends from high school, and Judges Sharon Johnson Coleman and Ann Williams, Justices Shelvin Hall and Joy Cunningham. Justice Cunningham, who was the first African American female president of the CBA, describes Holmes as “my over achieving younger sister. If I had a daughter, I’d want her to grow up to be like Pat Holmes.”

Holmes and Michael have three children—ages 33, 21, and 16. “One was in kindergarten one was in college,” Holmes points out. Of her extended family she smirks and describes them as “hilarious... This year’s Christmas theme is ‘Murder at the Disco.’”

### **Inclusion, Mentorship, Role Models, and the CBA**

Holmes’ parents raised her with the value and expectation that she get involved with her community. “You don’t just sit there. You get involved. That’s how you’re supposed to live.” Right out of law school, Holmes joined the CBA, ABA, and ISBA. Her involvement and service has only grown and blossomed since. She is on the

Board of Trustees for the University of Illinois. She is the past president and founder of the Black Women Lawyers’ Association of Greater Chicago, Inc. She sits as chair of Just the Beginning Foundation, Inc., and also serves as co-chair of the Illinois Judges Association (IJA) Retired Judges Committee. IJA president, Judge Robert Anderson, describes Judge Holmes as “bright, intelligent, articulate and has a great sense of humor.” A sentiment echoed by former IJA president, Justice Michael B. Hyman: “Pat is someone who can be counted on to rise to a challenge and get done whatever is needed. My experience with her has always been that she is a problem solver and a consensus builder who brings a fresh point-of-view to critical discussions.”

Holmes’ philosophy of service is part of the theme of her year as president of the CBA. She is encouraging every attorney to “[g]et involved, stay involved, mentor, and help.” Unsurprisingly, inclusiveness is also one of her primary goals. “I want to create that feeling that everyone is welcome. Everyone should feel included in the Chicago Bar Association because that’s the bar association for everybody.” She analogizes it to a family. “Each one of us—every kid, every spouse, every child—we’re all differ-

ent and we all bring something different to the table. But we’re all part of one group... That’s what I want to impart. We should all be a part of this one big family and feel included.”

As Justice Cunningham points out, inclusion is vital for the CBA: “In the not-so-distant past, the bar association was not welcoming to many attorneys.” But Cunningham is certain that Holmes “is the perfect leader to carry that theme [of inclusion] forward. She has always shown that we can get so much more done working together.”

As Holmes sees it, the future of the legal profession is at stake. “We’re in a day and age now where the legal profession is changing; the world is changing. Social media is taking over. People think they can do everything online.” But the bar association perpetuates, improves, and reenergizes the profession. “People lose track of that.” That is one of the reasons that Judge Holmes has asked each person to recruit five new or lapsed members to the CBA. Because the more inclusive and open the CBA is, the better it will serve the community. “Mentor someone. Grab a person and say, ‘Look, I’m going to help you be successful. Otherwise, what is the purpose? You’ve been a lawyer, you die, then what?’” When new people join the bar association and become involved, Holmes hopes they will spread the words to others about all the excellent work going on at the CBA.

Holmes has called on all CBA members: “You have to make people feel included and invited in.” Otherwise most won’t get much past the doorway. But if every attorney can find a place at the table, future generations of attorneys will be able to see themselves reflected in the CBA’s history and legacy. “[S]o that when the pictures start going up on the wall they really start to look like a rainbow.” ■

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*Oliver Khan is an Associate at Arnstein & Lehr and is a Co-Editor of the YLS Journal*

A close-up portrait of Nicole Alexander, a woman with blonde hair, smiling. She is wearing a black top and a pearl necklace. The background is a soft-focus green.

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**Lessons from the Ranch**

**By Matthew A. Passen  
YLS Chair**

In July, I had the privilege of spending 23 days in Dubois, Wyoming at the Trial Lawyers College, a program dedicated to training and educating lawyers and judges who are committed to the jury system and to representing and obtaining justice for individuals. The College was founded and led by legendary trial lawyer Gerry Spence and took place on his ranch.

I went to the Trial Lawyers College not knowing what to expect, but hoping to leave a better trial lawyer. I think I accomplished that goal. I also learned some unexpected lessons that made me a better person and that apply to lawyers of all practice areas:

**Power of role reversal.** Atticus Finch said it best in *To Kill a Mockingbird*: “You never really understand a person until you consider things from his point of view...until you climb into his skin and walk around in it.” This exercise—of actually trying to see and feel the world from someone else’s point of view—is incredibly powerful in understanding the “story” of one’s case and preparing for trial. It can be

equally beneficial in our interactions with family members, colleagues and others in everyday life.

**Feelings create connection.** As a trial lawyer, credibility is everything. To develop and maintain credibility, we have to be honest and be ourselves. The less obvious takeaway from the ranch is that being ourselves often involves exposing our true feelings—even feelings we are afraid or ashamed of. Having the courage to express our feelings and vulnerability makes us more relatable to others. This is how I will approach every jury selection from now on, and how I hope to act in my everyday life.

**Awaken the Right Brain.** Most lawyers (including me) are logical, analytic “left-brain” thinkers. They have never written a poem, painted abstract art or stood before an audience and sung a song. Having (skeptically) done all three at the ranch, I experienced an awakening of creativity and freedom of expression that I hadn’t felt since I was a child. Given that most people make decisions based on feelings, not logic, we might consider exploring activities that awaken the “right brain” to see life through a new, more human (less lawyerly) lens.

**It all begins with you.** This is one of Gerry Spence’s favorite sayings, and one I will always remember. How can I ask a juror to trust me if I don’t trust the juror or show that I can be trusted? How can I expect my wife to show me love and affection if I don’t show it to her? Most of life’s problems can be answered by this simple response: It all begins with me. ■

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HOW TO DRAFT A STATE- AND SHARIA-COMPLIANT WILL

# Where There's a Will, There's a Way

By Furqan Mohammed and Lucy Park



**D**rafting a will forces uncomfortable choices: divvying up property, choosing guardians for our children, etc. Nonetheless, attorneys and tax professionals unequivocally recommend that every person execute a will. There are numerous benefits to planning an estate: (1) using federal and state estate and generation-skipping transfer (GST) tax exemptions; (2) identifying who is entitled to receive what property and in what proportion (instead of letting state law decide); and (3) avoiding the cost of a court-supervised probate estate. *See generally* Pierro, Schaeffer & Connor, LLC, *Estate Planning Guide 2015*, at 1. Muslims have an additional motivation for executing a will: it is *mandated* in Islam, regardless of one's socioeconomic status or sect. The Prophet Muhammad emphasized the former when he stated, "It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a will about it." Sahih Al-Bukhari (collection of sayings from the Prophet), Hadith No. 2738, *available at* <http://sunnah.com/bukhari/55>.

Further, both Sunni and Shia Muslims have established laws of inheritance. Although much of the legal scholarship to date has focused on the Sunni (majority sect) laws of inheritance, recent publications have also begun to analyze the Shia (minority sect) laws of inheritance. *See, e.g.,* Shahbaz Ahmad Cheema, *Shia and Sunni Laws of Inheritance: A Comparative Analysis*, Pak. J. Islamic Research (2004), *available at* <http://www.bzu.edu.pk/PJIR/vol10/eng%206%20Shahbaz%20Cheema%2004-11-13.pdf> (comparative analysis of Sunni and Shia laws of inheritance with a focus on the latter). Although the focus of this article is Sunni laws, these same principles apply to the drafting of wills under Shia laws.

**Sharia and State Mandates for Distribution of Assets**

Sharia law generally prioritizes distributions from an estate as follows:

- Repayment of all debts owed by the decedent;
- Payment of funeral expenses (although it is acceptable for family members to gratuitously pay these costs);
- Specific bequests of up to one-third of the property distributed as the decedent sees fit, including to individuals who share no blood relationship with the decedent (*e.g.*, to charitable organizations or friends);
- Distributions of the remaining two-thirds of the property as mandated by Sharia law.

The distributions mandated by Step 4 depend on who survives the decedent and the gender of those survivors. The distribution mandated for a husband who passes away leaving a mother, a wife, a daughter, and a son, for example, would vary greatly from a wife who passes away leaving behind a father, a husband, a daughter, and a son. Distributions under Sharia law can thus be complicated depending on the survivors.

State statutes govern when a Muslim (or any person) dies without a will. But these statutes are incompatible with Sharia law. Imagine a husband passing away with \$300,000 of probate assets without a will (known as intestacy), leaving behind a wife, two kids (a son and a daughter) and a mother. Under Illinois law, the wife would receive one-half of the estate, or \$150,000, in addition to all property of which she is a joint owner (such as the marital home and bank accounts). 755 ILCS 5/2-1(a). The children would share the remainder in equal parts. The decedent's mother would receive nothing, because Illinois law does not permit parents to receive a share where the decedent is survived by his or her spouse or children. 755 ILCS 5/2-1(e). Passing away without a will thus results in

a distribution that is incompatible with Sharia law.

Even if a Muslim had executed a Sharia-compliant will before passing away, that is insufficient, by itself, to fulfill one's obligation in Islam. Those distributions would be superseded by state statutes to the extent they conflict. For example, Illinois allows a surviving spouse to renounce a decedent's will and receive one-half of the decedent's estate, if the decedent left no surviving children, or one-third of the decedent's estate, if the decedent left surviving children, in addition to all property of which the surviving spouse was a joint owner. 755 ILCS 5/2-8. Moreover, surviving spouses and children are allowed a "spouse's award" or "child's award," respectively, from a decedent's estate, which also may defeat the decedent's efforts to fulfill his or her obliga-

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tion in Islam. 755 ILCS 5/15-1 and 2.

This outcome begs the question: how can a Muslim fulfill both state and Sharia mandates through estate planning?

### Trusts and Other Estate Planning Devices

The answer lies in the creation of trusts and other estate planning documents. A trust is a fiduciary arrangement that allows a third party (trustee) to hold assets on behalf of a beneficiary (such as the heirs). *Black's Law Dictionary* 1740 (10th ed. 2014). Trusts are flexible instruments that specify how much and when certain assets should pass to the beneficiaries. See generally 760 ILCS 5/1 et seq. Other estate planning vehicles, such as family limited partnerships, can also be used for a similar purpose.

In Illinois, trusts have the added benefit of preventing a surviving spouse from circumventing a decedent's wishes. As described above, a surviving spouse may renounce a decedent's will and take his or her statutory "elective share" against the decedent's estate. 755 ILCS 5/2-8. However, Illinois does not include trust assets

in the definition of a decedent's "estate." See *Johnson v. La Grange State Bank*, 73 Ill. 2d 342, 364 (1978). Accordingly, Muslims can place their assets in trusts to ensure a distribution that comports with Sharia law.

Individuals should seek competent legal counsel in addition to Islamic scholars to draft wills, trusts and other estate planning documents. Doing so ensures that a decedent can rest knowing they have fulfilled an Islamic mandate, complied with state law and met their family's needs. ■

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*Furqan Mohammed is an associate in the Chicago office of Perkins Coie LLP. Furqan has a broad litigation and counseling background and he helps companies and start-ups that focus on halal, Muslim-centric and/or Sharia-compliant products and services. Lucy Park, a partner in the Chicago office of Perkins Coie LLP, is an estate planner who advises couples and families, as well as fiduciaries and beneficiaries, on the administration of trusts and decedents' estates, probate and pre- and post-mortem estate planning.*

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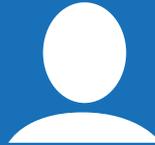
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# LEGAL ETHICS

BY JOHN LEVIN

## Legal Activism and Client Relations

In the course of day to day business, lawyers may be asked to do things, which—though completely legal and permitted by the Rules of Professional Conduct—conflict with the lawyer’s personal ethical standards or beliefs. It does not take too much imagination to think of several examples. In most cases, the lawyer can simply refuse to handle such matters. But sometimes the pressure of business may require that the lawyer, or members of the lawyers’ firm, deal with these issues.

The question I want to address is: to what extent may a lawyer ethically advocate for issues of law reform that may conflict with the interests of clients? (But first, a lawyer need not be concerned under the Rules simply because he or she does not agree with a client. Illinois Rule 1.2(b) states: “A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, economic, social or moral views or activities.”)

As an example, can a lawyer be active in the Sierra Club and represent coal mining interests at the same time? Illinois Rule 6.4, Law Reform Activities Affecting Client Interests, directly addresses the question. Rule 6.4 states:

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that

the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment 1, however, contains the caveat that “[i]n determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7.”

So the general rule seems to be that a lawyer is permitted to engage in law reform activities that may conflict with a client’s interests unless the Rules otherwise prohibit such activities. So where do you draw the line?

Some issues are clear. Under Rule 1.6, a lawyer cannot “reveal information relating to the representation of a client unless the client gives informed consent”. So there can be no telling of tales. [See also Rule 1.8(b), Conflict of Interest: Current Clients, prohibiting using information relating to the representation of a client.]

Other issues are harder. Rule 1.7, the general prohibition of conflicts of interest, states that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” However, Comment 1 to Rule 6.4 states that lawyers



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

For more, go to <http://johnlevin.info/legaethics/>.

### ETHICS QUESTIONS?

The CBA’s Professional Responsibility Committee can help. Submit hypothetical questions to Loretta Wells, CBA Government Affairs Director, by fax 312/554-2054 or e-mail [lwells@chicagobar.org](mailto:lwells@chicagobar.org).

“involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization.” So it is unlikely that mere involvement with a law reform group will create a conflict under Rule 1.7.

However, what if there is more activity? Here the Comments to Rule 1.7 plunge the lawyer into a grey area. Somewhere in that grey area is a line past which involvement with law reform activities may create “a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities or interests.” In that case there might be a prohibited conflict. In such a situation the lawyer should read the Rules and Comments carefully and come to a reasoned decision. ■

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

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# ETHICS EXTRA

BY BRANDON DJONLICH

## SETTLEMENT NEGOTIATIONS & ETHICS VIOLATIONS

### Two Attorney Wrongs Don't Make a Right

**W**hen negotiating a settlement, does failure to disclose the death of the plaintiff constitute a legal ethics violation? When plaintiff's counsel fails to disclose the death of his client, is defense counsel obligated to report this legal ethics violation to the Attorney Registration and Disciplinary Commission (ARDC)? When defense counsel fails to report this ethics violation, is he now subject to discipline? The Appellate Court of Illinois answers "yes" to all three questions. *Robison v. Orthotic & Prosthetic Lab, Inc.*, 2015 IL App (5th) 140079.

In 2008, Randy Robison filed a product liability action against Orthotic & Prosthetic Lab, Inc., alleging its defective prosthesis had caused him severe injuries. Anthony Gilbreth, of Crowder & Scoggins, Ltd. represented Robison. James Smith, of Greensfelder, Hemker & Gale, P.C. represented Orthotic. In September 2013, settlement negotiations commenced. On September 19, 2013, Smith made a final settlement offer to Gilbreth. On September 24, 2013, Gilbreth e-mailed the following acceptance: "My client has instructed me to accept [amount redacted] in full and final settlement of this matter. Please provide an appropriate release and I will present it to my client for review and approval."

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

On November 7, 2013, Smith drafted and sent a settlement agreement and general release to Gilbreth. On November 15, 2013, Gilbreth drafted and tendered an amended version of the proposed release to Smith. In an e-mail explaining the change, Gilbreth stated that his client, Randy Robison, had passed away, and his son, Matthew Robison, had been appointed as the personal representative of the estate in August 2013. As a result, Gilbreth was seeking consent to substitute the son, Matthew, as the plaintiff. The November 15, 2013, e-mail was the first time that Smith and defendant learned of plaintiff's death. Smith received this e-mail about two months after the settlement negotiations had, in theory, ended.

Smith e-mailed Gilbreth, on November 18, 2013, asking if his failure to disclose his client's death was an "unfortunate oversight" or if he had intentionally withheld this material fact during settlement negotiations. Gilbreth responded that the firm's legal research had indicated he had no affirmative duty to disclose his client's death, and he had believed disclosing the death would not be in his client's best interest. Therefore he argued that the rules of professional responsibility dictated against his disclosing the client's death. The following day, Smith informed Gilbreth that the settlement agreement was invalid because a material fact had been withheld, and his client opposed the substitution of the plaintiff.

As a result of the e-mail exchange, Gilbreth filed both a motion to substitute the son as plaintiff and a motion to enforce the

product liability settlement. After a hearing on both motions, the circuit court granted both the motion to substitute Matthew Robison as the plaintiff and the motion to enforce settlement. The defendant appealed.

#### Plaintiff, Defendant and Court

In its opinion, the appellate court stated, "In every suit, there must always be a plaintiff, a defendant, and a court. An attorney's employment and his authority are revoked by the death of his client, and an attorney cannot proceed where he does not represent a party to the action." Additionally, "Generally, the attorney-client relationship is terminated by the death of the client, and thereafter, the authority of the attorney to represent the interests of a deceased client must come from the personal representatives of the decedent."

The court stated that when Randy Robison died on January 20, 2013, the product liability lawsuit had no plaintiff of record. Since a lawyer cannot act on behalf of a dead client, Gilbreth had acted without any authority. However, the cause of action survived the original plaintiff's death, and, in this case the son could substitute as plaintiff for his father.

Moreover, from Randy Robison's death on January 20, 2013, to when the circuit court granted the motion to substitute Matthew as plaintiff on January 21, 2014, there were 365 calendar days during which the case had no plaintiff. Therefore, for 365 days, Gilbreth represented no persons involved in this cause of action. More importantly, during the September 2013 settlement negotiations, Gilbreth represented no party to the product liability lawsuit. Gilbreth argued on appeal that he had represented his client's best interest by not disclosing the client's death, in that he had prevented an adverse effect on the settlement value of the case. He asserted that his course of conduct was within the rules of professional responsibility. Unfortunately for Gilbreth, the court found him wholly wrong. The court stated, "We strongly disagree. We find that the arguments expressed by Gilbreth are specious and incredible, and we are concerned about

*continued on page 49*

# LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

## Microsoft Office 365—A Power Boost for Your Law Office

**M**icrosoft Office 365 delivers much more than Microsoft Office cloud apps and online file storage. It ushers in new approaches in multiple areas:

- Collaboration and file sharing via team websites
- Email and communications hosted in the cloud
- Lightweight, friendly cloud apps for Word, Excel, PowerPoint and more
- New subscription pricing for Office 365 bundled with Office 2013 software

With Office 365, Microsoft is charting a path into the future of computing. It offers a flexible hybrid approach to using traditional, desktop MS Office software, lightweight cloud counterparts, and file storage both locally and in the cloud. Office 365 opens the doors to collaborating in teams with clients, associates and others.

### Collaborating with MS Office 365

One of the most intriguing aspects of the new MS Office 365 is the integration of tools that allow a firm to take advantage of collaboration and sharing with people inside and outside the firm. Prior to Office 365 this type of functionality was available to firms via server applications like Lync, Exchange, and SharePoint which involved significant expense and IT support.

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

While the traditional MS Office suite made it possible to share documents via a network or email, the new MS Office 365 expands those options to create a more collaborative environment. For instance, you can create a MS Word document, and then save it to your Team Site to share with co-workers or outside counsel, enabled by SharePoint Document Workspace. Online “lite” browser apps let you simultaneously or asynchronously edit a document, even if the other party doesn’t have MS Word.

Skype for Business (f/k/a Lync) gives you the ability to share a document in real time through the web to let others instantly view and collaborate. Skype for Business also lets you send a document via instant messaging, and initiate a quick chat.

Tight integration of MS Outlook with MS Office 365 means your email program just became supercharged with Skype for Business’s collaboration functions. Instantly start a video chat or screen share from an MS Outlook email. Features and functionality that were formerly only found in enterprise installations can be had by any size firm, with little IT know-how.

### Matter Center

To truly get the best use out of Team Site a firm would be well advised to consider what they would like to be able to do and get help or training in order to design and configure a functional online space that meets their needs. While basic setup is self-explanatory, someone with SharePoint experience can create a remarkably robust collaborative platform in little time.

Now, Microsoft is rolling out Matter Center. This is big news. While it is still being rolled out, this is one of the first times Microsoft has focused on a verti-

cal platform, much less legal. Originally designed for Microsoft’s Legal and Corporate Affairs team, the Matter Center is a much needed “skin” to help lawyers take advantage of the SharePoint portal that is built into Office 365. As lawyers migrate to this new Office suite they may miss some great opportunities to add document management and collaboration, simply because SharePoint is a complex and occasionally difficult platform to customize. With customization for lawyers “out of the box” there will be faster and better adoption of these features. Instead of selling it directly, Microsoft is working with implementation partners to roll out Matter Center to customers such as All Covered and Kraft Kennedy, and they are also engaging with software partners such as LawToolBox, NetDocuments and Workshare.

### Microsoft Outlook at the Heart of Office 365

Together with the Team Site powered by SharePoint, MS Outlook is the heart of the online/offline/anywhere experience in MS Office 365. MS Outlook is available online, on the desktop and via mobile devices. MS Outlook houses voicemail, email, calendar, reminders, contacts, tasks and integrates tightly with MS OneNote and Skype for Business. It also acts as “groupware” giving the whole office the ability to easily share and coordinate on deadlines, events, and communication.

### Pricing and Options for Office 365

One can still purchase the Microsoft Office suite as traditional downloaded software or pre-installed on a new computer. However, purchasing the Office suite without Office 365 is slightly more expensive and restricted to a single PC. Office 365 adds significant additional options with myriad plans available through the platform.

While Office 365 has versions for home use, the real strength for law firms is the Office 365 business plans. With Office 365 Business Essentials, subscribers—up to 300 users—get access to the Office web applications, including online file sharing, web conferencing, “business class” hosted email and a public website. At \$6 per user per month (or \$60 per user per year), this option works well for small firms that

Want to learn more? Watch the webcast archive CLE from July 16 "MS Office 365: Improve Your Firm's Collaboration and Productivity" and watch for forthcoming How To... and Hands On programs from LPMT.

already have current (i.e., Office 2010 or 2013) software suites and want to add cloud functionality.

The next Office 365 subscription option is the Office 365 Business, also for 300 users or less. This plan adds the installed desktop version of Microsoft Office for up to five Windows PCs or Macs per user and includes Word, Excel, PowerPoint, One-Note, installations but does NOT include MS Outlook and the hosted Exchange, with Skype for Business or Yammer. This package is priced at \$8.25 per user/month annually, or \$10 per user per month for a monthly commitment. This is likely the right fit for firms who use email and web conferencing through another provider like Gmail and Google Hangouts.

The next Office 365 subscription option is the Office 365 Business Premium, also for 300 users or fewer. This plan adds the installed desktop version of Microsoft Office for up to five Windows PCs or Macs per user and includes Word, Excel, PowerPoint, Outlook, OneNote, Publisher, Access and Skype for Business. It also includes all the online functionality of the Business Essentials plan plus Office Mobile for iPhone and Android and site mailboxes for project-specific email and documents. This option costs \$15 per user per month (or \$150 per user per year).

What about Macs? Purchasers of the Office 365 Business Premium plan can choose to install Office 2011 for Mac running on Mac OS X 10.6 or later. The Office 365 Business Premium plan will work with Outlook 2011 and 2008 for Mac. The collaboration features are all available through any browser; however, some functionality in the Team Site (SharePoint) online is visible only in Internet Explorer. In Windows the IE Tab extension for Chrome or Firefox remedies that, but IE Tab is not currently available for Chrome for Mac. ■

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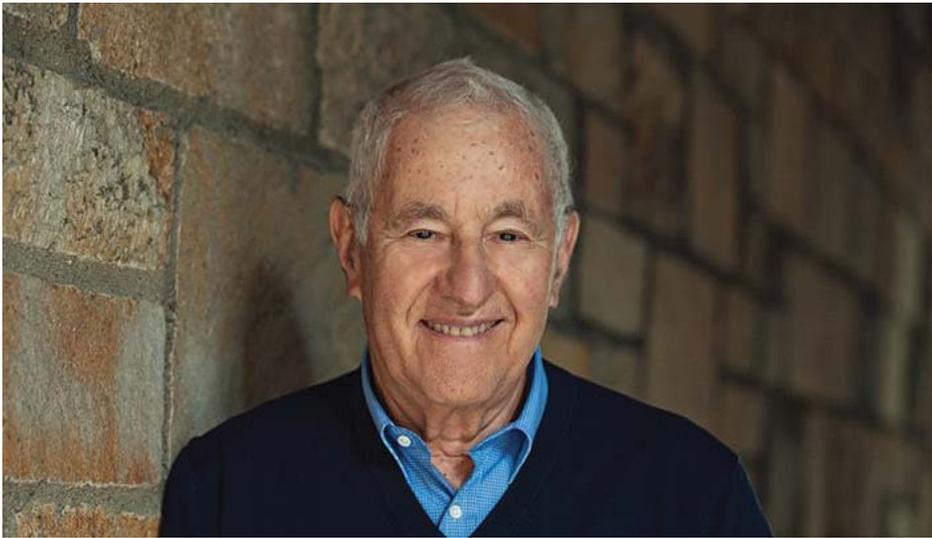
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# A PERSON OF INTEREST

BY PAMELA S. MENAKER

## Getting to Know...Irving Stenn, Jr.



**H**ow many lawyers get to pursue their second passion in life? Irving Stenn, Jr., is doing just that.

After practicing law for more than 50 years, Stenn has been able to take time now in his golden years to travel the world collecting modern art. And now he's into giving it away.

In what has been called one of the most generous donations to the Art Institute of Chicago, Stenn donated his entire collection of 105 drawings that will rotate with other permanent collections.

"I wanted to make this donation so that everyone could enjoy and appreciate this very particular area of art that often goes unnoticed," Stenn said. "Drawings on paper is a very intimate art form. And

every one of them is unique. They also appeal to me because they are the most raw visualization of an artist's thought process."

After graduating from the University of Michigan and then receiving his law degree there in 1955, Stenn, 82, started out as a Cook County Assistant State's Attorney before leaving to form his own firm with friend, Robert J. Cooney to handle personal injury work. Stenn and his late wife Marcia began collecting art when they bought an old Victorian house in 1968 in Lincoln Park. Their first thought was to tear it down because the neighborhood then had not yet gentrified.

"Instead, we saw the beauty in this grand old 4,000-square foot house with 12-foot ceilings and we did a total rehab with architect Harry Weese that took three years," Stenn said. They transformed it into a contemporary 1960s look with expansive white walls that needed something more. And it was there that the couple's fondness for art began.

They started with a Frank Stella print, "River of Ponds," a lithograph that was an example of minimalist art. "It's not

### A PERSON OF INTEREST

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abstract. It's the less is more kind of thing with lines and circles and diagrams," Stenn explained. From prints, they expanded to collecting painting and sculptures until the house was filled.

"They were very modest about their collection," said Mark Pascale, curator of the Art Institute's department of prints and drawings who Stenn befriended more than 15 years ago. After Marcia passed away in 1999, Stenn began to focus on collecting drawings on paper "because he was drawn to works that had an organic connection in style and content," Pascale said.

But after spending years and years collecting and appreciating these unique pieces – there are no copies – Stenn decided to gift the entire collection to the Art Institute so that others could appreciate these drawings. And with "this significant gift, the museum's holdings of artists who worked between World War II and the present has changed. Its strength and depth has filled in a lot of gaps for the Art Institute of Chicago," Pascale said. "What is particularly interesting is that Irv studied each artist and made it a point to get significant seminal work."

As Stenn puts it, "I wanted art that was historically important, what each artist did at first. I wanted his original idea." And the public's reaction to the collection that has been added to the permanent gallery has been very positive, Pascale said.

"The collection of 105 contemporary drawings by a who's who of contemporary artists offers a window into an era when artists reconsidered and reinvented the medium of drawing," Pascale said. "We are very appreciative of Irv's generosity and commitment to the public to learn about this important artistic era." ■

*Pamela S. Menaker is Communications Partner at Clifford Law Offices and a member of the CBA Record Editorial Board.*

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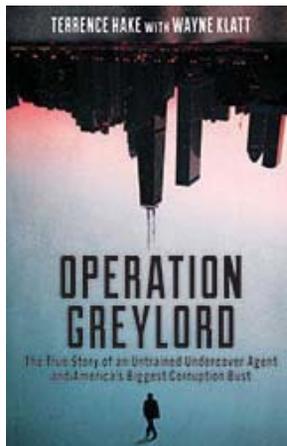
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# SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

## Justice and Corruption in Chicago



**Operation Greylord: The True Story of an Untrained Undercover Agent and America's Biggest Corruption Bust**  
By Terrence Hake and Wayne Klatt  
ABA Publishing, 2015



Reviewed by Daniel A. Cotter

Numerous books over the last 15 years have been written about Operation Greylord. Reporters, a judge (Brockton Lockwood) and a mob lawyer turned mole (Robert Cooley) have all published their accounts. In August 2015, one of the main undercover lawyers

*Daniel A. Cotter is a Partner at Butler Ruben Saltarelli & Boyd LLP, where he chairs the Insurance Regulatory and Transactions practice. He is a member of the CBA Record Editorial Board and Immediate Past President of the CBA.*

in the operation, Terrence Hake, with the assistance of author Wayne Klatt, published the latest tome on the subject, *Operation Greylord: The True Story of an Untrained Undercover Agent and America's Biggest Corruption Bust*. Hake was a prosecutor in the State's Attorney's Office in 1980, three years out of law school. Disgusted by what he witnessed in the criminal courts, Hake approached his mentor in the State's Attorney's Office to complain "about the case fixing in the murder, rape, and child molestation court in Chicago." (The bench-trial acquittal of hit man Harry Aleman in a murder where a neighbor definitively identified Aleman as the shooter was one of the triggers for Hake's disgust.) Operation Greylord is billed as "the first inside account of the takedown."

In April 1980, after Hake had made his initial complaint to his superiors at the State's Attorney's Office, he was told to appear at the FBI offices downtown. There, he met with Assistant U.S. Attorneys Charles Sklarsky, Scott Lassar and Dan Reidy (the "architect of Operation Greylord"). They interviewed Hake extensively to determine if he was a good candidate to go undercover and to assess his honesty. At one point during the interview, Sklarsky informed Hake, "We're not only after the fixers. We want the judges. There's never been a judge in Cook County who's been convicted while still on the bench."

Hake began to wear a wire and to find entrée points into the corruption by judges, lawyers and fixers in the criminal courts. He became friends with Jim Costello, a criminal defense attorney with a reputation as a lawyer who had bribed judges for favorable rulings. Costello made introductions and established connections for Hake. Based on interactions with Costello and others, a wiretap authorization was issued

to bug the chambers of Judge Wayne Olson, the first time a judge's chamber had been wired to pick up potential corruption.

Over the next three years, Hake would tape hundreds of conversations and make numerous payoffs as well as receive money from defense lawyers. He would turn it all over to the FBI. He also had an alert system for the FBI and kept a log of who went into Olson's chambers to be able to match voices with people. Shortly after going undercover, Hake moved to the defense side, setting up a fake law firm with a partner. He exposed himself to danger by virtue of his undercover work, learning at times that people expressed desire to harm him if he turned out to be the mole.

From 1984 to 1993, Hake testified at the trials of 23 Greylord defendants. Three judges committed suicide after their alleged corruption came to light. Seventeen judges were indicted and 15 convicted. More than 100 attorneys, court personnel and others were indicted and the vast majority were convicted. The operation also led to substantial reforms in the Cook County Courts system.

Recently, Hake was again sworn in as a State's Attorney, "living the dream I had just out of law school." He currently works in Felony Review. At the time of Greylord, Hake was not sure his dream would become reality, noting, "Dan Reidy told me when I agreed to work undercover that I would never be able to practice law again in Cook County."

The book is a must-read for everyone to understand the corruption that was in the Cook County Court system and the magnitude of this investigation that was unprecedented in its scope. Hake deserves much gratitude for risking his personal safety and future by agreeing to go undercover to ferret out corruption in the Cook County Courts system at the time. Thanks to him and others involved in Operation Greylord, the system is stronger. ■

**Ethics Extra**  
continued from page 43

his professional judgment in this case.”

The court further explained that the plaintiff's death was a material fact, because plaintiff's continuing pain and suffering was no longer a factor in the settlement value of the case. Gilbreth had wrongfully and intentionally concealed this fact from defense counsel. Additionally, Smith argued that Gilbreth knew of his client's death well before the settlement negotiations. On July 9, 2013, Kathie Blackman Dudley, a colleague of Gilbreth and a fellow attorney in the firm, had filed a petition for letters of administration, requesting that Matthew Robison become the personal representative of Randy Robison's estate. As a result of his client's death before settlement, there was no plaintiff of record to accept the settlement, and Gilbreth had no authority to negotiate or accept any settlement. Despite knowledge of the plaintiff's death on or before July

9, 2013, and the motion to substitute the son as plaintiff being granted on January 21, 2014, Gilbreth had erroneously led defense counsel to believe he represented the plaintiff and had authority to settle the lawsuit. Consequently, the appellate court held that the circuit court had erred in granting the motion to enforce settlement. The judgment was vacated and the case was remanded.

The appellate court next turned its attention to the scenario between Gilbreth and Smith regarding a breach of the Illinois Rules of Professional Conduct. See *In re Himmel*, 125 Ill. 2d 531 (1988).

Under Illinois Rule 8.4(c), “It is professional misconduct for a lawyer to... engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” The court concluded that based on Gilbreth's misrepresentations and material omissions, his actions “constitute[d] serious violations of Rule 8.4.”

Under Rule Illinois 8.3(a), “A lawyer who knows that another lawyer has

## WHAT'S YOUR OPINION?

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

committed a violation of... Rule 8.4(c) shall inform the appropriate professional authority.” The court concluded that Smith's knowledge of Gilbreth's failure to reveal the client's death necessitated that Smith report Gilbreth to the ARDC. Thus Smith's “failure to report...constitute[d] a potential violation of Rule 8.3.”

In light of both the Illinois Rules of Professional Conduct and the attorneys' actions in this case, the appellate court ordered that its opinion be transmitted to the Attorney Registration and Disciplinary Commission to determine if further disciplinary action was in order. ■

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