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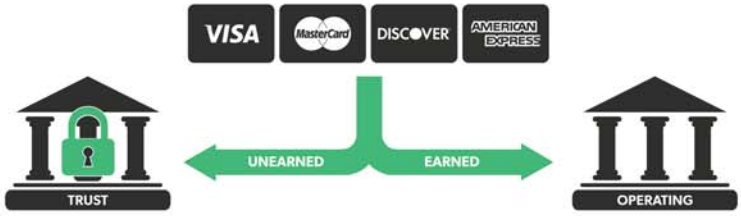

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CBA RECORD

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CONTENTS

November 2015 • Volume 29, Number 7

INSIDE THIS ISSUE

YOUNG LAWYERS SECTION

On the Cover

This month's cover celebrates the 92nd Annual Christmas Spirits musical, A Christmas Quarrel. The cover was created by Bar Show cast member Larry Aaronson. The Bar Show will be held December 2-6 at DePaul University's Merle Reskin Theatre.

PRESIDENT'S PAGE

BY PATRICIA BROWN HOLMES

Supercharge your Career and Leadership Skills Through Committee Service

One of the most professionally beneficial and personally rewarding benefits of CBA membership is the opportunity to supercharge your legal career and leadership skills through committee service. More than 6,300 members participate in the Association's 92 general bar committees and 27 Young Lawyer Section committees. Many members participate in more than one committee bringing our total committee participation up to more than 20,200.

CBA Practice Committees cover the full range of substantive practice areas–from Administrative Law and Appellate Practice–to Worker's Compensation. Service Committees include Legal Aid, Law Practice Management & Technology, Solo/Small Firm and many more. Special Committees include Administrative Hearings Review, Entertainment, Interfaith, the Joint Task Force on Women and Aging, Legislative, Judicial Evaluation, Public Affairs, Symphony Orchestra and others. Most committees meet monthly at the CBA but a few–such as the Municipal Law Committee–meet at the Circuit Court and at some of our larger law firms. Virtually all of the Association's Practice Committees and Service Committees feature monthly speakers who discuss various aspects of the law including: court procedures, legal developments, new legislation, new rules, practice tips, etc. Speakers share their knowledge, talent and considerable expertise often in very specialized areas of the law with committee members.

Most committee meetings are also webcast live and available online via the Association's website, www.chicagobar.org, throughout the city, suburbs and just about wherever members have internet access. A very convenient feature for members attending a committee meeting online is the ability to email questions to the speaker(s) following their presentations which are answered while they are watching the meeting. Committee meetings are always instructive and the speaker(s) presentations qualify for MCLE Credit.

It's important to remember that participation in CBA Committee's is free–yes that's correct, committee participation is absolutely free–once you are a CBA member you pay no additional fees to participate in one or more of the Asso-

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Featuring
Hon. Denny Chin, U.S. Court of Appeals for the Second Circuit, New York, NY
Marc S. Firestone, Senior Vice President and General Counsel, Philip Morris International, Inc.
Maria Green, Senior Vice President and General Counsel, Ingersoll Rand
Lorraine McGowen, Orrick, Herrington & Sutcliffe LLP
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THANK YOU TO OUR SPEAKERS

Here are just a few of the speakers who presented at CBA Committee Meetings during the months of September and October:

Darryl Bradford, General Counsel of Exelon, spoke at the Business Law Committee | Adam D. Novak, Northern Trust, spoke about the "Prudent Investor Rule" at the YLS Estate Planning Committee | James J. Grogan, Deputy Administrator & Chief Legal Counsel for the Illinois Attorney Registration & Disciplinary Commission, spoke at the Municipal Law Committee | Professor David L. Franklin, DePaul University College of Law, addressed the Civil Rights and Constitutional Law Committee | Judge John J. Ehrlich, Circuit Court of Cook County, spoke to the Civil Practice Committee | Kathleen M. Deane, Senior VP and Associate General Counsel, BMO Harris, spoke at the Financial Institutions Committee | Stephanie Kelly, Ice Miller, addressed the Local Government Committee | Hon. Sharon M. Sullivan, Presiding Judge of the County Division spoke at the Election law Committee | Debra Bernard, Perkins Coie, spoke at the Cyber Law & Data Privacy Committee | Ira S. Kohlman, Staff Attorney for the U.S. District Court, spoke at the YLS Civil Rights Committee | Jim Nichelson and Brian Flifet, Illinois Department of Revenue, were speakers at the State & Local Tax Committee | Rosemary Krimbel, Deputy Director, Legal Counsel, City of Chicago Law Department, and Jay Stewart, Director of the Illinois Department of Finance and Professional Regulation, spoke to the Administrative Law Committee | Judge Daniel A. Guy, Jr. spoke to the Federal Taxation Committee | Peter H. Hanna & Shaun M. Van Horn, Jenner & Block, spoke at the Federal Civil Practice Committee | Carolyn H. Rosenberg & John Andrew Moss, Reed Smith, addressed the Insurance Law Committee | George Sheldon, Director of the Department of Children & Family Services Director, spoke to the Adoption Law Committee | Richard M. Cutshall, Greenberg Traurig, spoke at the Financial & Investment Services Committee | William Ridgeway, U.S. Attorney's Office, spoke at the Local Government Committee | Heather Hansche and Lindsay Henry, Chapman & Cutler, were speakers at the Financial Institutions Committee | Judge James P. Flannery, Presiding Judge of the Law Division, spoke at the Tort Litigation Committee | U.S. District Court Judge Robert M. Dow, Jr. spoke at the Class Action Committee | Fred Sperling, Schiff Hardin, LLP, addressed the Business Law Committee.

120 Committees. Committee participation is among the all-time best benefits helping lawyers to supercharge their careers, stay connected with the legal profession, stay abreast of the law and best yet, you will meet and become lifelong friends with many lawyers who share your professional and personal interests. Some of these professional colleagues/friends will become referring lawyers enhancing your practice and business development opportunities. Committee Chairs and Vice-Chairs also work with the Continuing Legal Education Committee to develop/sponsor educational seminars for the members. Leadership opportunities abound within

continued on page 48

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1. Visit www.alliantcreditunion.com for details regarding Alliant membership eligibility. **2**. Comparison based on Alliant's August 2015 High Rate Checking dividend rate of 0.65% APY vs. the bank national average checking rate of 0.06% APY as of 08/03/2015 sourced from National Association of Federal Credit Unions in cooperation with SNL Financial and Datatrac Corp. **3**. Alliant High Rate Checking Dividends are paid on the last day of each month to checking accountholders who have opted out of receiving paper statements (receive eStatements only) and have a recurring monthly electronic deposit to their Alliant checking account each month (e.g., a direct deposit, payroll deposit, ATM deposit, mobile check deposit or transfer from another financial institution). Otherwise, Alliant checking accounts do not earn a dividend. Alliant checking is free; however, if incurred, fees such as a stop payment or NSF fee will apply. Please refer to the Alliant Fee Schedule at www.alliantcreditunion.com for a list of these types of fees. Account is subject to approval. We may not open checking for you if you do not meet Alliant criteria. **4**. Surcharge-free ATMs include Alliant-owned ATMs and ATMs that are part of the Alliance One, Allpoint, Bank of the West, CO-OP Network, Credit Union 24 CU Here and Publix Presto networks when you use your Alliant Convenience card, Alliant Visa HSA debit card or Alliant checking account Visa debit card. Alliant will rebate fees incurred at other nonsurcharge-free ATMs up to $20 per month per membership account when you use your Alliant checking account Visa debit card to make a deposit, withdrawal, transfer or balance inquiry. The rebate does not apply to cash advances from Alliant Visa credit cards through ATMs nor to the Alliant Convenience card, Alliant Visa HSA debit card and Visa International Service Assessment (ISA) fees. **5**. To qualify for the $50 bonus deposit offer, new member must open an Alliant checking account and meet the requirements of Alliant High Rate Checking within 90 days of his/her membership enrollment date and remain in good standing. Members who do not open checking or do not meet the high rate checking requirements during the timeframe do not qualify to receive the deposit. The $50 bonus deposit offer is not transferable, is only valid for new Alliant members and cannot be used in conjunction with any other checking offer. One $50 bonus deposit per member. Once we verify qualifications, we will deposit the $50 bonus deposit directly into the member's primary Alliant savings account. Please allow up to 60 days for deposit to be made. Check the status of the bonus deposit on Alliant Online Banking. The $50 bonus deposit is considered as taxable income and will be paid as a special dividend and reported on IRS Form 1099-INT. This account must remain open for at least six months or the bonus amount will be subtracted from your checking or savings account upon closing. When applying for your checking account, use promo code CNM. The August 2015 High Rate Checking dividend provides an Annual Percentage Yield (APY) of 0.65% APY. The APY is accurate as of the 07/14/2015 dividend declaration date. Checking dividend may change after account is opened and is subject to change monthly. There is no minimum balance requirement to open an Alliant checking account, to earn a dividend or to earn the bonus.

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Celebrating 50 Years of CBA Membership

By Bonnie McGrath
Editorial Board Member

At the annual CBA 50 Year Member Luncheon on October 27 are: (Top Row L to R):Terry Murphy, CBA Exec Director, Lawrence Jay Weiner, Jerome E. Cihak, John H. Bitner, Richard A. Miller, Richard L. Williams III, James P. Tatooles, Hon Leon Wool, Patricia Brown Holmes, CBA President, Larry L. Fleischer, Warren F. Grienenberger, Paul B. Uhlenhop, Robert M. Leone, Alfred F. Hofeld, Ralph Lustgarten, Steven Elrod, CBA Treasurer, Daniel Kotin, CBA 1st Vice President Seated L to R: Hon Alexander P. White, Hon Shelvin Singer, Hon Joel M. Flaum, Robert V. Johnson, Denis J. Owens, Charles W. Murdock, George N. Avgeris, Robert M. Karton, Malcolm S. Kamin, Melvin I. Katten, Donald Martin, Stanley P. Sklar, Bernard Hammer, Robert Arthur Romanoff, Thomas J. Boodell Jr , William P. O'Keefe, H. Reed Harris

The theme of "commitment" was rife throughout a recent luncheon in Corboy Hall that celebrated 67 members of the CBA who have kept up their membership for the past 50 years. A milestone in the Chicago legal community, to be sure!

But while the 50-year members were rightly honored for their commitment to dues-paying at the CBA, it was also clear that commitment was a large part of the life of each and every one of the members so honored.

Whether it was 50 years–more or less–with the same spouse, the same firm, the same area of practice or the judiciary, involvement with pro bono work or other volunteer activities like the annual Bar Show "Christmas Spirits" (lawyer performers from the show entertained for a few minutes during the festivities), commitment was the name of the game. Dependability, genuine interest and the desire to be–and stay–involved came through loud and clear.

A pronounced commitment to professional responsibility, in general, and particular legal issues, specifically, made the celebrants stand out. They also stood out for their commitment to outside hobbies, interests and sports–ranging from historic preservation to bungee jumping.

The room was filled with CBA members who saw a need to belong. And put their free time, money and a 50-year commitment behind that need.

"Role models," CBA president Patricia Holmes called them in her introductory remarks, thanking them for their time and commitment during a brief toast. "You've been there for us." But she also asked them for more: to get even more involved with the CBA going forward.

Keynote speaker Charles W. Murdock lamented how several conditions had changed in the legal community in the last 50 years. And that while the present may be "dubious," the past was "pretty good" for the honorees. Murdock lamented that

GROUP MENTORING

Grous new lawyers (5 or less years) with more seasoned lawyers (8 or more years) to foster the exchange of ideas, promote professional networking and tackle career challenges during this year-long program. Mentoring groups will meet once per month to discuss a wide range of topics based on the CBA's Group Mentoring Program Calendar.

For the 2015-16 bar year, mentee applications will be accepted for select mentoring groups until those groups reach capacity. The group mentoring program will begin a new application cycle in the summer of 2016. (Please note that the group mentoring program is not accredited for Illinois MCLE Credit. Attendance is for the benefit of the participant.)

today lawyers are looked at as "hired guns," judges are not held in as high regard, and while jobs are not plentiful for law school graduates, law student debt, not to mention outsourcing is–and that these are new challenges that need new remedies from those committed to the legal profession.

Murdock wondered what our legal landscape would look like 50 years from now–when some of those joining the CBA today come back to be honored for their half-century commitment.

Each 50-year member in attendance was introduced at the luncheon, and asked to come up to the podium for a picture. A group photo was taken immediately after the celebration, as well. Hearing the backgrounds of the 50-year members was impressive, even enthralling, when listening to what they'd committed themselves to during their years of membership. And one could only wonder what interesting ideas and endeavors would come forth from this sterling crowd in the future.

As one honoree, Robert Karton, said about his 50 years as a member of the CBA, "There were so many possibilities to learn about and so many opportunities to give back." ■

Letters to the Editor

The article about pro bono class action work, *Making Community Living a Reality for People with Disabilities* (October 2015 **CBA Record,** p. 32) tells only half the story.

The article focuses on Stanley Ligas, who has "Down Syndrome resulting in a mild cognitive disability." Stanley can read, balance his own checkbook, and hold a job, as the article describes. To his credit, Stanley wanted to live in his own apartment, and when the state refused, pro bono advocates jumped to his defense, a most worthy cause.

But by filing a class action suit, Stanley became the face for 6,000 residents who live in large private facilities–like Misericordia–most of whom function at a level nowhere near Stanley's, and most of whom have no need or desire to move. One is Bill's sister Stacie, who was born profoundly retarded and functions at a one year old level. Another is Scott's daughter Sarah, who has cerebral palsy. Stacie and Sarah enjoy a tremendous quality of life with 600 others at Misericordia. Yet the suit claimed that they–and 6000 others–were being deprived of their civil liberties by the state as they were "warehoused" at private "institutions" like Misericordia. The article repeats this characterization.

Many of the alleged "class members" saw the case as a threat to their right to choose, not a benefit. And so too did Chief Judge Holderman, who rejected the initial class settlement and decertified the class action after four years of litigation. Only after we and other lawyers–also working pro bono–intervened was a new class settlement crafted that protected the rights of all disabled individuals to live in the setting of their choice. As a result, Stanley was allowed to find a new home, while Stacie, Sarah, and thousands of others are allowed to remain in theirs.

And the work continues. This summer, we worked collaboratively with class counsel to ensure that Illinois continues to fund all housing choices–big and small–for the disabled during the budget impasse. Pro bono work is wonderful, meaningful, and career-changing, but the Ligas case, like all complex litigation, has many sides.

William Choslovsky, Fox Rothschild
Scott Mendel, K&L Gates

WHAT'S YOUR OPINION?

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

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MORE WOMEN NEED SEATS AT THE TABLE

First Chairs at Trial

By Laura Hoover
CBA Alliance for Women

On Thursday, October 8, the Chicago Bar Association's Alliance for Women and the Decalogue Society of Lawyers sponsored a program on Fairness and Equality in the Illinois Court System. Panelists Sherri Arrigo, Partner, Donohue Brown Mathewson & Smyth LLC, Illinois Appellate Court Justice Michael B. Hyman, and Stephanie Scharf, Partner, Scharf Banks Marmor LLC spoke from their perspectives on fairness in the administration of justice.

The Illinois Supreme Court Committee on Equality was established by the Illinois Supreme Court in 2015 to promote fairness in the administration of justice. The study conducted by the Illinois Supreme Court Committee, took the first empirical glimpse of those who serve as lead trial counsel in the Northern District of Illinois. The numbers were taken from a random sample of appearances filed in the Northern District of Illinois in 2013. There were 2,100 attorneys who filed appearances, an average of four attorneys per case.

The study found that in general appearances, 68 percent of those who responded were men. Of Lead Counsel or Trial Counsel, 75 percent were men. In cases where only men appeared in the matter (in any role), 60 percent were men.

Additional realities told a very similar story. In 2015, the American College of Trial Lawyers inducted 58 attorneys, and only six were women. In law firms, there is a significant drop off in the number of women as the level of seniority increases (i.e. associate, newly promoted partners, non-equity partners and equity partners).

The complete presentation of the Illinois Supreme Court Committee on Equality study and panel discussion can be viewed on the CBA Alliance for Women Committee's Webcast Archive.

Panelists Sherri Arrigo, Stephanie Scharf, and Justice Michael B. Hyman.

Sherri Arrigo, who practices primarily in the Circuit Court of Cook County, observed that the numbers are even worse than that of the Northern District of Illinois. "It's a handful of women in the city that are trying, especially the larger cases." Sherri explained. Hinting at a larger problem, law firms need to take responsibility for their policies and culture which fuel gender disparity. The legal profession is losing female talent, primarily because firms are not advancing enough women into senior roles. Moreover, society has made it very difficult for women to advance because of family commitments. Justice Hyman wisely noted, "I've never heard of the daddy track."

Future for Women

Clients are going to be the force driving changes to the gender gap within lead counsels. General Counsels are also asking questions about law firm diversity. Equality within the legal profession will come when clients insist on the change. "It's going to be the power of the purse," said Stephanie Scharf.

The panelists agreed that women play a crucial role in facilitating that change by bringing in their own business. Clients want the attorney they hired to try their case. When it is your business and your clients, you will spring yourself into the lead counsel role. ■

DEALING WITH BIAS/GENDER STEREOTYPES

–*Say Yes:* if anyone asks you to do anything related to a trial, say "Yes";

–*Prove Yourself:* you have to work twice as hard to get half as far;

–*Speak Up:* do the best you can, but if it gets to a point where the firm is hurting your career, do not remain silent;

–*Be Prepared:* a firm may retaliate against women speaking up–prepare to handle whatever backlash you might receive;

–*Have a Role Model/Mentor:* it can change your future.

–*Judicial Bias:* go to the presiding judge and ask for confidentiality; they will keep it!

The Chicago Bar Association presents the 92nd Annual Bar Show

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Tickets: $50 main floor / $30 mezzanine

For more information, please visit www.chicagobar.org/barshow or call Awilda Reyes at 312-554-2134

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CLE & MEMBER NEWS

Attention Law Student Members

It's time to renew your membership. Most law student memberships are valid through December 2015 unless you recently joined or prepaid dues for your entire law school term. Be sure to check your membership card for your expiration date.

For only $12 a year, there is no better way to jump-start your legal career. Law student membership offers you many ways to learn about the actual practice of law through free seminars, networking events, practice area committee meetings, career resources, and more. Learn what they don't teach you in law school!

Questions regarding renewals–call Kayla Bryan at 312/554-2135 or email kbryan@chicagobar.org.

Important Note to Law School Graduates: If you have already been sworn in, please call or email Kayla Bryan, or note this on your statement and return it via fax 312/554-2054 or mail. And be sure to take advantage of our free one year membership offer for new admittees. If you did not receive a letter outlining this offer, call 312/554-2133 or sign up online at www.chicagobar.org/jointhecba. Unfortunately, your law student membership will not automatically transfer to a regular membership nor can you convert this online. ■

Alliance for Women's Mentoring Circles

Designed to benefit women of all ages and in all stages of professional development because junior members learn from those with more experience, and mid-level and senior attorneys gain an invaluable opportunity to hone management skills, build relationships and develop referral networks.

Under the traditional rubric of mentoring, experienced practitioners give and junior apprentices take. But in the AFW's Circles, each member is both a mentee and a mentor. Each Circle is made up of 6 to 8 practitioners of varying levels of experience, and from different practice areas. The Circles allow women to discuss many of the same issues at the heart of the AFW's mission: professional development, networking, and work-life balance. The Circles offer a smaller, private forum, which allows each group to tailor solutions and strategies for their members. Circle discussions might touch on, for example, the balancing act of a new mother, the decision to change practice areas or a firm's promotional practices. They meet at least four times a year but some meet as often as once a month .

If you are interested in becoming a member of a Mentoring Circle, you should be aware of the time commitment. We ask that you only sign up if you are willing to commit to attending regularly, and staying in touch with your Circle. The benefits of the Circles can only be achieved if each member of a Circle is dedicated to making it a success.

For more information on any of the above, visit www.chicagobar.org/mentoring or call 312/554-2052. ■

One Year Free Membership and CLE for New Admittees

On November 5, approximately 2,000 new attorneys were admitted to practice law in the State of Illinois. CBA representatives were on hand to congratulate and welcome the new admittees who took their oath in the First District.

To help introduce the new admittees to the legal profession, the CBA offers a one year complimentary membership which includes the 6 hour Basic Skills Course and the additional 9 hours of Illinois Illinois MCLECredit required within their first year. Additional benefits include participation in free noon hour committee meetings and webcasts, one-on-one career counseling resources, networking events, legal publications, leadership and pro bono opportunities to enhance resumes 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 by calling the CBA's Membership Department at 312/554-2133.

To each of the new lawyers, the CBA sends its heartiest congratulations and best wishes for a successful career in the law. ■

THE CHICAGO BAR ASSOCIATION

Continuing Legal Education

Everything You Need to Know About Trust Accounting
December 2 • 12:00-2:10 p.m.

Transitioning from a Law Firm Setting to an In-House Role
December 2 • 5:15-7:00 p.m.

Hands-on Training: Google My Business
December 3 • 2:00-3:30 p.m.

Attacking the Affidavit
December 3 • 12:00-1:00 p.m.

A Look Ahead: 2016 Amendments to the Illinois Rules of Professional Responsibility
December 4 • 12:00-2:10 p.m.

The Judicial Perspective on Motion Practice
December 7 • 3:00-6:00 p.m.

How To... Manage Projects with Basecamp
December 8 • 1:45-2:45 p.m. (complimentary)

Evidence & Objections
December 8 • 3:00-6:00 p.m.

Mechanics Liens and Construction Claims
December 9 • 8:45 a.m. - 4:45 p.m. (half-day options available)

Advanced Legal Writing
December 10 • 12:00-2:10 p.m.

How To... Use Google Drive
December 15 • 1:45-2:45 p.m. (complimentary)

Understanding Financial Statements
December 15 • 2:00-4:30 p.m.

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December 17 • 12:00-1:30 p.m.

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

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

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Chicago Bar Foundation
Report

The Chicago Bar Foundation
Ensuring access to justice for all

Pro Bono Myths and Realities

By Bob Glaves
CBF Executive Director

If you talk to enough people about pro bono, it won't take long before you will hear nonsense like pro bono is the solution to chronic underfunding of legal aid, or equally silly statements like pro bono is nothing more than an overhyped waste of time and energy. And a whole lot of other untruths in between those two extremes.

The truth is pro bono indeed does play an integral role in the larger access to justice landscape, not to mention in our legal profession and in the justice system. But that role too often is overstated, understated or simply misstated and misunderstood, to the detriment of all of us who care about pro bono and equal access to justice.

During this year's Pro Bono Week, in a series of blog posts I discussed pro bono from the vantage point of five key pro bono stakeholder groups: lawyers, firms and law departments; legal aid organizations; government; the courts; and bar associations, foundations, access to justice commissions and other systemic players. Over the course of my almost 25-year career as a lawyer, I've been privileged to experience pro bono from just about every key vantage point. When combined with the systemic lens I have had for 16 years now in my current role at the CBF, that experience provides a pretty well-balanced perspective on where and how pro bono fits into the broader spectrum of access to justice. While each stakeholder group has its own distinct roles and responsibilities, there are a few common themes that emerge during the conversation.

This article is a "greatest hits" summary of a special series of blog posts during this year's CBA/CBF Pro Bono Week the last week of October. You can see the full series at **chicagobarfoundation.org/bobservations.**

At the 22nd Annual Pro Bono & Community Service Fair on October 29, nearly 300 attendees met with representatives from 50 of Chicago's pro bono, community service, and mentoring organizations, and found volunteer opportunities suited to their time and interests.

Our Special Responsibility as Lawyers: While lawyers and law firms support and participate in a wide range of charitable community service initiatives, as a profession we have a special responsibility to ensure that the justice system is fair and accessible to everyone regardless of their income or circumstances. As lawyers, we have been given a special privilege, effectively having been handed the keys to the justice system. With that privilege comes a special responsibility to use our training and skills to help ensure that people who can't afford our services

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to all who helped make this year's Fall Benefit such a tremendous success. Your support enables the CBF to continue improving access to justice for people in need and makes the legal system more fair and accessible for everyone.

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CBA/CBF Pro Bono Week kicked off with "Movies on Trial: My Cousin Vinny," presented with Honigman Miller Schwartz and Cohn LLP and Chicago-Kent College of Law. A screening was followed by a discussion of the film's pro bono and ethical issues by a distinguished panel of experts, Chicago-Kent College of Law Dean Harold Krent, Corporation Counsel Steve Patton and U.S. District Court Judge Virginia Kendall. Steve Weiss of Honigman moderated the discussion.

have access to the justice system.

In Illinois, that responsibility is underscored in the Preamble to the Illinois Rules of Professional Conduct, in the questions about pro bono and related giving in our annual attorney registration statements, and in the CBA's standing Pro Bono Resolution. That responsibility extends not only to individual lawyers, but to law firms and corporate legal departments (who in effect take on the responsibilities of firms by bringing that function in-house).

Pro bono is one part of a larger picture, not a panacea: Pro bono is just one part of a larger, integrated solution to ensuring equal access to justice. As a legal community we need to be clear that government bears the primary responsibility for funding and ensuring we have a fair and accessible justice system for everyone, and we need to understand that our professional responsibility requires us to contribute our time, our money **and** our influence to advance this common cause.

Pro bono is cheap, but it's not free: Good pro bono programs require the appropriate investment of staff and resources to succeed.

The comparative advantage, proximity and opportunity prisms: While our special responsibility for pro bono is clear, a key point is making sure we are looking at it through the proper lens. Lawyers can make an impact through pro bono service both by providing legal help directly to people in need and to the nonprofit organizations that serve them, as well as through training and providing legal representation on larger policy issues that impact disadvantaged communities (e.g., civil rights and civil liberties). There are three essential prisms through which lawyers, legal aid organizations, the courts and others should view pro bono: "comparative advantage," those areas where a pro bono lawyer, firm or law department is particularly well positioned to efficiently and effectively provide services compared to others who might provide those services; "proximity," which the great Bryan Stevenson notes is the importance of lawyers in private practice getting closer to the problems that low-income and disadvantaged people experience in the justice system; and "opportunity," which reflects the many benefits that come from doing pro bono work for all concerned.

Pro bono does not exist in a vacuum: With very rare exceptions, pro bono requires a team effort among the stakeholders and proper funding and support to be successful.

We all need to communicate responsibly and walk the walk: The way we communicate on these issues both individually and as a legal community is just as important as the rest of the common themes noted above. A key part of our leadership responsibility as a profession is to educate and make the case to government and other stakeholders, and that starts with communicating accurately and responsibly about pro bono and related access to justice issues. ■

Lawyer-to-Lawyer Mentoring Program

Sponsored in partnership with the Illinois Supreme Court Commission on Professionalism. Experienced attorneys (6 or more years) will be matched with newly licensed attorneys for a year-long mentoring program. Participating mentors and mentees will receive 6 hours of Illinois professional responsibility Illinois Illinois MCLECredit upon program completion. Attendance at the orientation session and 8 subsequent in-person meetings between the mentoring pair is required to complete the program and receive Illinois Illinois MCLECredit. This lawyer mentoring program creates opportunities for experienced lawyers to guide new lawyers in developing the practical skills and judgment to practice in a highly competent manner and to instill the ethical and professional values that characterize excellent lawyers. Registration for the lawyer-to-lawyer mentoring program opens in November of each calendar year. A mandatory orientation for mentors and mentees takes place at the CBA in January of each calendar year.

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MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Zaldwaynaka "Z" Scott, a partner at Kaye Sholer LLP, addressed the crowd at the annual Chicago Bar Foundation and Young Lawyers Section Pro Bono Fair held Thursday, October 29 at Skadden Arps. The Fair offers legal services providers and other service organizations in Chicago the chance to interact with potential volunteers. Ms. Scott was a 2015 Chair of Pro Bono Week. Photo by Shannon Burke.

The Association is poised to launch a new "Leadership Development Institute" for young lawyers who have practiced between 3-10 years. The new Leadership Development Institute was conceived and developed by a special committee, chaired by Clark Hill Managing Partner **Ray Koenig.** The Leadership Development program will include a total of nine training sessions beginning with an initial orientation session in January, followed by three successive programs in levels 101, 201, and 301.

Sessions will be held once a month at the CBA Building from 5:30–7:30 p.m. The Leadership Development training will begin on Thursday, January 28, 2016 with an opening session entitled: "Effective Leadership: What does it take to be a leader in your profession and in your community." The Basic Leadership session will feature Exelon Senior VP and Chief Strategy Officer **William A. Von Hoene, Jr.; Cliff Berman,** Vice-President and General Counsel of Option Care; **Steven Elrod,** Holland & Knight LLP; **Meredith E. Ritchie,** VP and General Counsel, Alliant Credit Union; CBA President **Patricia Brown Holmes,** Chair, Practice Group co-leader, White Collar Defense and Government Investigations, Schiff, Hardin; **Steve Patton,** Corporation Counsel, City of Chicago; and **Jesse H. Ruiz**, Partner, Corporate & Securities Group, Drinker Biddle. The January session will be moderated by **John K. Mitchell,** who is nationally recognized for his leadership development work.

The initial Leadership Training will be limited to 15-20 lawyers recommended by their sponsoring firm, employer, or organization. The tuition for the new Institute is $1,200, and includes the 9 training sessions, materials and a reception for graduates. Participants in the Leadership Development Institute will also receive MCLE credit.

An application for th training program is required, and may be obtained by contacting **Tamra Drees** at tdrees@chicagobar.org.

CLE in Switzerland

Make your reservations now for the Association's 2016 International Continuing Legal Education seminar in Lausanne, Switzerland March 29 and March 30, 2016. Optional pre- and post-extensions to London (March 26-27) and to Paris (March 31-April 3) are available for members. The CLE in Switzerland seminar is being co-hosted by **Marc S. Firestone,** Senior Vice-President and General Counsel, Philip Morris International, Inc. Marc has served as Chairman of the Institute for Inclusion in the Legal Profession since its inception in 2008. The CBA is co-sponsoring the Switzerland program with the Institute and the New York City Bar Association. The Switzerland program features an outstanding array of national and international lawyers, corporate general counsels, and judges who will discuss topics including diversity, equality, and inclusion in today's global law firms.

A general counsel roundtable featuring **Maria Green,** Senior Vice-President and General Counsel, Ingersoll Rand; **Richard Meade,** Vice-President and Chief Legal Officer–International, Prudential Financial; **Marc Firestone,** Senior Vice-President and General Counsel of **Philip Morris; Juliette Pryor,** Executive Vice-President, General Counsel and Chief Compliance Officer, U.S. Foods; **Michael J. Wagner,** Baker & McKenzie; **Lorraine McGowen,** Orrick, Herrington & Sutcliffe, LLP and others will also occur. In addition, Second Circuit U.S. Court of Appeals Judge **Denny Chin** will conduct a trial reenactment, and discuss the development of Federal Hate Crime Laws.

Don't miss this outstanding international program. For more information, contact Tamra Drees at 312/554-2057 or tdrees@chicagobar.org. For travel assistance, please contact our travel representative **Mark Rotblatt** at 312/751-0717 or vanchem@rcn.com.

Illinois Supreme Court Dinner

The 2015 Illinois Supreme Court Dinner, co-hosted by the Illinois State Bar Association and The Chicago Bar Association, will be held on Friday, December 11 at the Sheraton Hotel and Towers. A recep-

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tion for the Justices will begin at 6:00 p.m,. followed by dinner at 7:00 p.m. CBA President **Patricia Brown Holmes** and ISBA President **Umberto Davi** will co-host the event, and Illinois Supreme Court Justice **Anne M. Burke** will deliver remarks on behalf of the Supreme Court. Music will be provided by the CBA's nationally acclaimed orchestra. Tickets for the black tie optional dinner are $125 per person and may be ordered at www.isba.org/jointmeeting. For more information about this year's Supreme Court Dinner, contact **Kim Weaver** at kweaver@isba.org.

Illinois Judges Association Annual Luncheon

Illinois Attorney General **Lisa Madigan** will be the keynote speaker at the Illinois Judges Association's Annual Luncheon Meeting on Friday, December 11, at the Sheraton Hotel and Towers. IJA president **Robert J. Anderson** will preside at the luncheon. Tickets are $85 per person and may be ordered through the IJA Executive Director, **Kathleen Hosty,** at 312/431-1283 or ija@chicagobar.org.

Congratulations

President **Patricia Brown Holmes** accepted a special award presented to the CBA by Inter-American Bar President **Carlos Lopez Lopez** at the groups 75th anniversary meeting in Washington D.C. In 1941 Albert Kocourek represented the CBA at the IABA's first conference in Cuba…Illinois Supreme Court Justice **Charles E. Freeman** is the 2015 Unity Award Recipient…Judge **E. Kenneth Wright, Jr.,** authored the forward for **Susan Russell's** new book: *A Ruf Road Home: The Court Case Dogs of Chicago*… **Anne R. Pramaggiore,** President and CEO of Commonwealth Edison, received the William H. Avery Award for Equal Access to Justice…CBA Past President **Daniel A. Cotter;** U.S. District Court Judge **Sharon Johnson Coleman; Brenda A. Russell,** Director, PricewaterhouseCoopers, LLP; **Jeannine Cordero, Ricardo Islas,** WYCC Producer, and the CBA were nominated for a Midwest Emmy Award for producing *Bridging The Divide,* a WYCC Channel 20 (PBS)-TV Special featuring: **Dr. Otis Moss, Jr., Mrs. Juanita Abernathy,** and moderator extraordinaire, former NBC reporter **Renee Ferguson…Todd A. Smith** is the recipient of the Illinois Bar Foundation's 2015 Distinguished Award for Excellence…Judge **Deborah L. Thorne** has been appointed Bankruptcy Judge for the U.S. District Court, Northern District of Illinois…Judge **Patrice Ball-Reed, Hugo Chaviano,** Judge **Robert E. Gordon, Sharon A. Hwang, Mary Meg McCarthy** and **Sailesh K. Patel** received the Advocates of Diversity Award from the Diversity Scholarship Foundation… Past President **David C. Hilliard** spoke at Iowa's Intellectual Property Law Association on Opening Statements and Closing Arguments in Intellectual Property Law Cases…the West Suburban Bar honored **Richard J. Billik, Jr.,** ADR Systems of America and Judges **LeRoy K. Martin, Jr., Mark J. Lopez** and **Susan M.Coleman… Jonathan S. Jennings** was appointed to INTA's Right of Publicity Committee. Jonathan is also a member of the CBA Board of Managers…**Paula Hudson Holderman** will receive the Illinois Bar Foundation's 2015 Distinguished Service to Law & Society Award.

Mark Hellner has been appointed Executive Director of The Center for Disability and Elder Law…**Robert D. Kreisman** has been appointed Chair of the American Association of Justice Professional Negligence Section…**Michael L. Weissman** delivered the Payton Enrichment Talk at Chicago's Walter Payton College Preparatory School…**Christian M. Auty** was named a principal in Much Shelists Health Care Law Practice Group…**Kristine A. Bergman** is a new associate at Pattishall… **Phillip Barengolts** has been appointed Chair of INTA North American's Parallel Imports Committee and Unfair Competition Committee. Phil was also appointed to the CLE Board of the ABA's Section of Intellectual Property…**Thad Chaloemtiarana** was named Program Chair for the ABA Section of Intellectual Property Law's 31st Annual Intellectual Property Law Conference and also serves on the Section's CLE Board…**Jessica A. Ekhoff** moderated IP Law Basics for Non-IP Attorneys and the Do's and Don'ts of Self Evalautions for the Coalition of Women's Initiatives…Justice

DAILY PRACTICE AREA UPDATES

The CBA is pleased to introduce the second year of CBA Newsstand by Lexology, a daily email that provides valuable and free practical know-how. Learn more at www.chicagobar.org/newsstand.

Jesse G. Reyes was the keynote speaker at the 28th Illinois Association of Hispanic State Employees Conference…**Max Hugo Gaston** is a new associate at Williams, Montgomery & John, Ltd.…**Lisa Ann Murphy** has become a principal at Schenk, Annes, Tepper, Campbell, Ltd.…**Riele Sims** has become an associate at Ice, Miller, LLP…**Upneet S.Teji** is a new associate at Greensfelder, Hemker & Gale, P.C.… **Mia Jiganti** was appointed to the Joint Illinois Judges Association, ISBA, CBA Committee on Judicial Ethics…**Jamal M. Edwards** and **James Fuller** have been named counsel at Scharf, Banks, Marmor LLC…**Rachel M. Cannon** has become a partner at Dentons…**Stephen A. Markoff** was re-elected to the National Creditors Bar Associations Board of Directors… **Alexander X. Shadley** is a new associate at Segal, McCambridge, Singer & Mahoney, Ltd.…**Rita Ghose** has become a partner at BrIgitte, Schmidt, Bell P.C.…**Louis A. Lehr, Jr.,** a partner at Arnstein & Lehr, received Loyola University School of Law's Medal of Excellence Award…**Andrew D. Campbell** has been named co-chair of the practice group for Novack & Macey, LLP…**Steven V. Hunter** and **Daniel B. Lewin** received Quarles & Brady's Michael Gonring Pro Bono Awards…Clark, Hill PLC celebrates its 125 Anniversary…CBA Past President **Robert A. Clifford** was named "Man of the Year" by the Chicago Police Memorial Foundation;

Condolences

Condolences to the Family and Friends of: Illinois Supreme Court Justice **Thomas R. Fitzgerald,** Judge **Richard L. Curry, Lowell Burt Komie, John J. Naughton, Lawrence Walner, Grace Newgard, Charles Pressman,** and **Gerald Clifton.** ■

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

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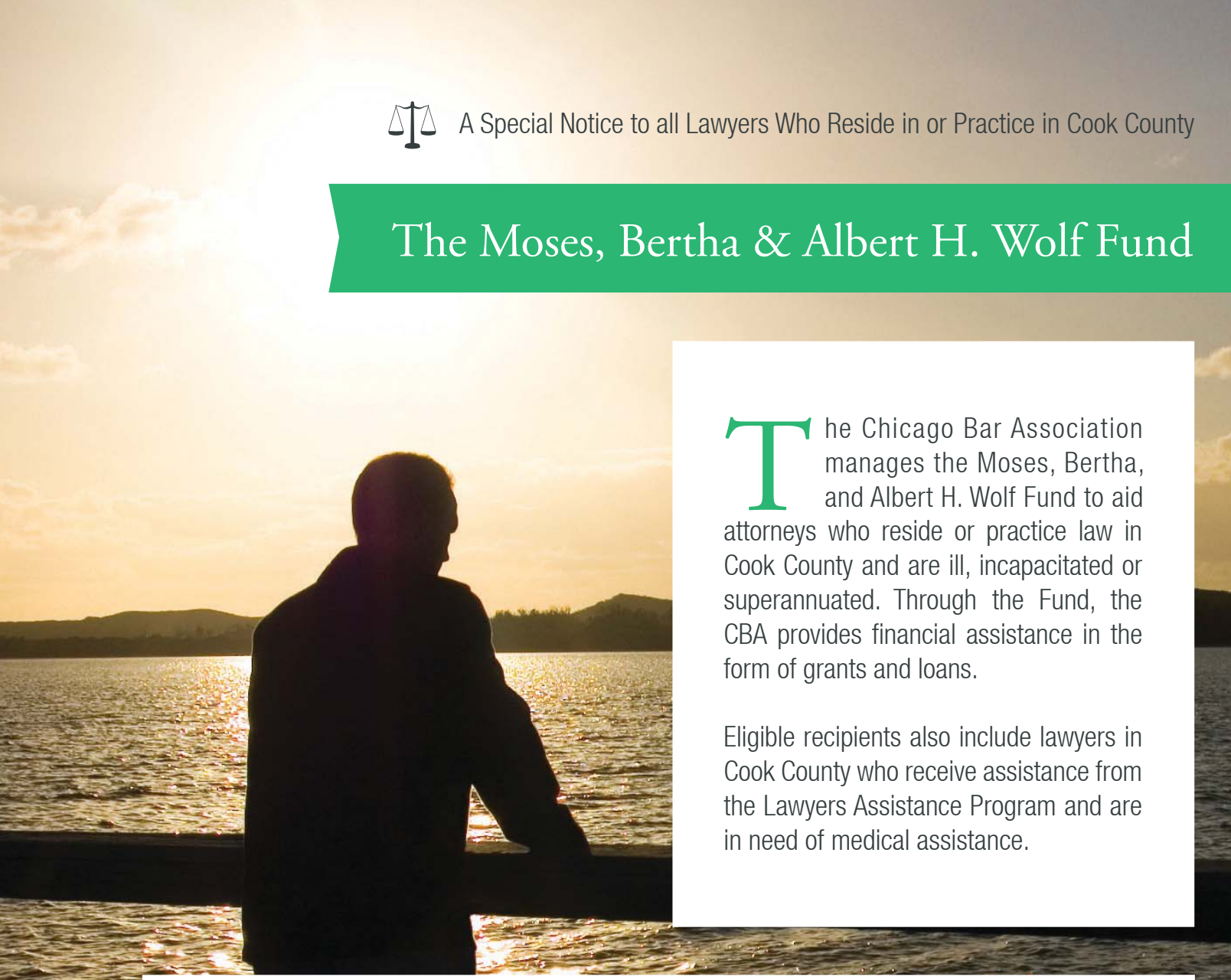

The Chicago Bar Association manages the Moses, Bertha, and Albert H. Wolf Fund to aid attorneys who reside or practice law in Cook County and are ill, incapacitated or superannuated. Through the Fund, the CBA provides financial assistance in the form of grants and loans.

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

"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

THE CHICAGO BAR ASSOCIATION

For more information, please contact Terrence M. Murphy, Executive Director
312-554-2002 • tmurphy@chicagobar.org

By J. Timothy Eaton

Practical Suggestions for Complying with the Rules

Interlocutory Appeals in the Illinois Reviewing Courts

The Illinois Supreme Court Rules allow certain appeals from non-final orders pursuant to the state Constitution, which provides that: "the Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Courts." Non-final appeals may be by right or by discretion; most are to the appellate court, although a few are to the Supreme Court.

NON-FINAL APPEALS REPRESENT AN IMPORTANT tool for practitioners to use when a delay in waiting for an appealable final judgment may be costly or may prolong a resolution of an issue that needs immediate attention. The need for interlocutory appeals also becomes apparent as litigation has become more expensive and complex, involving multiple issues as well as multiple parties. Although some may argue that actually permitting an appeal before a final judgment may lead to more expense and delay, others–including the authors of this article–believe that has not been the case.

The Supreme Court Rules that permit appeals of non-final judgments are Rules 304, 306, 307, 308, 381 and 383. This article discusses each of these rules and the procedures required when seeking appellate review.

Rule 304(a)

Perhaps the most familiar interlocutory appellate rule is Rule 304(a). It allows an appeal of a judgment as to fewer than all of the parties or claims. An early appeal of a dismissal of a party or claim may be beneficial to both parties. To the dismissed party, it provides the opportunity to be out of the case with certainty. This avoids a reconsideration of the dismissal by the trial judge, which is possible before the judgment is final. To the plaintiff, it allows an opportunity to immediately appeal the judgment as to the party or claim in the hope that a successful appeal will reinstate that party or claim before a trial occurs.

Before an appeal of a final judgment dismissing a party or claim can occur, the trial judge must make a special finding that there is "no just reason for delaying either enforcement or appeal or both." If a dismissed claim is not discrete but overlaps with other claims, then perhaps a special finding would not be an order. However, if a party is dismissed, the judge is usually less reluctant to make the special finding so the party can determine its status in the litigation as quickly as possible. If the trial judge denies the request to make a special finding, that order is non-appealable.

However, even if the trial court does make a special finding, it is not necessarily dispositive of whether the dismissal of the claim or party was indeed final. This is because a special finding does not make a non-final judgment final. Appellate courts have often reversed special findings under 304(a) that an order is appealable, when in fact it was not a final judgment.

The special finding needed under Rule 304(a) does not need to be part of the original order or judgment dismissing the party or claim. It can be sought later. When the finding is made, the party appealing the judgment has 30 days to file a notice of appeal. If a motion to reconsider is filed within that 30 day time frame, it tolls the time to file an appeal until there is a ruling on the motion. Once there is a ruling on the post-trial motion, the clock starts again and the party has an additional 30 days to file a notice of appeal.

- If there has been a special finding that the judgment can be appealed and the party against whom the judgment is made does not appeal, that party cannot appeal that judgment when a final judgment is entered at the conclusion of the case.
- If the special finding is not made, the order dismissing the party or claim can be appealed at the end of the case and is always subject to modification before entry of a final and appealable judgment.

Rule 304(b)

Many types of interlocutory orders under Rule 304(b) are automatically appealable without the need for a special finding. They are:

- Judgment orders entered in the administration of an estate, guardianship or similar proceeding which finally determines a right or status of a party;
- Judgments/orders entered in the administration of a receivership, rehabilitation, liquidation, or similar proceeding which finally determines a right or status of a party and which is not appealable under 307(a);
- A final judgment or order entered in a proceeding under § 2-1401;
- A final judgment or order in a proceeding under § 2-1402;
- An order finding a person or entity in contempt which imposes a monetary or other penalty; and
- Custody judgments or modifications (610) entered pursuant to the Illinois Marriage and Dissolution Act or Section 14 or 16 of the Illinois Parentage Act.

Judgments or orders in 304(b) must also be appealed within 30 days of the entry of the judgment or order, and a motion to reconsider also tolls the time in which to file an appeal.

The timing, format and sequence of these appeals under Rule 304(a) and (b) are governed by the same rules applicable to appeals under Rule 303.

Rule 306

The following orders are appealable under Rule 306:

- Orders allowing a new trial;
- Orders allowing/denying motion to dismiss on forum non conveniens;
- Orders allowing/denying motions regarding personal jurisdiction;
- Orders allowing/denying motions regarding venue;
- Orders affecting care and custody of unemancipated minors;
- Orders remanding proceedings for hearing de novo before an administrative agency;
- Orders granting motion to disqualify an attorney or party;
- Orders granting/denying certification of class action;
- Orders denying motion to dispose under Citizens Participate Act.

Generally, Rule 306 interlocutory appeals allow a party to avoid the time and expense of a trial when a successful appeal may resolve the case; or, in cases with custody issues, it avoids any prejudice caused by the delay of the appeal. Rule 306 interlocutory appeals are discretionary with the appellate court and do not require findings by the trial court. In the case of a new trial order under 306 (a)(1), a party must appeal to preserve the right to appeal that new trial order. If this is not done, the party may not appeal later at the end of the second trial. However, with respect to the other orders that are appealable under 306, recent case law suggests a party is not required to file an interlocutory appeal to preserve that issue in a later appeal. This is an area where updated research is needed before making a decision not to appeal.

Most appeals under Rule 306 are filed by filing a petition for leave to appeal within 30 days of the judgment or order. Respondent may file a response within 21 days. An exception exists for appeals under 306(a)(5), which provides for a 14-day time period from entry of the order; a response in such a case must be filed within 5 days. A supporting record is necessary to support any 306 petition, which may be certified with an attorney certification rather than a formal certification by the clerk's office.

No page limits are established for a petition under Rule 306 (except as to 306(a)(5)), but as a practical matter, length should be guided by the 50-page limit set under Rule 341. A petition under Rule 306(a)(5) regarding orders affecting the care and custody of unemancipated minors does have a page limit of 15 pages, with response limited to 5 pages.

When a petition for leave to appeal is granted under Rule 306, the proceedings in the trial court are automatically stayed. Jurisdiction in the trial court continues until the petition is ruled upon.

Rule 307–Interlocutory Appeals as of Right

Rule 307 allows the appeal of a preliminary injunction or similar orders when waiting for issuance of a final judgment may cause undue harm to the party seeking relief. The following types of orders are appealable under Rule 307:

- Orders granting, modifying, refusing, dissolving or refusing to dissolve or modify injunctions;
- Orders appointing or refusing to appoint a receiver;
- Orders giving or refusing to give other or further powers of property to appointed receiver;
- Orders placing or refusing to place a mortgagee in possession of mortgaged premises;
- Orders appointing or refusing to appoint a receiver, liquidator or rehabilitator or similar office for a bank, savings and loan, etc.;
- Orders terminating parental rights or denying or revoking temporary commitment in adoption proceedings and Orders commenced pursuant to Adoption Act § 5;
- Orders regarding exercise of eminent domain powers;

Discovery orders or orders denying a motion to disqualify an attorney are not appealable.

Under Rule 307, the notice of appeal must be filed within 30 days from entry of the order and should be designated "Notice of Interlocutory Appeal." A motion to reconsider following an order encompassed by Rule 307 does not toll the time in which an appeal may be filed.

The record on appeal must also be filed in the same 30 days unless the appellate court extends the time to file the record on its own motion. Once the record is filed, the briefing schedule under Rule 307 is 7 days from when the record is filed for the appellant to file its brief; 7 days for the appellee to respond; and 7 days for the appellant to file a reply. The scope of review of an appellate court in an appeal under 307 should pertain solely to the order being appealed from and not to other orders that have been entered in the case.

Rule 307 also allows appeals of temporary restraining orders under Rule 307(d). Under Rule 307(d), appeals must be taken within 2 days of the entry of the order, and a response can be filed within 2 days from the petition. The petition can be no more than 15 pages. The same page limit applies to the answer. The Appellate Court has 5 days to issue an opinion or order.

Under a recent decision in the Second District, petitions under 307(d) must be personally filed in the appellate court. The mailbox rule does not apply. This is also true with a notice of appeal, although some controversy exists as to whether the notice of interlocutory appeal under 307(d) should be filed in the appellate court or in the circuit court. The notice of appeal must be filed in the appellate court. Nizamuddin v. Community Educ. In Excellence, Inc., (2013 Ill. App.2d 131230) (2013). However, because other districts have not followed suit, a practical approach would be to err on the side of caution and perhaps attempt to file in both places.

The right to appeal later is not waived if a party fails to file an appeal following any of the interlocutory orders under Rule 307.

Rule 308

Rule 308 covers questions of law when substantial grounds for difference of opinion exist and the resolution may materially advance the termination of the litigation. This rule is patterned after Rule 1292(b) of the Federal Rules of Civil Procedure.

The question of law must involve an issue that is one of first impression or where the districts of the appellate court of Illinois have split in deciding the issue. But even where a question does meet the rule's criteria, resolution of the question must also materially advance the termination of the litigation. Thus, if the question is decided, it must at least narrow the issues or, perhaps if summary judgment is filed following resolution of the question, it may terminate the case.

Rule 308, like 304(a), requires a special finding or certification by the trial court that a question for appeal that a party is posing meets the requirements of Rule 308. This certification can be part of the original order or can be sought by motion thereafter. However, unlike 304(a), the trial court does not have the ultimate say as to whether the matter should be appealed. Once the trial court certifies a question under rule 308, a party must file an application to the appellate court (as in a Rule 306 appeal), asking the appellate court to accept the appeal. Thus, rule 308 involves a two-step process: (1) the trial court must certify the question; and (2) the appellate court must decide in its discretion to accept the appeal.

Once the trial court certifies the question, an application for leave to appeal to the appellate court must be filed within 14 days. The respondent has 14 days to file an answer in opposition. As in other interlocutory appeals, a supporting record is needed.

If the application is granted, normal briefing is allowed. Again, as in Rule 306, no page limits exist in Rule 308. However, the maximum should not exceed the requirements of Rule 341, which is 50 pages.

If the application for the appeal is granted, a stay of the trial court proceedings is not automatically granted. A motion for stay must be filed in the trial or appellate court. The scope of review is generally

limited to the certified question, although the court has the power to decide other issues. As in other interlocutory appeals, a supporting record is needed.

Rules 381 and 383

Finally, Supreme Court review of an issue in the trial court or appellate court can be decided either by Rule 381 or 383. If a party seeks mandamus under Rule 383, it must be as to an issue that is a matter of law, and the judge entering the order must have had no discretion in making the ruling. Supervisory orders are more common–although they may be directed to the trial court, they are mostly used where the Supreme Court is directing the appellate court to consider for the first time either appeals from Rule 306 or 308, or to reconsider one of their opinions in light of changed precedent.

Under Rule 383, a party must file a motion for leave to file a complaint with explanatory suggestions and a supporting record. The judge must be listed as a nominal party. The response time is 7 days after personal or facsimile service or 14 days after delivery of the motion to a third party commercial carrier or by mail. If the complaint for mandamus is allowed, then briefs may be filed according to an order of the Court.

Rule 383 motions also require explanatory suggestions and a supporting record. The trial court or appellate court judges must also be listed as nominal parties. Again, the time to file objections to the motion is 7 days if personal or facsimile service is used, and 14 days if service is by mail or third party carrier.

Oral argument is not permitted under either Rule 381 or 383. Neither rule is intended to bypass a normal appellate process, and should only be filed in extraordinary circumstances.

Conclusion

Interlocutory appeals are an important safety valve in the appellate process. When used properly, they can provide for an early disposition of judgments or orders that will clarify the litigation before a final judgment has been entered as to all claims. ■

J. Timothy Eaton served as CBA President in 2013-14 and is a Partner at Taft Stettinius & Hollister LLP

2015 ILLINOIS SUPREME COURT DINNER

Please join the CBA and the ISBA in honoring the Justices of the Illinois Supreme Court at the 2015 Supreme Court of Illinois Reception and Dinner on Friday, December 11, 2015, at the Sheraton Hotel & Towers, 301 E. North Water Street, Chicago. Justice *Anne M. Burke* will be the featured speaker at this year's event. 6:00 p.m. networking reception followed by a 7:00 p.m. dinner. Black tie optional. Order your tickets online at www.isba.org/jointmeeting. For more information and questions, contact Kim Weaver at 800/252-8908.

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By Raymond J. McKoski

The Ups and *Downs* of Defining Reasonable Doubt

The Duty to Define

In *People v. Downs*, 2015 IL 117934, the Illinois Supreme Court continued its long struggle to convince trial judges to refrain from defining reasonable doubt for jurors.

THE STRUGGLE BEGAN JUST BEFORE THE START OF World War I, when the Illinois Supreme Court declared that the meaning of reasonable doubt "is so commonly known and understood that it requires no definition." *People v. Hansen*, 263 Ill. 44, 50 (1914). Trial courts failed to take the hint though, and regularly provided juries with instructions defining reasonable doubt. Forty years later, the Court abandoned the subtle approach and put the rule in in more definitive terms: "Reasonable doubt is a term which needs no elaboration and we have so frequently discussed the futility of attempting to define it that we might expect the practice to be discontinued." *People v. Malmenato*, 14 Ill. 2d 52, 61 (1958). But the Court's hope that its unambiguous statement would put an end to the practice of defining reasonable doubt was not realized. It took the promulgation of Illinois Pattern Jury Instructions, Criminal (IPI Criminal) to finally persuade judges to stop tendering written reasonable doubt definitional instructions. Citing *People v. Malmenato*, the first edition of IPI Criminal expressly declined to provide an instruction defining reasonable doubt and advised judges not to try to make up their own. Illinois Pattern Jury Instructions, Criminal No. 2.05 (1968).

Following the mandate of IPI Criminal No. 2.05, judges discontinued giving written instructions defining reasonable doubt. Some trial judges, however, continued unauthorized attempts to "aid" juries in understanding the concept of reasonable doubt by describing the standard during voir dire–and "aid" is a generous characterization of the judges' oral explanations. For example, one judge in 1980 defined reasonable doubt to the venire by placing a rubber band around a glass of water. The judge then told the prospective jurors that if the defendant was a chip of wood in the glass the state would only have to offer enough evidence to float the chip to the reasonable doubt line (i.e., the rubber band) and not all the way to the top of the glass. *People v. Jenkins*, 89 Ill. App. 3d 395, 396 (1st Dist. 1980). More recently, the preferred method of explaining reasonable doubt has been to advise the jury that a plaintiff in a civil case must prove its claim by a preponderance of the evidence. Then, raising both hands to the same level to represent the scales of justice, the judge raises one hand slightly higher than the other to signify the civil burden of proof. Continuing, the judge explains that the reasonable doubt burden of proof in criminal cases is greater than the burden in civil cases and raises his hand higher (again to an unspecified height) to represent the level of proof necessary to convict a defendant in a criminal case. *See, e.g., People v. Gill*, 2014 IL App (1st) 123159-U, at *2.

No Definition vs. Duty to Clarify

In 2014, the Illinois Appellate Court, Second District, faced an unusual situation seemingly begging for a definition of reasonable doubt. After retiring to deliberate in a murder trial, the jury sent a question to the judge asking, "What is your definition of reasonable doubt, 80%, 70%, 60%?" *People v. Downs*, 2014 IL App (2d) 121156, ¶ 17. The trial judge responded, "We cannot give you a definition; it is your duty to define." Shortly after receiving this response, the jury found the defendant guilty of first degree murder. The dilemma facing the appellate justices was understandable: on one hand, they knew that the Illinois Supreme Court had long recommended against defining reasonable doubt, but on the other, they knew that judges have a duty to clarify jury confusion on questions of law. Besides, how could the justices let the jury think that reasonable doubt is defined in terms of percentages? *See United States v. Hall*, 854 F.2d 1036, 1044 (7th Cir. 1988) (Posner, J., concurring) ("Numerical estimates of probability are helpful in investments, gambling, scientific research, and many other activities but are not likely to be helpful in the setting of jury deliberations."). The appellate court reversed the conviction, holding that (1) the trial judge erred in advising the jury to collectively define reasonable doubt and (2) the jury's question indicated that there was a "manifest" possibility that the jurors employed less than the reasonable doubt standard in returning a guilty verdict.

In reversing the appellate court in *Downs*, a unanimous Illinois Supreme Court explained that historically Illinois forbade judges and lawyers from defining reasonable doubt. The Court emphasized the point by reminding the legal profession that since 1968 the Committee Note accompanying IPI Criminal No. 2.05 has clearly provided that jurors should not receive a reasonable doubt definition. Further, the Court explained that the trial court's response to the jury question, advising the jury that "we cannot give you a definition [of reasonable doubt]; it is your duty to decide," did not constitute a definition of reasonable doubt and was "unquestionably" a correct statement of the law. That still left the appellate court's concern that telling the jury to construct its

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own definition would lead the jury down the erroneous path of defining reasonable doubt in terms of percentages–and low percentages at that.

The Court answered the appellate court's concern in two ways. First, trial and reviewing courts should avoid "attempting to divine anything about the jury deliberative process" from questions about reasonable doubt. Second, if the trial judge told the jury that reasonable doubt is not defined in terms of percentages, that response would have, in effect, impermissibly provided a definition of reasonable doubt." *People v. Downs*, 2015 IL 117934, ¶¶ 29-31.

The message sent by the Illinois Supreme Court in *Downs* is unmistakable. Neither judges nor attorneys should attempt to define, explain, or illustrate the concept of reasonable doubt in jury instructions, in voir dire, in answer to jury questions, or during any other part of a trial.

During oral argument in Downs, the defendant's attorney, Jeffrey B. Kirkham, contended that at some point a judge must step in when a jury expresses a basic misunderstanding of the reasonable doubt standard. He illustrated his point with a hypothetical jury question, asking a judge, "What is your definition of reasonable doubt? Can we flip a coin?" People v. Downs, 2015 IL 117934, oral argument (see http://www.illinoiscourts.gov/media/on_demand.asp).

The Court did not address the hypothetical during oral argument or in its opinion. But until the Court says otherwise, it appears a safe bet that every jury inquiry about reasonable doubt will be answered in the manner approved in *Downs:* "We cannot give you a definition of reasonable doubt; it is your duty to decide." ■

Raymond J. McKoski, is a retired Lake County, Illinois, Circuit Judge and currently serves as an adjunct professor at The John Marshall Law School.

Alliance for Women Happenings

Increasing Energy & Managing Stress: Join the Alliance for a December committee meeting focused on increasing your energy level and managing stress effectively on Friday, December 4 , 12:15-1:15 p.m., at the CBA Building, 321 South Plymouth Court, Chicago.

Alliance for Women Annual Holiday Party: Join the CBA's Alliance for Women for an annual holiday get together on December 15 , from 5:30-7:30 p.m., at the CBA Building, 321 S. Plymouth Court, Chicago, More details to come. RSVP to afw@chicagobar.org.

Alliance for Women Holiday Gift Card Collection. The AFW will again be collecting gift cards for survivors of domestic violence who are receiving shelter this holiday season (until January 31, 2016) through Connections for Abused Women and Their Children. Suggested donations are for small denomination cards from stores like Target, Walgreens, CVS, Jewel-Osco, Walmart and more. Bring your donation to the AFW Holiday Party on December 15 or mail it to Angie Cruz, The Chicago Bar Association, 321 S. Plymouth Court, Chicago, IL 60604.

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Help End Distracted Driving

By Matthew A. Passen YLS Chair

We see it every day on our roadways: drivers staring at their phones–texting, emailing, programming their GPS–or engaging in some other form of distracted driving. According to the National Safety Council and Department of Transportation, distracted driving accounts for approximately 1.1 million motor vehicle crashes each year, resulting in more than 3,000 deaths and 400,000 injuries. If anything, these numbers are low, because unlike crashes caused by intoxicated drivers, there is no "blood test" for distracted driving.

This year, the CBA Young Lawyers Section is working to address this epidemic. The goal of our "End Distracted Driving" program is simple: to make our community safer by changing the way people drive. Although drivers in all age groups are guilty of driving while distracted, our program focuses specifically on young people.

The Program

After Philadelphia attorney Joel Feldman's 21-year-old daughter, Casey, was killed by a distracted driver, he began speaking about distracted driving. With the help of Children's Hospital of Philadelphia, he created an evidence-based distracted driving presentation that integrates health communication, behavioral science, and teen-targeted persuasion principles. The presentation–which our attorney-volunteers will give to high school students across Chicagoland–has been scientifically proven to change distracted driving attitudes and behaviors. The program is completely free to the schools.

Mr. Feldman's niece, Tess Feldman, practices immigration law in Chicago and is an active YLS member. She expressed her pride in this program: "Seeing the YLS embrace this cause with such force has been fantastic. I'm proud of the work my uncle is doing to end distracted driving and proud to be a member of a bar association doing this great work in our community."

Early Praise for the Program

A few weeks ago, Mr. Feldman, Katie Liss and I visited my alma mater, New Trier High School, to give three presentations to driver's education classes. The students were engaged, and the presentations received high praise from teachers and administrators. That afternoon, Joel and I filmed a "Justice and Law Weekly" TV program on WYCC with CBA president, Patricia Brown Holmes, which aired in November. YLS member Octavio Duran was also recently interviewed about the program by Univision, the Spanish TV news station. Finally, Illinois Senate President, John Cullerton, attended our kick-off reception and expressed his strong support of this new initiative.

We Need Your Help

Whether you are a young lawyer or a seasoned practitioner, we need your help to make this important program a success. There are two main ways to help.

First, volunteer to give a presentation at a high school. The presentation is intended to last one hour, so the amount of volunteer time is limited. We provide you with the necessary materials, including the presentation, wristbands to give to students, and a

continued on page 48

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RIDESHARING RISKS: DRIVERS AND PASSENGERS TAKE ON UBER

The Ridesharing Revolution

By Corinne C. Miller

The rapidly-expanding ridesharing business model is lucrative, creating jobs, and providing affordable transportation alternatives, but it is also leaving drivers and their passengers susceptible to gaps in insurance coverage. This is leading to a debate over the legal employment status of drivers and an influx of lawsuits in Illinois and throughout the country.

"Ridesharing," most commonly known to consumers under the names "Uber," "Curb," and "Lyft," is an innovative, phone application-based platform that is best comparable to a personal, on-demand taxi service. Offered throughout the state, Illinois boasts one of the largest ridesharing markets in the country.

What Ridesharing Is

Industry leader Uber provides the best example of the basic structure of ridesharing, or "transportation network companies" (TNCs). Virtually anyone with a vehicle, smart phone, license, insurance, and clean driving record can open for business as an Uber driver, and anyone with a smart phone and credit card can access the application required to summon rides.

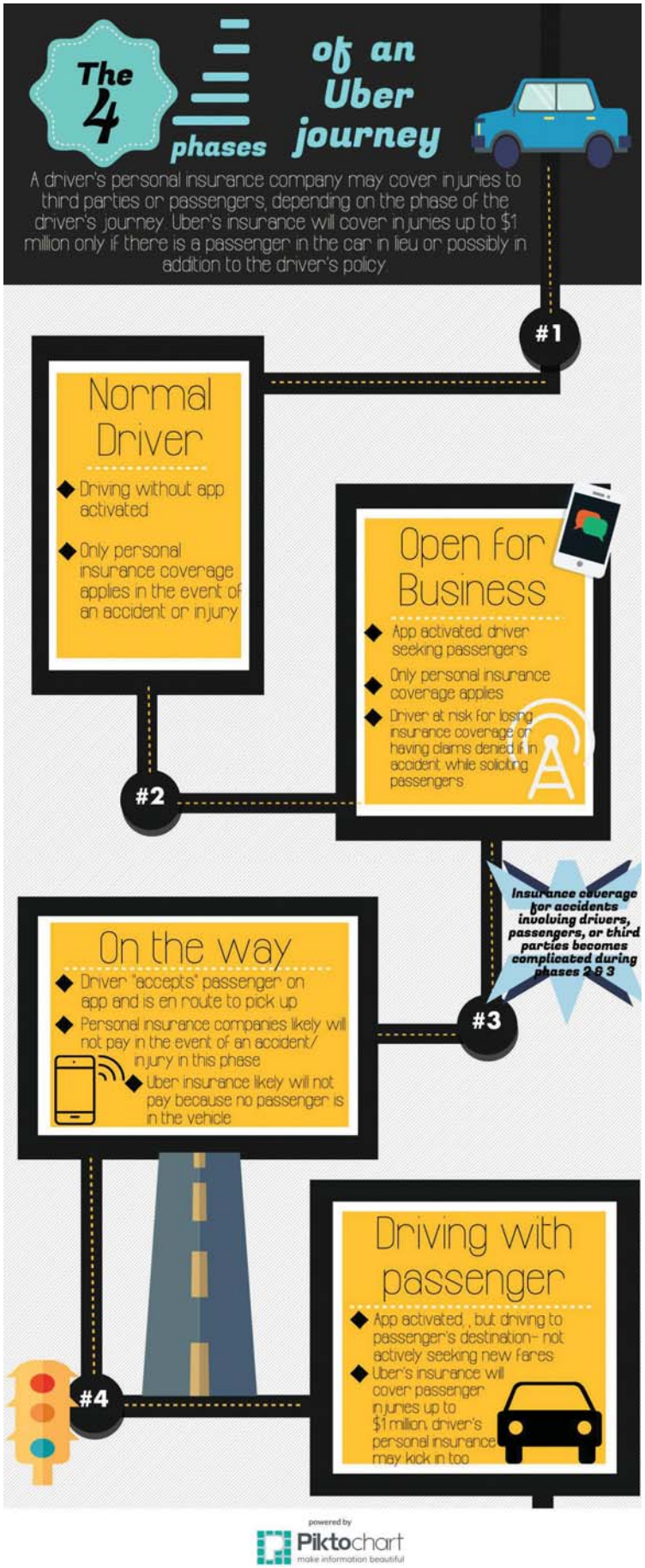
The phone application (App) allows for an Uber driver to become "available" for pick-ups at their discretion. Uber customers can view how many drivers are available nearby, the approximate wait time for a ride, and view peer reviews of the drivers. The customer's location is tracked using GPS, so the Uber driver will be automatically summoned to wherever the customer is currently located at the time of the request. The customer may also request a pick-up at a different location, can receive rate estimates between locations, and may split ride fares among other Uber passengers. The passenger's payment information is pre-loaded into the application and no additional tips or signatures are required at the end of the ride. Uber takes its share, and the rest is passed to the driver.

What Ridesharing Is Not

TNCs, though comparable to taxi services, are quite different in their business model, leading to differences in the legal liability of drivers and the legal protections afforded to customers. Unlike taxi drivers that require commercial licenses and heightened insurance requirements, TNC drivers utilize their own vehicles and personal insurance policies, leaving them (and their passengers) vulnerable to gaps in insurance coverage in the event of an accident with (or without) a passenger in the car.

Taxi drivers also have more legal protections than TNC drivers, specifically in the City of Chicago. Chicago adopted ordinances long ago that provide for personal injury coverage, property damage coverage, and the possibility of workers' compensation benefits, should a taxi driver become injured and unable to work. TNC drivers have no such protections. In response, TNC drivers are rallying against the companies they work for, demanding medical benefits, workers' compensation rights, expanded personal injury coverage, mileage, and improved safety oversight.

In addition to increased legal protections for taxi drivers, taxis also have fewer operational limitations than their



"As transportation systems evolve, so will the law. The technology may change but the basic rights of the public to safety and accountability will be upheld through the civil justice system"

–Attorney Christopher Nolan

TNC counterparts. For example, taxis historically had a monopoly on airport transportation. While some airports, including O'Hare and Midway, allowed TNC drivers to drop off passengers, TNC drivers were expressly prohibited from picking up arriving passengers. The distinction was due to a limitation on the number of commercial permits an airport would distribute, limiting the amount of taxi or livery vehicles on site, in addition to safety and licensure concerns. New legislation passed in Chicago in October 2015 will allow TNC drivers to both drop off and pick up passengers at Chicago airports, continuing to increase the competition and displeasure of taxi companies beginning in 2016, perhaps earlier. This is one of the many examples of how Illinois has been quick to jump on the TNC bandwagon and recognize the possible benefits of ridesharing while still appreciating the need for prompt regulation.

Other jurisdictions have been slower to address the issues raised by TNCs. Due to a complex worker and company relationship, the lack of commercial licensure requirements, and the difficulty of defining employment in emerging ridesharing markets, many jurisdictions have resisted allowing TNCs to operate lawfully in their communities. Some cities have even gone as far as to explicitly prohibit the operation of TNCs in their communities entirely.

Illinois Regulations

Uber first appeared in Chicago around 2011 and has since expanded to six cities across Illinois. Proposed regulations for TNCs began shortly thereafter, with Illinois HB 4075 and HB 5331 being the first of many legislative proposals. Both bills passed the Senate and the House, but former Illinois Governor Pat Quinn vetoed the bills, citing concerns of overbroad regulations and suggesting that such rules are better left to local municipalities based on their individual preferences. Compromise came when Governor Quinn signed SB 2774 into law, which created the Illinois Transportation Network Providers Act. Among other things, this Act sets forth minimum auto liability insurance for TNC drivers, above that which is already required for all Illinois drivers.

Illinois TNC drivers are now required to hold a minimum insurance policy of $50,000 for death and personal injury per person, $100,000 for death and personal injury per incident, and $25,000 in property damage. This is in contrast to the state law for all drivers, which requires only $25,000 for death or personal injury per person, $50,000 for death and personal injury per incident, and $20,000 for property damage.

Legal Implications

In addition to lagging or non-existent legislation throughout the country, insurance companies are also proving slow to adapt to the growing TNC business model. Illinois is one of only a few states that has taken measures to ensure the existence of at least some driver and passenger legal protections. The complexity of the TNC business model largely stems from the difficulty of classifying the legal employment status of a TNC driver.

Risks to Drivers and Passengers: The "Employment" Dispute

One of the greatest possible threats to TNCs' continued success is the categorization of their workers. There are two primary concerns surrounding the employment debate for TNC drivers: 1) the business model of a TNC is such that drivers are often operating their vehicles in a legal grey-area that makes it difficult to pinpoint liability; 2) most TNC agreements specifically categorize their drivers as independent contractors, not employees.

The Journey of a TNC driver

TNC drivers are always operating their vehicle in one of four phases:

1. Driving without the TNC app activated;
2. Driving with the TNC app activated, but not yet being summoned to pick up a passenger;
3. Driving with the TNC app activated, receiving a notice to pick up a passenger, and driving to pick the passenger up; or
4. Driving with the TNC app activated and driving the passenger to their destination.

There is little dispute that when TNC drivers are driving their vehicle for purely personal use in phase one, they cannot be considered an employee legally. Only personal insurance coverage could be used in the event of an accident during phase one. In phases two and three, however, the legal employment status of the driver becomes much more relevant and will determine how liability is shared between the driver and the TNC entity. This is concerning for drivers, passengers, and even third parties that may be injured during the course of a TNC driver's work day.

A TNC driver's personal auto insur-

ance coverage is in addition to the policy of the overarching TNC company policy. The good news for Illinois TNC passengers is that they are generally covered when riding in a TNC vehicle. Uber, for example, has a $1 million policy that will pay out in lieu of or in addition to the driver's personal insurance policy *when a passenger is in the vehicle*.

But what about when there is not a passenger in the vehicle? This question was recently taken on (and quietly settled) in San Francisco after a 2013 New Year's Eve tragedy led to the death of a six-year-old girl. *Ang Jiang Liu, et al. v. Uber Technologies, Inc., et al.*, No. CGC-14-536979 (Sup. Ct. Cal. San Francisco Cnty. 2014) explored the implications of an Uber driver driving without a passenger, with the Uber app activated, where injuries were sustained to a third party. This demonstrates the "legal grey area" drivers find themselves in–stuck in a vicious circle of finger-pointing where no insurance company will pay out from a driver's personal policy, leading to litigation and lack of driver, passenger, and third party legal protections.

Per the Uber business model, legal protections are generally extended to passengers in the vehicle. Although this is good news for passengers, the liability protections afforded to drivers through their companies are generally weak at best. Uber drivers are not reimbursed for their mileage by the company and bear the cost of any property damage to their vehicle through their own insurance policies. The shifting driving phases complicate not only the TNC-driver employment relationship, but also insurance coverage. Without a passenger in the vehicle, Uber, as a general rule, will not pay through its policy, and insurance companies have been, historically, reluctant to pay out on policies where their insured is engaging in commercial (work) activities. TNC drivers are engaging in business for a profit, obtaining business through the TNC app, and working with their own schedules—all of which severely complicates the employer-employee relationship status.

Independent Contractor Status

The distinction is quite simple in theory: if a TNC driver is considered an employee at any part of the driver's journey, they are entitled to certain protections for being designated as such. An independent contractor, however, receives far less, if any, legal protection and assumes personal liability.

Uber and Lyft both explicitly classify their drivers as independent contractors in their user agreements, not employees. However, simply dubbing your staff "independent contractors" does not make it so. The existence of an employer-employee relationship is legally significant and drastically changes the rights and responsibilities of all parties involved.

Starting with the first highly-publicized TNC case regarding TNC employment status, *O'Connor v. Uber Technologies*, 58 F. Supp 3d 989 (N.D. Cal. 2014), courts are beginning to address the critical distinction between employees and independent contractors in the rapidly growing ridesharing industry. Disgruntled TNC drivers brought *O'Connor* and several similar cases throughout the country, arguing that drivers operate under the direct control of their company, Uber, and as such, they have the legal status of "employee." Uber drivers argue entitlement to legal protections, increased transparency between Uber and the public, and reimbursement for work-related expenses, among other things.

The United States District Court for the Northern District of California recently granted the *O'Connor* plaintiffs class action status and permitted the case to proceed as such, over Uber's objection. In another opinion from March 2015, the Court made a preliminary finding that there is a presumption that a service provider is considered an employee. This was buttressed when the California Labor Commission determined that Uber drivers should be considered employees and not independent contractors in an opinion issued in June 2015, which Uber intends to appeal.

Despite Illinois' seeming progressivism toward TNCs, under current Illinois

continued on page 43

Pro*Files:* Steven M. Elrod

By Jonathan B. Amarilio and Trisha M. Rich

Please briefly describe your work as a lawyer and the path that led you to where you are now.

I currently serve as the Executive Partner of Holland & Knight's Chicago office. My own practice is focused on representing private and public sector clients on land use, zoning, and real estate matters. I also chair Holland & Knight's national Land Use and Government Team. I serve as the Corporation Counsel for the City of Highland Park, and as the Village Attorney for the Villages of Northbrook, Glencoe, Lincolnwood, and Carpentersville. And, I am an adjunct professor at Northwestern University School of Law, where I teach Local Government and Land Use Law.

Upon entering law school, I had no idea what area of the law interested me. However, two classes that I took at Northwestern Law School helped focus me on the practice area that I am in today: (1) State & Local Government Law with Professor Dawn Clark Netsch and (2) Land Use Law with Professor Len Rubinowitz. During the OCI process, I limited my search to law firms with this area of expertise and I joined the then pre-eminent land use and municipal law firm, Ross & Hardies, working with such legends as Richard Babcock, Marlin Smith, and Fred Bosselman. The

This profile is the first in a series. One of the YLS's goals this year is to increase the membership and active participation of associates in large law firms. Each month, we will be profiling a Chicago lawyer who practices in a large law firm and is active in the CBA. This month, we start with current CBA Treasurer and Holland & Knight Chicago Office Executive Partner, Steven M. Elrod.

land use and government group at Ross & Hardies split to form a new firm, Burke Weaver & Prell, and that firm ultimately became the Chicago office of Holland & Knight in 2000. I have stayed with that group and in the same practice area throughout my career.

How did you first get involved in the CBA?

I first became involved in the CBA during law school in 1980. I was active in the Young Lawyers Section, and I started attending committee meetings of the Real Property Law Committee and the Local Government Committee as soon as I passed the bar.

What positions have you held with the CBA?

I have been fortunate to hold a number of CBA positions, including Chair of the Local Government Committee and a member of the Board of Governors. I currently serve on the Board of Directors of the Chicago Bar Foundation. And I was recently honored to be re-elected to a second one year term as Treasurer of the Bar Association.

How has your membership in the CBA helped your career?

The Bar Association has provided me with introductions to the finest, brightest, and most diverse group of lawyers and judges in the country. It enhanced my professional development by enabling me to serve in leadership positions at a very young age, and it afforded me (and continues to afford me) the ability to attend terrific and informative seminars and CLE classes. The Bar Association also helped me appreciate the necessity of giving back to the community, and using my skills as a lawyer to help those less fortunate, and those that do not have access to justice. Between the Bar Foundation and the numerous pro bono and public service committees of the CBA, there are hundreds of opportunities for lawyers to get involved and make a huge difference, and have a tremendous impact, in our community.

What advice would you have for young lawyers at large law firms about becoming involved in the CBA?

Get involved early and often. I urge the associates at my firm to be active members of the CBA as soon as they can. I have encouraged my son, who is as associate at a large firm, to get involved and I am proud that that he has. Large law firm associates tend to be so focused on billing hours and navigating their way through their firm's bureaucracy that they sometimes forget to leave their desks and experience the legal profession outside. It is important for them to understand that active involvement in the CBA will help them achieve their goals in very tangible ways, and will assist them in building connections that will be valuable throughout their entire careers. I recognize that most large law firms now

RESOURCE PORTAL FOR SOLO PRACITITONERS AND SMALL FIRMS

Did you know that the CBA has a FREE resource portal for solo small firm members? Access archived programs on firm marketing, start up tips, legal software demos, client development and more. Go to www.chicagobar.org, click on the Resources tab, then Solo Small Firm Resource Portal, or call 312/554-2070.

offer CLE and provide other educational resources that traditionally were found only at bar associations. However, the firms cannot offer the social and networking experiences that the bar association provides. There is a huge benefit to learning with and from attorneys outside of your own law firm. You never know when that relationship will enhance your career, such as through a referral due to conflicts.

What is your favorite annual CBA event and why?

Without question, it is the annual Bar Show, also known as Christmas Spirits. This is the satirical musical review that is produced and directed by, and stars, only lawyers. While I am not talented enough to be a member of the huge production cast and crew, I have been one of the most loyal members of the audience (next to my late father, who started attending the Bar Show before I was born). I attended my first Bar Show while still in law school in 1982. I have not missed a single show since then. The show is fantastic, and it offers a wonderful opportunity to entertain clients, family and friends. I attend with my many family members who are members of the Bar, and I invite and entertain clients. I have already reserved my tickets for the 2015 performance in December. ■

Ridesharing Risks continued from page 41

law, Uber and other TNC drivers are not considered to have the legal status of "employees." According to the Illinois Employee Classification Act from the Illinois Department of Labor, an individual is considered an employee *unless*: 1) the individual is free from control or direction over the performance of service; 2) the service is performed outside the scope of usual services provided by the individual; and 3) the individual is in an independently established trade or deemed a sole proprietor under law.

While TNC drivers make their own schedules, their business would not exist but for the assistance of the TNC app facilitating their ride availability. Consequently, TNC companies argue that the driver's obvious autonomy trumps any minimal control the company may have over their drivers. Despite Illinois and several other states' labor commissions making preliminary findings that deem TNC drivers to be independent contractors, there is still little authority supporting this from the courts. In *O'Connor*, to the extent that the independent contractor versus employee debate has been addressed thus far, the Court made decisions on procedural legal issues and not on the merits of the employment argument. Only time will tell what protections will be extended to TNC drivers, their passengers, and any third parties that may be affected by a TNC driver's journey, regardless of the phase of the drive.

End of the Ride?

Christopher Nolan, the attorney representing the family of the six-year-old who died in 2013, optimistically noted that "[a]s transportation delivery systems evolve so will the law. The technology may change but the basic rights of the public to safety and accountability will be upheld through the civil justice system."

The current regulations in Illinois and other jurisdictions are placing drivers, passengers, and third parties in an insurance limbo, where TNC insurance may or may not pay out in the event of an accident involving the drivers they claim little to no legal control over. Meanwhile, a TNC driver's private insurance company may also deny coverage, cancel policies, or refuse to pay, deeming the driver's activity commercial in nature.

For now, TNC companies continue to operate in a legal grey area in most jurisdictions. Illinois is one of few states that appreciates the validity of the TNC business model while still recognizing the need for accountability and fair regulation to protect drivers, passengers, and third parties. Still, further legislation is needed to provide additional legal protections for participants and to ensure that TNCs operate freely–and safely–in our communities. ■

Corinne C. Miller is an associate litigation attorney at Lawrence & Morris in Chicago. She focuses her practice on personal injury, real estate, landlord-tenant, and commercial litigation.

LEGAL ETHICS

BY JOHN LEVIN

The Department of Justice and More Problems for Lawyers

A recent column reviewed actions by the U.S. Department of Justice and the D.C. Circuit Court of Appeals that reaffirmed the attorney-client privilege in the context of corporate investigations performed by counsel. This is a welcome development.

However, on September 9, 2015, the Office of the Deputy Attorney General issued a memorandum to all U.S. Attorneys concerning individual accountability for corporate wrongdoing. The memorandum reaffirms policy that "[o]ne of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing." The memo listed six key steps to strengthen the pursuit of individual corporate wrongdoing. The steps of particular interest to lawyers involved in corporate investigations are: "in order to qualify for any cooperation credit [under the Federal Sentencing Guidelines], corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct; … criminal and civil corporate investigations should focus on individuals from the inception of the investigation; … absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation; … [and] Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases…."

While the memorandum does not call the attorney-client privilege into question, it does create serious problems for lawyers engaged in corporate investigations. The problems arise out of the language of Illinois Rule of Professional Conduct (based on the ABA Rule) 1.13: Organization as Client. Section (a) states: "a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Section (f) states: "In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing."

Comment 10 to the Rule expands on this principle, stating:

> "There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged."

The problem for lawyers is that there may be situations in which it is in the best interest of the client to get maximum credit under the Federal Sentencing Guidelines. In such instances the client can waive the attorney-client privilege and request its lawyers to disclose the possibly criminal actions of its employees. Since there is no attorney-client relation between the employee and the lawyer, the lawyer is not prohibited from doing so. However, because of this possibility, the lawyer is obligated to disclose the situation to the employee at the time of the interview. Needless to say, this may adversely affect the candor of the interviewee and impair the investigation. ■

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

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

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

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.

New for members!

The Chicago Bar Association Online Library

With over 1000+ files (and growing), the CBA's Online Library includes selected articles, checklists, slide decks and sample documents culled from the past two years of continuing legal education courses, committee meetings and the *CBA Record*. As a member you can search, view and download substantive content from experts near and far and make the most of your membership.

The CBA Online Library is hosted by BlueTie Vault, an online document storage and search platform that syncs digital files and emails to a shared online searchable repository.

The Library will continue to grow, so check back frequently!

Getting Started:

Using the Library is as simple as 1, 2, 3:

1. Go to www.chicagobar.org/onlinelibrary and log in as a CBA member.

2. Enter your search terms in the search box and click on the green search button on the right. Search over 1,000 files in 80+ categories plus advanced options including proximity, synonym and sounds like. See the User Guide on the site for tips on how to build a search like a pro.

3. In the search results click on a file to get a preview and read online; you can also download or print the files.

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LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

A Tale of Two Presentation Styles

Lawyers have long used Microsoft's PowerPoint to provide visual displays to support a live presentation during CLE programs, for client meetings or to communicate with a jury. Slides are also used to convey information in an easily digestible format, and sent as standalone communication devices or displayed online on sites like LinkedIn SlideShare. Over the years the expectation of a professional looking slide deck has gone from aspirational to assumptive. Expectations demand that slides are lean, graphic, and high impact. In firms with a graphic design and marketing department a lawyer can often get help, but what can a lawyer do on her own?

Live Presentations

Slides should help you make your point. Try to find images and words that help viewers understand your point. The number one sin, ok probably number 2 (#1 is misleading with charts), is reading from your slides. If your slides have no words, you can't read them. A slide doesn't replace the need for the audience to listen to you. A slide filled with words guarantees an audience will read the slide and not listen to you.

Getting Graphics

It is important to use high resolution photographs and graphics in your slides, and equally important that you have permission to use them for commercial purposes. Many paid sites, such as Fotolia, Shutterstock, and iStock by Getty Images ensure you have access to thousands of high quality images with permission to use them. Here are a few sites to get quality graphics for free.

- Unsplash https://unsplash.com/. Free, high resolution photos. Search and download. No attribution necessary.
- StockSnap.io https://stocksnap.io/. Free stock photos, no attribution, no copyright. Includes a free (while in BETA) graphics editor called Snappa.
- Morguefile http://www.morguefile.com/. Free photo archive of high resolution stock photos. In some cases photographers request attribution, so check the details for the image. Adaptation (editing) is also usually allowed.

While Google and Bing have advanced image searches that let you filter for graphics that are free for commercial use, be sure to do a reality check because the filters are imperfect.

Occasionally you may need to capture images from your computer screen. Snagit https://www.techsmith.com/snagit.html ($50 for a single user) from TechSmith lets you capture screenshots or specific portions of you screen, as well as blur, annotate and edit them. All of your clips are saved to an image library on your computer for reuse.

Creating Handouts

If your slides have no words how can you get your audience to read the case summary, the language of the contract or other clauses that often find their way into lawyers' slide decks? You can use the notes fields to add content to your slides, thus appealing to the folks who want words so they don't need to take a lot of notes or if they want a quick version of a longer handout.

The easiest way to accomplish this is to put notes, suitable for sharing, into the slide notes field. To add bullets, hyperlinks and other formatting you can convert the slides to MS Word and edit as necessary.

In PPT 2010

File–Save and Send–Create Handouts–Create Handouts in Word–Notes below Slides

In PPT 2013

File–Export–Create Handouts–Create Handouts in Word–Notes Below Slides

Alternatives to Microsoft's PowerPoint

While people have long used Microsoft PowerPoint, plenty of alternatives are available that let you create more fluid, or more graphically pleasing or just different presentations. You'll need to practice.

- Prezi https://prezi.com. Free if everything you do is public and you want to present online. Otherwise $13.25/mo to be able to control privacy, get image editing tools and work offline. Designed to work with touch screens.
- Keynote http://www.apple.com/mac/keynote/. For Macs only, although you can get Keynote for iOS if you want to create and display presentations from your iPad. Keynote is $20, and is very good for editing graphics and has pretty templates. "Works seamlessly" with MS PowerPoint, though that is not entirely true, anymore that moving from one design in PPT to another is completely "seamless". A reality check is necessary.
- Google Slides https://www.google.com/slides/about/. If you have collaborators, this is perfect. Create, edit, share, and present online for free. Not a ton of templates, but you can convert PPT to Slides easily. It doesn't have all the bells and whistles of PPT, but enough for most people. Just like in PPT, don't forget right click menu options.

Presentations for Passive Consumption

Lawyers often send information in slide presentation format because it is an easy

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

Want to learn more? Watch for upcoming Hands On training for Microsoft PowerPoint or check out the How To…video in the library at www.chicagobar.org/howto

way to send summary information in a digestible format. They also share slides for marketing purposes, whether hosting on their own website or on a platform like SlideShare, YouTube, or Vimeo. While Microsoft's PowerPoint has options for create a "kiosk" or self playing presentation, other tools are available to add narration, video, animation and more to a slide deck that makes it an interactive communication tool.

- Sway https://sway.com/ is new from Microsoft and currently free with Office online. This interactive tool will let you convert a PowerPoint into an interactive display, designed for touch screen, with a focus on sharing as well as presenting. You can easily add interactive content includes videos and charts. It also helps find relevant images: as you put in words, it suggests dynamic content through Bing search.
- Mix https://mix.office.com/ is a free add-in for PowerPoint that lets you turn a slide deck into an interactive online video by adding audio, video, polls, screen capture and other interactive elements to a slide deck. Videos generated with Mix can be played on most any device or shared through social media.

Use Technology to Persuade

Whether giving a live presentation with visual props, or delivering interactive content on an individual basis or shared platform, we have come a long way from static slides and Clipart. Take advantage of technology tools to make your point to a media-savvy audience. ■

Understanding Financial Statements

Tuesday, December 15, 2:00–4:30 pm

MCLE Credit: 2.5 IL MCLE Credits

Location: Chicago Bar Association, 321 South Plymouth Court, Chicago, IL 60604

Presented by: Continuing Legal Education

An entity's financial statements convey a great deal of significant information regarding its financial position and the results of its operations. The ability to understand financial statements is a critical skill for corporate, family, trial and other lawyers. It also is essential for lawyers reviewing financial statements to be able to "read between the lines." This session focuses on understanding financial statements, intermediate level financial analysis and essential concepts underlying the presentation of financial information and determining their veracity. At the end of the program, lawyers will be able to ask better questions regarding financial statements produced to them and/or know when the level of complexity is such that they need to hire an accountant to assist in reviewing those financial statements.

The program provides special emphasis on "financial shenanigans," ways in which Generally Accepted Accounting Principles ("GAAP") are manipulated and practical suggestions on how to find misstatements in financial statements of both public companies and medium sized, family owned businesses. The program is ideal for corporate attorneys, trial lawyers, bankruptcy counsel, family law practitioners and general counsel.

Speakers: Lee A. Gould, CPA/ABV, JD, CFE, CFF; and Michael D. Pakter, CA, CPA, CFE, CIRA, CDBV, CFF, Managing Members, Gould & Pakter Associates, Managing Members, Gould & Pakter Associates, LLC

President's Page continued from page 8

the committees for planning/suggesting committee agenda items, reviewing and recommending legislation, reviewing and recommending Rule Changes at the state and federal levels, suggesting and helping select speakers for meetings and CLE seminars, writing articles, etc. Members who have demonstrated leadership and planning skills are recommended each year to serve as future Chairs and/or Vice-Chairs of the committee.

The list of outstanding speakers at CBA Committee meetings during September and October is very impressive and much too long to list in this article. As an example of how successful some of our committees are, the Trust Law Committee chaired by Jared McCloud, McDermott Will & Emery, with Vice-Chair Mel M. Justak II , Reed Smith, had almost 100 in person and online attendees at their September and October meetings. Any CBA member is welcome to attend any committee meeting regardless of whether they are registered on the committee's roster. For a complete list of upcoming committee meetings, speakers, MCLE credit and webcast availability simply check the Weekly E-Bulletin which is emailed every Thursday to all members.

One of our past presidents was fond of saying "When lawyers get together good things happen." Participating in one or more committees will advance the highest and best interests of the legal profession and will help supercharge your legal career and leadership skills.

For more information or to join a CBA committee, visit www.chicagobar.org/committees. It's simple and will provide a multitude of personal and professional benefits that will last throughout your career. ■

CLASSIFIED ADS

HELP WANTED

Need assistance with Chapter 7 Bankruptcy filings. Must be familiar with Best Case Bankruptcy Software. Very flexible hours at your discretion including evenings or Saturdays. Suburban Woodridge Law Office Location. 630/971-3600.

CLASSIFIED AD RATES

The rates for classified ads are $2.50 per word for CBA members and $3.50 per word for nonmembers. Checks made out to The Chicago Bar Association must accompany all ads.

YLS Chair continued from page 36

"Family Safe Driving Agreement" for the students to discuss later with their families. Simply review the presentation beforehand; each slide is filled with presenter notes to discuss with the students. No training is necessary; however, we filmed a training video available on the CBA website.

Second, help us connect with more high schools to host a presentation. Our goal is to deliver this presentation to as many schools and students as possible throughout Chicago and the neighboring suburbs. A personal introduction goes a long way. If you have connections with high school administrators, teachers or PTA organization, please help make an introduction.

To help us End Distracted Driving in Chicagoland, contact me or the YLS at 312/554-2031 or yls@chicagobar.org. ■

UPDATE YOUR MEMBER PROFILE

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

The Chicago Bar Association
Young Lawyers Section

TEXAS HOLD'EM GOES TO MARDI GRAS

for the Benefit of The Chicago Bar Foundation

Friday, February 19, 2015
Chicago Culture Center
78 E. Washington, Chicago, IL

6:30 p.m. - Check In
7:00 p.m. - Play/Reception Begins

Head to the French Quarter for an evening of texas hold'em as well as fun for all. Non-players enjoy watching the table action and enjoy N'awlins inspired food, drinks and entertainment.

For the Player:
$125 per player on or before 12/31/2015
$150 per player on or after 1/1/2016

Rebuys/add-ons during 1st hour

Social Event Only:
$100 per person on or before 12/31/2015
$125 per person on or after 1/1/2016

All fees are non-refundable and include drinks/buffet/entertainment.

Proceeds benefit The Chicago Bar Foundation. To learn more and purchase tickets:

www.chicagobar.org/ylspoker

Questions? Call the YLS at 312-554-2031.

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If you would like to reach out to more than 22,000 Chicagoland Lawyers with your message, try the **CBA Record** for as little as $200 per issue.

Contact Joe Tarin at jtarin@chicagobar.org

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Before you're caught without protection, call CBA Administrators today at 312.554.2075 for more information.

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