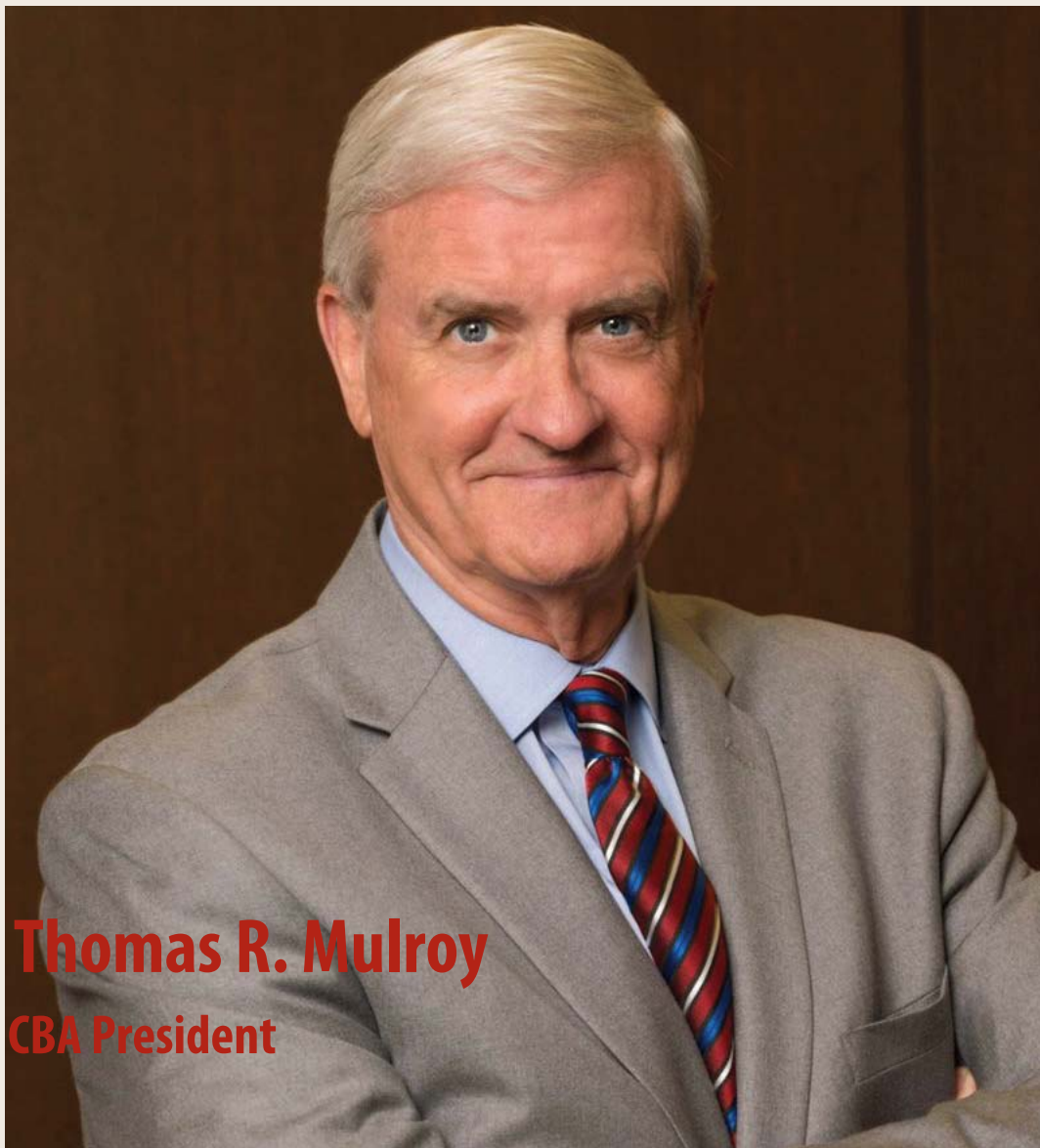


JULY/AUGUST 2017

# CBA

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# R E C O R D



**Judge Thomas R. Mulroy**

**2017-18 CBA President**

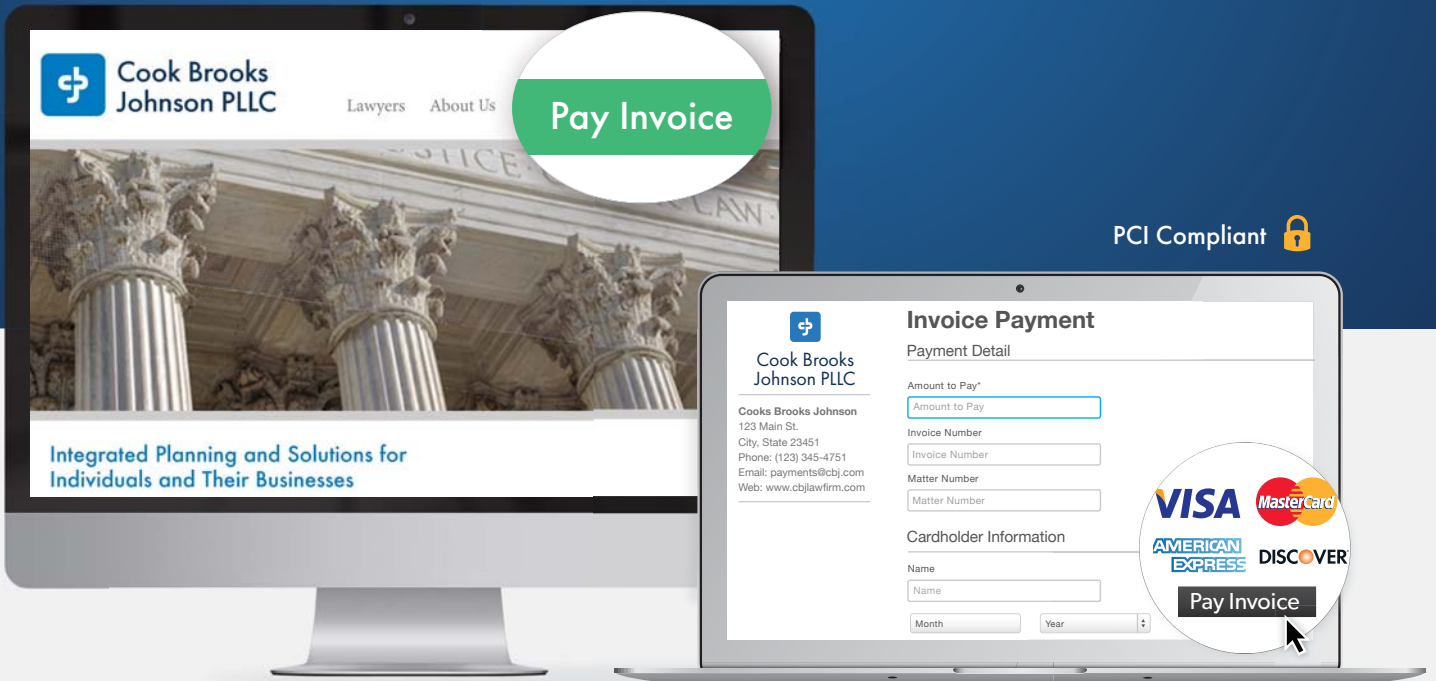
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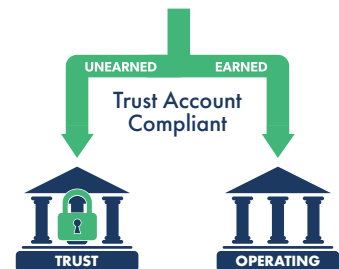
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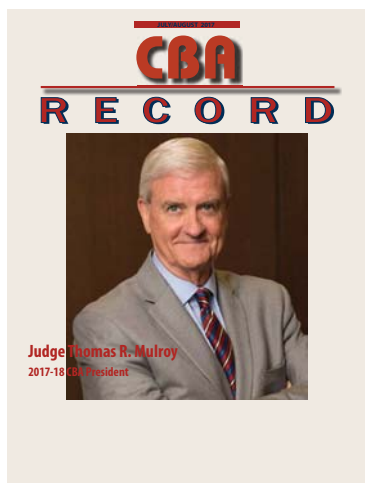
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### On the Cover

This month's **CBA Record** cover features our 2017-18 CBA President, Judge Thomas R. Mulroy.

# CBA RECORD

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# EDITOR'S BRIEFCASE

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

## A Commitment to Truth

We keep hearing about fake news and fake history and fake facts. About alternative truth and post-truth. That truth is in the eye of the beholder, a subjective impression of reality, an illusion of the mind. A few months ago, *Time* magazine's cover posed the question, "Is Truth Dead?"

I suggest that this assault on the very concept of truth is also an assault on our legal system which, by design, aims at revealing truth.

Trials involve a rational pursuit of truth, which resides in the facts. We follow rules of evidence, rules of procedure, and rules of professional conduct and swear witnesses to tell nothing but the truth, all for the singular purpose of ascertaining the true facts of what happened. As a federal appellate panel has noted, "Our adversary system depends on a most jealous safeguarding of truth and candor." Now take a step back and ask yourself whether trials are fundamentally about determining truth.

Many judges and lawyers might argue that a trial is not an exercise in recovering truth. That's because for as long as there have been lawyers, they have been massaging and filtering truth so as to substantiate their client's case and undermine their opponent's. In the process, truth, through the medium of language, gets spun, twisted, bent, bruised, condensed, ignored, skewed, exaggerated, and shaped, reshaped, and misshaped.

Commentators have said as much. Federal Judge Marvin Frankel observed that "Partisan lawyers do not try to uncover the truth. On the contrary, lawyers trained and commissioned to seek justice, are engaged very often in helping to obstruct and divert the search for truth." In a similar vein, legendary Judge Henry Friendly wrote, "Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance [the] client's cause by any ethical means." There are also constitutional and legal constraints on truth seeking—for example, the Fifth Amendment protection against self-incrimination, the Fourth Amendment prohibition on unreasonable search and seizure, and testimonial privileges such as doctor-patient, attorney-client, and spousal.

Consider, too, the admonition of Dean Monroe Freedman that attorneys have an obligation to dispute, if they can, "the reliability or credibility of an opposing witness whom he [or she] knows to be truthful." Professor Stephen Gillers identified "courtroom truth," which he described as "a unique species of the genus truth, and it is not necessarily congruent with objective or absolute truth, whatever that may be." And Publilius Syrus might have been thinking about trials when, over 2,000 years ago, he wrote, "In quarreling the truth is always lost."

That said, still, getting at truth must be at the root of a trial. Lawyers should avoid trivializing, minimizing, or, in any other manner, defusing the power of truth. Rather, they should embrace their role as pursuers of truth and strive mightily to cultivate a culture that values truth. To be sure, once a society loses its ability to discern fact from fiction it risks the legitimacy of its core institutions, including its legal system.

Without a commitment to truth, trust and respect for the courts fades. Without a commitment to truth, everything that the judiciary says or does is potentially suspect. Without a commitment to truth, fairness and justice, both of which depend on truth, degenerate into meaningless platitudes.

Do we need any more reason to keep truth from becoming a victim of rhetoric? ■

*Rehearing:* "Lawyers occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing had happened."—*Winston Churchill*



# The Chicago Bar Association CLE in Rome, Italy April 16-19, 2018

## AGENDA

### April 16

- Welcome luncheon on Piazza Del Popolo.
- Welcome reception at Tonucci & Partners (Piazza Del Popolo).

### April 17

- Tours of Italian courts and meeting with the President of the Rome Bar Association.
- Visit to Prosecutor General's Office, the Appellate Court and the Supreme Court of Cassation.
- Multimedia evening tour of the Forum and dinner.

### April 18

- Four hours of CLE including a presentation from Amanda Knox's criminal defense counsel; a presentation from the Chief Prosecutor in Rome about mafia prosecutions; a presentation from the American Embassy about immigration issues in Italy and Europe; and a discussion of the changing role of Italian women.

### April 19

- Tour of the Borghese Museum.
- Closing dinner at Casina Valadier, Borghese Gardens.

## HOTELS

Hotel d'Inghilterra (Spanish Steps)  
Hotel Minerva (Pantheon)

## RECEPTION & CLE LOCATION

Tonucci & Partners will host our welcome reception and our CLE in their beautiful offices located at the Piazza Del Popolo. Tonucci, an 85 member law firm, is one of the largest Italian firms focusing on corporate and financial transactions and civil, criminal and administrative litigation.

## SPEAKERS

**Alex Guttieres**, International Law Offices of Guttieres & Grillandini. Alex will introduce us to the President of the Rome Bar and the President of the National Association of Magistrates.

**Roberto Jacchia**, DeBerti Jacchia Franchini Forlani. At his firm, Roberto is Chairman of European Law with a concentration in European immigration.

**Giovanni Salvi**, Magistrate and Prosecutor. As Rome's Prosecutor General, Giovanni's focus has been anti-terrorism, mafia prosecution and human trafficking prosecution. He is the former chief prosecutor of the "procura di Catania-Anti-mafia District Directorate."

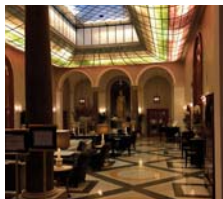
**Carlo Dalla Vedova**, criminal defense lawyer engaged by Amanda Knox, an American student, when she was accused of killing her roommate.



Casina Valadier



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To receive an agenda and travel information in the Fall, send an email to Tamra Drees at [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

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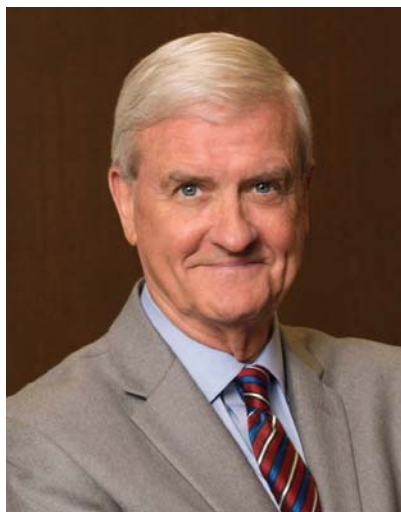
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# PRESIDENT'S PAGE

BY JUDGE THOMAS R. MULROY

## The CBA Wants You



**T**ravel bans, fake news, tweets at midnight, Russian hacking and criticism of the legal system may recall Dickens: “It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness...” Our government’s executive branch’s criticism of lawyers, judicial decisions, and individual judges is inappropriate and, moreover, dangerous—it causes the public to suspect the integrity of the judicial system.

Judges and lawyers have tough skins; criticism comes with the job. Lawyers have been criticized before, but today’s attacks are much more serious. When Shakespeare’s character, Dick the Butcher, dreamed of a society where laws would not be enforced so he would be able to act with impunity, he said: “The first thing we do, let’s kill all the lawyers.” But Shakespeare was writing as a playwright, not as a government official.

What to do? Today, more than ever, judges and lawyers need an effective bar association. Lawyers and judges have unique skills and needs. Recognizing this, in 1874, Chicago lawyers formed the Chicago Bar Association to support one another, for camaraderie, and for

common education. Since then, the CBA has remained relevant to thousands of Chicago lawyers in all practice types and areas.

The practice of law has become increasingly challenging, rushed and stressful. Today in particular, members of the CBA need—and find—support from one another. Our members work to maintain the dignity of the profession, sponsor continuing legal education programs, encourage collegiality and promote the administration of justice. These essentials will always be needed in our practice no matter how the profession changes.

The CBA has an excellent Executive Director and a first-rate staff. The Board of Managers, which decides Association policy, is active. They oversee the Association’s operating budget, which comes primarily from member dues and fees for continuing legal education seminars.

That budget makes possible an enormous range of activities and initiatives that support the causes of truth and justice. Members of the Association are dedicated to making sure affordable legal services are available; ensuring adherence to strong ethical standards; improving public understanding of and respect for the legal system; encouraging diversity; satisfying the needs of members; and promoting a collegial atmosphere.

The practice of law can be especially hard for newly admitted lawyers. Navigating the bridge from law school to a successful practice is challenging. Years ago, the CBA created the Young Lawyers Section to help this group. Today our award-winning YLS has 9,000 members and has become one of the most active and effective sections of any bar association in the country. The section’s variety of committees and projects give a young lawyer many ways to grow and be connected.



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Overall, the CBA has 90 committees ranging from Animal Law to Zoning Law. We provide tremendous opportunities for lawyers to expand their network of friends and acquaintances, to fulfill their CLE requirements and to extend their horizons beyond the practice of law. For example, the Association presents programs relating to Chicago's gun violence epidemic, mental health crises and immigration issues. And on the lighter side, the CBA has an orchestra, a theater group, a golf outing and an annual trip to Europe.

In short—our association of Chicago lawyers is a perfect organization to help you. Become more active in your Association; it's yours, and we want you. ■

## Fighting Terror in Civil Court, A Case Study

### New Signature Speaker Series Kick-Off

CBA President Thomas Mulroy is pleased to present a new, free speaker series for CBA members—the Signature Series. The series launches on Tuesday, August 15 with “Fighting Terror in Civil Court, A Case Study: *Sokolow vs. PA.*” Rachel Weiser, Director of Advocacy Educational Programming, Shurat HaDin, will speak about her work at Shurat HaDin, the Antiterrorism Act and will conduct a case study on the *Sokolow v. PA* lawsuit.

The program will take place from 12:00-1:15 p.m. at The Chicago Bar Association, 321 S. Plymouth Court, Chicago, IL 60604. To register, call 312/554-2056 or email [seminars@chicagobar.org](mailto:seminars@chicagobar.org) (include your name, address, email and phone). Members will receive 1 IL MCLE Credit. *Special Thanks to Clark Hill PLC.*

### About the Program:

Terror is reaching countries that never dreamed they would come under attack. The Israel Law Center is a Tel Aviv non-profit, legal NGO and a leader in fighting terror in the courtroom worldwide. At The Israel Law Center lawyers go on the offensive against terror in the courtroom in order to stop the flow of money and to provide some measure of compensation to the victims.

In February 2015, for example, Rachel Weiser, a senior attorney at The Israel Law Center, along with local counsel from Arnold & Porter, won a \$655 million dollar verdict in Manhattan Federal court under the Antiterrorism Act. The jury found the Palestinian Authority and Palestinian Liberation Organization liable for terror attacks that injured and killed 33 American citizens in Israel during the second Intifada.

The Israel Law Center has over \$2 billion dollars in judgments, has frozen over \$600 million dollars in terror assets and has collected over \$200 million for the victims.

### About the Speaker

Rachel Weiser grew up in Pittsburgh and has been working as a litigator since graduating from Case Western Reserve University Law School in 1998. After moving to Israel in 2010 with her husband and 5 children, Rachel joined the legal team of Shurat HaDin, where she works on the organization's U.S. antiterror cases. Most recently Rachel was part of the trial team that won Shurat a \$655 million dollar jury verdict against the PA and PLO on behalf of 33 American victims of terror during the second Intifada. Rachel also runs Shurat HaDin's biannual law student internship program and annual lawyer's seminar.

#FBF #CBAHistory



## THE CHICAGO BAR ASSOCIATION

Standing over the entrance to the CBA Building is the male figure of Justice by sculptor Mary Block. The cast aluminum sculpture balances on the book of law while holding a bird (peace) in his right hand and a globe (the global nature of life) in his left.



# CBA NEWS

144TH ANNUAL MEETING HELD ON JUNE 22

## Judge Thomas R. Mulroy Named CBA President

Judge Thomas R. Mulroy became the 141st President of The Chicago Bar Association at its annual business meeting and luncheon on Thursday, June 22. Mulroy is a trial judge in the Law Division's Commercial Calendar Section, and is only the second sitting judge in the CBA's history to serve as President of the Association. Prior to becoming a judge in 2007, Judge Mulroy served as an Assistant United States Attorney and then as a partner at Jenner & Block. Judge Mulroy is a Fellow in the American College of Trial Lawyers and currently serves as a member of the Board of Governors of Loyola University School of Law. Judge Mulroy was directly responsible for implementing a successful mandatory arbitration program for cases under \$75,000 in the Circuit Court's Commercial Calendar Section and is now the supervising judge. Judge Mulroy's father, Thomas R. Mulroy, Sr., was a longtime active CBA member.

Outgoing CBA President Dan Kotin, of Tomasik Kotin Kasserman LLC, passed the ceremonial Lincoln Gavel to Judge Mulroy at the annual meeting, signifying the transition of the Association's leadership.

Serving with Judge Mulroy on the Association's Executive Committee are: First Vice-President Steven M. Elrod, Holland & Knight LLP; Second Vice-President Jesse H. Ruiz, Drinker Biddle & Reath LLP; Secretary E. Lynn Grayson, Jenner & Block LLP; Treasurer Maurice Grant, Grant Law LLC; and outgoing President Daniel M. Kotin. Members of the 2017-18 Board of Managers are: Jonathan B. Amarilio; Alan R. Borlack, Judge Thomas M. Durkin; Mark B. Epstein; Judge Shel-



vin Louise Marie Hall; Robert F. Harris; Michele M. Jochner; Michael J. Kaufman; Pamela S. Menaker; Paul J. Ochmanek, Jr.; Matthew A. Passen; Mary Robinson;

John C. Sciacotta; Helene M. Snyder, Andrew W. Vail; Greta G. Weathersby; and Zeophus J. Williams. ■

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- \$17.7 Million Medical Malpractice/Brain Injury Settlement
- \$9 Million Birth Injury Settlement
- \$6.5 Million Birth Injury Settlement
- \$6.5 Million Recorded Kane County Wrongful Death/Trucking Accident
- \$2.4 Million Pedestrian Accident Verdict

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# Creating A Path Towards Solutions

By Adam Sheppard and Michael Strom

**D**istinguished members of the legal community came together to address violence in Chicago at a full-day summit hosted by the CBA on May 19. Justice Anne M. Burke and Daniel M. Kotin (CBA President) issued thoughtful opening remarks, stressing the urgency to address the unacceptable current level of violence.

The summit featured four sessions, each aimed at developing solutions: (1) Reducing Violence by Improving the Relationship Between Law Enforcement and the Communities They Serve; (2) The Affected Communities: People, Police, Problems and Progress; (3) The Impact of Media and Social Media on Chicago Violence; and (4) Gun Violence and the Illinois Justice System: What Chicago Can Learn from Other Cities. The keynote luncheon speaker was Ronal Serpas, PhD., Professor of Practice—Criminology and Justice, Loyola University New Orleans. Chief Judge Timothy Evans and the Hon. Thomas R. Mulroy issued heartfelt closing remarks.

## Reducing Violence by Improving the Relationship Between Law Enforcement and the Communities They Serve

*Panelists:* Cook County State’s Attorney Kim Foxx; Andrew Holmes (crisis responder, Chicago Survivors: community activist); Chicago Police Department Superintendent Eddie T. Johnson; Pamela J. Meanes (past president of the National Bar Association and a partner in Thompson Coburn); and Alderman Roderick T. Sawyer (City of Chicago, Sixth Ward). *Moderator:* Antonio M. Romanucci (Romanucci & Blandin, LLC).

The panelists addressed ways to address schisms between law enforcement and the community they serve. Superintendent Johnson discussed new CPD policies changing rules on police use of force. Pamela Meanes summarized case law



regarding the use of force. The National Bar Association, of which she is past president, conducts “know your rights” presentations to different community and police organizations. State’s Attorney Foxx stressed the importance of diversion programs to help reduce the mass incarceration of minorities in Cook County. Such programs divert lower risk offenders and those who need treatment from jail and treat them in the community. Alderman Sawyer discussed the need to allocate city development funds for restaurants and other commercial establishments in distressed communities.

## The Affected Communities: People, Police, Problems and Progress

*Panelists:* Jadine Chou (Chief Safety and Security Officer, Chicago Public Schools); Bishop James E. Dukes (Liberation Chris-

tian Center); Peggy Flaherty (L.C.S.W., Sr. Vice President, Clinical Operations, Thresholds); Reverend Dr. Walter Johnson (Greater Institutional A.M.E. Church); Reverend Michael L. Pflieger (Pastor, Faith Community of St. Sabina). *Moderator:* Hon. Thomas R. Mulroy.

This panel analyzed the communities regularly affected by gun violence and new initiatives for making them safer. Peggy Flaherty discussed Thresholds’ work in providing crisis intervention, de-escalation training, and mental health services. A number of court programs have utilized Thresholds’ services in diversion programs.

Father Pflieger characterized individuals in the most affected communities as having “present traumatic stress disorder.” He has organized a basketball tournament involving four different gangs.

Jadine Chou addressed the importance of Chicago public schools eliminating “zero-tolerance” policies. Student suspensions are down and more children have been put into jobs. Reverend Johnson opined that jail does not adequately deter violence in his community. He discussed the importance of parents taking responsibility for their children at a young age before behavioral problems manifest. Bishop Dukes echoed that sentiment. As he put it, “feed the ducks even if you don’t see any.”

Professor Ronal Serpas, Ph.D., Loyola University New Orleans, Department of Criminology and Justice, gave the keynote address at the Summit luncheon. Serpas, who retired from a 34-year career in law enforcement in 2014, had served 13 years as the police superintendent/chief in New Orleans, Nashville and Washington State Patrol. Serpas is the founding Co-Chair of Law Enforcement Leaders to Reduce Crime and Incarceration. He cautioned against using 1970’s tactics on 21st-century problems. He stressed the need to get mentally ill and substance impaired people out of jails and into mental health/drug treatment programs, and recommended the following:

- Prioritize violent crime
- Enact federal sentencing reform
- Increase community policing
- Use “hot spot” policing

### The Impact of Media and Social Media on Chicago Violence

*Panelists:* Amy P. Campanelli (Cook County Public Defender); Jeffrey Jones (FBI Chicago Intelligence Analyst); Christopher Mallette (John Jay College, Executive Director, Chicago Violence Reduction Strategy); Kristen McQueary (Chicago Tribune, Editorial Board); and Andrew Papachristos (Yale University, Associate Professor of Sociology, Director of the Policy Lab). Moderator: Lori Lightfoot, Mayer Brown LLP. Facebook and other social media sites can escalate violence by spreading it beyond neighborhood disputes and turf wars. Professor Papachristos’ studies indicate that social networks can increase the chance of being shot up to 40%, depending on the people in a given

network. Public Defender Campanelli noted that social media evidence is commonplace in court and is often referenced in bond hearings.

### Gun Violence and the Justice System: What Can Chicago Learn From Other Cities.

*Panelists:* Roseanna Ander (Executive Director, University of Chicago Crime Lab); Walter Katz (Deputy Chief of Staff for Public Safety, City of Chicago); Honorable Patricia Mendoza (Circuit Court of Cook County, Juvenile Justice Division); and John O’Malley (William Blair and Company Corporate Security Director). Moderator: Daniel M. Kotin (CBA President; Partner, Tomasik Kotin Kasserman).

This panel examined how other large, similarly diverse, cities confronted gun violence epidemics. The panel discussed whether a city’s justice system can dramatically combat a gun epidemic. Roseanna Ander noted that the number of murders in Chicago increased dramatically when Chicago police stop and frisks declined from 60,000 per month to 10,000 per month. However, a similar drop in New York City’s stop and frisks also accompanied a drop in the murder rate. New York City and Los Angeles have far fewer shootings by 11 and 12 year-old children.

Judge Mendoza noted that, in Juvenile Court, the age of children charged with violent crimes seems to be decreasing. In 2006, she saw 15-year-old juveniles charged with lesser crimes. Today, 13-year-olds regularly appear in court on gun charges.

Walter Katz opined that sentencing enhancements for gun offenses helped curb combat gun violence in Los Angeles. The panel members, however, placed the greatest emphasis on investing time and money directly in the most affected communities.

## WHAT’S YOUR OPINION?

Send your views to the **CBA Record**, 321 South Plymouth Court, Chicago, IL 60604, or to Publications Director David Beam at [dbeam@chicagobar.org](mailto:dbeam@chicagobar.org). The magazine reserves the right to edit letters prior to publishing.

As John O’Malley stated, “we need more grandmas to keep kids in line the way they used to do.”

### Closing Remarks

Chief Judge Timothy C. Evans’ and the Hon. Thomas R. Mulroy’s closing remarks echoed the sentiments of the panelists and audience members—“we won’t stop working until peace is restored in these neighborhoods.” ■

*Adam Sheppard is a partner in Sheppard Law Firm, P.C., which concentrates in defense of criminal cases. Mr. Sheppard also serves as panel attorney in U.S. District Court, whereby he is appointed to represent indigent defendants pursuant to the Criminal Justice Act. Michael Strom is a CBA member and a Past President of the Decalogue Society.*

**As the gun violence epidemic continues to plague Chicago, Judge Mulroy wants the CBA to continue to work toward solutions that will remediate the problem. Watch your eBulletin this fall for further opportunities to get involved.**

## RESOURCES FOR NEW LAWYERS

Just getting started in the practice of law in Chicago? The CBA offers many resources and programs to help new lawyers. Find out more about MCLE, start-up boot camp, career & mentoring services, practice area pointer videos, and volunteer opportunities. All under the YLS tab at [www.chicagobar.org](http://www.chicagobar.org)

# 2017 Herman Kogan Awards

By Anne Ellis, CBA Record Associate Editor

This year’s Kogan Media Awards featured heroes both on and off the field: All ears were on the speakers and award winners, but all eyes kept glancing at the Chicago Cubs World Series Trophy, which was on display at the ceremony celebrating 28 years of outstanding legal journalism in Chicago.

The awards, named in honor of legendary journalist Herman Kogan, recognize outstanding legal and public affairs reporting. With Incoming President Thomas R. Mulroy presiding, the awards were presented by Dennis Culloton, Chair of the Kogan Awards Committee, at a luncheon at the Standard Club on May 9. The committee selected winners from among dozens of entries in print, broadcast, and online media categories (see the winning entries, listed nearby).

## Keynote Messages

In keeping with the theme of legal journalists as heroes playing a championship role in our society, Judge Mulroy introduced the keynote speakers: media personalities David Kaplan of ESPN and Comcast SportsNet, and Scott Simon of NPR. Forsaking the traditional speaker’s podium, raconteurs Kaplan and Simon sat side-by-side and traded stories about the Chicago Cubs as heroes of the 2016 World Series. Both have written books about the team—Kaplan’s “The Plan,” a behind-the-curtain look at the buildup to the World Series win, and Simon’s “My Cubs: A Love Story.” Citing the diehard superstition of a true Cubs fan, Simon said he waited to write his book until after the Cubs had actually won the series. He ribbed Kaplan, who started writing his account a year ago. But Kaplan said he had to start early because he wanted to document “how they got there—and no one knew if ‘this would be the year.’” As Kaplan sees it, “Tom Ricketts is the real hero of the Cubs’ story—he took



all the hits five years ago to set up the team for long-term, sustained success.” Ricketts, he says, “has the mind of a businessman, but the heart and soul of a fan.”

Simon and Kaplan traded predictions for the 2017 baseball season, with both

agreeing, “Relax! The wins will come!” The ceremony ended, giving Cubs fans the opportunity to pose with the World Series trophy, and all to shake the hands of the off-the-field heroes, the Kogan Award winners. ■

## Kogan Award Winners

- Tim Novak, Chris Fusco, Mick Dumke, Brett Chase, *Chicago Sun-Times*, Print - Features and Series Category, “Beyond the Rubble: Life After The CHA Upheaval”
- Steve Schmadeke, *Chicago Tribune*, Print—Legal Beat Reporting Category, “Tale Of An Interrogation?”
- Better Government Association Staff, *BGA*, Online Category, “BGA Forces Release of Mayor Rahm Emanuel Private Emails, Garners Landmark Policy Shift”
- Phil Rogers, Marion Brooks, Michelle Relerford, Katy Smyser, Courtney Copenhagen, Richard Moy, Zach Christman, Julio Martinez, *NBC5 Chicago*, “Code Of Silence”

## Meritorious Awards

- Steve Mills, Todd Lighty, *Chicago Tribune*, Print—Features and Series Category, “Police Officers’ Questionable Testimony”
- Roy Strom, *Chicago Lawyer*, Print—Features and Series Category, “To Catch A Spoofer: ‘Spoofing’ is the Financial Crime of the Moment”
- Kari Lydersen, *BGA*, Online Category, “Feisty Law Firm Fights For Rauner’s Agenda”
- Frank Main, *Chicago Sun-Times*, Print—Legal Beat Category, “Cops Turned Blind Eye to Rapes”
- Ben Bradley, *WGN-TV*, Broadcast Category, “Already In Prison, Drew Peterson’s Murder-For-Hire Defense Cost Taxpayers Over \$260K”



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# YOUR VOICE IN SPRINGFIELD: RECOMMENDING CBA POSITIONS ON MORE THAN 100 BILLS

## CBA Legislative News

By Helene Snyder, CBA Legislative Committee and  
Loretta Wells, CBA Director of Government Affairs

The CBA's Legislative Committee, chaired by Helene Snyder, reviewed more than 200 pieces of non-sponsored legislation during the Illinois General Assembly's 99<sup>th</sup> and 100<sup>th</sup> sessions in 2016-2017. The committee recommended positions on approximately 100 bills that were adopted by the CBA's Board of Managers.

The following bills were drafted by CBA substantive law committees, reviewed by the Legislative Committee, and approved by the Board of Managers for the 100<sup>th</sup> General Assembly—2017 Session.

### HB 703 (Feigenholtz) Interstate Adoptions

This proposed legislation sets forth detailed, consistent and coherent procedures as to the manner in which the Department of Children and Family Service (DCFS) approves or denies approval of interstate adoptive placements of children.

**Status:** Passed both Houses. **Drafted by:** Adoption Law Committee

### HB 2526 (A. Williams) Illinois Trust Code

This proposed legislation is a comprehensive Illinois version of the Uniform Trust Code, intended to modernize trust law in Illinois, codify common law concepts that currently apply to trusts, and provide uniformity in relations to trust law in other states. The Uniform Trust Code has been adopted in 30 states and the District of Columbia (Alabama, Arizona, Arkansas, District of Columbia, Florida,

Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming), with state-specific modifications, and was introduced in 2015 in one additional state (New Jersey).

**Status:** House Rule 19(a)—Re-referred to Rules Committee. **Drafted by:** Trust Law Committee

### HB 2667 (Cassidy) Common Interest Associations

Amends 735 ILCS 5/9-102(b); 9-102(c); and 9-104.3—Forcible Entry and Detainer Act (FED Act) to include references to the Common Interest Community Association Act.

**Status:** House Rule 19(a)—Re-referred to Rules Committee. **Drafted by:** RPL-Condo Subcommittee

### HB 2673/HB 189 (Cassidy/Thapedi) Condominium Act-Surplus Funds

Amends 765 ILCS 605/9(c). This proposal would create a new subsection (5) to Section 9(c) of the Illinois Condominium Property Act. This new section would expressly authorize a condominium association's board to dispose of any surplus funds over actual expenses at the end of each fiscal year in one of four enumerated ways. The text of this bill was made part of **HB 189** (the "global" or "omnibus" bill created by Rep Thapedi).

**Status:** HB 2673—House Rule 19(a)—Re-referred to Rules Committee. **Status:** HB 189—Passed both Houses. **Drafted by:** RPL-Condo Subcommittee

**CBA/YLS Committees:** please designate your Legislative Liaison(s) for the 2017-2018 bar year by August 31, 2017

A CBA/YLS Committee Legislative Liaison Workshop will be held on October 23, 2017 at the CBA Building. All Legislative Liaisons should attend.

### HB 3359 (E. Sims, Jr.) Forcible Entry Action—Eviction

This proposal is a technical amendment that would make our court system more understandable to the public by changing the name of the "Forcible Entry and Detainer Act" to the "Eviction Act."

**Status:** Passed both Houses. **Drafted by:** Legal Aid Committee

### SB 1903 (Silverstein) Companion Animal—Cold/Heat

Amends 510 ILCS 70/3.01—This proposal expands the animals protected from "cruel treatment" from "dog or cat" to "companion animal," as defined in 510 ILCS 70/2.01a of the Humane Care for Animals Act.

**Status:** Senate Rule 3-9(a)/Re-referred to Assignments. **Drafted by:** Animal Law Committee

If you have a keen interest in the CBA's efforts to evaluate pending bills to improve how Illinois' statutes impact the legal community and the public, consider attending a meeting of the Legislative Committee and seeking an appointment to serve on the committee. ■

For additional information or a full text copy of the bills, go to the Illinois General Assembly website: [www.ilga.gov](http://www.ilga.gov) or contact Loretta Wells, Director of Government Affairs, at 312/554-2060



## Referral Service Launches First Flat Fee Service for Uncontested Divorces

### *Paving the Way for Consumer Friendly Priced Legal Services*

In an effort to bridge the access to justice gap and take the guesswork out of legal fees, The Chicago Bar Association's Lawyer Referral Service (LRS) launched its first flat fee referral panel this month. Consumers who qualify will pay just \$899, plus costs, for an uncontested divorce.

We are delighted to offer a flat fee service, one of the first of its kind, linking consumers with experienced attorneys to represent them. Eligibility requirements for the flat fee rate include: no children, able to locate spouse, no real estate, no pension/retirement plans, no alimony/support requested, no lawsuits pending, and in agreement re: personal property and financial accounts. After initial screening by the LRS, the client will then discuss their case with the referred attorney, who will make the final eligibility decision.

The attorneys participating on the flat fee panel undergo the same rigorous vetting procedures as all attorneys in the LRS and must demonstrate the following: numerous years of practice experience, proof of malpractice insurance, letters of recommendation, and good standing with the Illinois Attorney Registration and Disciplinary Commission.

For more information about the flat fee service, contact the Lawyer Referral Service at 312/554-2001.



  
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# The State of FOIA in Illinois in 2017

By William A. Zolla, CBA Record Associate Editor

The Illinois Freedom of Information Act provides that *public bodies* shall make *public records* available to any person for copying and inspection. But what constitutes a “public body” or a “public record” under the statute? For example, are public employees’ private e-mails and text messages subject to disclosure under FOIA? Is a private entity performing work on behalf of a governmental agency considered a public body? How should government agencies prepare for and respond to FOIA requests? These and other questions were addressed in “FOIA 2.0: Critical Updates Examined,” a seminar recently hosted by the CBA.

Rob Olmstead, Executive Director of the Illinois Torture Inquiry and Relief Commission, moderated the program, which featured attorney Barbara Adams, Senior Counsel at Holland & Knight, who frequently represents state and local government agencies in disputes over responding to FOIA requests; Sarah Pratt, who has worked since 2013 as a Public Access Counselor in office of the Illinois Attorney General; and attorney Matthew Topic, a partner at Loevy & Loevy and Outside General Counsel for the Better Government Association, who regularly

represents FOIA requesters.

After discussing the evolution of the Illinois FOIA statute, and several recent, highly publicized FOIA cases involving Chicago Mayor Rahm Emanuel and members of the Chicago Police Department, the panelists focused on the extent to which private e-mail and text messages created by public employees are public records under FOIA. The panel agreed that as a general rule, private communications between individual public employees are discoverable if the communications pertain to the performance of public business. That is, the test is not whether the record at issue is in the government’s possession or control, but whether the record was created for or used by a public body. Therefore, when public officials or employees create a record while engaged in activity that falls within the scope of their public duties, the record is considered a public record created by or for a public body.

The panelists also discussed two important FOIA cases recently decided by the Illinois courts, both of which concerned the issue of when a private entity will be deemed to be subject to FOIA’s disclosure requirements. In the first, *Chicago Tribune v. College of DuPage*, 2017 IL App(2d)

160274, the Illinois Appellate Court held that a non-profit foundation that solicited private donations for the College of DuPage performed a governmental function on the college’s behalf and, therefore, was subject to FOIA. The court emphasized that a public body’s obligation under FOIA to provide access to public records is not limited to those records in its present possession or control, but also extends to records in the possession of a nonpublic body that has contracted to perform a governmental function on behalf of the public body.

In the second case, *Better Government Association v. Illinois High School Association*, 2017 IL 121124, the Illinois Supreme Court ruled that the IHSA, a private, not-for-profit unincorporated association that governs and coordinates interscholastic sports competitions for over 800 public and private high schools throughout Illinois, is *not* a public body subject to FOIA because it is an independent legal entity that is neither controlled nor funded by any government body. The Court further held that certain records maintained by IHSA could not be considered the public records of a local school district, whose public and private high schools are members of the IHSA, because IHSA does not perform any governmental function on behalf of the school district. ■

#FBF #CBAHistory



## THE CHICAGO BAR ASSOCIATION

Myra Colby Bradwell was one of our nation’s leading advocates for women’s rights and played an important role in breaking through the barriers that restricted women from practicing law.

As founder and owner of the Chicago Legal News she wrote many editorials about equality for women, and about the need for an association of lawyers in Chicago.

Her December 1873 editorial was instrumental in The Chicago Bar Association’s formation in March 1874.



### Resources for New Lawyers

Just getting starting in the practice of law in Chicago? The CBA offers many resources and programs to help new lawyers. Go to [www.chicagobar.org](http://www.chicagobar.org), YLS, New Lawyer Resources to see our comprehensive list and links including MCLE requirements, new admittee to do list, career services, mentoring programs, seminars for new lawyers, practice pointer videos, solo start up boot camp and more.



# The Chicago Bar Association's

94th Annual

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**SEPTEMBER 13, 2017**



The CBA's Annual Golf Outing is a terrific way to get involved with the CBA while enjoying an afternoon on the links (instead of behind your desk!). Not a golfer? Stop by the dinner for some great networking!

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*Schedule:*

12:00 p.m.	Lunch
1:00 p.m.	Shot Gun Start
6:15 p.m.	Dinner

*Pricing*

**Golf & Dinner - \$195.00**

Includes 18 holes of golf, golf cart, locker, lunch (sandwich and beverage), dinner, and prizes.

**Golf Only - \$170.00** (no dinner)

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Online registration available at

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or

contact Angie Cruz at 312-554-2132 or  
[acruz@chicagobar.org](mailto:acruz@chicagobar.org).



# CLE & MEMBER NEWS

## CBA Welcomes New Admittees

In May, approximately 500 new attorneys were admitted to practice law in the state of Illinois. To help introduce new admittees to the legal profession, the CBA offers free membership and free CLE for one year. Other benefits include job search resources, how-to seminars, participation in committee activities, career

development services, legal resource guides, networking opportunities, social events and much more.

If you know a new lawyer who has not yet activated his or her complimentary membership, please encourage them to do so. Call 312/554-2133 for more information. ■

## The CBA Needs 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 free MCLE credit, upcoming seminars, networking events and important news about the Association.
- Receive timely notices of your committee meetings, topics and speakers.
- Cut down on the amount of mail and faxes the CBA sends which helps lower these expenses and saves trees!

To notify us of your email address, call 312/554-2135 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 nor will we bombard you with unnecessary emails. Thank you! ■

## CBA Resources for New Lawyers

Just getting started in the practice of law in Chicago? The CBA offers many resources and programs to help new lawyers. See our comprehensive list and links including MCLE requirements, start up law firm boot camp, career services, mentoring programs, seminars for new lawyers, practice area pointer videos, volunteer opportunities and more.

For more information, go to [www.chicagobar.org](http://www.chicagobar.org) ■

## Members Save 15% on On-demand Legal Research and Writing Services from LegalResearch.com

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## Last Call for Membership Dues

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

There is no doubt that these are challenging times for the legal profession. Budgets are tight and time is a precious commodity. The CBA is aware of this, is working hard to meet your needs and has not raised dues in over 11 years. Keep up with the latest legal developments. Network with the brightest legal minds in Chicago. Meet future employers, mentors, business contacts and friends. Get job search help. The CBA is where you belong. Make connections, grow your business and enrich your professional future. Renew today via [www.chicagobar.org](http://www.chicagobar.org), US mail or call 312/554-2020.

Special Billing Notes: Reduced dues are available for unemployed members and those with financial hardships. Call 312/554-2131 or see dues hardship form at [www.chicagobar.org](http://www.chicagobar.org). For dues installment plan, call 312/554-2020. If you do not wish to renew for this membership period, please call 312/554-2135 or email [kbryan@chicagobar.org](mailto:kbryan@chicagobar.org) to resign your membership and avoid reinstatement fees in the future.

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# Get Free Illinois MCLE Credit Through CBA/YLS Committee Meetings!



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#### To Move Ahead

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- Build relationships essential to professional and personal growth

#### Free MCLE Credit Through Committee Meetings

- Most CBA and YLS committee meetings qualify for Illinois MCLE credit (the amount of credit depends on the length of the presentation - average credit is 0.75 hour). Live Webcasts of meetings also qualify for Illinois MCLE credit. **All of our committee meetings are free, thus this is a great way to earn Illinois MCLE credits at no cost!**

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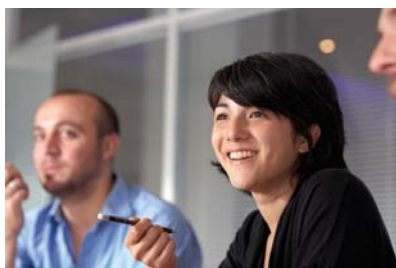
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# 2017-2018 CBA & YLS Committees

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### CBA Practice Committees

- Administrative Law (3rd Monday/Every Other Month)
- Adoption Law (2nd Tuesday)
- Alternative Dispute Resolution (1st Thursday/12:00 p.m.)
- Animal Law (3rd Thursday)
- Antitrust Law (4th Wednesday/Every Other Month)
- Asset Protection (4th Wednesday)
- Aviation Law (1st Wednesday)
- Bankruptcy & Reorganization (3rd Wednesday)
- Business Law (1st Wednesday/Subcommittee assignments vary)
- Civil Practice (2nd Tuesday)
- Civil Rights & Constitutional Law (1st Thursday)
- Class Action (4th Thursday)
- Commercial Finance & Transactions (3rd Wednesday)
- Commercial Litigation (4th Wednesday)
- Committee on Attorney Malpractice Law (1st Tuesday)
- Consumer Credit (1st Wednesday/Every Other Month)
- Consumer Law (1st Thursday)
- Criminal Law (2nd Tuesday)
- Cyber Law & Data Privacy (3rd Tuesday)
- Domestic Relations (2nd Wednesday/Subcommittee Assignments Vary)
- E-Discovery (As Called)
- Elder Law (4th Monday/12:45 p.m.)
- Election Law (2nd Friday)
- Employee Benefits (3rd Friday)
- Energy, Telecommunications & Water (2nd Thursday)
- Environmental Law (1st Tuesday)
- Federal Civil Practice (1st Tuesday)
- Federal Taxation (4th Tuesday/Division Assignments Vary)

- Financial Institutions (2nd Wednesday)
- Food Law (3rd Monday)
- Futures & Derivatives Law (3rd Wednesday)
- Gaming Law (2nd Friday, Quarterly)
- Health Law (4th Wednesday)
- Human Trafficking (2nd Tuesday) **NEW!**
- Immigration & Nationality Law (3rd Thursday)
- Insurance Law (1st Wednesday)
- Intellectual Property Law (4th Tuesday)
- International & Foreign Law (2nd Tuesday)
- Juvenile Law (3rd Thursday)
- Labor & Employment Law (2nd Wednesday)
- LGBT Committee (4th Wednesday)
- Local Government (2nd Tuesday)
- Media & Entertainment (4th Thursday)
- Mental Health & Disability Law (1st Tuesday)
- Military Law & Affairs (1st Tuesday)
- Municipal Departments (1st Wednesday/8:00 a.m. and 3rd Thursday/12:00 p.m. at Richard J. Daley Center)
- Probate Practice (3rd Tuesday)
- Real Estate Taxation (1st Thursday)
- Real Property Law (2nd Thursday/Subcommittee Assignments Vary)
- Regulatory & Compliance (4th Tuesday) **NEW!**
- Securities Law (3rd Thursday/Subcommittee Assignment Vary)
- Social Security Law (3rd Thursday)
- Sports Law (As Called)
- State & Local Tax (2nd Monday)
- Tort Litigation (2nd Wednesday)
- Trade & Professional Associations Law (2nd Tuesday)
- Traffic Laws (1st Thursday)
- Trial Practice (3rd Tuesday)
- Trust Law (2nd Monday)
- Workers' Compensation (1st Thursday/12:30 p.m./Every Other Month)

### CBA Service Committees

- Alliance for Women (4th Tuesday)
- Continuing Legal Education (2nd Monday)
- Creative Writing (1st Friday/12:00 p.m.)
- Human Rights (3rd Wednesday)
- Law & Literature (3rd Wednesday at Daley Center)
- Law Practice Management & Technology (3rd Thursday)
- Lawyer Referral Service (1st Monday, Every Other Month)
- Legal Aid (2nd Thursday/12:00 p.m.)
- Media Production (4th Wednesday)
- Mindfulness and the Law (4th Friday)
- Professional Fees (2nd & 4th Thursday)
- Professional Responsibility (3rd Thursday/12:00 p.m.)
- Solo/Small Firm Practitioners (1st Tuesday)
- Unauthorized Practice and Multidisciplinary Practice (2nd Monday/Bimonthly)

as They Age (1st Thursday/Every Other Month/12:00 p.m.)

### Young Lawyers Section Committees

- Serving members in practice less than 10 years.
- Bankruptcy (1st Tuesday)
  - CBA Moot Court Competition (As Called)
  - Career Assistance (1st Tuesday)
  - Civil Rights (3rd Wednesday)
  - Corporate Practice (2nd Thursday)
  - Creative Arts (1st Wednesday)
  - Criminal Law (2nd Friday)
  - Education Law (2nd Thursday)
  - Environmental Law (4th Thursday)
  - Estate Planning (1st Tuesday)
  - Family Law (1st Wednesday)
  - Fundraising (As Called)
  - Future of the Profession (1st Monday)
  - Health & Hospital Law (4th Thursday)
  - In-House Counsel (As Called) **NEW!**
  - Insurance Coverage (2nd Tuesday)
  - Intellectual Property Law (1st Wednesday)
  - International Corporate & Trade Law (3rd Monday)
  - Labor & Employment Law (4th Thursday)
  - Law Exploring (1st & 3rd Wednesday/5:30 p.m.)
  - Law Student (As Called)
  - LEAD for Large Law Firms (1st Monday)
  - Legal & Regulatory Compliance (2nd Wednesday)
  - Professional Responsibility (1st Wednesday)
  - Public Service/Outreach (As Called)
  - Real Estate Law (4th Tuesday)
  - Social (As Called)
  - Tort Litigation (4th Thursday)
  - Women in the Law (1st Tuesday)

### CBA Special Committees

- CBA Chorus (Wednesday Evenings)
- CBA Record Editorial Board (2nd Monday/12:00 p.m.)
- Committee on Racial & Ethnic Diversity (As Called)
- Entertainment/Christmas Spirits (As Called)
- Finance (As Called)
- Herman Kogan Media Awards (As Called)
- In-Court Lawyer Referral (As Called/ 4:00 p.m.)
- Interfaith Law (As Called)
- Judicial Evaluation (As Called)
- Judicial Evaluation Appellate Review (As Called)
- Legislative (2nd & 4th Monday)
- Membership (As Called)
- Past Presidents (As Called)
- Public Affairs (1st Thursday)
- Symphony Orchestra (Wednesday Evenings)
- Task Force on Issues Affecting Women

All members may serve on 4 Practice Committees, 4 YLS Committees and an unlimited number of Service Committees. For Special Committees, email [areyes@chicagobar.org](mailto:areyes@chicagobar.org) stating your interest and background. **Check the committees you wish to join and complete form.** Mail to Awilda Reyes at 321 South Plymouth Court, Chicago, IL 60604 or fax to 312-554-2054. Questions? Call 312-554-2134. **You can also sign up online at [www.chicagobar.org/committees](http://www.chicagobar.org/committees).**

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# Chicago Bar Foundation Report



## Self-Inflicted Barriers to Access to Justice:

# The Rules on Advertising and Investment

By Bob Glaves, CBF Executive Director

**M**any thousands of Illinoisans who need or would benefit from legal assistance and can afford to pay something aren't getting it. They may not recognize their problem as a legal one, or if they do, they too often don't know where to go for quality legal help or whether it would be a cost-effective solution for them. At the same time, we have more lawyers than ever before, most of whom have capacity and interest in helping more paying clients. In economics, this is called a market failure, and our profession is compounding this failure by unnecessarily restraining market forces from fixing the problem.

Our profession aggravates this market failure in access to justice in two fundamental ways: our overly restrictive rules on marketing and advertising, and our rules limiting ownership and investment in law firms to only lawyers.

In the rest of the business world, an untapped market like this is met with sophisticated marketing and advertising campaigns to educate and attract consumers, and new business models that are fueled by a variety of capital investment options. Lawyers, however, face a far more difficult challenge in doing this under the current Rules of Professional Conduct. And it is people in need of legal help who ultimately suffer.

### The Shortsighted Rules Limiting Ownership

While more flexible investment and ownership options for law firms are not a game changer for every access to justice challenge, they have the potential to make a big impact in the consumer and small business markets. These potential clients—about 1.9 million in Cook County alone—have too much income to qualify for free legal help but are in the moderate-income market. This is the heart of our market failure. With notable exceptions such as personal injury cases, access to affordable legal help increasingly is out of reach for this broad segment of our community.

A number of lawyers and firms are developing innovative models to make legal help more affordable and accessible through the CBF's Justice Entrepreneurs Project and beyond. However, these lawyers and firms face huge challenges in accessing the capital that would be necessary for them to scale up their successful efforts due to the unyielding restrictions on outside investment.

### The Rule Restricting Outside Ownership and Investment

Illinois and most of the country has long prohibited lawyers from sharing profits or attracting investments from anyone except other lawyers in the same law firm. As a result, not only are lawyers and firms prohibited from attracting outside inves-

tors, they also are prohibited from sharing profits or equity with other professionals they work with who do not happen to be lawyers.

Rule 5.4 of Illinois Rules of Professional Conduct contains the limitation typical of others around the country, and the comments to the Rule reflect its underlying purpose: "These limitations are to protect the lawyer's professional independence of judgment."

But is this kind of blunt prohibition really necessary to protect lawyers and their clients?

Isn't there a way to underscore those protections while still giving lawyers and firms access to the capital investment options other professions and businesses have access to and utilize?

As a matter of fact, there is.

### Other Jurisdictions Already Are Proving This Can Be Done

Australia and the United Kingdom are among many other jurisdictions that for years have permitted what are commonly referred to as "alternative business structures" for law firms. These rules allow for outside investment and/or other professionals to be able to share in law firm ownership and profits.

Recognizing the potential for innovation here in the U.S. legal market, last year the ABA Commission on the Future of



Legal Services issued a thorough and well-reasoned “Issues Paper Regarding Alternative Business Structures” and invited comment. This Issues Paper laid out the many potential benefits to the profession and to access to justice that would flow from allowing more flexibility in law firm ownership and investment. The Paper also noted that in other countries and jurisdictions where alternative business structures have been allowed, there has been no evidence of harm to the profession.

In spite of the fact that there has been no documented harm elsewhere, the comments to the Issues Paper from the ABA membership were overwhelmingly negative, with a relatively small number of supporters drowned out by a cascade of opposition. Many of the comments were nakedly protectionist and short-sighted. Other commenters raised legitimate concerns about protecting professional loyalty and independence, but nothing that could not be addressed through regulations. As other countries already are proving, we can protect our duties of professional independence and loyalty while at the same time being more flexible on investment and ownership.

### **Legal Innovation Increasingly Flows Outside of the Profession**

Among the consequences of the outmoded restrictions on investment for lawyers is that investments in legal innovation increasingly are just going around the profession. Avvo and Legal Zoom are just two examples of entities that are attracting significant outside investment and driving a number of innovations around marketing and technology that have the potential to meaningfully increase access to legal help. These entities are more limited in their impact because they can't themselves provide legal services, and instead have to work around the ownership restrictions by connecting with other lawyers who must remain independent.

### **All Animals Are Equal, but Some Animals Are More Equal than Others**

The continued opposition to anyone other than lawyers having ownership in law firms hinders innovation in the profes-

sion in another important way as well: by artificially limiting the roles of the many other professionals who play a key part in law firm success.

Many other professionals who specialize in technology, marketing, management, finance, and other key disciplines bring necessary expertise that complements what lawyers bring to the table and is crucial to innovation and business success. Yet these other professionals are then prevented from sharing in the ownership or profits of a firm. Lawyers are similarly prevented from partnering with professionals from other disciplines to deliver a comprehensive suite of services.

### **So Why Are We Still Doing This?**

Putting aside the protectionist elements in our profession, who I believe are only a vocal minority, I believe the main reason these limitations continue to exist is that lawyers genuinely concerned with potential threats to their professional independence don't see a good enough reason to risk changing the status quo without proof that it will lead to something better. Given the large and growing gap today in access to justice for such a large segment of our community (not to mention the other points noted above), that simply is not a good enough reason. There clearly is a major market failure for people in the middle market who need legal services, and the genuine concerns about preserving professional independence can be addressed through new rules that also open the door to broader ownership and investment.

In addition to evidence this is working out okay in other countries, lawyers in Illinois and elsewhere in the country who work in-house for corporations have proven this can be done. Lawyers who work in-house don't check their ethics at the door, they do pro bono work, and they have figured out how to maintain their professional independence in the corporate setting. Companies that want to bring legal services in-house take on the ethics responsibilities that come with it.

Regulation that allows other owners and investors in law firms can do that as well, requiring anyone who wants to deliver legal services through an alternate

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business structure to expressly agree to be responsible for adhering to the Rules.

### **The Overly Restrictive Advertising Rules**

The principal Rules impacting marketing and advertising for lawyers are Rules 7.1 through 7.4 of the Illinois Rules of Professional Conduct. Like the Rule regarding ownership and investment in law firms, the overall intent of these Rules is laudable: to protect clients. But along with helping to protect clients from false or misleading communications and coercive or harassing behavior, the Rules have the effect of making it harder for people to understand their legal issues and to find quality, affordable legal help to address those issues.

These Rules start in the right place. Rule 7.1 prohibits lawyers from making false or misleading communications about their credentials or services. That is as it should be.

Similarly, Rule 7.3 at its core serves an important purpose by prohibiting solicitation of clients through coercion, duress or harassment.

It is elsewhere in Rule 7.3, and in Rules 7.2 and 7.4, where the Rules get overly prescriptive and excessively limiting.

Rule 7.3 with limited exceptions prohibits solicitation when a client is “known to be in need of legal services.” And when it is permitted, Rule 7.3 goes on to require that the words “Advertising Material” be included on any communication that is considered a solicitation of this nature.

Rule 7.2 says a lawyer can advertise in a number of ways but can't pay someone for a communication that recommends the lawyer's services. As the comment to the Rule 7.2 states, “A communication contains a recommendation if it endorses or vouches for a lawyer's credentials,

**Note:** This article is adapted from a “Bobservations” blog series on the CBF website. You can see the full series at [chicagobarfoundation.org/bobservations](http://chicagobarfoundation.org/bobservations).

abilities, competence, character, or other professional qualities.”

With limited exceptions, Rule 7.4 prevents lawyers from stating that they specialize or are expert in a particular area of law.

### What Clients Need

The biggest reason people don't get legal help when they need it is because people don't recognize their problem as a legal issue. Secondary issues include people not knowing how or where to find quality legal help, whether they can afford it, and questions about whether they are getting good value for the price.

Although some of these issues reflect other fundamental problems, such as the lack of transparency and predictability in pricing, these are issues where marketing and advertising can help people understand their legal issues, evaluate their options, and find quality and affordable legal help. With the continued growth of social media and other new communication channels, there are even more outlets available for this outreach. But our current Rules are hindering lawyers from most effectively connecting with people who need legal help.

### Where the Current Rules Leave Us

The combined impact of our current Rules is that most lawyers are regularly confused about what they can and can't do when it comes to advertising. This has led to a culture where, with some notable exceptions, marketing and advertising from lawyers is far more limited than it should be to be useful to the public.

On the one hand, we all see the TV ads from lawyers pitching their services for matters like personal injury and bankruptcy. With occasional exceptions, these ads do not showcase our profession at its finest or necessarily help people to better understand their legal issues. However, these ads are permitted under the current Rules.

On the other hand, a potential client might reach out directly over social media suggesting they have a legal problem they are looking to resolve, which they may or may not recognize as a legal issue. It isn't clear under the Rules whether a lawyer can respond with an offer of their legal services, and if so, whether the lawyer needs to preface that response with “Advertising Material.”

There are many examples in between these two scenarios where the lawyer would not be doing anything deceptive or coercive, yet it still isn't clear whether their marketing and advertising efforts would be in line with the Rules.

Beyond limiting lawyers from most effectively connecting to potential clients in the consumer and small business markets, the current Rules also make it much harder than it should be for a potential client to learn whether a lawyer is any good at what they do. Lawyers are limited in saying they specialize or are expert in any particular area even when they are widely recognized as such, and other entities who might be able to recommend a lawyer on that basis (e.g. an association or network) generally can't do that if the lawyer is paying anything to that entity.

Obviously, we don't want to have lawyers trying to “buy” unwarranted recommendations or falsely state they have credentials or experience they do not possess. But that kind of behavior already would violate the Rules as false or misleading, and we should rethink whether we need all of these other Rules that limit “endorsement” advertising that could help the public connect to quality legal help.

A Proposal to Streamline the Rules As we think about these issues, it is useful to compare what we see from other legal businesses such as Avvo, ARAG, or Legal Zoom to the type of marketing and advertising that is more typical of lawyers serving the consumer and small business markets. These other legal providers are using tried and true tactics from other businesses and professions to help people understand when they might benefit from legal help and then trying to connect to them with resources to provide that assistance. While lawyers arguably already have the potential

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to adopt many of these methods under the current Rules, it would be much easier for them to do so if the Rules were streamlined and clarified.

The Rules should more clearly recognize that there is a big difference between coercive solicitations (e.g., the proverbial ambulance chasing) or harassing a client who has made it known that they don't want to be contacted, compared to a lawyer letting a potential client know he or she might be able to help them by providing legal services and has the requisite experience and expertise to do so.

Consider this proposal: Keep the prohibitions on false or misleading advertising and coercive or harassing solicitation, and scrap all of the other prescriptions and proscriptions on marketing and advertising under the current Rules. This would continue to protect the public from bad behavior while putting lawyers on equal footing with other businesses and professions when it comes to marketing and advertising.

### Conclusion

By opening the door to a broader array of capital options and marketing and advertising approaches, we can jump start innovation in the profession. It will allow our profession to compete on a level playing field with other legal innovators, and enable lawyers to undertake strategic partnerships with other professionals to make their legal services more accessible and affordable. The end result should be that people have access to a wider range of information and resources to help them better understand their legal issues, evaluate their legal options, and more easily find quality, value-based and cost-effective legal services. ■

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# MURPHY'S LAW

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Lawyer by the *Leading Lawyers Network* and as a Rising Star by *Illinois Super Lawyers*. The reception will begin at 5:00 p.m. and will be held on the second floor at the CBA Building. There is no charge for the reception which includes cocktails and hors d'oeuvres. We look forward to seeing you at the Open House and All-Bar Reception.

## 94<sup>th</sup> Annual Golf Outing

The CBA's 94<sup>th</sup> Annual Golf Outing will be held on Wednesday, September 13, 2017 at Harborside International Golf Course, 11001 S. Doty Avenue in Chicago. Harborside International is a favorite golf destination and among Chicago's finest public courses. Harborside has country club fairways, great greens, and some monster traps. Golf committee chair **James R. FortCamp**, Seyfarth Shaw, and golf committee secretary **Angie Cruz**, are working hard to make this the best CBA golf outing yet. We'll have a number of prizes including: longest drive, closest to the pin, etc., and a few fun challenges on one or two of the par 3 holes to benefit the Interfaith Committee's Restorative Justice Training programs in our city schools. Retired Judge **Thomas L. Hogan** and ret. Judge **Shelia M. Murphy**, co-chairs of the Interfaith Committee, and members of the committee will also be joining us at the outing. We've kept the price at \$195, which includes: golf, carts, lockers, lunch and a buffet dinner with cocktails. Golf and lunch only is \$170 per person. The outing begins with lunch at 12:00 noon, followed by a shotgun start at 1:00 p.m. Join your colleagues from the bench and the bar and bring your golfing clients to the CBA's Outing. You'll enjoy it and they will too! For more information or to make reservations, contact **Angie Cruz** at [acruz@chicagobar.org](mailto:acruz@chicagobar.org).

## Justice John Paul Stevens Awards Luncheon

Nominations are still open for the 2017 Justice John Paul Stevens Awards Luncheon. Each year the Association honors lawyers and judges whose legal career exemplify Justice Stevens' integrity and commitment to excellence and public service. Nominations for the Justice Stevens Award should be emailed to **Terrence Murphy** at



CBA President Judge Thomas R. Mulroy moderated a panel of Chicago's leading mental health experts at the Association's June 29 Seminar entitled: "Mental Health Resources: Pathways to Help Persons and Families in Crisis." Participants included (above left) Alexa James, Executive Director of NAMI Chicago; Mark Ishaug, Executive Director of Thresholds; Dr. Daniel Yohanna, Interim Chair, Department of Psychiatry and Behavioral Neuroscience at The University of Chicago; and (above right) Professor Mark Heyrman of The University of Chicago Law School. Photos by Bill Richert.

**D**on't miss the Association's Open House and All-Bar Welcome Reception for CBA President Judge **Thomas R. Mulroy** and YLS Chair **Jonathan B. Amarilio** on Thursday, September 7, from 5:00-7:00 p.m. Judge Mulroy is a trial judge in the Law Division's Individual Commercial Calendar Section and is only the second sitting judge to serve as President. Judge Mulroy began his career as an Assistant United State's Attorney and then as a partner at Jenner & Block. Judge Mulroy is a Fellow in the American College

of Trial Lawyers and serves as president of the Board of Governors of Loyola University School of Law. Judge Mulroy's father was a prominent Chicago lawyer and an active member of the CBA.

Jonathan Amarilio is a partner at Taft Stettinius & Hollister LLP and concentrates in commercial litigation and appellate practice. Jon served as a Special Assistant Attorney General and as a Special Assistant Corporation Counsel for the City of Chicago in a number of matters. Jon has been recognized as an Emerging



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

## The Moses, Bertha & Albert H. Wolf Fund

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

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



*"I can say without hesitation that the generous support that I have received from the Wolf Fund has enabled me to receive medical treatment for several disabling conditions and prevented me from becoming homeless. My hope is that I will be able to return to the full-time practice of law and someday make a substantial contribution to The Chicago Bar Association's Wolf Fund in return for all the help they have given me. I am ever so grateful."*

*— Wolf Fund Recipient*



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For more information, please contact Terrence M. Murphy, Executive Director  
312-554-2002 • [tmurphy@chicagobar.org](mailto:tmurphy@chicagobar.org)

## JUSTICE STEVENS NOMINATIONS

The Chicago Bar Association is accepting nominations for its annual Justice John Paul Stevens Award. The Award is presented annually to Illinois attorneys or judges who have shown throughout their careers that they are extraordinary individuals and who have demonstrated extraordinary integrity and service to the public and/or community. The award will be presented this fall at the 18th Annual John Paul Stevens Awards Luncheon.

Please submit a narrative statement with any supporting materials or information regarding your nominees to the Justice John Paul Stevens Award Committee, c/o Terrence M. Murphy, Executive Director, 321 South Plymouth Court, Chicago, IL 60604; or email [tmurphy@chicagobar.org](mailto:tmurphy@chicagobar.org).

[tmurphy@chicagobar.org](mailto:tmurphy@chicagobar.org). Justice Stevens served as Second Vice-President of The Chicago Bar Association in 1970 and resigned that office upon his nomination to the U.S. Court of Appeals by President Gerald R. Ford. Justice Stevens was appointed to the U.S. Supreme Court in 1975 and retired from the high court in 2010. Justice Stevens is our nation's third longest serving Supreme Court Justice. Justice Stevens is the author of several books including: *Six Amendments-How and Why We Should Change the Constitution* and *Five Chiefs*, which is a compendium of memories of each Chief Justice that he served with—from Chief Justice Fred Vinson through the Court's current Chief Justice John Roberts. Look for the flyer announcing the 2017 award winners and the date for the luncheon. For more information members may contact CBA Events Coordinator **Tamra Drees** at 312/554-2057 or [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

### CLE in Rome

Save the dates (April 16-19, 2018) for next year's CLE Program in Rome, Italy. Judge Mulroy and the Rome planning committee

have put together an outstanding array of speakers from Italy who will be participating in the CLE seminar including: **Alex Gutierrez**, Guttieres & Grillandini; **Roberto Jacchia**, DeBerti Jacchia Franchini Forlani; **Giovanni Salvi**, Magistrate and Prosecutor General; and **Carlo Dalla Vedova**, who represented Amanda Knox. Four hours of MCLE programming will include presentations from Amanda Knox's criminal defense counsel; Rome's Chief Prosecutor about mafia prosecutions; a speaker from the American Embassy about immigration issues in Italy and Europe; and a discussion of the changing role of women lawyers in Italy's legal system. The CLE program will be held at Tonucci & Partners, one of Italy's largest law firms. Planned events include a welcome reception, tour of the famous Borghese Museum, and a closing dinner at beautiful Casina Valadier. For more information about the CLE in Rome program, contact **Tamra Drees** at [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

### Membership Drive

**Timothy S. Tomasik** will chair the Association's membership campaign over the next several months (July-October) and will be reaching out to members and member firms for your support. The Association is a strong advocate and spokesperson for the legal profession in our city, state, and nation. We offer many outstanding programs that significantly benefit the bench, the bar and the public in our community. A major goal of the campaign is to enlist the support of our members and member firms in educating non-members about the importance of bar association membership. It's been said that leadership is about getting people involved and the campaign will spotlight many opportunities for lawyers to become involved in a myriad of CBA programs and initiatives that are making a difference within the profession and in our community. We need your help in recruiting your non-member partners, associates, and colleagues to join the CBA and to support the important work of the Association.

### Congratulations

Seventh Circuit U.S. Court of Appeals Judge **Ann Claire Williams** will take

Senior Status in September...CBA past president **Dan Kotin** was appointed to the Committee on Character and Fitness to fill the unexpired term of **Marian E. Perkins**...**Valentine Austriaco & Bueschel** was admitted to membership in the National Association of Minority and Women-Owned Law Firms (NAM-WOLF)...**Steven A. Ravid**, First District Appellate Clerk, has retired after many years of outstanding service and **Thomas D. Paella**, Chief Deputy Clerk, will serve as interim clerk...**Kathryn A. Imburgia** is a new associate at Polsinelli...**Francisco E. Connell** has become a shareholder at Chuhak & Tecson and **Amy T. Grace** has become a principal at the firm...**Vaishali S. Rao** and **John Costello** will lead the CBA's new Regulatory & Compliance Committee...YLS past chair **Katie Liss** was appointed to the Center For Conflict Resolution's Board of Directors...**Michael J. Tardy**, Director (extraordinaire) of the Administrative Office of the Illinois Courts (AOIC), has retired and **Marcia Meis**, Deputy Director of the Administrative Office, was appointed to succeed Michael as AOIC's new Director...**Bill Nissen**, a partner at Sidley Austin, is the new president of the Union League Club...**Diana C. White**, Executive Director of the Legal Assistance Foundation (LAF) of Chicago, has retired and Sidley Austin partner **John Gallo** will succeed Diana as LAF's new Executive Director in October—**Katherine Shank** is serving as LAF's interim director...**Stephen N. Engberg** has become of counsel with Anthony J. Madonia & Associates...**Michael L. Weissman**, Levin & Ginsburg, Ltd., was a recent speaker at the National Credit Union Administration's Specialized Lending Conference...**Shawn S. Kasserman**, Tomasik Kotin Kasserman, was elected president of Kids in Danger.

**Howard Teplinsky** and **Katherine (Katy) Grosh** have joined Levin & Ginsburg, Ltd....**Lynne R. Ostfeld** received the Medal of Knight of the French National Order of Merit from the Consul General of France...**Kelly Ann Kienzle** has been named president and CEO of ATG LegalServe, Inc....**Roseanne Lucianek**, longtime ABA Director of the Division for Bar Services, is retiring September 1...**Ter-**

**rence J. Dee**, McDermott Will & Emery LLP, is the new president of The Chicago Bar Foundation...Ret. Judge **Russell W. Hartigan** is the new president of the Illinois State Bar Association. President Hartigan is also a new partner at Goldstine, Skrodzki, Russian, Nemecek and Hoff, Ltd....Judge **Mary S. Trew** was installed as president of the Alliance of LGBT Judges... **Kristin Barnette McCarthy** is the new president of the Women's Bar Association of Illinois... **John P. Scanlon** is the new president of the Illinois Trial Lawyers Association... **Mitchell B. Goldberg** was installed as the new president of the Decalogue Society of Lawyers...**Martin Quintana** is the new president of the Hispanic Lawyers Association of Illinois...Ret. Judge **John P. Coady** is the new president of the Illinois Judges Association...**Evan Siegel** is the new president of the Appellate Lawyers Association of Illinois...**Jasmine Hernandez** will be installed as president of the Asian American Bar Association in September...**Erica Kirkwood** was installed as president of the Black Women Lawyers' Association of Greater Chicago Inc....**Dartesia A. Pitts** is the new president of the Cook County Bar Association...**Jay A. Andrew** is the new president of the Northwest Suburban Bar Association...**Gerald A. Cassioppi** is the new president of the DuPage County Bar Association...**Perry J. Browder** is the new president of the Illinois Bar Foundation.

**William J. Cadigan** was named Chairman of the Illinois State Board of Elections...**Stephen R. Patton** has rejoined Kirkland & Ellis...**Daniel L. Farris** and **Nicole A. Poulos** have become associates at Fox Rothschild LLP...**Percival Olsen** and **John B. Sample**, associates at Shepard Mullin Richter & Hampton LLP, were honored by First Defender Legal Aid at the group's awards reception...**Jeffrey J.H. Koh**, associate at Ropes & Gray LLP, was recognized by Chicago Scholars as a 35 under 35 young leader...**Andrew C. Wood** has become an associate at Fitch Even Tabin & Flannery LLP...**Nancy L. Hendrickson** joined Kaufman Dolowich & Woluck LLP's securities litigation group...**John L. Ropiequet**, Arnstein & Lehr LLP, was a featured speaker at the 2017 Consumer Financial Services

Conference...**Manuel Flores**, a partner at Arnstein & Lehr LLP, was honored at the 2017 Father of the Year Awards...**Norman B. Berger** is senior counsel at Gensburg Calandriello & Kanter P.C...**Brian L. Salvi**, Salvi, Schostok & Pritchard P.C., is leading the firm's national water safety campaign for swimming pool safety...**Michael D. Weis** was added to Dykema Gossett's corporate practice group...**Nicole M. Kuchera** is counsel to Stradley Ronon's investment management group...**William T. Gibbs**, Corboy & Demetrio P.C., spoke to the CBA's Municipal and Law Division Committee about ongoing National Hockey League concussion litigation...**Robert E. McKenzie**, a partner at Arnstein & Lehr LLP, received the ABA Civil and Criminal Tax Penalties Committee's Jules Ritholz Award...Judge **Sophia H. Hall** received the Decalogue Society of Lawyers' Hon. Charles E. Freeman Judicial Merit Award...Senator (ret.) **Arthur L. Berman** received the Decalogue Society's Founders Award...**Patrick F. Ross** and **Daniel R. Ross** will practice with their father Robert J. Ross at the Ross Law Firm Ltd....**Michelle G. Novick**, a partner at Arnstein & Lehr LLP, and **Scott Allen Kozlov**, senior counsel for the ARDC, were speakers at a seminar about "Ethical Issues Faced by In-House Counsel as Legal and Business Advisors"...**W. Andrew Douglass**, Polsinelli P.C., spoke at a seminar about "Health and Prescription Drug Benefit Trends"...**Angela M. Snell** has become an associate at Faegre Baker Daniels LLP...**Brian A. Sher** was named managing partner of the Chicago office of Bryan Cave LLP...**Jeffrey D. Shelley** was added as counsel to Sugar Felsenthal Grais & Hammer LLP...**Amanda L. Mueller**, Reed Smith LLP, was involved in handling the corporate sale of Petmate...**Meggie F. Hogan** is an associate at Swanson, Martin & Bell LLP.

**Karen Munoz** was named a partner at Dolan Law P.C...**Matthew A. Bills** was named a partner at Barack Ferrazzano Kirschbaum & Nagelberg LLP...**Todd C. Jacobs** has joined Bradley Riley Jacobs P.C...**Abraham Sandoval** was named a partner at SmithAmundsen LLC...**Nancy L. Shalowitz** has been named General Counsel and Assistant Dean for Human

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Resources at The John Marshall Law School...**Kathryn L. Mickelson** co-chaired WBAI's Domestic Relations Round Table...**Nicole L. Simmons** was named an associate at Momkus McCluskey Roberts LLC...**Terra L. Reynolds**, Paul Hastings LLP, spoke at PLI's seminar on the "Basics of Accounting for Lawyers"...**Marc V. Richards**, Brinks Gilson & Lione, spoke at the AIPPI-US Global IP Educational Forum at The John Marshall Law School...**Hannah L. Needham** and **Zenia C. Salles** were added to Ginsberg Jacobs' telecommunications group...**Rachael G. Pontikes** was named a partner in Reed Smith's life sciences health industry group...**Marcus R. Morrow** was named associate at Tribler Orpett & Meyer P.C...**Robert W. Petti**, of counsel to Segal McCambridge Singer & Mahoney, spoke to the Claims and Litigation Alliance about "Vapor Intrusion and Recent USEPA Actions"...**Patrick A. Salvi** and **Patrick A. Salvi, II** were selected to the **2017 Lawdragon 500 Leading Lawyers in America**...**Rene A. Torrado, Jr.** and **Janet Torrelio** were recently married by Seventh Circuit U.S. Court of Appeals Judge **William J. Bauer** and Reverend Monsignor **Kenneth Velo**.

2017 CBA/CBF Pro Bono Award Honorees: **Sarah Hess**, Legal Counsel for Health Justice, received the Kimball R. and Karen Gatsis Anderson Public Interest Law Fellowship; **Gary Wachtel**, Discover Financial Services, received the Exelon Outstanding Corporate Counsel Award; **Howard M. Rubin**, DePaul University College of Law, received the Leonard Jay Schragger Award of Excellence; **Kathleen Robson Gordon** and **Salvador J. Lopez** received the Edward J. Lewis II Pro Bono Service Award; **Trisha**

**M. Rich**, Holland & Knight LLP received the Maurice Weigle Exceptional Young Lawyer Award; **Sheri Mecklenburg**, U.S. Attorney's Office, received the Richard J. Phelan Public Service Award; and **Daniel J. Lesser**, Sargent Shriver National Center on Poverty Law, received the Thomas H. Morsch Public Service Award.

### **Birthday Greetings**

Judge **E. Kenneth Wright, Jr.**, Seventh Circuit U.S. Court of Appeals Judge **William J. Bauer**, **Thomas A. Demetrio**, **Jack Joseph** (CBA member since 1952), and **Bill Richert**.

### **Condolences**

Condolences to the family and friends of **William J. Martin**, **John "Jack" McAuliffe**, and **Barry Locke**. ■

## **CBA/CPA Speed Learning Event**

The Illinois CPA Society and Young Lawyers Section of The Chicago Bar Association welcome members of both groups to come together for a "speed learning" event on August 17 at 5:00 p.m. at the ICPA Headquarters, 550 W. Jackson Blvd., Chicago. Attendees will share their knowledge of various topics during several fast-paced, facilitated discussions. The event is a terrific opportunity to make connections outside of your profession.

Discussion topics will include successful networking and business development strategies, uses of technology and practice management systems, understanding and correcting misconceptions about the legal and accounting professions, managing personal and professional priorities, how issues of diversity and inclusion impact each profession, and how attorneys and accountants can collaborate to better service clients.

An open happy hour will follow in Illinois CPA Society's plaza and learning suites to give attendees time to continue conversations and meet others. CBA members will receive 0.75 IL PR-MCLE credit. Register for the free event at [www.chicagobar.org/cle](http://www.chicagobar.org/cle).



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By Matthew E. Misichko

Non-Compete Agreements in Illinois

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# Enhanced Inapplicability and Continuing Uncertainty



**Effective January 1, 2017, the Illinois Freedom to Work Act (SB 3163) (the Act) prohibits private sector employers from entering into a covenant not to compete with any “low-wage employee.” This term is defined as an employee who earns the greater of (1) the minimum wage from federal, state, or local law, or (2) \$13.00 per hour. Currently, the federal minimum wage is \$7.25 per hour, while the state of Illinois and Cook County minimum wage is \$8.25. Therefore, a non-compete agreement involving all Illinois minimum wage employees as well as all newly defined low wage employees is “illegal and void” under the Act.**

**CONSEQUENTLY, ILLINOIS EMPLOYERS SHOULD** review any non-compete agreements with their employees and their onboarding materials to ensure compliance with the Act. Similarly, employee handbooks and human resources manuals should be updated to reflect this change. In addition, practitioners should become aware of the general attributes of Illinois non-compete agreements to provide context and obtain a greater understanding of the Act.

#### **General Overview of Current Illinois Non-Compete Agreements**

Covenants not to compete, covenants not to solicit, and covenants not to disclose confidential information represent several types of restrictive covenants seen most often in employment agreements. In addition to meeting the requirements of the Act, for a non-compete agreement to be enforceable in Illinois, it must be (1) reasonably necessary to protect the legitimate business interest of the employer, (2) ancillary to a relationship or valid contract, and (3) reasonably supported by adequate consideration. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871.

To protect a legitimate business interest, the employer must prove this interest is reasonable based on a totality of the circumstances. Factors include the employer’s customer relationship being nearly permanent, the employee acquiring confidential information while working, and the restriction—in the form of duration, geographic scope, and type of activity—being created to appropriately protect the employer’s interest.

Factors to determine whether duration is reasonable include hardship to the employee, the length of time for the employer to obtain new customers or clients, and the non-compete agreement’s effect on the public. *Tower Oil & Technology Co. v. Buckley*, 99 Ill. App. 3d 637 (1981). Provisions relating to geographic area regarding a former employee’s employment opportunities must be narrowly tailored to only protect the employer’s legitimate business interest. *AssuredPartners, Inc. v. Schmitt*, 2015 IL App (1st) 141863.

In its simplest construction, adequate consideration is an act or promise that benefits or hurts one party. *Bires v. WalTom, LLC*, 662 F. Supp. 2d 1019, 2018 (N.D. Ill. 2009). Recently, the Illinois Court of Appeals found that two years of employment by an employee is considered adequate consideration to enforce a non-compete agreement. *Fifield v. Premier Dealer Servs., Inc.*, 2013 IL App (1st) 120327.

Unfortunately, the Northern District of Illinois has clouded the decision in *Fifield*. One decision specifically agreed with the decision in *Fifield*; another found that employment for less than two years was considered adequate consideration. *Instant Tech v. DeFazio*, 40 F. Supp. 3d 989 (N.D. Ill. 2014). Moreover, two courts found that the bright-line test of two years in *Fifield* was not binding and predicted the Illinois Supreme Court would be unlikely to adopt the test. *Traffic Tec, Inc. v. Kreiter*, 2015 WL 9259544 (N.D. Ill. Dec. 18, 2015); *Banker Life & Casualty v. Miller*, 2015 WL 515965 (N.D. Ill. Feb. 6, 2015).

Two appellate court decisions have also reached differing conclusions about *Fifield*. One case found the two-year bright-line rule as binding, while the other decision found the bright-line rule controlling if no additional consideration is given in the non-compete agreement. *Prairie Rheumatology v. Maria Francis*, 2014 IL App (3d) 140338; *McInnis v. OAG Motorcycle Ventures, Inc.*, 2015 IL App (1st) 142644. Guidance has been provided about defining adequate consideration to enforce a non-compete agreement in addition to the standard set forth in *Fifield*. The Northern District of Illinois has held that compensation, including raises and bonuses, are factors to determine if adequate consideration has been given. *LKW Corp v. Thrasher*, 785 F. Supp. 2d 737 (N.D. Ill. 2011). Compensation, stock options, a signing bonus, or a grant of additional paid time off are relevant factors when analyzing the adequate consideration requirement.

Under the Act, a “covenant not to compete” is defined as any agreement between an employer and low-wage employee preventing the low-wage employee from (1) performing work for another employer for a specified period of time, (2) any work in a specified geographical area, or (3) performing work that is “similar” to the low-wage employee’s current work.

The Act fails to address two important questions that will lead to additional unsettled questions of law and fact, which will need further clarification by Illinois courts or future legislative action. First, how will the law potentially affect non-solicitation agreements? Second, how broad or narrow will “similar” work be defined?



### The Relationship Between Non-Compete and Non-Solicitation Provisions

Illinois courts are likely to enforce non-solicitation agreements if such agreements are (1) reasonable to protect an employer's legitimate business interest, and (2) the non-solicitation terms are reasonable. *Lawrence & Allen, Inc. v. Cambridge Human Res. Group, Inc.*, 292 Ill. App. 3d 131 (1997). Some believe an agreement preventing the solicitation of clients "operates as a non-compete agreement" and does interfere with an employee's ability to secure a future employment opportunity. Mary L. Mikva, *Drafting Confidentiality, Non-Compete & Non-Solicitation Agreements: The Employee's Wish List*. ABA Regional Institute Labor and Employment Law: The Basics, June 2004.

Likewise, Utah recently passed a new law making a non-compete agreement void if the non-compete is in effect for a period of more than one year after employment. HB 251, Post-Employment Restriction Amendments, <http://le.utah.gov/~2016/bills/hbillamd/HB0251S10.pdf>. The act explicitly states that the new law applies only to a "post-employment restrictive covenant" and does not apply to non-solicitation agreements, nondisclosure agreements or confidentiality agreements. HB 251, Section 1(b). Unlike Utah's legislation, the Illinois Act does not explicitly rule out non-solicitation agreements from its

definition of a "covenant not to compete," leaving the unanswered question of whether non-solicitation agreements are included within the definition under the Act.

Similar factors are used to evaluate both non-compete agreements and non-solicitation agreements. Determining the reasonableness of non-solicitation agreements "also is evaluated by the time limitation and geographical scope stated in the covenant." *Coady v. Harpo*, 308 Ill. App. 3d 153 (1st Dist. 1999). Some may argue that because these two factors are identical to those found in the current analysis of a "covenant not to compete" under the Act, the Act has the potential to apply to non-solicitation agreements as well.

One distinguishing factor in the analysis of non-solicitation agreements is an absence of the requirement relating to geographic limitation. *Arpac Corp. v. Murray*, 145 Ill.App.3d 151 (Ill. App. Ct. 1986). Specifically applying to the Act, it could be reasoned that because the Act does specifically include a geographical limit as a condition to application of a covenant not to compete, the Act does not apply to non-solicitation agreements. Additionally, Illinois courts generally apply a lower level of scrutiny to non-solicitation agreements than the standard applied to non-compete agreements. As previously mentioned, all that must be shown to enforce a non-solicitation agreement is (i) it is necessary to

protect the employer's legitimate business interest and (ii) the terms are reasonable.

### "Similar" Work under the Act

To determine how Illinois courts may interpret "similar" work under the Act, additional federal and state statutes regarding employment may provide insight.

Under the Equal Pay Act of 1963, "similar" work is defined as labor "which requires equal skill, effort, and responsibility, and which are performed under similar working conditions." Pub. L. 88-38. Likewise, the Illinois Equal Pay Act defines substantially similar work identically as the federal Equal Pay Act. 820 ILCS 112/10.

In order to provide clarity, employers auditing their payroll practices can access information to help create groups of "similar" work. *What you Need to Know About Recent Amendments to Illinois's Equal Pay Act*, Matthew C. Luzadder, Janine N. Fletcher, Aug. 9, 2016, <http://www.labor-daysblog.com/2016/08/what-you-need-to-know-about-recent-amendments-to-illinois-equal-pay-act/>. While this analysis is within the context of equal pay, it is a worthwhile endeavor to understand how to define, determine and avoid "similar" work in the non-compete arena.

Public policy arguments suggest that due to Illinois being the most bankrupt state with one of the ten worst unemployment rates in the nation, non-compete agreements should not become another source of employment impediment. Approximately 46% of all employees in Illinois have a mean hourly wage of \$13.00 or less. May 2015 State Occupational Employment and Wage Estimates Illinois, *Bureau of Labor Statistics*, [https://www.bls.gov/oes/current/oes\\_il.htm](https://www.bls.gov/oes/current/oes_il.htm). Accordingly, 46% of the Illinois workforce is protected by the Act. The three largest sectors to employ individuals making approximately \$13.00 or less are Food Preparation and Serving Related Occupations (482,170 people), Personal Care and Services Occupations (168,830 people) and Healthcare Support Occupations (159,210 people).

More than 30% of employees making \$13.00 per hour or less come from these three job sectors. It is likely that Illinois courts will narrowly construe "similar"

work under the Act to limit the strength a non-compete agreement could potentially have on an employee making more than \$13.00 per hour and who signs a non-compete agreement. The Act seeks to provide proper protection for these employees, especially after the recent decisions relating to Jimmy John's.

### **Jimmy John's Case and the Pervasiveness of Non-Compete Agreements**

Many people assume that non-compete agreements are signed by a limited number of employees. The pervasive assumption is that employers usually limit the use of non-compete agreements solely to higher-level individuals in a company, including managers and those in high level sales roles. In reality, however, nearly 18% of all workers in America, or approximately 30 million people, are bound by non-compete agreements. *Non-Compete Contracts: Economic Effects and Policy Implications* (citing Starr, Bishara, and Prescott report (2015)), Office of Economic Policy, U.S. Department of the Treasury, March 2016.

The recent revelations surrounding Jimmy John's illustrate the pervasive corporate practice of requiring non-compete agreements and the uncertainty in knowing just how many employees sign non-compete agreements. *People v. Jimmy John's Franchise, LLC*, 2016 CH 07746, Ill. Cir. Ct. (June 8, 2016), [http://www.illinoisattorneygeneral.gov/pressroom/2016\\_06/JimmyJohnsComplaintFILED.pdf](http://www.illinoisattorneygeneral.gov/pressroom/2016_06/JimmyJohnsComplaintFILED.pdf).

In 2016, Illinois Attorney General Lisa Madigan filed a lawsuit against Jimmy John's for enforcing non-compete agreements on nearly all departing employees, including hourly workers such as sandwich makers and delivery drivers. The non-compete agreements did not allow employees to accept jobs with a Jimmy John's competitor for two years after leaving the company, and prohibited employees from working within two miles of a Jimmy John's store that made 10% or more of its revenue from the sale of sandwiches.

Madigan claimed that Jimmy John's had no legitimate business interest to enforce a non-compete agreement against the aforementioned employees. *Jimmy John's*, at 2. Madigan also believed the non-compete

agreement was not narrowly tailored, not supported by adequate consideration, and unreasonable. Most importantly, Madigan argued that many employees "will be unaware" that the non-competition agreements are unenforceable and "will continue to experience economic harm" because of this. Employees were required to sign the non-compete agreements as a condition of employment and were not given additional consideration in exchange for signing the non-compete agreements.

The argument remained that Jimmy John's employees subject to the non-compete agreement did not have access to confidential or trade secret information. Additionally, employers may not have an established structure for the onboarding process of new employees. In the case of Jimmy John's, the non-compete agreement signed by employees was included in the company's Operations Manual. *Jimmy John's*, at 10.

If non-compete agreements are potentially outlined in an Operations Manual, it begs the question where non-compete agreements are potentially placed in other employers' collateral materials. Additionally, because Jimmy John's "use of standard non-competition agreements is pervasive at all levels of [Jimmy John's] hierarchy," many employers may become accustomed to non-compete agreements in any type of collateral materials or believe the document can be routinely included in onboarding packets for new employees. *Jimmy John's*, at 16. The Act is a clear warning for Illinois employers to review and edit their non-compete agreements. For those employers that previously had non-compete agreements in place for low-wage employees, management must be cognizant of potential non-compete agreements unknown or hidden in employee onboarding materials and take immediate action.

In addition to other issues, the non-compete agreement for Jimmy John's did not provide adequate consideration because "employees were not offered monetary payment or guaranteed employment for a specified period of time..." *Jimmy John's*, at 12. The Madigan complaint does provide insight on what may be considered adequate consideration for

employees making \$13.01 per hour that must sign a non-compete agreement. Monetary payments may be considered adequate consideration, so long as they are not considered "de minimis." Studies also find that employees have improved training and wage outcomes when employers attach "substantial" consideration described above to a non-compete agreement. Office of Economic Policy U.S. Department of Treasury, March 2016.

Further, there may be a group of employees whose hourly wage is above the low-wage threshold in the Act that are subject to an enforceable non-compete agreement if one assumes that all conditions previously mentioned are met. For example, cooks at restaurants, whose mean hourly wage in Illinois is \$21.32 per hour, may be privy to important information relating to ingredients, specific preparation of certain food, and recipes that give the employer a competitive advantage over other restaurants and food vendors. Radio and television announcers have a mean hourly wage of \$20.13. May 2015 State Occupational Employment and Wage Estimates Illinois, *Bureau of Labor Statistics*, [https://www.bls.gov/oes/current/oes\\_il.htm](https://www.bls.gov/oes/current/oes_il.htm) There are approximately 49 broadcast television stations in Illinois. This industry may be an example of a small market that may give an employer a legitimate business reason to include and enforce a non-compete agreement for their employees. Broadcasting Information Guide, Station Index, <http://www.stationindex.com/tv/by-state/IL>.

A newer industry group, such as employees working at medical marijuana establishments, may also be eligible for a non-compete agreement at a mean hourly wage above the Act's threshold. These employees may be privy to technical information, formulas and other proprietary information during the regular course of their work. While the Act does create necessary protection for low-wage employees, those employees above the hourly wage cutoff may experience non-compete agreement-like restrictions related to future employment. From the Jimmy John's decisions and the multiple factors discussed above, employers should seriously consider the cost-benefit analysis of imposing a non-

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compete agreement against certain hourly workers.

While some may believe an employer should protect its interest as it relates to a cook by using a confidentiality agreement, it is not implausible to believe that a non-compete agreement could be used to accomplish the same protection for the employer. Employers have a higher likelihood that a non-compete agreement will be upheld if the agreement is focused on preserving customer and supplier relationships instead of outright denying the employee from working for a competitor. *What Business Owners and CEOs Should Know*, Crain's Custom Media, <http://www.chicagobusiness.com/section/custom-content-labor-employment-law>.

### Conclusion

It is still imperative to remember that, on both a national and local scale, non-compete agreements are not favored by courts and the legislature. A 2016 White House report believes non-compete agreements reduce job mobility, remove bargaining power for employees and minimize the labor pool for other companies. *Non-Compete Agreements: Analysis of the Usage, Potential Issues, and State Responses* (May 2016), [https://www.whitehouse.gov/sites/default/files/non-competes\\_report\\_final2.pdf](https://www.whitehouse.gov/sites/default/files/non-competes_report_final2.pdf). The U.S. Department of Treasury also commissioned a report and found that non-compete agreements lower wage growth, burden the interests of workers and are used excessively. *Non-Compete Contracts: Economic Effects and Policy Implications*, Office of Economic Policy, U.S. Department of the Treasury, March 2016. Consequently, employers should be proactive and cautious in crafting and negotiating non-compete agreements. Engaging in this process will benefit an employer who hopes to enforce the non-compete agreement in the future.

Nonetheless, covenants that are now prohibited under the Act for certain employees do provide necessary and legitimate business protection for employers. An employer still has the right to protect its confidential information and trade secrets. An employer also has the right to restrict a departing employee from trying to steal

information, poach clients and solicit other individuals in other business relationships. Businesses could see the Act putting Illinois at a further disadvantage and forcing more companies to relocate to other states in hopes of assuring the protection of business information and assets. There are clear reasons why Illinois is consistently ranked among the worst states in the United States in which to conduct business. As a result, a thoughtful balancing of the interests of both employers and employees is warranted.

With the Act now enforceable in Illinois, employers contemplating non-compete agreements for employees making \$13.01 per hour and above should seriously consider the necessity, purpose, and legality of a non-compete agreement. Non-compete agreements limit various aspects of an employee's opportunities, including the ability to find new employment, upward mobility of workers looking for a higher wage, advancement of an employee with new skills obtained from a current or previous employer, and the negotiation power to demand higher wages with a current or future employer. *Jimmy John's*, at 17.

The impact of the Act will likely gain strength in the coming years. In Chicago, the minimum wage will increase to \$13.00 per hour on July 1, 2019, while Cook County's minimum wage will increase to \$13.00 per hour on July 1, 2020. Because of these minimum wage increases, practitioners can assume that more individuals employed in Cook County will earn wages higher than the \$13.00 per hour rate explicitly mentioned in the Act. Consequently, the potential exists for a larger pool of employees to gain protection from the Act, thus dissuading employers from entertaining the thought of implementing wide-scale use of non-compete agreements. ■

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*Matthew E. Misichko is an associate in the Commercial Practices Group at Handler Thayer, LLP*

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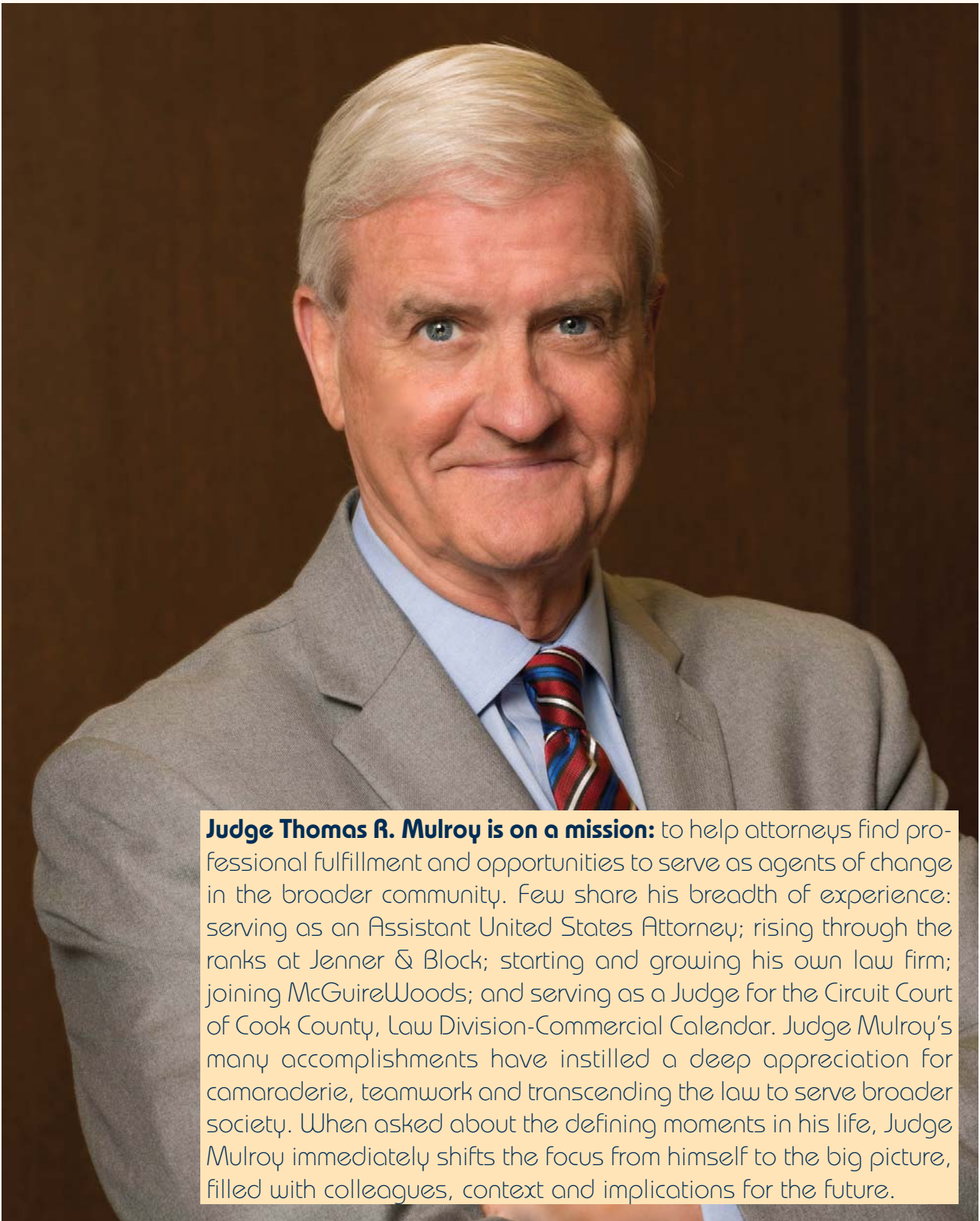


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By Anthony F. Fata

# Meet CBA President Judge Thomas R. Mulroy



**Judge Thomas R. Mulroy is on a mission:** to help attorneys find professional fulfillment and opportunities to serve as agents of change in the broader community. Few share his breadth of experience: serving as an Assistant United States Attorney; rising through the ranks at Jenner & Block; starting and growing his own law firm; joining McGuireWoods; and serving as a Judge for the Circuit Court of Cook County, Law Division-Commercial Calendar. Judge Mulroy's many accomplishments have instilled a deep appreciation for camaraderie, teamwork and transcending the law to serve broader society. When asked about the defining moments in his life, Judge Mulroy immediately shifts the focus from himself to the big picture, filled with colleagues, context and implications for the future.





*Judge Mulroy with his wife, Elaine Mulroy*

### **SIMPLY PUT, JUDGE MULROY IS AN INSTINCTUAL**

mentor and a forward-looking leader with a clear vision for the CBA's future.

### **Painter, Army Water Polo Champion and Family Man**

Born in Winnetka, Judge Mulroy began working at a young age. One of his early jobs was "painting every fire hydrant in Winnetka." After graduating from Loyola Academy, where he swam and played water polo, Judge Mulroy majored in history at the University of Santa Clara. During his junior year, he studied in Rome through Loyola University. "On the plane ride over, I met my future wife, Elaine."

Judge Mulroy returned to the University of Santa Clara for his final year of undergraduate study. "Just before graduation, the Dean of Students asked me, 'What are you going to do now?'" Though he had not really considered his next step, Judge Mulroy spontaneously responded, "I'm going to law school."

Judge Mulroy earned his J.D. from Loyola University. While in law school, he joined the Army Reserves and reported for two weeks of active duty each year. During one assignment, an officer asked if anyone knew how to swim. "I didn't know why he was asking, but as a swimmer and water polo player in high school and college, I thought I should raise my hand." Little did Judge Mulroy know, the officer was asking so he could field a team for the base's water polo tournament. "Our team ended up winning the championship. I remember officers on the other teams pointing at me, asking, 'Where'd he come from?'"

Judge Mulroy and Elaine married after college and have three children: Thomas (a partner at Hinshaw & Culbertson), Kevin (a creative director and writer for BBDO Worldwide), and Heather (who co-founded the Standard Society, an agency that represents directors of commercials and movies). Judge Mulroy is also a proud grandfather of three.

### **Rigorous Career Filled with Challenges and Camaraderie**

After graduating law school in 1972, Judge Mulroy took a job as an Assistant United States Attorney for the Northern District of Illinois. "I loved it. I started out in appeals, and then went to the trial division. I tried 20 jury cases in three years." He fondly recalls the camaraderie in the office. "We talked about trials and evidence all the time. When a jury was out, we would sit with our colleague whose trial it was and await the jury verdict." He still has close friends from that time in the office.

In 1976, Judge Mulroy was offered an associate position at Jenner & Block. "My first case was a probate matter for Bert Jenner," the name partner of the firm. It was not a run-of-the-mill client matter. Jenner had just learned that a former client had passed away and named him one of many beneficiaries in the will, which was being vigorously contested in downstate Illinois. "I had no idea where I was going or what I was getting into, but it turned out well for Bert. I didn't get a bonus, but I did get to keep my job." Several years later, Judge Mulroy was up for partner. The day before the partner election meeting, the firm intercom announced that Mulroy had won a trial verdict in a major insurance coverage matter. "It was good timing." Judge Mulroy rose through the ranks at Jenner & Block, served on its Executive Committee, and practiced at the firm until 2001.

"I loved Jenner & Block, but wanted to try something new and challenging." Judge Mulroy started his own firm. It attracted large clients and large matters. "Because of the size of some of the matters, we needed a bigger infrastructure." He then joined McGuireWoods in 2003, where he practiced until 2007, when he became a judge.



At “A Path Toward Solutions: A Summit on Curbing the Violence in Chicago,” with Rev. Dr. Walter Johnson of Greater Institutional AME Church, Rev. James E. Dukes of Liberation Christian Center, Father Michael L. Pfleger, Faith Community of St. Sabina, and Jadine Cho, Chief Safety and Security Officer, Chicago Public Schools.

### Longtime Goal Achieved: Becoming a Judge

Judge Mulroy had wanted to be a judge since his time as an Assistant United States Attorney. “I love trials and the rules of evidence.” Indeed, Judge Mulroy wrote the first Trial Practice Manual for the United States Attorney’s Office for Northern District of Illinois. He has taught trial practice as an adjunct professor at Loyola University. He also established the “Mulroy Award”—given to the student who earns the highest grade in Evidence.

In 2007, Judge Mulroy was appointed a Judge for the Circuit Court of Cook County, and is now assigned to the Law Division-Commercial Calendar. After 10 years of service on the bench, Judge Mulroy’s love of the courtroom remains strong. “The lawyers are great. And one thing I notice is jurors are more enthusiastic than ever about serving.”

Although he greatly enjoys presiding over trials, Judge Mulroy has a practical understanding that many matters should be resolved expeditiously. To that end, he spearheaded the Commercial Calendar’s innovative arbitration program. Cases in which damages are less than \$75,000 can be referred to an arbitration before a single arbitrator. Either party can either accept the award, or reject it upon payment of a fee. However, if the rejecting party does

worse at trial, it must pay the other side’s attorneys’ fees associated with the arbitration. “Our thought was to force litigants to internalize the risks of rejecting an award.” The program has been a tremendous success and is a cost-effective alternative for the litigants. The arbitration process “gives the parties an early chance to explain their side of the story and vent. Many times, the money is secondary; the litigants just want to be heard.”

### Vision for the CBA: Center of Excellence for of Camaraderie, Fulfillment and Service

Judge Mulroy is deeply concerned that the practice of law is not as fulfilling as it once was. As a result, his initiatives as CBA President will focus on the subjects of *lawyers* and *society*, and not just traditional legal subjects. “Lawyers have a need to be a part of the bigger community, and I want the CBA to help them fulfill that need. We are interested in issues that are bigger than the law and the legal profession.”

### Returning to Rome

Next year’s European CLE will be to Rome. Judge Mulroy has ambitious plans for the event. Speakers will include Amanda Knox’s criminal defense attorney, Rome’s chief prosecutor and a representative from the United States Embassy.

Leisure time will include a cooking class, a tour of the Roman Forum and a variety of other events.

### Looking to the Future

Always a forward-thinker, Judge Mulroy has planned a symposium entitled, *The Future of the Practice of Law in Chicago*. “The uniqueness of attorneys has been diminished. Too many lawyers say they hate their jobs. Law students can’t find jobs, young and mid-career lawyers are afraid of getting fired, older lawyers are being pushed out of the firms, law firm margins are being pinched, and solo practitioners’ income has diminished.” In addition, “law school enrollment is down across the board.” Judge Mulroy’s symposium will address these problems.

The symposium will be divided into six subject areas that will be addressed by separate committees comprising 20-30 attorneys and judges. Each committee will identify three problems and three corresponding solutions and will present their findings at a symposium with CBA member input. The six subject areas include:

**Transitioning from Law School to Practice.** This committee will focus on the transition from law school, a theoretical, academic environment, to the actual practice of law. Judge Mulroy is acutely aware of the disillusionment many young attorneys feel shortly after entering practice. “The young lawyer’s first mentor plays such a critical role in defining that lawyer’s career, how they practice law and how they interact with those around them.”

**Diversity and Inclusion.** As Judge Mulroy puts it, “it is one thing to hire persons from a diverse background, but quite another to really incorporate them and include them in the organization.” This committee will focus on that inclusion. Judge Mulroy’s vision for this committee conveys a deep empathy. For example, he understands that the challenges faced by women who are older than 50 are far different than the challenges faced by younger women. This committee will also examine how different generations interact. “You have many,

distinct age-groups interacting, but often speaking different languages. Baby Boomers are interviewing Millennials with Gen Xers down the hall and Centennials on the way. How does that impact any given firm or the practice of law generally?”

**Alternative Dispute Resolution.** This committee will focus on the pros and cons of ADR. In Judge Mulroy’s observation, docket overcrowding led to a fundamental shift in focus by the judiciary. “Twenty years ago, judges went from hearing cases to *managing* caseloads.” This led to a wide-range of ADR innovations. But Judge Mulroy senses that the legal community must keep in mind the purpose of ADR. Is it to move cases along, or to provide an inexpensive forum for handling disputes? If it is the latter, is ADR truly serving that end, or would some parties be better off staying in court.

**Judicial System.** This committee will explore access to justice for civil proceedings in state court. For example, it will address issues related to “ghost-written pleadings” as well as the role and complexities of “limited representation,” where an attorney is engaged for a specific motion. It will also address issues such as technology in the courtroom. The committee’s proposed recommendations, however, cannot come with a prohibitive price tag. “Our courts are financially strapped. So the solutions this committee proposes cannot involve the expenditure of already-strained court resources.”

**Law Firms.** This committee will address common issues confronted by law firms of all sizes, from large mega-firms to solo practitioners, and will include issues such as billing, ethics, training, and mentoring.

**New Business Structures.** This committee will focus on the rapidly changing legal industry and confront issues such as artificial intelligence and the role of non-lawyers in the legal profession.

### **Mental Health Series**

Judge Mulroy is concerned with mental health issues, how they impact the justice system, and, most importantly, how the



*At podium of special luncheon for Cardinal Blase J. Cupich, with Chief Judge Timothy C. Evans, Circuit Court of Cook County, and Monsignor Kenneth Velo.*



*At the Justice John Paul Stevens Awards luncheon, with Justice Stevens and Seventh Circuit Court of Appeals Judge William J. Bauer*

justice system impacts those suffering mental illness. “We all know someone with a mental illness. It is critical that judges and attorneys get involved in this problem, to make sure that the justice system is helping to create solutions and not adding to the problems.” With Mark Epstein, Judge Mulroy has developed a seminar series on this subject that revolves around a practical, hypothetical situation and ways loved ones, police officers, attorneys and judges

can deal with the issues presented. “Mental illness presents an opportunity for lawyers to view the law in the context of the broader society.”

### **Continuation of the Curbing the Violence Summit**

The gun violence epidemic continues to plague Chicago, and Judge Mulroy wants the CBA to work toward remediating the  
*continued on page 56*

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**Interest in Your Future:  
Making the YLS Work  
for You**

**By Jonathan B. Amarilio  
YLS Chair**

**F**orty-six years ago a small group of young lawyers gathered to form the CBA’s Young Lawyers Section. From that humble beginning, the YLS has grown into the country’s most decorated young lawyer organization. We offer and engage in countless charitable works, social awareness campaigns, educational programs, and professional development opportunities for our members. We have thrived together. We are unrivaled because of the countless hours of work you and our predecessors have poured into this organization and, thereby, into each other. It is a legacy we should be proud of and protect. Being the Chair is a responsibility I do not take lightly.

And so this year will be about what we can accomplish together for the YLS and for each other. This year will be about making the YLS as useful, immediate, and relevant to you as possible. In other words, this year will be about maximizing your return on investment and, in so doing, ensuring the YLS’s future.

To that end, we recently completed a

member survey to better understand what the YLS can do for you and your practice. Your answers have guided the steps we will be taking this year and the changes we will be making together.

One of those changes will be a complete restructuring of the director position on the YLS Executive Council. Directors will no longer be responsible for overseeing committees; rather, their primary mission will be to bring you to the world and the world to you. For example, our new diversity organization outreach directors will collaborate with and organize joint events and programs with diverse affinity bar groups. Our professional organization directors will concentrate similar efforts toward organizing joint events and programs with young professionals in other industries. And our new law school outreach directors will work to recruit our newest members so that we can ensure the next generation of YLS-ers is as strong and active as all of you.

We will also be retiring a number of older programs to make way for some new ones. This effort will include new substantive committees, new employment connection services, and new social opportunities. It will also include a new CBA Board Mentoring Program with the CBA’s officers, so that our most active members can match with their “Big Bar” counterparts and learn how to navigate the waters of associational governance from those who have successfully sailed the course.

The YLS will also host a new judicial symposium designed to allow our young attorneys to interact with and learn from our judiciary. I am a firm believer that one of the greatest services the CBA provides is being a gathering place for practitioners and judges to get to know each other outside of the courtroom. I hope to expand that opportunity for you—with your help.

In addition, the YLS plans to launch a new podcast named “@thebar,” in which

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YLS co-hosts will regularly discuss issues of interest to young lawyers in an informative and entertaining way. The podcast will serve as a platform for YLS members to explore topical legal issues, consider our history, work through our common challenges, and highlight our members and their accomplishments.

All those who are reading this know well how challenging our profession can be. Being a lawyer requires long hours, a never-ending dedication to our clients' interests, and most of all, a love of the art of advocacy as a vehicle for justice, progress, and right action. Being a lawyer empowers, but it also humbles. It teaches us constantly and demands that we teach others in turn. And once in a while, when we work together for each other and our community, it somehow inspires us to work even harder.

That will be the YLS' mission this year: to deliver on the promise that every minute you invest in the YLS and its members is a minute you invest in your own future. I ask you to work with me, and more importantly, work with each other, to make the YLS work for you. ■

## YLS KICKS-OFF A NEW BAR YEAR AT ITS ANNUAL MEETING



2016-17 YLS Chair Katie Liss passed the gavel to 2017-18 YLS Chair Jonathan Amarilio at the YLS Annual Meeting luncheon, held at Harry Carey's Italian Steakhouse on June 7. The Section thanks Katie Liss for her outstanding leadership in 2016-17 and looks forward to Jonathan Amarilio taking the lead in the coming year.



The Section also congratulates the young lawyer members who demonstrated exemplary service this year through their committee service, project leadership and dedication to the Section. Congratulations to the Creative Arts Committee, including Chairs Ross Hersemann and Maryam Fakouri, Vice Chair Sarah Ebel, and Legislative Liaison Angela Huisigh, who received the David C. Hilliard Award for outstanding committee service; to Alexander Memmen, who received the Milton H. Gray Award for outstanding project leadership for his efforts on our "Miami Nights" casino night fundraiser; and to the YLS Award Rising Star Award winner Tom Cramer. The Labor and Employment Committee was also acknowledged for having the highest attendance at their annual seminar during the 2016-17 bar year, and YLS Officers Nick Standiford and Jeff Moskowitz were recognized as YLS Ambassadors.

Finding the Perfect Fit For Your Profession

# Considerations in Making a Lateral Move as a Law Firm Associate

By Jesse P. Hyde



**A**s a recent law school graduate, when joining a law firm as an associate, you focus on developing foundational skills that will serve you through your entire career. If you are a corporate M&A associate, for example, you are drafting disclosure schedules and ancillary closing documents, coordinat-

ing due diligence, and, ideally, beginning to draft asset and stock purchase agreements. If you are a litigation associate, you draft motions, respond to discovery requests, and prepare for depositions. As you progress to a mid-level associate, your concentration is on gaining experience and building relationships with clients and

other attorneys. While it is critical to excel as an associate within your firm, there will be opportunities to make a lateral move to other firms and companies during this period, with short-term and long-term factors to evaluate and consider.

### Practice Area Strengths and Capabilities

The expertise and reputation of the prospective firm in your preferred practice area is an essential consideration. Joining another firm may be ideal from a practice area and professional development standpoint when it has a deeper emphasis in client services and industries of interest. For example, as a finance associate, if you enjoy handling syndicated debt finance and private equity finance transactions most, does the prospective firm offer a larger and more sophisticated focus in these areas? Are there particular sectors (e.g., technology, real estate, energy) to which you have gained some exposure and that would be enhanced by joining the prospective firm? As a litigation associate, if you enjoy working on securities class actions and internal investigations, is the prospective firm more recognized for these matters? Does it have a more robust practice? Will practicing with the firm afford you the opportunity to work with leaders in the field?

Additionally, as you become a more seasoned practitioner and when business development becomes a priority, you should also consider the firm's overall rankings in their local market and nationally. Though not completely dispositive, a lateral job-seeker can assess firm and practice group recognition and prominence utilizing some selected resources, such as Vault, Chambers and Partners, and the American Lawyer, as well insight from trusted recruiters, mentors, and peers. Evaluating rankings and reliable insight can also reassure you of the strengths of your current firm and confirm when a lateral move is unwarranted if you are already part of a leading practice group and are satisfied with the level and type of substantive experience you are receiving.

Nonetheless, even if you are content with the caliber of your firm and your practice area focus, other environmental and career progression factors can merit considering a lateral move to a firm of equal or comparable standing.

### Advancement Opportunities: Law Firms

When reviewing opportunities in your second through fifth year as an associate,

partnership (income and equity) prospects at your current and prospective firms are a key area of assessment, assuming law firm practice is your long-term objective. Exceptional work-product and strong reviews aside, other elements can help gauge partnership likelihood and trajectory. When assessing career longevity, one can look at a firm's overall leverage (the ratio of non-equity attorneys, including non-equity partners, of counsel, and associates, to equity partners) and also review the number, level, and specialties of the partners and associates in a practice group. Other factors and potential indicators are whether a firm has a single or two-tiered partnership; the total number of years of the partnership track (typically 6.5-8 years); and the number of other associates in your class-year and preceding years in your practice group. Most firms have shifted to a two-tiered partnership system, where becoming an income partner is the more common and shorter-term goal. Reviewing a firm's previous partner elections over the past five years and determining the number of partners made in a specific practice group and office can give you a general idea of partnership promotion likelihood.

Also, to evaluate eventual progression from income to equity partner from a business generation standpoint, examine a firm's brand in your practice area, the level of responsibility you are receiving or will receive on matters, client contact, and opportunity to be a resource for leading partners. (e.g., a corporate attorney may ask: would this private-equity M&A practice offer more exposure to front-line transactional experience and interaction with portfolio companies to progress faster as a practitioner and eventually develop business?) Associates should also consider client fee-structure factors as they relate to their practice area interests. As a corporate associate, if you believe you would thrive more at a firm servicing mid-market private equity clients at a slightly lower billing-rate, lateraling to a corporate practice group operating in this space may be optimal.

In contrasting lateral versus home-grown associate partnership likelihood, it is

important to note that firms are careful in lateral hires and want to ensure that there is ample capacity for an additional partner-track attorney. When bringing in lateral associates, firms commonly hire associates with full credit for their class year, and specify the year they are first eligible for partnership in their offer letter. For merit-based compensation systems, firms hire an associate at a specific level number based on their previous experience (usually ranging from 1-4 or 1-3). Generally, laterals are well-positioned for partnership and are welcomed as highly-credentialed prospects with sound firm experience and strong skill-sets who will progress with their peers and advance long-term. Often key practice group leaders are involved in the hiring process, and firms' supportive lateral integration processes foster a smooth transition and an environment where associates prosper as quality additions to teams.

### Advancement Opportunities: In-House

Associates interested in pursuing in-house counsel career paths will also have opportunities as they reach their fifth-year level or so. Such positions will continue to be available in the senior associate and income partner years. When conducting an in-house position search, you will want to cast a wider application net than for a law firm search given the comparatively larger number of corporate legal departments. Client contact is also important. Good impressions with corporate counsel can benefit you when in-house needs arise within their company or at other peer organizations.

### Organization Culture and Work-Life Balance Factors

Firm culture and environmental conditions indeed influence associate satisfaction and can drive lateral moves. Factors such as teams worked with, types of matters handled, hours expectations, diversity, and feedback can influence an associate's decision to remain with or leave a law firm. Associates in a firm's satellite office may find joining the home office of another firm appealing if it lets them work with a larger team or have a more formal train-

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ing process. Also, as previously discussed, sometimes lateraling to a certain office or practice group with a strong track record of shareholder elections can provide a more viable path to partnership.

By contrast, associates practicing with larger offices and/or firms may find a midsize firm or office more appealing if they can potentially obtain more practical experience in a smaller setting with leaner-staffed matters. Midsize environments can also provide greater access to partners for mentoring, more manageable billable hour expectations, and, in the case of satellite offices, the opportunity to join a vibrant growing office and practice.

Regarding work-life balance, while most firm minimum billable hour requirements range from 2000-2100 hours, in Biglaw, actual hours worked are often much higher. If you are looking to enhance your work-life balance, lateraling to a midsize firm with a lower minimum billable hour requirement, or to a firm with an established remote or flex-time working arrangement system, may make sense. Other, often uncontrollable, forces can accelerate the incentive to lateral as an associate, including partner departures or reduced work-flow.

In conducting diligence of a prospective firm, associates should also review the firm's financial health, assessing profits per partner, year-over-year revenue growth, and recent lateral partner hiring or attrition. When looking to join a firm with strong associate satisfaction, one should also be mindful of associate retention and turnover. Perspectives from law school classmates at the firm, or co-counsel you may have worked with from the firm, are also helpful in ascertaining a positive firm

environment. An experienced recruiter will also understand the specific practice group and be resourceful in lending insight into associate life.

## Compensation

Last year law firms raised associate salaries for the first time in nearly a decade, increasing top market salaries to a range of \$180,000.00 for first years through \$315,000.00 for eighth years. Associates commonly consider whether lateraling is prudent based on compensation, particularly with market salary increases to this level. Of course, bonuses, which vary across firms, are the other key component of compensation. From a cost-benefit perspective, if you are at Firm A paying below-market salary, which has the same hour and assignment expectations of Firm B, and Firm B is paying at- or above-market compensation levels, Firm B may be a more desirable employer, assuming other variables are equal, such as practice strength, professional development, partnership prospects, and overall firm ranking. However, if you are content in all other career aspects at Firm A, it is important to be cautious in lateraling to a new firm and leaving a positive situation. The short-term compensation improvement may not outweigh the benefits of the sophisticated practice you have developed and relationships you have formed at your current firm. Also, if your current firm offers a more feasible path to partnership, the long-term partner-level salary and bonus increase can make up for lower compensation as an associate.

Often lateral opportunities are available prior to an associate's current firm's annual bonus distributions. Therefore, at the offer stage, you can negotiate a signing bonus to offset the bonus you may be leaving behind at your current firm. This is where having an experienced recruiter who works with the firm can be helpful. Also, firms typically consider associates eligible for a pro-rata bonus for the remaining months of the year in which the associate is hired.

If you are relocating, there is generally a firm-specific relocation expense reimbursement allotment policy. Of course, associates licensed in other jurisdictions should

first check the state bar's rules of reciprocity. When an attorney does need to become licensed, the firm will allow them a certain number of utilization hours to study and cover their bar review course and licensing fees. Generally, for transactional attorneys, relocating to another geographic market is common practice for larger firms. Experience gained with firms in specific cities is highly valued, such as New York corporate and finance practice experience.

## Using a Recruiter or Search Firm

Working with a knowledgeable recruiter can help align your career objectives with appropriate target law firms and companies and inform you of specific unposted positions. A recruiter will guide you through the interview and hiring process, including resume review, compensation negotiation, interview preparation, and consultation through the conflicts check and notice process.

Key factors to consider when selecting a recruiter or search firm are: (1) adherence to confidentiality and ethics; (2) market intelligence; (3) understanding of specific firms and your practice area; and (4) attentiveness and responsiveness following an initial meeting and consultation. An effective recruiter should be a helpful resource who provides critical insight on practice groups and in-house legal departments, and gives sound direction on the search and interview process. Their assistance should enable a more successful transition to an ideal firm or company.

As you continue through your rigorous—and hopefully rewarding—practice as an associate, it is worthwhile to give thought to your career trajectory. Reviewing the factors addressed above can ensure a more fluid and advantageous lateral search process. ■

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*Jesse Hyde is a Managing Director with the legal search firm Wegman Partners LLC, where he focuses on placing attorneys with Am Law 200 and midsize law firms as well as with corporations. He also previously served as Co-Chair of the Career Assistance Committee of the Chicago Bar Association's Young Lawyer's Section.*





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# LEGAL ETHICS

BY JOHN LEVIN

## New ARDC Rule: Lawyers Without Malpractice Insurance Must Take Course

Some readers of this column may remember the long and somewhat acrimonious debate that preceded the adoption by Illinois of a minimum continuing legal education requirement. Readers may also recall that Illinois was far from the first jurisdiction to adopt such a requirement.

However, Illinois has now taken the lead in a new area of legal education. Under amended Illinois Supreme Court Rule 756(e)(2), commencing in 2018 Illinois lawyers who do not carry legal malpractice insurance must take a self-assessment on “an interactive online educational program” provided by the Administrator of the ARDC “regarding professional responsibility requirements for the operation of a law firm.” The subsection further provides that: “The self-assessment shall require that the lawyer demonstrate an engagement in learning about those requirements and that the lawyer assess his or her law firm operations based upon those requirements.” The results of the self-assessment are confidential and may not be used in evidence in a disciplinary proceeding. The biennial course also carries 4 hours of MCLE professional responsibility credit.

The purpose of this new provision is two-fold. The first is to educate lawyers on practices and procedures to reduce the chances of a malpractice claim. The

major malpractice insurers have their own educational programs and resources to educate and advise policyholders. It only makes good business sense to reduce the likelihood of a claim. Larger institutions and law firms also provide resources to their members and employees for the same reason. Under the new Rule, the ARDC will provide a similar service to the uninsured.

A second purpose of the new rule is to motivate lawyers to purchase malpractice insurance. According to research provided by the ARDC, most of the uninsured lawyers in Illinois are sole practitioners. According to the ABA, five to six percent of private attorneys face a malpractice claim every year. Unless you want to represent yourself in the claim (a generally accepted “very bad idea”), the cost of defense could be excessive. By drawing the uninsured bar’s attention to the issue of malpractice liability and insurance on a regular basis, the new rule may cause more Illinois lawyers to purchase the coverage over time.

The amendments to Rule 756 are a form of regulatory program called “proactive management-based regulation.” This concept was discussed at length in a 2013 *Hofstra Law Review* article [Vol. 42:233] by Ted Schneyer titled “The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers.” The article draws a distinction between two forms of regulation. The first is “professional self regulation” in which “the courts adopt a code of professional conduct based heavily on the ABA rules in order to govern the lawyers practicing in their jurisdictions.... And the courts and their agencies impose discipline, ranging from private warnings to disbarment, on lawyers whom they find to



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).

### NEED SOME AFFORDABLE MEETING SPACE?

The CBA has a variety of meeting rooms and can provide catering and audio/visual services for client conferences, firm meetings, social gatherings etc. Call Michele Spodarek, CBA Conference Center Manager at 312/554-2124 for details.

have breached code rules.”

The second is “proactive management-based regulation,” which is “a regulatory model formulated by theorists Cary Coglianese and David Lazer that requires firms to engage in their own planning and develop their own management processes in order to achieve externally defined but broadly stated public goals. Compliance with professional duties is, of course, an example.... The proactivity element turns on a self-assessment process....” Schneyer discusses at length the successful use of proactive management-based regulation by lawyers in Australia and suggests its use in the United States.

What I find intriguing in the adoption of this rule is that Illinois, after lagging in the adoption of mandatory continuing legal education, has taken the lead in using this novel form of regulation of lawyers. We will soon see if it is successful. ■

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



The Chicago Bar Association

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# LPMT BITS & BYTES

BY CATHERINE SANDERS-REACH

## What Flavor of Cloud Storage Should I Use?

Even if you don't know what cloud storage is, you may already be using it. Dropbox, iCloud, and Google Drive became household names by letting users store electronic documents, pictures, albums, and other digital data on their "cloud" for free. So, what is "the cloud"? According to the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility, the cloud is just "a fancy way of saying stuff's not on your computer" (Formal Opinion 2011-200, [tinyurl.com/d4dmgxs](http://tinyurl.com/d4dmgxs), quoting the definition from the article "Byte Rights" in *Maximum PC*, September 2010).

Opinion 2011-200 also correctly suggests that an attorney using webmail such as Gmail is using "cloud computing." In the *ABA LTRC 2016 Survey Report: Law Office Technology* ([tinyurl.com/hevcscst](http://tinyurl.com/hevcscst)), only 38 percent of attorneys responding asserted that they used cloud computing or SaaS (software as a service) for law-related tasks (10 percent don't know). Of those who use the cloud, the top three products used were Dropbox, Google Drive, and iCloud. What should be considered before using cloud storage? Who are the big players in the business market? What security issues need to be addressed? Read on!

### Benefits of Cloud Storage

What is the appeal? The benefits of cloud storage for the solo and small firm practice

**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.**

are easily evidenced. The services reduce the need to buy external drives and serve as de facto backup. Instead of storing data locally to your computer, you store it on third-party servers accessible through a web browser such as Chrome, Safari, or Firefox. Through mobile devices, such as phones and tablets, lawyers can access the firm's files, and in many cases with the right apps attorneys can make comments and edits on the go.

Many firms often do not have complex and expensive setups that include file servers and virtual private networks (VPNs), and thus working on firm files once meant putting them on a laptop or removable media to make them portable. Firms that had previously used systems such as LogMeIn and GotoMyPC found that, for accessing documents, the cloud storage services were faster and more convenient. Additionally, most of the cloud storage services have "viewers," so if a user needs only to read a document, then no additional software is required on the device. Most cloud storage services maintain document versions, allowing a lawyer to access previous versions of the document and revert. Sharing documents via cloud storage is also easier, especially for larger documents or entire folders of documents, reducing the need for e-mailing multiple files or using file transfer protocol (FTP).

Another significant benefit of most online cloud storage services is that they are operating system and device agnostic. Most of the major business-class cloud storage services—including Microsoft's—will work on any device, be it a Mac, PC, Android phone, iPhone, or iPad. Some services may have more add-ons and integrations with Microsoft Office software applications, and iCloud does not work on Android devices, but for the most part,

A longer version of this article originally appeared in the *ABA GP|Solo Magazine* May/June 2017 and can be found on the LPMT blog at [lpmt.chicagobar.org](http://lpmt.chicagobar.org)

as long as there is access to a browser or an app, the firm is not bound to a specific operating system.

### Pricing

Cloud file storage services are typically priced per user, per month, with a specific amount of storage available based on a plan. If paid by the year, the products are usually discounted by up to 20 percent. If a user exceeds the allotted amount of storage space, an additional fees must be paid. In bundled user pricing (five users, ten users, etc.), additional users usually can be added for a small charge.

### Is Online Storage Backup?

In short, no. While online storage can serve to create redundancy of your local files, online backup business services offer backup for files on multiple devices plus servers, create hard drive images, and store the backup both in the cloud and on external media. Files, servers, software, and images can be restored incrementally, or from "bare metal" (to an empty drive). Backup service providers will send restore discs overnight so the data can be restored quickly. For a quick comparison, look at the features of Mozy Pro ([mozy.com](http://mozy.com)) or Carbonite for Office ([carbonite.com](http://carbonite.com)) offerings, and you will see they are typically far more comprehensive than online document storage services.

### Collaboration

A major benefit of online document storage services is the ease and security of sharing files and collaborating with clients. Firms can share a file or folder by providing a link instead of (insecurely) e-mailing documents. Most of the business plans allow users to share a link or a password-protected link to a document or folder, with collaborators being given rights ranging from view-only, to comments-only,

to document downloading, to real-time editing. Access to the collaborators can be revoked at any time. Be careful when sharing confidential documents via online document storage. A recent decision found that privilege was waived because a link to a folder of documents in the cloud, which was produced via discovery, was sent with the “anyone with the link can access or download” permission. The judge likened it to leaving a box of documents on a bench. Be sure to share documents and folders specifically with certain people versus “anyone with the link can access”, and/or add password protection the folder. That way you can be sure that the files you share are not subsequently available to others. In most cases this does mean that the recipient of the link will need to create a (free) username and password to access the files, but without that additional control your firm is trading convenience for security.

### Law Firm Security and Cloud Storage of Client Files

Law firms using online document storage services should acquaint themselves with applicable ethics opinions ([tinyurl.com/pmh5z2g](http://tinyurl.com/pmh5z2g)) and legislative and regulatory requirements ([tinyurl.com/z3avxhw](http://tinyurl.com/z3avxhw)) that would affect their decision regarding which providers meet their needs. Generally the business plans from many providers have terms and conditions, privacy policies, and security protocols that comport more appropriately with a law firm’s duties of confidentiality. Depending on the practice area and the type of data stored, some firms may require a more expensive plan or a service that will offer further security features including owning the encryption keys, HIPAA compliance, mobile device management, device wiping, records retention, litigation holds, data-loss prevention, and more. These features will also help a firm maintain compliance with internal policies and procedures, such as an acceptable use policy or remote access policy. While these features may require a minimum number of users, it more likely that the product will simply cost more per user per month and may well be worth the expense.

*continued on page 56*

# CBA Signature Series

## A Case Study: *Sokolow v. PA*

**Date:** Tuesday, August 15, 12:00–1:15 pm

**Location:** The Chicago Bar Association, 321 South Plymouth Court

**Presented by:** CBA and Decalogue Society

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Terror is reaching countries that never dreamed they would come under attack. The Israel Law Center is a Tel Aviv non-profit, legal NGO and a leader in fighting terror in the courtroom worldwide. At The Israel Law Center lawyers go on the offensive against terror in the courtroom in order to stop the flow of money and to provide some measure of compensation to the victims.

In February 2015, for example, Rachel Weiser, a senior attorney at The Israel Law Center, along with local counsel from Arnold & Porter, won a \$655 million dollar verdict in Manhattan Federal court under the Antiterrorism Act. The jury found the Palestinian Authority and Palestinian Liberation Organization liable for terror attacks that injured and killed 33 American citizens in Israel during the second Intifada.

The Israel Law Center has over \$2 billion dollars in judgments, has frozen over \$600 million dollars in terror assets and has collected over \$200 million for the victims. Rachel will speak about her work at Shurat HaDin, the Antiterrorism Act and will conduct a case study on the *Sokolow v. PA* lawsuit.

**Our Speaker:** Rachel Weiser, Director of Advocacy Educational Programming, Shurat HaDin. Rachel grew up in Pittsburgh and has been working as a litigator since graduating from Case Western Reserve University Law School in 1998. After moving to Israel in 2010 with her husband and 5 children, Rachel joined the legal team of Shurat HaDin, where she works on the organization’s U.S. antiterror cases. Most recently Rachel was part of the trial team that won Shurat a \$655 million dollar jury verdict against the PA and PLO on behalf of 33 American victims of terror during the second Intifada. Rachel also runs Shurat HaDin’s biannual law student internship program and annual lawyer’s seminar.

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## Nine Costly Mistakes Small Businesses Make on Employee Benefits

**A**s a small business owner, you may think offering quality benefits to your employees sounds time consuming and expensive, but it doesn't have to be. With today's market conditions and a little help from technology, managing employee benefits is easier than ever. Here are 9 mistakes we see employers making every day:

### Mistake #1: Going Direct to the Carrier

Both health and ancillary insurance products cost the same no matter where you purchase them because the rates are based on age, geographic location and other factors. When you purchase coverage through sites like HealthCare.gov—you're on your own. Don't miss out on the one-on-one assistance you could have had if you had gone through a private brokerage, such as: communicating with the carrier on your behalf; providing post-sale support throughout the year; employee maintenance; and an explanation of benefits to new hires.

Here's another interesting fact: there's usually no service fee for going through a broker. Insurance carriers can't provide the one-on-one assistance that brokers do. That's why carriers like UnitedHealthcare appoint thousands of brokers to sell their products at no additional cost to you.

So, if the cost is the same, and brokers will do the work for you, why not utilize the added support? It's like having a personal assistant for your employee benefits (without paying a penny extra).

### Mistake #2: Not Offering Voluntary Benefits

Offering voluntary benefits like dental and vision insurance doesn't have to cost you a dime, but it may save your employees hundreds of dollars.

#### How?

Each benefit is paid for 100% by your employees but at the group or employer sponsored rate (almost always cheaper). Your employees get the best of both worlds—

access to richer benefits at a lower cost.

In the individual market (where your employees would have to shop if you didn't offer benefits), vision and dental insurance are available at a higher cost and with waiting periods. Under a group plan, though, waiting periods may be waived and the cost is often more affordable for both employer and employee.

Disability insurance is possibly the most overlooked voluntary benefit. Disability is not always permanent—it might be pneumonia or pregnancy—anything that leaves an employee unable to work for longer than allotted sick days.

Aside from an employer-sponsored plan, disability insurance isn't guaranteed issue. (Guaranteed issue is issued regardless of an applicant's health status.) That means individuals who are self-employed may not be able to protect their income in the event something happens to them and they can no longer work.

Think of it as insurance for an employee's income. With disability insurance, they continue to get paid until they are healthy enough to return to work.

There are two types of disability insurance: Short-Term Disability (STD) and Long-Term Disability (LTD):

STD benefits will replace a portion of an employee's salary if they are out of work for up to 6 months due to a qualified illness or injury. Pregnancy is covered as a disability.

LTD benefits cover an employee's paycheck for an extended length of time while they are recovering from a more critical illness or injury. Typically, a LTD benefit will kick in after STD benefit runs out.

### Mistake #3: Administering Benefits Manually

Chances are you don't hand write each of your employees' paychecks every month. So why are you still manually managing their benefits?

Tools exist to make this process seamless, from the initial enrollment meeting to benefit selection, employee on-boarding, Human Resource Information Systems

(HRIS), requesting and tracking Time Off/PTO, and Payroll deductions.

Benefits Enrollment: Enroll into a health insurance plan and ancillary products in minutes. Onboarding: Enter new hires and have them complete I-9 and W-4 forms electronically. Reports: Generate custom reports including payroll deductions and time off management. HR Administration: House all employee data in one place, with no more messy paperwork.

You won't have to chase employees for their signature with e-sign features. And the computer is more likely to catch an error than you are. Fewer mistakes means less back and forth with paperwork and faster on-boarding

#### Why online enrollment?

Enrollment time can be cut in half with real-time updates on open enrollment progress and custom reports can be generated instantly. Also, it will be much easier for employees to compare their options and enroll into an insurance plan: At any time throughout the year employees can view their benefits and read documents you post.

### Mistake #4: Letting your Employees Shop the Individual Market

The individual market can be a more expensive option for you and your employees. Health insurance premiums under a group health plan are paid with pre-tax dollars, and on average experience smaller annual rate increases. If that's not reason enough to go with a group health insurance plan option, let's look at how the individual market did in the year 2016:

One out of every three counties in the United States had only a single carrier offering individual health insurance plans.

In Cook County alone, BlueCross BlueShield of Illinois was the only carrier offering a PPO plan. That's one PPO plan option in the individual market compared to over 25 PPO plans in the group market.

18 out of 23 Consumer Operated and Oriented Plan (CO-OP) Programs have failed.

Insurance carriers Aetna, Coventry, UnitedHealthcare and Land of Lincoln Health have exited the state of Illinois individual market. And Harken Health recently announced they will be closing their doors soon.

Choices in the individual market are limited. Switching to a group health insurance plan can give employees access to more carriers, a larger network of doctors and hospitals, stronger benefits, and cost savings for the both of you.

#### **Mistake #5: Ignoring Compliance Regulations**

With the rules constantly changing, it's hard to keep track of what rules are still being enforced. But the consequences for not complying can end up costing your business thousands of dollars. One provision under ERISA requires employers to provide a Summary Plan Description (SPD) to participants (your employees) within 30 days of their request. If you fail to do so you could be issued a fine of \$110/day. It's not worth the risk.

Your benefits broker should be able to help you with these issues. Consider switching to a new one if he/she is not able to help.

#### **Mistake #6: Only Offering One Plan Option**

One plan doesn't necessarily fit all. We recommend offering three plans: with low, medium and high deductibles. Let your employees decide. Giving your employees more options will allow them to choose a plan that meets their family's medical needs—without costing you more money.

#### **Mistake #7: Not Leveraging Consumer Driven Accounts**

Leverage Consumer Driven Accounts (CDAs) such as a Flexible Spending Account, Health Reimbursement Arrangement or Health Savings Account to further control your cost and increase your benefit offering. CDAs are tax-advantaged accounts that save you and your employees money. Here are some examples:

An FSA can be funded by employees

and/or employers and is used to pay qualified health care (and dependent care) expenses on a tax-free basis. An FSA can only be accessed through an employer.

#### *How does it work?*

Employees generally allocate dollars at the beginning of the plan year to pay their out-of-pocket medical expenses with pre-tax dollars. The allocated amount is the employees estimated yearly cost of medical expenses.

For example, say you're an employee who wants to have Lasik procedure this year and you know it's going to cost \$2,000 dollars—fund your FSA with \$2,000. That way you are paying for Lasik with pre-tax dollars. And if the surgery only ends up costing you \$1,500 you have until the end of your plan year to spend that additional \$500 where you need it—like to pay for your prescriptions. Many employers also allow up to \$500 of unused funds to roll over from one plan year to the next.

A Health Savings Account (HSA) accrues over time. Think of it as a 401(k) for medical expenses. We recommend offering one HSA eligible plan option to your employees because these plans typically have lower monthly premiums, and they allow employees to pay out-of-pocket expenses with pre-tax dollars. So, when your employees open an HSA, they will be paying not only their monthly premium with pre-tax dollars but also their out-of-pocket expenses with pre-tax dollars.

Lastly, here's a simple scenario for a Health Reimbursement Arrangement (HRA): An HRA is an arrangement established and funded by an employer to help pay employees out-of-pocket medical expenses.

Say you want to offer two plan options: Plan #1 costs \$400 a month and has a \$3,000 deductible. Plan #2 costs \$200 a month and has a \$6,000 deductible

With an HRA, the \$6,000 deductible could look like a \$3,000 deductible.

#### *Here's how it works:*

You fund half of your employees' deductible. In the right situation (even worst-case scenario meaning your employees all meet their \$6,000 deductible), your savings will

exceed what you pay out in the reimbursement. Your reimbursements are business expenses that become write-offs at the end of the year.

As you can see, CDAs can help employers and employees save money, but only through a group plan. Individuals cannot access an FSA or HRA without an employer.

#### **Mistake #8: Deciding Budget Based on Insurance Premiums**

When your renewal is around the corner, you have one question in mind—what's my premium increase look like this year? The cost of insurance premiums go up most years. What if you could keep that cost the same each year, without taking away from the benefits you're currently offering. Just decide how much you would like to contribute to each employee, whether that be a set dollar amount or a percentage.

Through a defined contribution model, you can control your cost and define what your business spends on benefits—no matter how many different lines of coverage you offer and no matter what the coverage costs.

Control your budget by setting a budget. Then stick to it—it's that simple.

#### **Mistake #9: Not Educating your Employees about Healthcare**

Lack of employee education on healthcare options can lead to a lower utilization of benefits. And low utilization is a waste of your money. After you've spent your money to make these benefits available, you want to make sure your employees are using them.

Save money on premiums by teaching your employees to visit quick care facilities instead of going to the ER. Teach them to take advantage of the benefits that are built into their health plans, such as annual physical exams and mental and behavioral health services—don't assume they know.

Your employees can be better off physically and financially with their group benefits versus shopping in the individual market. By educating them, you're increasing their appreciation too.

*continued on page 56*

## IXSolutions continued from page 55

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## PRACTICE AREA UPDATES

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Learn more at [www.chicagobar.org/newsstand](http://www.chicagobar.org/newsstand).

## 2017 Curbing the Violence Summit Now on YouTube

If you missed the CBA's Curbing the Violence Summit which was held at The Standard Club on May 19, catch the entire day's programming now on the CBA's Youtube Channel at [www.youtube.com/chicagobar](http://www.youtube.com/chicagobar). The event brought together thought leaders from around Chicago in fields such as the law, education, religion, and government to develop solutions to the violence affecting Chicago.

## LPMT Bits & Bytes continued from page 43

### Conclusion

Many will greatly benefit from online document storage. Although the security issues may seem daunting, the reality is that many small firms have fewer security controls on internal documents living on individual desktops, laptops, mobile devices, external media, and small business servers. The benefits of mobile file access, secure shar-

ing and collaboration, versioning, and file redundancy for de facto backup give law firms significantly better control and functionality with online document storage. If your firm has not explored the possibility of using online document storage, what are you waiting for? ■

## Meet Judge Thomas R. Mulroy continued from page 43

problem. Noting the omnipresence of guns in the Chicago community, Judge Mulroy observes, "the focus has to be on people. What is causing the gun violence? It used to be primarily gangs and turf. Now we have social media playing a major role in gun violence, with assailants avenging social media attacks by shooting the person who posted a nasty message." Again, Judge Mulroy sees this as a way for "lawyers to get involved in the bigger picture" and offer solutions that go far beyond the legal community.

### Topical Speakers' Series

Judge Mulroy has big plans for the Speakers' Series. "I want it to be topical and timely, something lawyers will talk about beyond the courtroom or conference room." Among other speakers, Judge Mulroy has invited attorneys featured in Netflix's *Making of a Murderer* series.



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### Call to Action

Judge Mulroy envisions a CBA where lawyers can find camaraderie. "You have to meet and become friends with as many lawyers as you can. Business is more fun if you know your colleagues. It is less stressful if you know and interact with people going through the same struggles as you." If Judge Mulroy had his wish, every member would get more involved in the CBA. "We want this to be a place where lawyers further their profession. But we also want it to be a place where lawyers can meet and broaden their horizons and discuss important issues that affect society as a whole."

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*Anthony F. Fata is a partner at Cafferty Clobes Meriwether & Sprengel LLP and serves on the Editorial Board of the CBA Record*



# Professional Video Services for Law Firm Websites

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Ricardo Islas serves as the CBA's New Media Developer. He oversees the Association's legal and community programming through traditional and digital media platforms. Prior to joining the Association in 2016, Ricardo was an Emmy award-winning producer for WYCC in Chicago. While at WYCC, he served as producer for the CBA's "Justice and Law Weekly" series and town hall meetings.

### How It Works:

CBA Video Services will shoot your video onsite at your law office or the CBA. Fees include location set up, taping, and post-production editing. You will receive a digital file to post to your website and/or social media sites. You will own the copyright to the video.

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*\*Parking/taxi and other fees may apply.*

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- Video fees will include single camera shoot plus sound and lighting set up for a 1-5 minute finished video. Negotiated fees will be based on individual shoot requirements discussed at the consultation meeting.
- Law firms are responsible for scripting their message.
- Video messages for marketing purposes are typically 1-2 minutes per lawyer. Longer messages will require more editing (additional fees may apply).
- We recommend you memorize your script/message. The CBA can provide a teleprompter upon request.
- Law firms will be responsible for hosting and embedding videos on their website.

To set up a video session or learn more, contact Ricardo Islas, CBA New Media Developer, at 312-554-2085 or [rislas@chicagobar.org](mailto:rislas@chicagobar.org).

See sample videos at [www.chicagobar.org/video](http://www.chicagobar.org/video).



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