SEPTEMBER 2017

# CBA RECORD

Committee Chair/Vice-Chair Directory Enclosed

# MUCH TO SUE ABOUT NOTHING!

## THE 94th ANNUAL BAR SHOW

an irreverent musical comedy revue

THURSDAY-SUNDAY
NOV 30 - DEC 3, 2017

DEPAUL's MERLE RESKIN THEATRE
60 E. BALBO AVE., CHICAGO

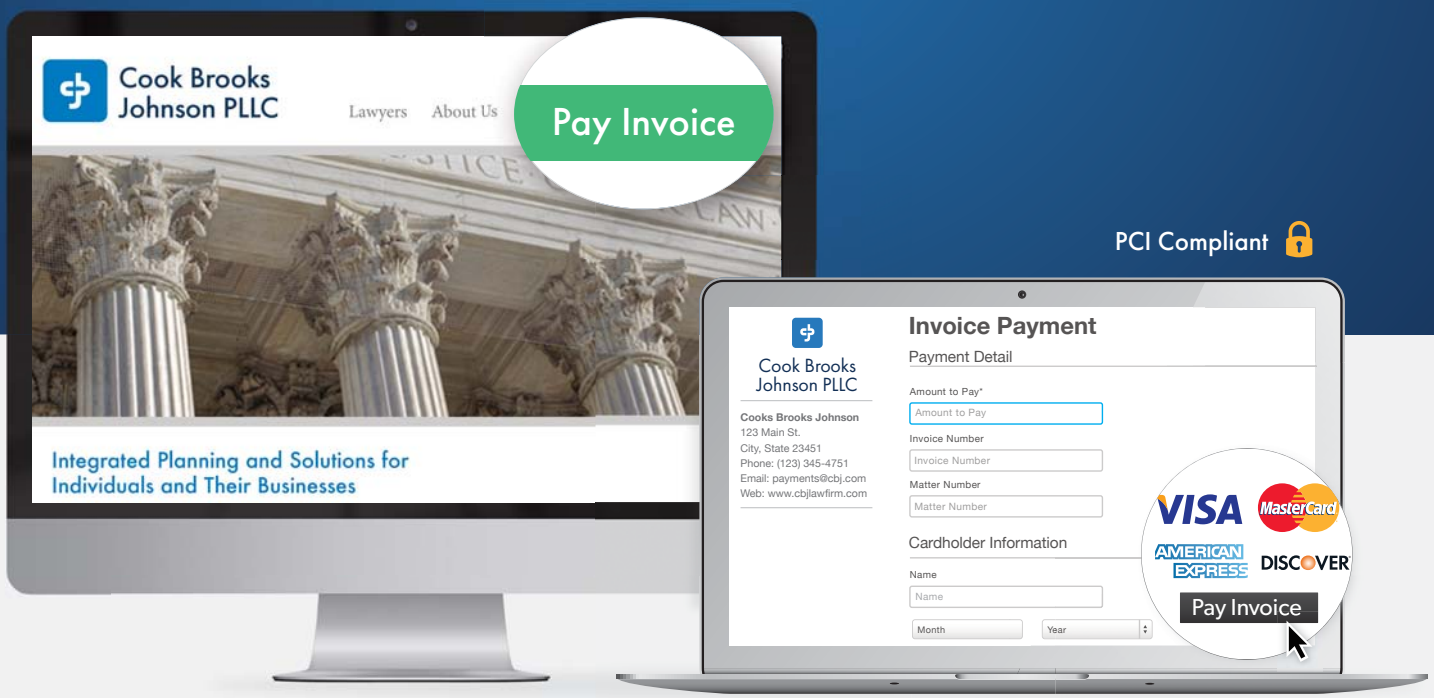
ORDER YOUR TICKETS NOW
BARSHOW.ORG • 312-554-2064

# LawPay®

AN AFFINIPAY SOLUTION

THE CHICAGO BAR ASSOCIATION

**Proud Member Benefit Provider**

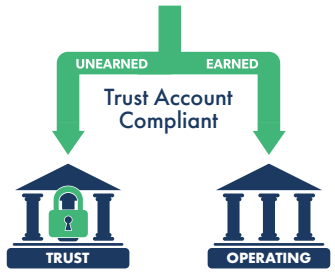



# THE EXPERTS IN LEGAL PAYMENTS

## The proven payment solution for lawyers.

Managing payments and growing revenue for over 40,000 law firms in the United States, LawPay is the only payment solution offered as a member benefit through the ABA. Developed specifically for law firms, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind that your credit card transactions are handled the right way.

VISA MasterCard DISCOVER AMERICAN EXPRESS




LawPay.com/CBA | 866.299.6061

LawPay is a registered ISO of Merrick Bank, South Jordan UT.

# *Have a case to refer?*

## Look no further than McNabola Law Group.

*Competitive fees for referring attorneys*

*Success rate of almost 98% of cases at trial*

*Record high verdicts and settlements in Cook, DuPage and Will Counties*

*Over $550 million in verdicts and settlements on behalf of our clients*

MCNABOLA
LAW GROUP

55 West Wacker Drive, Ninth Floor, Chicago, Illinois 60601 • 312.629.2900 • www.McnabolaLaw.com

PERSONAL INJURY • TRUCKING NEGLIGENCE • MEDICAL MALPRACTICE • PRODUCT LIABILITY • AVIATION LAW

# 18th Annual JUSTICE JOHN PAUL STEVENS Award Luncheon

**The Chicago Bar Association and The Chicago Bar Foundation**

Cordially invite you to attend

## The 18th Annual Justice John Paul Stevens Award Luncheon

to celebrate Illinois attorneys who have demonstrated extraordinary integrity and service to the community throughout their careers.

*Honoring*

**Hon. Ruben Castillo**
**Robert A. Clifford**
**Hon. Nathaniel R. Howse, Jr.**
**Hon. Joan Humphrey Lefkow**
**Richard J. Prendergast**
**Larry R. Rogers, Sr.**
**Ronald S. Safer**
**Hon. Mary Jane Theis**
**Dan K. Webb**

---

**Tuesday, October 10, 2017**
The Standard Club • 320 S. Plymouth Ct., Chicago
11:30 a.m. Reception • 12:00 p.m. Luncheon

$75 per person • $750 table of 10

For reservations, contact Tamra Drees, CBA Events Coordinator, at 312-554-2057 or tdrees@chicagobar.org.

# CBA RECORD




*The* **CBA Record** *(ISSN 0892-1822) is published seven times annually (January, February/March, April/May, July/August, September, October, November) for $10 per year by The Chicago Bar Association, 321 S. Plymouth Court, Chicago, Illinois 60604-3997, 312/554-2000, www.chicagobar.org. Subscriptions for non-members are $25 per year. Periodicals postage paid at Chicago, Illinois. POSTMASTER: Send address changes to* **CBA Record**, *c/o Kayla Bryan, Chicago Bar Association, 321 South Plymouth Court, Chicago, Illinois 60604.*



*Copyright 2017 by The Chicago Bar Association. All rights reserved. Reproduction in whole or in part without permission is prohibited. The opinions and positions stated in signed material are those of the authors and not by the fact of publication necessarily those of the Association or its members. All manuscripts are carefully considered by the Editorial Board. All letters to the editors are subject to editing. Publication of advertisements is not to be deemed an endorsement of any product or service advertised unless otherwise stated.*


# CONTENTS

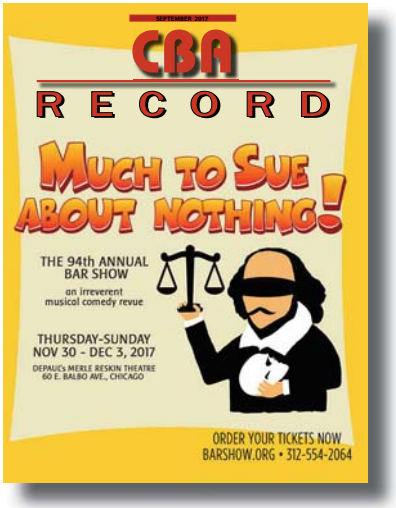

September 2017 • Volume 31, Number 5


## INSIDE THIS ISSUE



## YOUNG LAWYERS SECTION






### On the Cover

This month's **CBA Record** cover celebrates the 94th Annual CBA Bar Show musical, *Much to Sue About Nothing!* which will be held from November 30 through December 3 at DePaul University's Merle Reskin Theatre. The cover art was created by Bar Show cast member Larry Aaronson. A ticket order form appears on page 25. Tickets are also available at www.chicagobar.org/barshow.

CBA RECORD

EDITORIAL BOARD

Editor-in-Chief
Justice Michael B. Hyman
*Illinois Appellate Court*
Managing Editor
Amy Cook
*Amy Cook Consulting*
Associate Editor
Anne Ellis
*Proactive Worldwide, Inc.*
Summary Judgments Editor
Daniel A. Cotter
*Butler Rubin Saltarelli & Boyd LLC*
YLS Journal Editors-in-Chief
Nicholas D. Standiford
*Schain Banks Kenny & Schwartz Ltd.*
Natalie Chan
*Sidley Austin LLP*

Carolyn Amadon
*University of Chicago*
Nina Fain
*Janet Sugerman Schirn Family Trust*
Anthony F. Fata
*Cafferty Clobes Meriwether & Sprengel LLP*
Clifford Gately
*Heyl Royster*
Angela Harkless
*The Harkless Law Firm*
Justin Heather
*Illinois Department of Commerce and Economic Opportunity*
Jasmine Villaflor Hernandez
*Cook County State's Attorney's Office*
Michele M. Jochner
*Schiller DuCanto & Fleck LLP*
Oliver A. Khan
*American Association of Insurance Services*
John Levin
Bonnie McGrath
*Law Office of Bonnie McGrath*
Clare McMahon
*Law Office of Clare McMahon*
Pamela S. Menaker
*Clifford Law Offices*
Peter V. Mierzwa
*Law Bulletin Publishing Company*
Kathleen Dillon Narko
*Northwestern University School of Law*
Adam J. Sheppard
*Sheppard Law Firm, PC*
Richard Lee Stavins
*Robbins, Saloman & Patt, Ltd.*
Rosemary Simota Thompson
William A. Zolla II
*The ZOLLaw Group, Ltd.*

THE CHICAGO BAR ASSOCIATION

David Beam
*Director of Publications*
Rebecca Martin
*Manager of Advertising and Sponsorships*

# EDITOR'S BRIEFCASE

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

## The Counterweight to Evil

The subject of race and religious tolerance in America has once again come to the fore, stirring up divisiveness and strong emotions along with widespread public outrage. While the current discord, like its many predecessors, will pass into the shadows, the issues that generated the controversy will not, and they remain as contentious as ever. In the words of Edmund Burke, the influential Anglo-Irish politician, "An event has happened on which it is difficult to speak, and impossible to be silent."

Each of us should ask ourselves what we are doing to meaningfully challenge hate, bias, and hidden barriers in our society. For justice and right to triumph, lawyers and judges must find personal and professional ways to ensure our nation fulfills the promise that is America and the promises that are guaranteed to all by the Constitution of the United States of America, as amended.

The Greek lawmaker and poet, Solon (638-558 BC), expressed our duty when he was asked how justice could be secured in Athens. Solon responded, "If those who are not wronged feel the same indignation as those who are." But that indignation, I believe, has little impact unless it is accompanied by action. Too often we are beset by indifference, and perhaps just as bad, by ignorance. We cannot be passive spectators to racism, anti-Semitism, homophobia, Islamophobia, xenophobia, and similar kinds of hostility. Indeed, no one is safe unless we are all safe. We (and by "we" I refer to judges and lawyers) have an inherent obligation, due to our pledge to uphold the Constitution, to protect our democratic values and promote equality, social justice, and pluralism. In the words of Justice Louis D. Brandeis, "The greatest menace to freedom is an inert people."

The evils of racism, anti-Semitism, and the other forms of intolerance continue to recur, giving rise to an ugly reality that vilifies and dehumanizes groups of people for being who they are, and, in the process, diminishes and endangers all of us.

### Vilification

The most common tool of perpetrators of hate, vilification, is bullying, name-calling, and false accusations carried to the extreme. The objective of vilification is to deny civil rights and to spur discrimination against those in its sights. Both malicious and destructive, vilification seeks to negatively affect the lives of its victims. Vilification is incompatible with living in a just and equitable society.

### Dehumanization

Then there is dehumanization, the most hideous manifestation of intolerance. Dehumanization labels its victims as inherently undesirable, unworthy inferiors to be identified and avoided. The perpetrators want to marginalize those they fear, isolate them, and breed despair within them. They define them as "outsiders" who are not one of "us" and do not belong with us. Their disgusting rhetoric claims the "outsiders" to be enemies, who are suspect, odious, and objectionable.

When the hate mongers devolve into debasing their victims, negating their humanity, the worst instincts of human beings can take over. This permits slavery, human trafficking, ethnic cleansing, genocide, and other crimes against humanity. No decent citizen should condone or sit still in the presence of efforts to dehumanize others.

In a democracy, it is the judicial branch that serves as a counterweight to the evils of which I write. But laws alone do not supply a sufficient antidote to intolerance. Ours is a profession that endeavors to foster human welfare and human dignity, a profession that requires its members to respect and promote differences, to wrestle with critical questions about tolerance and intolerance, to resist silence. And to speak up. I have, now it's your turn. ■

*Rehearing:* "The world is not dangerous because of those who do harm. It's dangerous because of those who watch and do nothing."—Albert Einstein

# The Chicago Bar Association CLE in Rome, Italy

## April 16-19, 2018

### AGENDA

**April 16**

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

**April 17**

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

**April 18**

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

**April 19**

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

### HOTELS

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

### RECEPTION & CLE LOCATION

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

### SPEAKERS

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

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

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

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


Casina Valadier


Hotel d'Inghilterra


Hotel Minerva

To receive an agenda and travel information in the Fall, send an email to Tamra Drees at tdrees@chicagobar.org.

## The Chicago Bar Association

www.chicagobar.org

**OFFICERS**

**President**
Judge Thomas R. Mulroy
*Circuit Court of Cook County*

**First Vice President**
Steven M. Elrod
*Holland & Knight LLP*

**Second Vice President**
Jesse H. Ruiz
*Drinker Biddle & Reath LLP*

**Secretary**
E. Lynn Grayson
*Jenner & Block LLP*

**Treasurer**
Maurice Grant
*Grant Law LLC*

**Executive Director**
Terrence M. Murphy

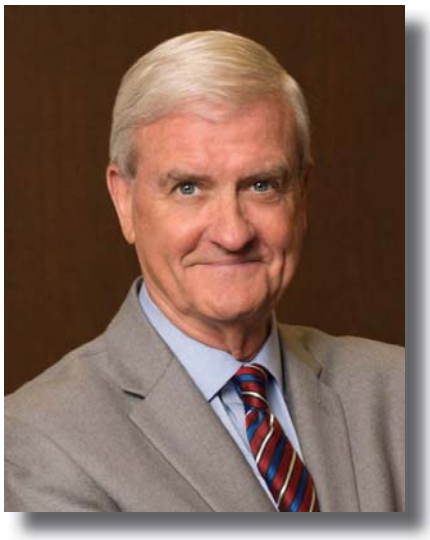
**Assistant Executive Director**
Elizabeth A. McMeen

**BOARD OF MANAGERS**
Jonathan B. Amarilio
Alan R. Borlack
Hon. Thomas M. Durkin
Mark B. Epstein
Hon. Shelvin Louise Marie Hall
Robert F. Harris
Michele M. Jochner
Michael J. Kaufman
Daniel M. Kotin
Pamela S. Menaker
Paul J. Ochmanek, Jr.
Matthew A. Passen
Mary Robinson
John C. Sciaccotta
Helene M. Snyder
Andrew W. Vail
Greta G. Weathersby
Zeophus J. Wiliams


# PRESIDENT'S PAGE

**BY JUDGE THOMAS R. MULROY**

## A Mulroy's Brush with Chicago History



The random murder of 14 year old Bobby Franks, son of a wealthy Kenwood family, horrified and frightened Chicago in 1924.

Albert Loeb lived in Kenwood with his wife and four sons: Allan, Ernest, Richard, and Thomas. Loeb was a lawyer and was one of the founders of the law firm now known as Arnstein & Lehr. He was also one of the organizers of the Standard Club. Later, Loeb became Vice President and Treasurer of Sears Roebuck.

In 1924, Loeb's son Richard graduated from the University of Michigan and then attended graduate school at the University of Chicago where he met Nathan Leopold, who was in the University's law school. Over time and during long philosophical discussions, Loeb enticed Leopold to commit the "perfect crime;" in this case, the motiveless murder of a random victim. The two young men rented a car and drove randomly through their Kenwood neighborhood looking for someone to kill. While driving, the men saw Loeb's cousin and neighbor, Bobby Franks. They enticed Franks into their car and brutally killed him. Shockingly, on the way to hiding Franks' body, they stopped and ate lunch. The two murderers then used Leopold's portable typewriter to type a ransom note which they mailed to Bobby Franks' father. Bobby's body was discovered as Franks' father was on his way to pay the $10,000 ransom demand. The crime was horrible, lurid and senseless.

At the time, my uncle, James Mulroy, my father's brother, worked as a "cub reporter" for the Chicago Daily News, a competitor of the Tribune. The Franks murder captivated the city and particularly mesmerized the competitive news media. Uncle Jim, a graduate of the University of Chicago, and his reporter partner, Alvin Goldstein, were assigned to the Franks story and spent days searching for information about the crime which they hoped would be put in their newspaper under their bylines.

While disposing of Franks' body, Leopold's eyeglasses had fallen from his pocket and were recovered by the police, who traced them to Leopold. Leopold at once became a suspect in the murder.

Learning of the glasses development, Mulroy and Goldstein focused on the typewriting in the ransom note. Because Leopold was gaining traction as a suspect, the reporters decided to use their University of Chicago contacts and speak to some of Leopold's law school class mates. When they spoke to the students, the reporters learned that Leopold had typed the law school study group notes and had distributed them to his fellow group members. The reporters were able to get some of Leopold's typewritten notes, and when they compared the notes with the ransom note, it was clear that the typing matched. Uncle Jim and his partner reported their findings to the police. Ultimately, and possibly because of this evidence, both boys confessed to the murder.

After Loeb and Leopold were indicted for the killing, Loeb's father hired Clarence Darrow to defend them. In a stunning move, Darrow pleaded the men guilty and called psychiatrists to testify in an attempt to convince the judge that he should not impose the death sentence. The defense psychiatrist testified that Loeb was unemotional when describing the crime's gruesome details and noted that the men even stopped to eat with Bobby Franks' dead body in the car. The psychiatrist said that Loeb showed no remorse, no regret, no compassion and had no normal human emotional responses. Loeb even told the psychiatrist that he had considered murdering his younger brother instead of Franks. The defense psychiatrist testified that Loeb had a disordered personality which caused a pathological discord between his intellectual and emotional life. The public was outraged by the testimony and by the opinion.

The prosecution psychiatrist testified that Loeb did not have a mental disease, his thinking was clear and his answers always responsive. He found no evidence of any mental defect, disorder, or any lack of development.

On September 10, 1924, Judge John Caverly, Chief Justice of the Criminal Court, sentenced each man to life plus 99 years. The judge's sentence was broadcast live on WGN radio.

Albert Loeb, Richard's father, died of a heart attack two months after Richard was sentenced.

In January 1936, Richard Loeb was murdered by another prisoner while serving his sentence.

My uncle, James Mulroy, and his reporter partner, Alvin Goldstein, were awarded the Pulitzer Prize in 1925 for "… their service toward the solution of the murder of Robert Franks."

This awful, senseless murder of a wealthy boy by two wealthy teenagers for no understandable reason horrified Chicago and worsened its reputation for violent crime. It also began a lively debate about the connection between mental illness and crime which has continued to this day. ■

## Signature Series–Desmond Clark's Six Principals of Winning

***Pro Football legend will speak on his remarkable journey through life and the National Football League***

CBA President Thomas Mulroy is pleased to present a new, free speaker series for CBA members–the Signature Series. On October 12, Pro football legend Desmond (Dez) Clark will introduce his "6 Principals of Winning"–a moving compilation of narratives from his early childhood throughout his 13-year career in the NFL, and the leadership that took him to the 2006 Super Bowl. Desmond will take the audience on a gripping journey through his stories of heart-wrenching personal challenges, overcoming obstacles, and ultimately becoming one of the greatest tight ends in NFL history, despite not being the most naturally talented team member at any step along the way.

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

### About the Speaker

Whether on the field, in the classroom, the boardroom, or beyond, Clark will inspire and enlighten you with heartfelt conversation on the power of diversity and the importance of having a personal standard of excellence. Clark strives to help audiences see that both obstacles and opportunities shape character and determine success, and delivers an incredible tale of personal achievement at the highest level.

#FBF #CBAHistory

THE CHICAGO BAR ASSOCIATION

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

As founder and owner of the Chicago Legal News she wrote many editorials about equality for women, and about the need for an association of lawyers in Chicago. Her December 1873 editorial was instrumental in The Chicago Bar Association's formation in March 1874.

## JOHN PAUL STEVENS AWARD LUNCHEON TO BE HELD OCTOBER 10

# Honoring Those Who Make A Difference

By Sally Daly
Public Affairs Director

Nine top-tier attorneys who exemplify the highest commitment to integrity and public service in the spirit of the Chicago legal community's "favorite son" have been selected to receive the Chicago Bar Association's John Paul Stevens Award.

Named in honor of the legendary retired Supreme Court Justice and native Chicagoan John Paul Stevens, the awards will be presented at the CBA's annual John Paul Stevens luncheon scheduled for October 10 at the Standard Club.

This year's award recipients are Chief Judge Ruben Castillo, of the U.S. District Court for the Northern District of Illinois; Robert A. Clifford of Clifford Law Offices; Illinois Appellate Court Justice Nathaniel R. Howse, Jr.; Judge Joan Humphrey Lefkow of the U.S. District Court for the Northern District of Illinois; Richard J. Prendergast of Richard J. Prendergast Ltd.; Larry R. Rogers Sr. of Power Rogers & Smith; Ronald S. Safer of Riley Safer Holmes & Cancila; Illinois Supreme Court Justice Mary Jane Theis; and Dan K. Webb of Winston & Strawn LLP.

Justice Stevens retired from the High Court in 2010 after 35 years of distinguished service. The awards, presented by the CBA and the Chicago Bar Foundation, recognize lawyers and judges who best exemplify the Justice's commitment to integrity and public service in the practice of law.

CBA President Thomas R. Mulroy noted that the awards symbolize Justice Stevens' lifetime effort to improve the system of justice as well as his active participation and dedication to the CBA.

"We are very proud to recognize these exceptional legal professionals with this year's John Paul Stevens Awards," said Mulroy. "Not only have they blazed an accomplished trail in their respective careers, they have also taken time along the way to serve the community and to help ensure that the justice system works for everyone." ■


Castillo


Clifford


Howse


Lefkow


Prendergast


Rogers


Safer


Theis


Webb

# NOT JUST

# YOUR GO-TO NURSING HOME LAWYERS

We may be the go-to nursing home lawyers in Illinois, but we have won multi-million dollar verdicts and settlements in a variety of serious injury, accident, and medical malpractice matters.

Most recently we recovered a $7.5 million settlement for an injured boat worker that was THE LARGEST JONES ACT RECOVERY EVER RECORDED IN ILLINOIS. Our firm held the previous Illinois record Jones Act settlement of $4.5 million set in 2008.

**OTHER NOTABLE RESULTS:**

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

**We've shared millions in attorney's fees with our referring lawyers on many of these cases.**

**CALL STEVE OR JOHN AT 312-332-2872 TO DISCUSS REFERRALS.**

LEVIN & PERCONTI

ATTORNEYS AT LAW

325 N. LaSalle Street, Suite 450 Chicago, Illinois 60654
Phone: 312-332-2872 Toll Free: 877-374-1417 Fax: 312-332-3112
www. LevinPerconti.com www.nursinghomelaw.com

BLUHM LEGAL CLINIC ATTORNEYS TO ADDRESS MEMBERS ON SEPTEMBER 26

# CBA Kicks Off Unique Speaker Series

By Sally Daly, CBA Public Affairs Director


Steven Avery (above) and Brendan Dassey, the subjects of *Making A Murderer*

The Chicago Bar Association is offering an innovative new monthly speakers series beginning this fall that will provide cutting edge legal information on topics ranging from the examination of false confessions as portrayed in the popular television documentary *Making a Murderer,* to legal rights for immigrants and refugees in today's political climate.

The Signature Series, introduced by CBA President Thomas R. Mulroy, is free for CBA members and will feature prominent speakers on two separate topics each month through May.

"The CBA is very excited to introduce the Signatures Series, which will bring some of the most thought-provoking speakers and relevant legal information directly to our members," said Mulroy.

This month's lineup kicked off on September 8 with a timely examination of legal rights for immigrants, refugees and asylum seekers in today's government and political climates. Mary Meg McCarthy, the Executive Director of the National Immigrant Justice Center, examined constitutional and due process issues currently impacting the civil rights of the nation's immigrant populations.

The second installment of the series will take place on Tuesday, September 26, with a true-story examination of a false confession in the case involving Brendan Dassey, whose confession became a key subplot in the Netflix series *Making a Murderer.* Dassey's attorneys, Steven Drizin and Laura Nirider, will explore the problem of false confessions and examine how psychological interrogation works to elicit both true, and in some cases, false confessions. ■

***The lunchtime events take place from noon to 1 p.m. at the Chicago Bar Association, 321 S. Plymouth Court and most offer MCLE credit. Attendees can come in person or view live via CBA Webcast. Both in-person and webcast registration can be completed online at www.chicagobar.org/cle.***

Drizin

Nirider

## 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.

PROTECTING WOMEN'S RIGHTS IN AMERICA

# Is it Time for the ERA?

By Sharon Nolan, CBA Marketing Director

On September 26, join us for a free screening of *Equal Means Equal,* the definitive film about the status of women in America. *Equal Means Equal* makes the case for the need to ratify the Equal Rights Amendment. A pre-film panel will address risks to women's rights without the ERA, as well as the potential impact of eventual ERA ratification. Pre-film panelists include: Mary Kay Devine, Director of Community Initiatives, Women Employed; Anne Houghtaling, Executive Director, HOPE Fair Housing Center; Professor Ann Lousin, The John Marshall Law School; and Judge Daniel Biss, Illinois State Senator (moderator).

After the film, Illinois State Representative Ann Williams will make remarks on the status of Illinois approval of ERA ratification, and Annie Williams, policy director for Indivisible Illinois, will speak on action plans. The event will take place from 4:00-7:00 p.m. at the CBA Building, 321 S. Plymouth Ct., Chicago, IL 60604. Attendees need to pre-register on Google form at https://goo.gl/forms/F5f8fBkd-PLG9Woi43 (link is also available at www.chicagobar.org).

Co-sponsoring organizations include: American Association of University Women (AAUW), AAUW-IL Gender Equity Fund, American Constitution Society (ACS), Black Women Lawyers Association (BWLA), The Chicago Bar Association, Illinois State Bar Association (ISBA), Indivisible Illinois, Women's Bar Association of Illinois (WBAI), CBA/YLS Women in the Law Committee, and Southern Illinois University School of Law. ■



# Earn Free MCLE Credit and Sharpen Your Practice

By Sharon Nolan, CBA Marketing Director

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

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

Remember, most CBA and YLS committee meetings qualify for free MCLE credit. The amount of credit depends on the length of the presentation (average credit is .75 hours). And many committee meetings are webcast live so you can earn free credit without leaving your office or home (only live webcasts count for credit, not archived meetings). Finally, all of our committee meetings are free, thus this is a great way to earn MCLE credits at no cost!

Confirmation of committee assignments and 2017-18 meeting date schedules were emailed to all committee members in August. Most committees have begun meeting again in September. For questions, call or email Awilda Reyes at 312/554-2134, areyes@chicagobar.org. Note: Members listed on committee rosters will receive direct emails regarding committee meetings, speakers, hand out materials, legislation, etc. However, you do not have to be listed on the committee roster to attend its meetings. ■

***Members may attend any committee meeting. Check the weekly CBA e-Bulletin which is emailed to all members every Thursday or visit www.chicagobar.org, Committees, Meeting Notices for a current list of meeting topics, speakers, MCLE credit and Webcast availability.***

## In-House Counsel Committee

Are you an in-house attorney, looking for opportunities to network and learn with other in-house attorneys? The YLS has recently launched an In-House Counsel Committee and is currently seeking new members. Bi-monthly, evening committee meetings will launch in October. To receive notice, visit www.chicagobar.org/committees and select "In-House Counsel Committee" under the YLS committee listing to join. Please email the committee Co-Chairs, Jane Mansell at Jane.Mansell@us.mcd.com and Joanna Rogow at jorogow@gmail.com with any suggestions or inquiries regarding the committee.

## Save on Hotel Bookings

CBA members can now save an average of 26% on hotel bookings through Hotel Engine, a private hotel booking platform that connects you to deeply discounted hotel rates at popular properties including Marriott, Hyatt, Westin and more. The digital platform and mobile app connect members to wholesale rates at more than 100,000 hotels across North America, South America, and Europe.

Top benefits include:

- An average savings of 26% off hotels, from boutique B&Bs to popular brands and resorts
- No contracts, annual fees, or spending minimums
- 24/7, U.S.-based customer support

Go to hotelengine.com/join/chicagobar to get started or call 866-782-9300 to learn more.


## Now save up to **49%** with UPS!
## All thanks to The Chicago Bar Association

Take advantage of new savings with UPS offered to you as a member of The Chicago Bar Association. We have recently enhanced our relationship with UPS in order to provide the best value to our members.

You can now save up to 49% off Express Shipping with the peace of mind that comes from using the carrier that delivers more packages on time than anyone. Simple shipping! Special savings! It's that easy! Just go to www.ups.com/savings for details or to enroll. For more information call (800)325-7000.

# Don't Go Bare

**Starting out? Moonlighting? Part-time? Malpractice insurance is NOT an unnecessary expense.**

- **You're still at risk**
- **Your referral partners are at risk**
- **Your relationships are at risk**

Protect your clients. Get covered with ISBA Mutual…**it's easier than you think.** We love smaller firms and we offer lawyers' malpractice insurance to new and part-time lawyers at an affordable price.

**ISBA Mutual**
Lawyers' Malpractice Insurance

**800 473-4722** **isbamutual.com**

# CLE & MEMBER NEWS

## New Chair/Vice-Chair Directory

All CBA and YLS committees will begin meeting in September. Enclosed in this issue of the **CBA Record** is a booklet listing our new committee chairs and vice-chairs, along with standard meeting dates. Weekly committee speakers, topics and MCLE credit availability will be sent to all members via the weekly ***CBA eBulletin,*** which is emailed every Thursday. This information can also be found at www.chicagobar.org/eBulletin or under Committees, Meeting Notices. Members may attend any meeting that interests them (i.e., you do not have to be on the committee roster to attend the meeting).

As a reminder, you can receive free Illinois MCLE credit by attending committee meetings that qualify. Most practice area committee meetings do qualify for about one hour of credit. You may attend in person or can view select committee presentations via Webcast at www.chicagobar.org.

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

## The CBA Needs Your Email Address

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

–Receive the ***CBA eBulletin*** every Thursday containing a list of the following week's committee meetings and speakers noting free MCLE credit, upcoming seminars, networking events and important news about the Association.

–Receive timely notices of your committee meetings, topics and speakers.

–Cut down on the amount of mail and faxes the CBA sends which helps lower these expenses and saves trees!

To notify us of your email address, call 312/554-2135 or send an email to info@chicagobar.org including your name, phone, email address and CBA member number. Please note that the CBA does not provide or sell member email addresses to outside entities nor will we bombard you with unnecessary emails. Thank you! ■

## Resources for New Lawyers

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

For more information, go to www.chicagobar.org ■

## Save 15% on On-demand Legal Research and Writing Services

With more than four decades of success providing expert level research, case-specific analysis and accurate writing solutions to attorneys nationwide, the team of experienced attorneys at LegalResearch.com now offers discounted services to CBA members–on your terms, your schedule and your budget.

Visit www.legalresearch.com/CBA for more information or call 844-638-6733 for a free consultation. ■

The CBA is your local spot for MCLE

**Register for a Seminar Today**

**312/554-2056**

**www.chicagobar.org**

## Is This Your Last Issue?

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

Don't miss out on: free CLE seminars –enough to fulfill your MCLE requirements, live and webcast options; free MCLE credit through noon hour committee meetings-attend live or via webcast; free online MCLE credit tracker: unlimited CLE of your choice only $150 now through May 2018: new law practice management and technology software training, web resources and low cost office consulting; free practice area email updates: networking and business development opportunities; free solo/small firm resource portal; career resources; member discounts and more. Plus, your membership helps strengthen the CBA's efforts to improve the administration of justice in Illinois and provide legal services to the disadvantaged.

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

The Chicago Bar Association

# MEMBERSHIP EXCLUSIVES

Savings and more!

**Alliant Credit Union**
800-328-1935 x8616 • www.alliantpromos.org/cba
Below-market loan rates, above-market rates on savings, IRAs, certificates and HSAs, and more.

**Avis Car Rentals**
800-698-5685 • www.avis.com/chicagobar
Use the Avis Worldwide Discount (AWD) # A851600 every time you rent to receive up to 25% off.

**Budget Car Rentals**
800-455-2848 • www.budget.com/chicagobar
Use your Budget Corporate Discount (BCD) # T720200 every time you rent to save up to 20%.

**Credible Student Loan Refinancing**
866-540-6005 • www.credible.com/partners/Chicagoar
Fill out one form to receive personalized offers from multiple lenders, and compare them side-by-side on your dashboard.

**Hotel Engine**
866-782-9300 • hotelengine.com/join/chicagobar
Save an average of 26% at more than 100,000 hotels across North America, South America, and Europe.

**LawPay/Credit Card Processing**
866-376-0950 • www.lawpay.com/cba
LawPay provides attorneys with a secure, online way to accept credit cards in their practice. Members get first 3 months free.

**LexisNexis**
312-385-9706 • www.lexisnexis.com/bars
Get valuable member benefit discounts and legal resources to help you excel including solo/small firm member pricing.

**Magazine Subscriptions** - Lowest Prices Guaranteed
800-289-6247 • www.buymags.com/chbar
Get low professional rates on magazine subscriptions.

**National Purchasing Partners**
800-810-3909 • mynpp.com/association/chicago-bar-association
Discounts for your firm and its employees on Expedia, BestBuy, Office Depot, DocuSign, Verizon (if eligible) and more.

**United Parcel Service**
630-628-4159 • www.savewithups.com/cba
Save up to 49% on shipping with preferred rates.

## Law Practice Management & Technology Discounts:

**BlueTie**
Securely find and retrieve client information anytime, anywhere. Members get a 10% discount. www.bluetie.com/technology-innovation/bluetie-vault-for-law-firms or 800-BLUETIE

**Citrix ShareFile**
A cloud-based storage service that offers secure file sharing. Members get a 10% discount for life. http://sf-mktg-pages.sharefile.com/Chicago-Bar-Association-LP.html or 800-441-3453

**Cosmolex**
All-in-one legal practice management software. Members save 10%. 866-878-6798

**EsqSites**
ESQSites offers simple to use website platforms and hosting. Members get up 25% discount on setup fees with code “CBA.” 877 SITES 123 or www.esqsites123.com

**LegalResearch.com**
Research, case-specific analysis and accurate writing solutions. Members save 15% on on-demand legal research and writing services. www.legalresearch.com/CBA or 844-638-6733

**MyCase**
A web-based legal practice management software that covers all the daily functions of the modern law office. Members get a 10% lifetime discount. http://bit.ly/ChicagoBarAssoc or 800-571-8062

**PacerPro**
Use PACER? Get PacerPro, the service used by top litigation firms nationwide. Members receive a special discount. www.pacerpro.com/accounts/chicagobar

**PracticePanther**
Easy to use case management programs for the modern attorney. Members get a 15% lifetime discount. www.practicepanther.com/chicago-bar-member-benefit or 800-856-8729

**Rocket Matter**
A total legal practice management cloud-based platform. Members get a 15% lifetime discount on a month-to-month subscription. www.rocketmatter.com/chicagobar or 877-785-8981

**Ruby Receptionist**
Creating real, meaningful connections with your English and Spanish-speaking callers. Members receive exclusive pricing. www.callruby.com/chicagobar or 866-611-7829

**Smokeball**
Smokeball empowers the small law firm to manage its emails and documents in the cloud. Members get 50% off the onboarding fee. www.smokeball.com/chicago-bar-association or 855-668-3206

**www.chicagobar.org/save**

# Chicago Bar Foundation Report

The Chicago Bar Foundation Ensuring access to justice for all

## Eight Attorneys Recognized for Outstanding Work at the CBA and CBF Pro Bono and Public Service Awards Luncheon

# Honoring Careers of Dedication and Service

(Clockwise from top left) Event co-chair David Bamlango; award recipients Gary Wachtel, Trisha Rich, and Sal Lopez; event co-chair Susan Lees; award recipients Sheri Mecklenburg, Dan Lesser, Sarah Hess, Howard Rubin, and Kathleen Robson Gordon.

Each year, the CBA and CBF recognize several unsung heroes of the legal profession who selflessly devote their time and energy towards fighting for justice on behalf of low-income and disadvantaged people. On July 17th, Chicago's legal community gathered at the 19th Annual Pro Bono and Public Service Awards Luncheon to recognize and celebrate eight extraordinary attorneys. The 2017 award recipients represent a broad cross-section of Chicago's legal community, but they share an unflagging commitment to advancing access to justice and inspiring those around them to follow their lead.

Through their tremendous work, the award recipients have touched many lives. They have represented children and families facing health-related legal problems, victims of domestic violence and rape, and low-income people facing foreclosure and

Sarah Hess accepts the Anderson Fellowship from event co-chair David Bamlango.

Morsch Award recipient Dan Lesser (left) chats with CBA Executive Director Terry Murphy (center) and Tom Morsch (right).

bankruptcy, among many other vulnerable Chicagoans. Luncheon co-chairs David Bamlango of DLA Piper LLP (US) and Susan Lees of Allstate Insurance Company presented the awards in front of more than 700 members of the Chicago legal community at the Fairmont Hotel Chicago. ■

**For bios of the 2017 honorees or to learn more about the individual awards, visit chicagobarfoundation.org/awards**

## Save Money on CBA Member Discount Programs

Save on Lexis, client credit card processing, virtual office receptionists, student loan rates, car rentals, UPS, magazine subscriptions, legal software and more. Visit www.chicagobar.org for more information and links to our discount providers. These programs have been negotiated to offer you savings and special offers as a value-added benefit of your CBA membership. Make the most of your membership investment and check out these savings!

## Congratulations to the Recipients of the 2017 Pro Bono & Public Service Awards

*The Kimball R. Anderson and Karen Gatsis Anderson Public Interest Law Fellowship:*
Sarah Hess, Legal Council for Health Justice

*The Exelon Outstanding Corporate Counsel Award:*
Gary Wachtel, Discover Financial Services

*The Richard J. Phelan Public Service Award:*
Sheri Mecklenburg, United States Attorney's Office

*The Edward J. Lewis II Pro Bono Service Award:*
Kathleen Robson Gordon and Salvador J. Lopez, Robson & Lopez LLC

*The Maurice Weigle Exceptional Young Lawyer Award:*
Trisha M. Rich, Holland & Knight LLP

*The Leonard Jay Schrager Award of Excellence:*
Howard M. Rubin, DePaul University College of Law

*The Thomas H. Morsch Public Service Award:*
Daniel J. Lesser, Sargent Shriver National Center on Poverty Law

# MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

The CBA honored the distinguished career of Seventh Circuit Court of Appeals Judge Ann Claire Williams at a September 15 luncheon at the Standard Club. Pictured are (left to right) CBA Executive Director Terry Murphy, Seventh Circuit Court of Appeals Judge William J. Bauer, Judge Williams, CBA President Judge Thomas R. Mulroy, and U.S. District Court Judge Sharon Johnson Coleman. Photo by Bill Richert.

Don't miss the 2017 Justice John Paul Stevens Awards Luncheon on Tuesday, October 10, 2017 in the Grand Ballroom at the Standard Club. This year's honorees include: Chief Judge of the U.S. District Court **Ruben Castillo, Robert A. Clifford,** Illinois Appellate Court Justice **Nathaniel R. Howse, Jr.**, U.S. District Court Judge **Joan Humphrey Lefkow, Richard J. Prendergast, Larry R. Rogers, Sr., Ronald A. Safer,** Illinois Supreme Court Justice **Mary Jane Theis,** and **Dan K. Webb.** A reception for the award winners will begin at 11:30 a.m. in the Living Room, second floor, at the Standard Club, followed by the luncheon at noon. Tickets for this year's luncheon are $75 per person or $750 for a table of 10. We are all hoping that Justice Stevens will be able to join us at this year's Awards Luncheon. For more information or to make reservations, contact CBA Events Coordinator **Tamra Drees** at tdrees@chicagobar.org or 312/554-2057.

### CLE in Rome, Italy, April 16-19, 2018

CBA President **Thomas R. Mulroy** and the Rome Planning Committee have put together another outstanding international CLE program which will be held in Rome, April 16-19, 2018. A number of prominent lawyers from Rome will participate in the program including**: Alex Guttieres**, Guttieres & Grillandini; **Robert Jacchia**, DeBerti Jacchia Franchini Forlani; **Giovanni Salvi**, Magistrate and Prosecutor General; and **Carlo Dalla Vedova** who represented Amanda Knox. The Rome program will provide members with four hours of Illinois MCLE credit and will feature presentations from Carlo Dalla Vedova about the Amanda Knox trial; Rome's Chief Prosecutor who will discuss mafia prosecutions; a speaker from the American Embassy who will address immigration issues in Italy and Europe; and a discussion about the changing role of women lawyers in Italy's legal system. Tonucci & Partners, one of Italy's largest and most prominent law firms, will host the CLE sessions at their spectacular office building in Rome. Planned events include a welcome reception, a tour of the famous Borghese Museum and a closing dinner at beautiful Casina Valadier. For more information about the CLE in Rome program, contact Tamra Drees at tdrees@chicagobar.org. Look for the CBA's CLE in Rome announcement which will soon be emailed to members.

### CBA Membership Drive

The Association is a strong advocate and spokesperson for the legal profession and for the judiciary in our city, state and nation. The CBA's many outstanding programs and services significantly benefit the bench, the bar and our community. The Association's 95 general bar and 27 Young Lawyer Sections committees cover virtually every practice area and, our service committee's help underpin the Association's extensive legislative programming and public education/public service programming. For young lawyers the CBA's YLS offers the best value, and the top educational and social programming of any YLS in the country.

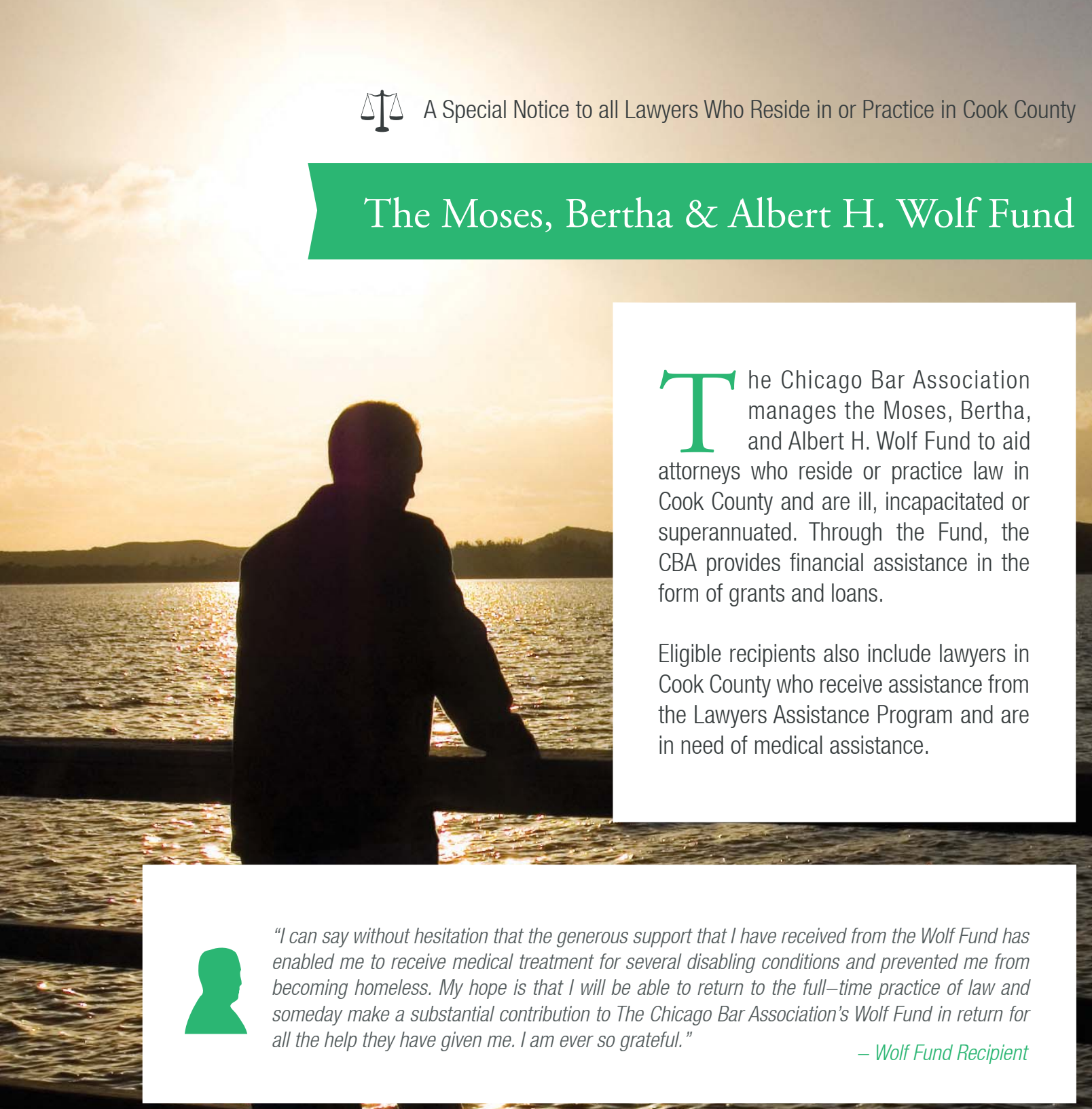
During the past year, the CBA held a major day-long conference featuring national and local experts on "Curbing Chicago's Violence." The Association is sponsoring a "Lawyers Call To Action" program on November 3, which will spotlight legal help that community organizations need with the goal of connecting them with volunteer lawyers who can help.

Last June, President **Thomas R. Mulroy** held a symposium on Illinois' mental health crisis featuring leading experts from the legal and medical professions and from our leading mental health organizations serving people in the greater metro area. Mental health can and often does intersect with the criminal justice system and the June program identified a number of important areas where the legal profession can play a leadership role. Two such areas where the CBA can be of significant help involve legislation and court rules.

Our Membership campaign, led by **Timothy J. Tomasik,** will be asking every member during the year to invite five (5) of their partners, associates and/or lawyer

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

# The Moses, Bertha & Albert H. Wolf Fund



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

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

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

*– Wolf Fund Recipient*

THE CHICAGO BAR ASSOCIATION

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

The CBA held its 94th Annual Golf Outing on Wednesday, September 13 at the Harborside International Golf Course in Chicago. Current President Thomas R. Mulroy welcomed past Presidents, CBA members, and friends, and everyone enjoyed a picture-perfect Chicago afternoon. *Thank you to our sponsors: ATG Legal Serve, Attorney Protective, Attorneys' Title Guaranty Fund, Inc., CBA Insurance Agency, Davis & Hosfield Consulting LLC, DTI, File & Serve Xpress, Hunken Financial Group, IX Solutions, Legal Copy Services, Old Republic Title, Ripon Printing, Tomasik Kotin Kasserman, US Legal Support, and to Donor: Record Copy Services.* Photo by Bill Richert.

friends who are not already members to get involved in the important work of the Association. There are a myriad of programs, committee and community service opportunities where your help is needed and can make a difference.

### 94th Annual Bar Show

The curtain rises on this year's Bar Show "Much To Sue About Nothing!" on Wednesday, November 30 at DePaul's Merle Reskin Theater. The show will run five days and will close with a Matinee on Sunday, December 3. The Bar Show has been entertaining lawyers, their families and clients for almost a century. It is an irreverent musical parody written and performed entirely by lawyers and judges–all members of the CBA. The Bar Show is a holiday classic that you won't want to miss. The show lampoons international, national and local personalities who have made the news during the past year. It's all in good fun and the members who perform in the show, while not professional actors and actresses, are very talented and never fail to wow the audience. Laughter is great medicine and the Bar Show is guaranteed to bring some uncontrollable belly laughs. Don't miss this year's show. Main floor tickets are $45 per person and Mezzanine seats are $35 per ticket. A $5 discount will be given for tickets ordered before October 6 so get your orders by mail or at barshow@chicagobar.org. The discount does not apply to mezzanine seats.

### Congratulations

**Aurora Abella Austriaco** became Illinois' State Delegate at the ABA's Annual Meeting in New York City. Austriaco was also elected Secretary of the National Association of Bar Presidents…Congratulations to U.S. District Court Judge **Milton I. Shadur** on his retirement from the Court…CBA Past President **Robert A. Clifford** received the L. Sanford Blustin Award from the Northwest Suburban Bar Association…**Zachary T. Fardon** will lead King & Spalding's new Chicago office… **Joseph A. Power, Jr.** has become President of the prestigious Inner Circle of Advocates…**Amanda L. Zink** is a new associate at Lyndsay A. Markley, Ltd…**Michael F. Bonamarte** is the new President of the Justinian Society of Lawyers.

Author/advocate **Joel Cohen** will speak to the Appellate Lawyers Association about his book: *Blindfolds Off: Judges on How They Decide…***Scott Koslov** is Chairing the ABA's 2017 Unauthorized Practice of Law school, which will be held at the CBA Building at the end of October… **Kerry A. Peck** spoke on advanced planning at the Northbrook Inn Memory Care Center…Judge **Laura Edidin** is the new president of the Jewish Judges Association. Judge Edidin presented the following awards at its 15th Annual Justice, Lifetime Achievement and Public Service Award and Installation dinner: Illinois Supreme Court Justice **Thomas Kilbride** received the Judge Richard J. Elrod Public Service Award, Judge **James P. Flannery, Jr.,** Presiding Judge of the Circuit Court's Law Division, received the Lifetime Achievement Award, and Illinois Appellate Court Justice **John B. Simon** received the Hon. Seymour Simon Justice Award…**Robert F. Harris,** Cook County Public Guardian and CBA Board member, was appointed a Circuit Court Judge…Illinois Supreme Court Justice **Anne M. Burke** and Judge **Michael Chmiel** were honored by the Advocates Society at the groups summer Judicial Reception…**Peter V. Baugher** has opened Baugher Dispute Resolution LLC.

**Katie C. Liss,** past Chair of the CBA's YLS, accepted the ABA Young Lawyer Division's First Place Awards for Best Comprehensive Programming, Best Diversity programming, Best Service to the Bar, and Best Service to the Public and Most Outstanding Single Project at the ABA's Annual Meeting in August…**Yana Karnaukhov** was selected as a 36 under 36 honoree by the Jewish United Fund…Cook County Sheriff **Thomas J. Dart** will be the keynote speaker at Lawyers Assistance Program's (LAP) Annual Dinner on November 15. Honorees at this year's LAP dinner include: **Jonathan Beitner,** Presidents

# CBA CAREER CENTER

Your destination for exciting legal job opportunities and the best resource for qualified candidates within the legal industry.

## Employers:

- EMAIL your job directly to job seeking legal professionals
- PLACE your job in front of our highly qualified members
- SEARCH our resume database of qualified candidates
- MANAGE jobs and applicant activity right on our site
- LIMIT applicants only to those who are qualified
- FILL your jobs more quickly with great talent

## Legal Professionals:

- POST multiple resumes and cover letters or choose an anonymous career profile that leads employers to you
- SEARCH and apply to hundreds of fresh jobs on the spot with robust filters
- SET UP efficient job alerts to deliver the latest jobs right to your inbox
- ASK the experts about your career issues


www.chicagobar.org/careercenter

Award; **Karen Munoz, Madeleine Sharko** and **Stephanie Stewart,** Carl Rolewick Award; Illinois Appellate Court Justice **Jesse Reyes,** Crowley Award; Judge **Steve Balogh, Keith Morse,** and Illinois Appellate Court Justice **Kathryn Zenoff** will receive the Howlett Award…**Charles S. Beach** was appointed to the Circuit Court of Cook County…Arnstein & Lehr LLP has merged with Philadelphia's Saul Ewing to become Saul Ewing Arnstein & Lehr… **Craig Hanson,** Supervising CARPLS Attorney has retired…**Mary Melcher** was honored by the National Bar Association at the groups convention in Toronto… Baker & McKenzie received The Family Defense Center's Outstanding Pro Bono Service Award…**Kristen E. O'Neill** has become an associate at Levin Ginzburg… **Stephen P. Blonder** has been named to Much Shelist P.C.'s management committee…**Christine Mulheim McKnight** was named managing partner at Kaufman & Company's new Chicago office… **Zaldwaynaka L. Scott,** partner at Foley & Lardner, was appointed to the screening committee for the Northern District of Illinois Judiciary…**David I. Feldman** was named partner at Strauss & Malk, LLP…**Antonio (Tony) M. Romanucci,** Romanucci and Blandin, was nominated as second vice-president of the Illinois Trial Lawyers Association… **Christina M. Chen** is the new managing partner at Buckley & Sandler's Chicago office…**Elizabeth Khalil,** partner at Dykema Gossett PLLC, was spotlighted in Bloomberg BNA.

## Law At The Library

**The Chicago Bar Association is proud to partner with the Chicago and Evanston public library systems to offer a free monthly legal information series offering practical insight for the general public into a wide variety of everyday legal topics.**

**CBA members will offer their legal expertise in free seminars that will be held each month at Chicago's Harold Washington Library and the Evanston Public Library. The September sessions will provide up-to-date information on child support and related issues.**

**The sessions are free and registration is not required. For a complete schedule of dates and topics for 2017-2018 go to www.chicagobar.org.**

### Condolences

Condolences to the family and Friends of: **Michael A. Ficaro, Scott L. Carey,** Judge **John Hourihane, Morgan J. Ordman,** and **Peter E. Pallis.** ■



LAP

LAWYERS' ASSISTANCE PROGRAM

# The Chicago Bar Association presents the 94th Annual Bar Show

## MUCH TO SUE ABOUT NOTHING!

Nov. 30 - Dec. 3, 2017 • Thu-Sat 7:30pm • Sun 2:00pm
DePaul Merle Reskin Theatre • 60 E. Balbo Ave., Chicago

# Email/Fax/Mail-in Ticket Order Form

Join the Chicago Bar Association for an evening or afternoon of musical entertainment at the 94th Annual Bar Show! Each December, the Association has parodied local and national legal, political, sports, and showbiz figures. This year, the show once again promises to deliver hilarious parodies of political peccadillos, governmental gaffes, legal lampooning, and celebrity spoofs.

**Main Floor Tickets: $45 / But just $40 if ordered by October 6, 2017 or for 10 or more**
**Mezzanine Tickets: $35 (no early bird or group discount)**

To order your tickets,
visit www.barshow.org or call the box office at 312-554-2064 *anytime,*
***OR*** complete this form and submit it by *no later than November 3, 2017*
(i) as PDF by e-mail to Awilda or Michele at barshow@chicagobar.org,
(ii) by fax to the CBA at 312-554-2054, or (iii) by mail to the CBA,
Attention: Bar Show, 321 S. Plymouth Court, Chicago, Illinois 60604-3997.

You will receive an e-mail confirmation of your order.

***Please complete all applicable fields below.***
***Credit card payment only. All sales are final.***

**2017 BAR SHOW TICKET ORDER**

| | # Tickets Main Floor @ $45* | # Tickets Mezzanine @ $35 | Total Amount Due |
|---|---|---|---|
| Thursday, November 30 | _____ | _____ | $_____ |
| Friday, December 1 | _____ | _____ | $_____ |
| Saturday, December 2 | _____ | _____ | $_____ |
| Sunday, December 3 | _____ | _____ | $_____ |
| | | **ORDER TOTAL:** | $_____ |

*Main floor is only $40 if ordered by Oct. 6, or for 10 or more.

***NOTE SHOW TIMES:***
*Thu-Sat evenings: 7:30 p.m.*
*Sunday matinee: 2:00 p.m.*

_____
Name (as it appears on credit card) Phone

_____
Mailing Address

_____
City State Zip

_____
E-mail address (please write clearly)

☐ Visa ☐ Discover
☐ MasterCard ☐ American Express

_____
Credit Card # Exp. Date

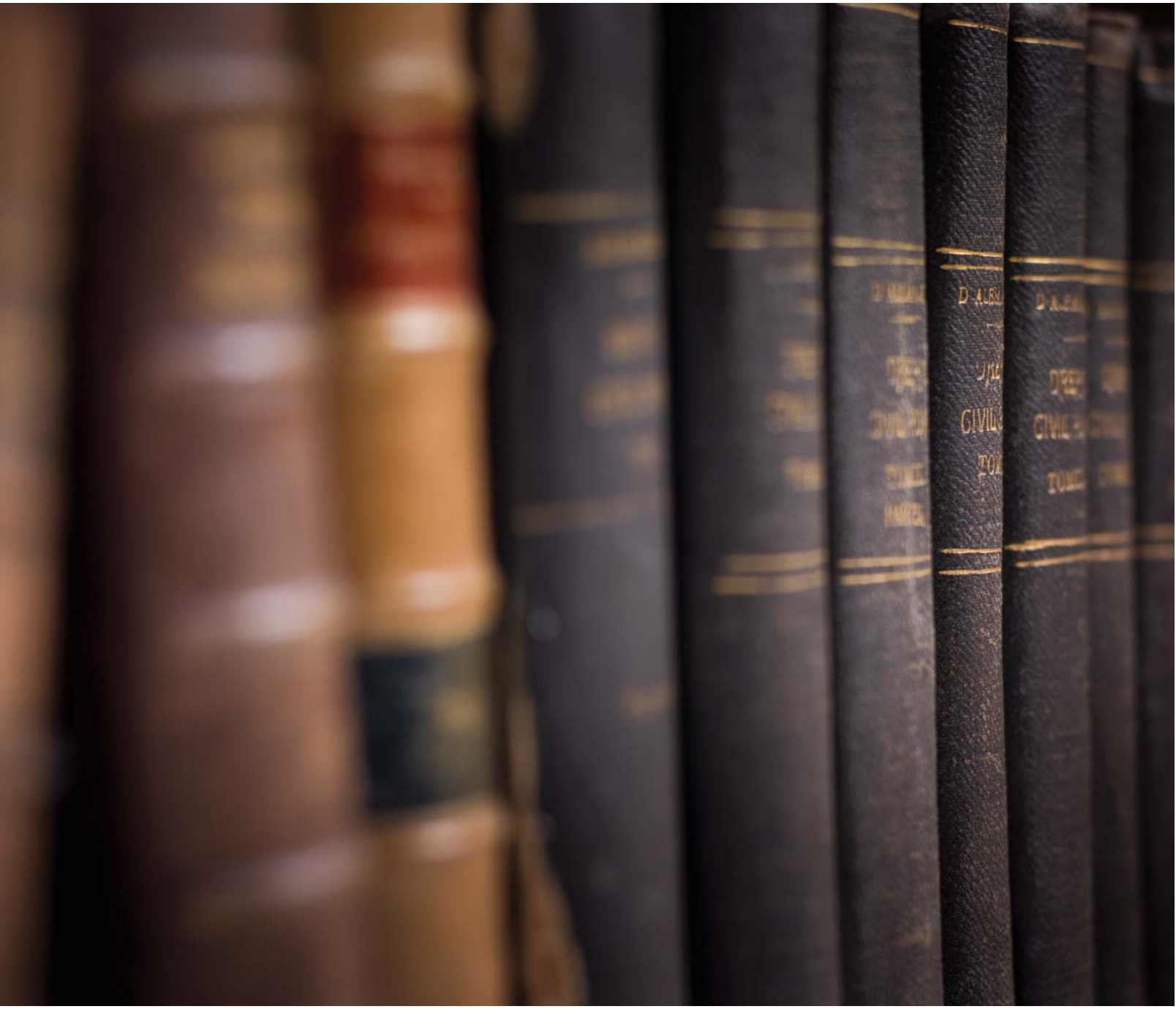
_____
Cardholder Signature Required

CBAREC 0917

By Richard Lee Stavins

Navigating the Strict Time Limit of **Section 2-1401**

# Attacking a Judgment More Than Two Years After Entry



**A perplexing problem for attorneys is how to attack a default judgment more than two years after it was entered, given section 2-1401's strict two year time limit. Here are some ideas on what to do.**

A DISTRAUGHT CLIENT COMES TO YOU IN A panic. He was served with a citation to discover assets relative to a judgment by default that was entered against him four years ago, and he wants you to take out your magic wand and make the citation and the judgment go away. You may not know much about attacking a judgment, but you do know that 735 ILCS 5/2-1401 is the exclusive remedy for attacking a judgment more than 30 days after entry, that section 2-1401 contains a strict two year time limit, and that the judgment against your client is far more than two years old. Things are not looking good.

Essentially, there are two potential solutions to the problem: the void judgment solution and the 304(a) solution.

### The Void Judgment Solution

If you can make the default judgment void *ab initio*, the two year limitation will not apply. Paragraph (f) of section 2-1401 says that "[n]othing contained in this Section affects any existing right to relief from a void judgment," and paragraph (a) of section 2-1401 abolishes all other common law forms of relief from a void judgment. 735 ILCS 5/2-1401. Based on paragraph (f), the Supreme Court and Appellate Court have directed that a challenge to a judgment after 30 days, contending that the judgment was void, must be brought under section 2-1401(f). *Sarkissian v. Chicago Board of Education*, 201 Ill.2d 95, 104 (2002); *Onewest Bank, FSB v. Topar*, 2013 IL App (1st) 120010, ¶ 14, fn.2.

However, a section 2-1401(f) petition based on voidness markedly differs from a conventional section 2-1401(a) petition. A voidness petition may be brought at any time, even after the two year limitation in 2-1401 has expired, and it need not or show a meritorious defense or due diligence. *In re Marriage of Verdung*, 126 Ill.2d 542, 547 (1989); *Sarkissian,* 201 Ill.2d at 103-04 (2-1401 petition, challenging service of summons on defendant held timely filed seven years after judgment entered); *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2017 IL 117720 (attack on judgment held valid after 12 years); *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294, 308 (1986); *Onewest Bank*, 2013 IL App (1st) 120010, ¶ 14; *Pekin Insurance Co. v. Rada Development Co.*, 2014 IL App (1st) 133947, ¶ 19; *In re Marriage of Parks*, 122 Ill.App.3d 905, 909 (2d Dist. 1984); *People ex rel McGraw v. Mogilles*, 136 Ill.App.3d 67, 72 (2d Dist. 1985). The voidness petition need only show one thing: that the judgment is void.

So, how do you turn what appears on its face to be a valid and subsisting judgment into a void judgment. The answer: attack the jurisdiction of the court.

For any judgment to be valid, the Circuit Court must always have two forms of jurisdiction: jurisdiction of the subject matter of the litigation and personal jurisdiction over the parties. *State Bank v. Thill*, 113 Ill.2d 294, 308 (1986); *In re Marriage of Verdung*, 126 Ill.2d 542, 547 (1989); *Mortgage Electronic Systems. v. Gipson*, 379 Ill.App.3d 622, 627 (1st Dist. 2008). So long as the litigation involves a justiciable matter (and what litigation doesn't?) the Circuit Court has subject matter jurisdiction. Ill. Const., Art. 6, §9. On the other hand, jurisdiction over the parties–also referred to as personal jurisdiction or *in personam* jurisdiction–is fact dependent in each case. To successfully attack *in personam* jurisdiction, attack the service of process.

"Service of summons upon a defendant is essential to create personal jurisdiction of the court." *J.C. Penny Co. v. West*, 114 Ill. App.3d 644, 646 (1st Dist. 1983). Indeed, a court acquires *in personam* jurisdiction over a defendant *only* by effective service of process on the defendant in a manner prescribed by statute or by the defendant's consenting to jurisdiction by filing an appearance before entry of judgment. *In re Luis R.*, 239 Ill.2d 295, 305 (2010); *In re M.W.*, 232 Ill.2d 408, 426 (2009); *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294, 308 (1986); *State Farm Mutual Automobile Insurance Co. v. Grater*, 351 Ill.App.3d 1038, 1040 (2d Dist. 2004).

Where a defendant was not properly served with summons, the court has no personal jurisdiction over that defendant, and any judgment entered against that defendant is void *ab initio*, even if the defendant was aware of the proceedings. *Marriage of Verdung*, 126 Ill.2d at 547; *State Bank of Lake Zurich*, 113 Ill.2d at 308; *Mugavero v. Kenzler*, 317 Ill.App.3d 162, 164 (2d Dist. 2000); *John Isfan, Inc. v. Longwood Towers, LLC*, 2016 IL App (1st) 143211, ¶ 37; *White v. Ratcliff*, 285 Ill.App.3d 756, 763-64 (2d Dist. 1996); *Citimortage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 12; *Gacki v. LaSalle Nat'l Bank*, 282 Ill.App.3d 961, 965 (2d Dist. 1996); *Sutter of Ekong*, 2013 IL App (1st) 121975, ¶¶ 24, 25; *OneWest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187, ¶ 27; *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill.App.3d 993, 1001 (2d Dist. 1988).

"Failure to effect service as required by law deprives a court of jurisdiction over the person and any default judgment based on defective service in void." *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12; *U.S. Bank Nat'l Assn'n v. Johnston*, 2016 IL App (2d) 150128, ¶ 28; *TCF Nat'l Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 27; *Illinois Service Federal Savings & Loan Assn'n of Chicago v. Manley*, 2015 IL App (1st) 143089, ¶ 36. Lack of personal jurisdiction deprives the court of the ability

to impose a judgment on any party over whom it lacks that personal jurisdiction. *In re M.W.*, 232 Ill.2d 408, 426-27 (2009).

A judgment that is void for lack of *in personam* jurisdiction may be attacked at any time and place, in any court, directly or collaterally, even for the first time on appeal. *Marriage of Verdung*, 126 Ill.2d at 547; *Sarkissian*, 201 Ill.2d at 103; *City of Chicago v. Fair Employment Practices Com'n.*, 65 Ill.2d 108, 112 (1976); *People v. Thompson*, 209 Ill.2d 19, 25 (2004); *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 45; *Mugavero*, 317 Ill.App.3d at 166; *Lewis v. West Side Trust & Savings Bank*, 377 Ill. 384, 385 (1941); *J.C. Penny*, 114 Ill.App.3d at 646. The void-for-lack-of-jurisdiction argument is so important and so crucial that the waiver rule does not apply. *Mugavero*, 317 Ill.App.3d at 166.

If the purported service upon the defendant was by a private person and not by the local sheriff, the common law presumption of validity which attaches to personal service by the sheriff does not apply. *Mitchell v. Tatum*, 104 Ill.App.3d 986, 989 (1st Dist. 1982). Even in the case of service by the sheriff, if the service is substituted service on a member of the household pursuant to 735 ILCS 5/2-203(a), the presumption of validity of the service does not apply. *Prudential Property & Casualty Insurance Co. v. Dickerson*, 202 Ill.App.3d 180, 184 (1st Dist. 1990).

Sometimes it is possible to establish that the judgment creditor or the judgment debtor is not a recognized legal entity, which also renders the judgment void. All parties to a lawsuit must be either natural or artificial persons. *Bavel v. Cavaness*, 12 Ill.App.3d 633, 637 (5th Dist. 1973). There must be a plaintiff and a defendant, and each must be either a natural or artificial person in being. *Knowles v. Mid-West Automation Systems, Inc.*, 211 Ill.App.3d 682, 688 (1st Dist. 1991). Where this rule is violated, and a judgment is entered involving an entity that is not recognized as a legal entity, the judgment is void *ab initio*. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 22 (dead person); *Capital One Bank, N.A. v. Czekala*, 379 Ill.App.3d 737, 743 (3d Dist. 2008) (non-existent business); *Reed v. Long*, 122 Ill.App.2d 295, 297 (4th Dist. 1970) (dead person); *Tyler v. J.C. Penny Co., Inc.*, 145 Ill.App.3d 967, 972 (4th Dist. 1986) (common description of a group of stores); *Lewis v. West Side Trust & Savings Bank,* 377 Ill. 384, 385 (1941) (partnership, under then-existing law, changed by 735 ILCS 5/2-411). "A lawyer should know his client when he files his suit…. A suit brought in a name which is not that of a natural person, a corporation or of a partnership is a mere nullity… and the whole action fails." *Alton Evening Telegraph v Doak,* 11 Ill.App.3d 381 (5th Dist. 1973).

Another possibility is that if the named plaintiff or defendant is a purported corporation or limited liability company, it might actually be merely an assumed name for the corporation or LLC, and not itself a corporation or a limited liability company. Arguably, a corporate assumed name is *not* a legal entity. Although a corporation may adopt an assumed name [805 ILCS 5/4.15(a)], the corporation must sue in its own corporate name and may not sue in its assumed name. By statute, a corporation is authorized "to sue and be sued, complain and defend, in its corporate name." 805 ILCS 5/3.10(b); *Roe v. Catholic Charities of the Diocese of Springfield, Illinois*, 225 Ill. App.3d 519, 528 (5th Dist. 1992). There is no statutory or common law authority for a corporation to sue or be sued, or to complain or defend, in an assumed name or any name other than its full, proper corporate name. 805 ILCS 5/3.10(b).

### The 304(a) Solution

Supreme Court Rule 304(a) explicitly states that if a lawsuit involves multiple parties or multiple claims for relief, a judgment which disposes of anything less than all of the parties and all of the claims, rights and liabilities is not enforceable or appealable and is "subject to revision at any time"–unless and until the court either finds that there is no just reason for delaying enforcement or appeal of the order or enters an order which disposes of all parties and all claims, rights and liabilities.

This means that without a so-called 304(a) finding, if a judgment is entered which is valid on its face, and for which the Circuit Court had jurisdiction, but there remains a lingering undisposed party or claim, the judgment cannot be enforced, cannot be appealed, and is subject to revision at any time. Crucially, because the judgment is subject to revision at any time, the 30 days to attack the judgment under 735 ILCS 5/2-1301(e) and the two years to attack the judgment under 735 ILCS 5/2-1401 do not begin to run until either the court finds that there is no just reason

for delaying enforcement or appeal of the order or enters an order which disposes of that last lingering party and claim. *Kral v. FredHill Press Co.*, 304 Ill.App.3d 988, 992-94 (1st Dist. 1999); *Mares v. Metzler*, 87 Ill.App.3d 881, 883-85 (1st Dist. 1980); *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill.2d 496, 502-03 (1990).

Armed with this body of law (the *Kral, Mares,* and *Dubina* decisions), you need to examine every pleading in the case and find that one unadjudicated claim or party. It might be, as in *Mares*, a defendant who was never served with process, or, as in *Kral*, a defendant who filed bankruptcy and whom everyone forgot about. It might be a bogus counterclaim filed by some defendant that everyone knows was filed only as a bargaining chip and that everyone disregarded. Or perhaps you will find that the default judgment was entered against your client on less than all counts of the complaint, and there remains a lingering count that was never disposed of. Without a 304(a) finding, any one of those things will trigger the *Kral-Mares-Dubina* doctrine and make your motion to vacate the judgment timely.

This does not necessarily mean that the judgment *must* be vacated, only that the motion to vacate the judgment is timely no matter when it is filed. *Kral*, 304 Ill.App.3d at 994. You will still have to convince the court that your client is such a sterling fellow that he deserves to have the judgment vacated. But, it does enable you to circumvent the two year limitation of 735 ILCS 5/2-1401, which otherwise would have been an insurmountable hurdle.

### Service of the 2-1401 Motion

Ordinarily, a section 2-1401 motion must be served by summons, registered mail or publication. S. Ct. Rules 105(b), 106. However, if an attorney for the respondent on a 2-1401 motion is actively representing the respondent in ancillary matters before the court in the same case, such as post-judgment collection proceedings, the motion may simply be mailed by first class mail to that attorney. *Onewest Bank, FSB v. Topar*, 2013 IL App (1st) 120010, ¶ 19; *Welfelt v. Schultz Transit Co.*, 144 Ill.App.3d 767, 772-73 (1st Dist. 1986); *Public Taxi Service, Inc. v. Ayrton*, 15 Ill. App.3d 706, 712 (1st Dist. 1973).

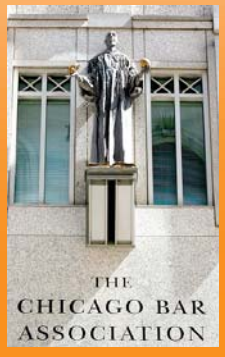
In our hypothetical at the outset of this article, there was indeed an ancillary matter pending before the court: the judgment creditor's attorney had issued a citation to discover assets pursuant to 735 ILCS 2-1402 (that's 1402, not 1401), and so you would simply serve your motion and notice of motion on her. ■

*Richard Lee Stavins is a shareholder in the law firm of Robbins, Salomon & Patt, Ltd. in Chicago. He concentrates his practice in trial and appellate litigation. He is a member of the CBA Tort Litigation Committee and serves on the* **CBA Record** *Editorial Board.*

#FBF #CBAHistory

## The Chicago Bar Association

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




## Pro Bono Support

Are you looking for a pro bono opportunity that fits your skills, interests and availability? The CBF Pro Bono Support Program is here to help connect you to meaningful pro bono volunteer opportunities that are a good fit for you. To learn more about potential volunteer opportunities, go to www.chicagobarfoundation.org/resources/pro-bono or Contact Angela Inzano at 312/554-4952 for assistance getting involved.

**Nielsen Career Consulting**

**Career Counseling For Attorneys**

Strategies and support for your career in or out of the law

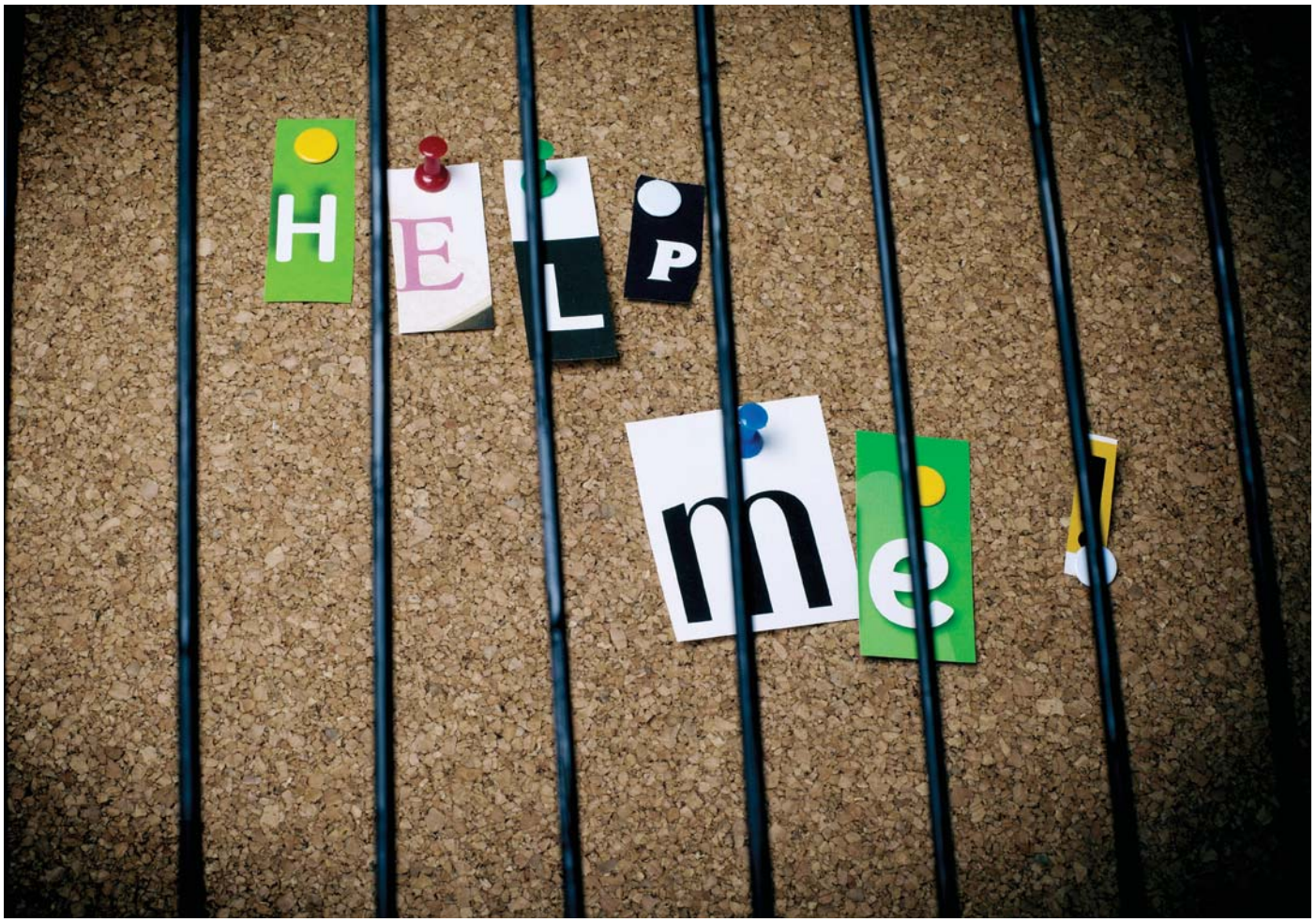
- 30 Years of Experience
- Over 3500 Clients

**Sheila Nielsen, MSW, JD**

The Park Monroe
65 E. Monroe St., Ste. 4301
Chicago, IL 60603
(312) 340-4433
www.nielsencareerconsulting.com

By Colin Quinn Commito

# A Letter from Jail




A handwritten letter on a lined sheet of paper slid across my desk as the senior partner inquired, "Commito, do we have a case here?" As a new associate in the law office of Luther Franklin Spence & Associates, I frantically skimmed the document for an answer. I could make something out: The author was an inmate in an Illinois correctional institution who had been tried twice in succession –an acquittal followed by a conviction for first degree murder. "Mr. Spence," I replied, "this is a double jeopardy case and one we have to take."

## The Facts

On the night of November 12, 2004 a gunfight broke out on Chicago's west side at a strip mall on 9th and Roosevelt. Cordelrow Brown ("Brown") was alleged to have fired a handgun at three young men who sat in a black SUV. The young men fired back and Mr. Brown fled. One bullet hit Terrell Spencer. Michael Dixon and Jarrett Swift went unscathed. But there was someone else.

A person sitting in a car nearby had been struck in the neck by a stray bullet. Mycal Hunter, an innocent bystander, would never again walk or breathe without the assistance of a ventilator. In fear of causing his death, Hunter's doctors decided not to remove the bullet lodged in his neck.

An investigation of the scene uncovered only one weapon; a 9.mm firearm fired by Dixon. Spencer, Dixon and Swift were not charged for their participation in the gunfight. Cordelrow Brown, however, was found, arrested and indicted for criminal offenses committed against each individual at the scene.

As to Spencer (who had been hit by a bullet) and Hunter (the bystander who was hit), Brown was charged with counts of attempted murder, aggravated battery with a firearm, aggravated discharge of a firearm and aggravated battery. With respect to Dixon and Swift (who were not hit), Brown was charged with counts of aggravated discharge of a firearm and aggravated battery.

### The First Prosecution

In December 2008, Mr. Brown waived his right to a jury, and a trial commenced before Judge Thomas M. Tucker in the Circuit Court of Cook County, Fourth District. The government elicited testimony from Dixon, Swift and Spencer identifying Brown as the initial shooter and used forensic evidence to persuade the judge that the bullets from three of the young men went one way while the bullets from Brown went another. Dixon fired shots away from Hunter and Brown shot in his direction. The government rested after arguing that Brown discharged the bullet that caused Hunter's paralysis. But the gun allegedly fired by Brown was not introduced into evidence and the bullet that struck Hunter remained lodged in his neck.

The defense then moved for a directed verdict, arguing that the government had failed to prove each offense charged as to Hunter beyond a reasonable doubt. The judge agreed. Motion granted. Brown was *acquitted* of all charges as to Hunter –attempted murder, aggravated battery with a firearm, aggravated discharge of a firearm and aggravated battery.

A different result obtained with respect to Dixon, Swift and Spencer. The Court found Brown guilty of the aggravated discharge of a firearm and aggravated battery with a firearm of Spencer. With respect to Swift and Dixon, Brown was convicted of the aggravated discharge of a firearm. Brown was sentenced to serve six years in the Illinois Department of Corrections.

### The Second Prosecution

Mycal Hunter died two years into Brown's sentence. Brown was then charged with first-degree knowing and felony murder. The counsel who secured Brown's acquittal in the first prosecution prepared to defend him a second time.

The second trial started in error. Brown's defense counsel did not file a motion to dismiss the indictment on the basis of a double jeopardy violation. The Fifth Amendment of the United States Constitution guarantees citizens the freedom from being tried twice for the same offense. U.S. Const., amend. V; Ill. Const. 1970, art. 1, § 10. As a result, the trial commenced without an interlocutory appeal to the First District Appellate Court of Illinois to resolve any issues of former jeopardy. Ill. Sup. Ct., R 604(f).

The government freely presented its former case against Brown anew. But this time, the government had newly discovered evidence: the bullet removed from Hunter's neck. Forensic testing showed that the bullet recovered from Hunter was not discharged from Dixon's gun. This "smoking gun" evidence was of little probative value, but managed to persuade the Judge.

Brown was found guilty on all counts for the first-degree knowing and felony murder of Hunter. A sentencing hearing was scheduled and his legal counsel withdrew.

Attempting to raise the issue of double jeopardy himself, Brown filed a *pro se* motion arguing that his lawyers were ineffective. I imagined him sitting at the law library reading through double jeopardy cases, treading water in an area of law that Chief Justice Rehnquist referred to as a "veritable Sargasso Sea that could not fail to challenge the most intrepid judicial navigator." *Albernaz v. United States*, 450 U.S. 333, 343 (1981). The Sargasso Sea has gained literary infamy due to its near impossible navigability and definition as the only sea defined by currents, not land. Unsurprisingly, Brown's motion was denied.

Brown then wrote the lined sheet of paper from jail that slid across my desk at the law office of Luther Franklin Spence & Associates.

### My Entrance

Upon reading Brown's letter, it was apparent to me that something was wrong. Though he had been tried twice for the same crimes, no one had raised the issue of double jeopardy. Brown himself had started the discussion, belying the old maxim about a fool for a client. But was it too late to raise double jeopardy? A waiver would end his case. It was up to me to get the issue on the record.

Just days away from Mr. Brown's sentencing hearing, I drafted and filed a post-trial motion to vacate his conviction on the basis of double jeopardy. Motion filed, motion denied. Brown was sentenced to natural-life in prison with no chance for of parole. At 25 years of age, he would die in jail.

There was one option left. I would press the issue again. With permission from Brown's family to appeal the case and authority to file and argue the case from Mr. Spence, my commitment to Brown in the intellectual tug of war with the double jeopardy clause began.

### The "Sargasso Sea"

The double jeopardy clause serves as protection against governmental abuse in the following circumstances: (1) a second prosecution for the same offense after conviction; (2) a second prosecution for the same offense after acquittal; and (3) multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). Seemed simple enough, and in fact, rather clear. Not so.

### The "Second Trial" Test

The double jeopardy clause prevents a second trial only when there has been a first. A truism at first glance, but there are complications. Unless jeopardy attaches and terminates in the first trial, the "double" drops off and there is just jeopardy with no constitutional implications. Jeopardy attaches the moment at which a defendant is at risk of being found guilty. *Serfass v. United States*, 420 U.S. 377, 388 (1975). Jeopardy terminates upon a final and substantive judgment of acquittal or conviction, by judge or jury. *Kepner v. United States*, 195 U.S. 100, 134-35 (1904) (Holmes, J., dissenting, joined by White and McKenna, JJ.).

At Brown's first trial, Spencer was sworn in and answered the government's questions. Brown was then at risk of being found guilty. Jeopardy attached. At the close of the government's case, the Honorable Thomas M. Tucker acquitted Mr. Brown of all offenses charged as to Hunter. This was done by way of a directed verdict, which contained the hallmark requirements of finality. Jeopardy terminated. I was determined to show the First District Appellate Court of Illinois that Brown had therefore been prosecuted twice for the same offense in violation of the double jeopardy clause of the United

States Constitution. But I had to hurdle some barriers at the same time–there was another important test to pass.

### The "Same Elements" Test

In 1911, the Supreme Court first addressed, but did not definitively resolve, the question of what test should determine whether two offenses are the same or different for double jeopardy purposes. *Gavieres v. United States*, 220 U.S. 338, 342 (1911) citing *Morey v. Commonwealth*, 108 Mass. 433 (1871) (Judge J. Gray). With a definitive answer given in 1932, the test seemed to be set in stone: "whether each provision requires proof of a fact which the other does not." *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180 (1932). Eloquent and simple, but how did the test operate?

Lower courts interpreted this language as creating a "same elements" test–a side-by-side comparison of the common elements of two offenses aimed at identifying a difference between them. *People v. Perkins*, 2016 IL App (5th) 140429-U, ¶ 18. Identify a difference in the elements of two subject offenses and the government may prosecute successively.

In Brown's case, the first test subjects were the offenses of attempted murder (acquitted in the first trial) and murder (found guilty in the second trial). Placed side-by-side, comparing the elements, the test seemed to fail Brown. The two offenses were different. Attempted murder required specific intent, while "knowing" murder only called for knowledge, e.g., knowing that you were firing a gun. Then there was the victim's death–required for a murder charge but not for attempt. Yet the physical conduct required for the commission of each offense was the same. *People v. Davidson*, 159 Cal. App. 4th 205, 210 (2008).

Brown had been acquitted of the attempted murder of Hunter. How could he thereafter be found guilty of having murdered Hunter? Is the government able to prosecute in succession simply because the "same elements test" identifies a difference between the culpable mind state elements of two criminal offenses though there is an identity in the physical conduct? This would be particularly odd given the higher standard of mens rea for attempt.

### The "Same Conduct" Test

In 1990, the Supreme Court decided the case of *Grady v. Corbin*, 495 U.S. 508 (1990), which assigned equal importance to the elements of conduct and mind state when subjecting two criminal offenses to the "same elements" test. The Court held that even if the "same elements" test revealed a difference between the culpable mind state elements of two criminal offenses, the double jeopardy clause prevented a second prosecution if the government would be required to prove the same conduct it failed to prove in a prior prosecution. *Id.* at 510. This case would set Brown free.

The conduct that the government failed to prove in Brown's first trial, that he took a substantial step towards the commission of Hunter's murder, was used to prove his guilt in the second trial. Sounded good. But as always, keep researching.

In 1993, the Supreme Court overturned *Grady v. Corbin*, allowing the government to successively prosecute the same culpable conduct regardless of a previous loss at trial. But not all was lost. The case that overturned *Grady v. Corbin* had reaffirmed a legal doctrine that would offer Brown relief.

### The "Collateral Estoppel" Doctrine

The court in *Dixon* reaffirmed the incorporation of the collateral estoppel doctrine into the double jeopardy clause. Collateral estoppel operates when the government loses. It is a narrower concept that operates when the government fails to prove a material "ultimate fact" in a prior case which is a necessary part of a conviction in a second trial, even for a different offense. Once an "issue of ultimate fact has been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *United States v. Oppenheimer*, 242 U.S. 85, 87 (1916) (Holmes, J.). An issue once lost, is lost forever.

The government lost its first prosecution of Brown. Therefore, collateral estoppel was triggered to preclude re-litigation of issues that had died in his first trial. Because the commission of attempted murder requires a specific intent to kill, the government was precluded from securing Brown's conviction for the intentional murder of Hunter. Also in its first prosecution, the government failed to prove that Brown committed the offenses of aggravated discharge of a firearm, aggravated battery with a firearm and aggravated battery against Hunter. *People v. Brown*, 2015 IL App (1st) 134049. Therefore, the government was prevented from retrying the essential factual issues of whether Brown knew that his acts would more probably than not result in the death of Hunter. This issue of his knowledge, now lost, was lost forever and in all circumstances where some mens rea was necessary. Brazenly, the government re-litigated the issues anyway in the second trial.

We argued these points on appeal. I attempted to help navigate the panel through the series of confusing double jeopardy holdings in a fact situation which presented like a law school hypothetical. And I had an unsympathetic client. But the court agreed. On the murder charges and other charges of aggravated battery and discharging a firearm as to Hunter where intent was necessary, it found for Brown. Those charges were dismissed.

But we were not home free. Still on the list was Brown's conviction for the felony murder of Hunter. On this count, a life sentence also rested.

### The "Offense Distinction" Test

In order to convict Brown for the felony murder of Hunter in the second trial, as opposed to intentional murder, the government used his prior felony convictions for the felony offenses committed against Swift, Dixon and Spencer as predicates; aggravated discharge of a firearm, aggravated battery and battery. *People v. Brown*, 2015 IL App (1st) 134049, ¶ 36.

Felony murder is an oddity. Rather than possess a culpable mind state requirement of its own, the offense derives mental culpability from its predicate felony, much like a virus that swaps genes. *People v. Aaron*, 409 Mich. 672, 708-09 (1980). Even more bizarre, the offense of felony murder employs the civil liability construct of proximate cause foreseeability in

determining a defendant's fate. *People v. Lowery*, 178 Ill. 2d 462, 467 (1997). The Illinois Supreme Court has defined felony murder's requisite connection between its forcible felony and death as "any cause which, in natural or probable sequence, produced the injury complained of, it need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the injury." *People v. Hudson*, 222 Ill. 2d 392, 405 (2006). The definition is radically broad, punishing the unknowing and unintentional loss of life.

But in the world of double jeopardy, felony murder and its predicate felony are the same offense. As the Supreme Court explained, if one offense incorporates another offense, without expressing the latter's elements, both offenses are the same. *In re Nielsen*, 131 U.S. 176, 188 (1889)(Bradley, J.). In the words of the late Justice Scalia, "the offense commonly known as felony murder is not an offense, distinct from its various elements." *United States v. Dixon*, 509 U.S. 688, 698 (1993). Matter closed. The double jeopardy clause prevents a second prosecution for the same offense even after conviction. Brown had already been held convicted and sentenced for his felony offenses committed against Dixon, Swift and Spencer. He could not be retired and sentenced again. The appellate court squarely reversed the trial court on felony murder.

But as a Chicago lawyer once told me, "young man, in this business, you are going to win cases you should have lost and lose cases you should have won."

### The Bullet and the "Death Exception"

When Mycal Hunter died and the bullet that paralyzed him was recovered, the prosecution threw everything it could at Brown. It was not concerned about the niceties of double jeopardy. It wanted something to stick. And there remained one theory on which something might.

Remarkably, the delayed death of the Brown case had factual antecedents at both the United States and Illinois Supreme level, but they were not helpful to Brown. In 1912, the Supreme Court decided *Diaz v. United States*, 223 U.S. 442, 448 (1912), a case that involved a battered man who died from his injuries a month after trial. The convicted batterer was subsequently prosecuted again, this time for murder. Would not the double jeopardy clause trigger to protect the defendant from a second trial for the same offense after conviction? The Court held the opposite, stating that the victim's death was a "consummation" of the defendant's initial offense, the effect of which merely continued the first prosecution without creating a new jeopardy. *Diaz v. United States*, 223 U.S. 442, 448-49 (1912). Jeopardy delayed is not double jeopardy.

In 1932, Justice Brennan incorporated this ruling, which would come to be known as the "death exception," into a footnote in the case of *Ashe v. Swenson*, 397 U.S. 436 (1970). This footnote drove a stake a through the heart of Brown's case. And 60 years later the Illinois Supreme Court decided the case of *People v. Carrillo*, 164 Ill. 2d 144 (1995), which involved a beating victim who lived through the first trial of her assailants and died nine years later. Similar to Brown, following the victim's death, the government used prior predicate felony convictions to charge felony murder in a second prosecution. The Illinois Supreme Court applied the death exception stating that the victim's death was merely a consummation of what the defendant set into motion by committing predicate felony offenses. No double jeopardy violation.

The similarity of these cases to Brown's case was striking, but there were also differences. First, *People v. Carillo* involved the government's use of predicate felonies committed against the victim who later died. Brown involved the government's use of predicate felonies committed against *other* persons, not the victim, who lived. Second, Brown's case involved an *acquittal* of all offenses charged as to the victim, who later died. *People v. Carillo* did not involve a prior acquittal. The bottom line is that the government had been given a second chance to convict Brown of essentially the same crime based on the same conduct. The policies underlying double jeopardy should have prevented that, no matter the equities.

But the differences proved unavailing. Though the court had recognized the violations of double jeopardy in much of the second trial, Brown's appeal of his life sentence in the end failed. The appellate court affirmed his conviction. As the law stands today, an acquittal cannot operate to estop the government from prosecuting a defendant for the felony murder when a forcible felony conviction, even if committed against another person, was secured in the defendant's first trial. The death exception and the oddity that is felony murder combined to seal Brown's fate.

### Final Reflection

Mycal Hunter was killed. My client was at the scene of the crime and convicted of other violent crimes. The decisional law of double jeopardy is, as Justice Rehnquist stated, a veritable Sargasso Sea; a convergence of violent currents generated by governmental forces. A defendant who finds himself in the Sargasso Sea will need a life vest. That life vest is the double jeopardy protection of our state and federal Constitution. Only a lawyer can provide such a vest. But once provided, the life vest must remain free from the puncture that is our society's overwhelming interest in immediate accountability for crime. *N. Sec. Co. v. United States*, 193 U.S. 197, 400-01 (1904) (Holmes, J. dissenting). ■

*Colin Quinn Commito's litigation experience includes trials, settlements, and appeals with a variety of criminal offenses. Commito has also litigated civil cases in Illinois that include divorce, parentage fraud, trustee and successor trustee liability, breach of fiduciary duties, and administrative review actions under the Illinois Video Gaming Act. A committed skateboarder, Commito is above all else dedicated to assisting skateboarders and skateboard companies navigate, manage and utilize U.S. law.*

## WHAT'S YOUR OPINION?

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

## CBA YOUNG LAWYERS SECTION

**Chair**
Jonathan B. Amarilio
*Taft Stettinius & Hollister LLP*

**First Vice-Chair**
Brandon E. Peck
*Peck Ritchey LLC*

**Second Vice-Chair**
Octavio Duran
*Hart & David LLP*

**Member Service Manager**
Jeffrey Moskowitz
*J. Moskowitz Law LLC*

**Public Service Manager**
Carl Newman
*City of Chicago Department of Law*

**Project Officer**
Emily Roschek
*American Bar Association*

**Project Officer**
Svetlana Gitman
*Bruce Farrel Dorn & Associates*

**Secretary/Treasurer**
Alexis Crawford Douglas
*K&L Gates LLP*

***YLS Journal* Co-Editors in Chief**
Natalie C. Chan
*Sidley Austin LLP*

Nicholas D. Standiford
*Schain, Banks, Kenny & Schwartz, Ltd.*

**Assistant Editor**
Daniel J. Berkowitz
*Aronberg & Goldgehn*

**YLS Director**
Jennifer Byrne


## Join Us @thebar

### By Jonathan B. Amarilio YLS Chair

In the last edition's column, we previewed some of the YLS' plans for this bar year. Our ongoing efforts to make the YLS as relevant and immediate as possible to its members include the fall launch of the CBA's new podcast "@thebar." The mission of the podcast is straightforward: to discuss legal news, events, stories, and topics of the day (and whatever else strikes our fancy) in an informative and fun way. To be clear, this is not CLE. This is as far from CLE as we can make it.

We've already begun planning and taping episodes of the podcast, covering topics such as substance abuse among lawyers, the growth of artificial intelligence in the practice of law, the Illinois budget crisis, Chicago's plague of gun violence, loss of public confidence in the fairness of our judicial system, and tales from the trenches of celebrity divorces. Another topic is the status and future of marijuana laws. And if you ever wondered how to become a better storyteller so that juries, judges, clients and friends won't need to "actively listen" when you speak, we have that covered too.

Our guests include some names you may know, including the best-selling author and screenwriter of "Gone Girl," "Dark Places," and "Sharp Objects," Gillian Flynn; the author of "The Addicted Lawyer: Tales of the Bar, Booze, Blow, and Redemption" and regular contributor to *Above the Law,* Brian Cuban; Illinois Representative Greg Harris; well-known family law expert Miles Beermann; and many more.

What does it mean for you? First, this will be an entertaining way for us to discuss serious (and not so serious) issues faced by young lawyers and the communities in which we work and live. It's a podcast for you and potentially a podcast by you. What do I mean by that? If you have an idea for an episode, perhaps something you want to learn about or listen to during your commute, you can reach out to me and our team of volunteer co-hosts and producers via email at cbaylspodcast@gmail.com, or on Facebook, Instagram and Twitter at @CBAatthebar.

Better yet, if you think you have what it takes to put an episode together and make it in podcast prime time, you might be able to come on the podcast and grab that worldwide audience that you know you truly deserve, but only previously acknowledged to a mirror. We look forward to hearing your ideas and hopefully having you on the pod.

Stay tuned and keep an ear out for our launch in the next several months. If you do, I can promise you will learn, laugh, and possibly discover your next career. ■

### YLS Meet the Committees Night

Come out and meet the Young Lawyers Section's practice and specialty committees–everything from Bankruptcy to Estate Planning to Women in the Law–on Thursday, September 28, from 5:30-7:30 p.m. at CBA Headquarters. Meet and mingle with YLS leaders, enjoy complimentary appetizers and cocktails, and sign up for committees. Nonmembers and law students welcome. Register at www.chicagobar.org/yls.


## West LegalEdcenter®

**Is your firm struggling to manage CLE requirements cost-effectively?** MDM&C isn't. "West LegalEdcenter has become our one-stop shop for all of our CLE, for all of our offices and all of our attorneys," says Nicole. "Within our first year alone, we saved close to $100,000." West LegalEdcenter gives your firm access to thousands of learning and development programs, accredited in your firm's jurisdictions, in a variety of convenient, accessible formats.

Hear Nicole's story and view a demo of West LegalEdcenter at **westlegaledcenter.com/link/testimonial**.
Learn more about McElroy, Deutsch, Mulvaney & Carpenter, LLP at **mdmc-law.com**.

**Call 1-800-241-0214, option 3 to learn more.**

THOMSON REUTERS™

© 2013 Thomson Reuters W-311260/2-13 Thomson Reuters and the Kinesis logo are trademarks of Thomson Reuters.

AN OVERVIEW ON CHANGES AND SURPRISES IN THE 2017 COLLECTIVE BARGAINING AGREEMENT

# The New NBA

By Matthew E. Misichko

While many Americans equate the first few days of July with celebrating our nation's independence, others define early July as the beginning of a new season in the National Basketball Association.

On July 1, 2017, the NBA and the National Basketball Players Association began to operate under a new Collective Bargaining Agreement. The Agreement is effective from July 1, 2017 until June 30, 2024. However, the NBA and the NBPA each have the option to terminate the Agreement at the end of the sixth season of the current Agreement (June 30, 2023) so long as the terminating party gives written notice by December 15, 2022.

The following piece contains a general overview of the Agreement, changes from the current Agreement as compared to the previous collective bargaining agreement (entered into in 2011), and some surprising provisions pertaining to the world of professional athletes. The Agreement is a

heavily negotiated document that leaves no stone unturned.

### General Overview of the Agreement

The Agreement contains 42 different articles, ranging from Player Eligibility and the NBA Draft (Article X), an Anti-Drug Program (Article XXXIII) and Compensation and Expenses in Connection with Military Duty (Article V).

### Basketball Related Income

Without a doubt, the most detailed and imperative article in the Agreement is Basketball Related Income, Salary Cap, Minimum Team Salary and Escrow Arrangement (Article VII). Generally, Basketball Related Income (BRI) is the determination of what dollars are included in the proverbial pie of money that will be split between NBA players (represented collectively by the NBPA) and NBA owners.

Specifically, from the Agreement, BRI includes the total operating revenue "to the extent derived from, relating to, or arising directly or indirectly out of, the performance of Players in NBA basketball games or in NBA-related activities." (Article VII, Section 1(a)(1)). The following entities are included in the BRI calculation: the NBA, NBA Properties, Inc., NBA Media Ventures LLC, all NBA teams other than "Expansion Teams" during their first two salary cap years and "Related Parties."

Dollars that are not considered BRI are not shared with NBA players and are distributed to the 30 NBA teams, and, in essence, each team's owner. For example, in the Collective Bargaining Agreement covering the 2005 NBA season, NBA Players received 57% of BRI. In the 2011 Collective Bargaining Agreement, NBA Players received 51% of BRI. Experts believe NBA Players under the Agreement will receive between 49% and 51% of BRI given the complex calculations conducted to determine BRI (http://www.nba.com/article/2016/12/14/nba-and-nbpa-reach-tentative-labor-deal).

In the Agreement, BRI is outlined in 17 separate sub-articles, detailing the dollars from regular season gate receipts; proceeds from the right to broadcast NBA preseason, regular season and playoff games; proceeds from in-arena sales of novelties and concessions; 50% of the gross proceeds from the sale, lease or licensing of luxury suites; and even all proceeds (net of taxes) from a team's championship parade (Article VII, Section 1(a)(1)(i)-(xvii)).

Certain dollars are excluded from BRI, including proceeds from the sale of any NBA-related entity; the assignment of player contracts; value received in connection with the design or construction of a new or renovated stadium; and anything of value that is received from a concessionaire, service vendor or other third party that is installed in an NBA arena (Article VII, Section 1(a)(2)(i)-(xxi)).

Remember–the "Forecasted BRI" numbers are just basketball-related income. The NBA's future as a business is bright. The influx of current and future BRI is thanks in large part to the NBA's new $24 billion television contract signed with ABC/ESPN and Turner.

Interestingly, a specific team is mentioned within the context of the BRI calculation. Article VII, Section 1(a)(7)(ii)-(iii) of the Agreement outlines procedures to determine BRI for the New York Knicks. This is because the Madison Square Garden Company owns the New York Knicks, Madison Square Garden (the Knicks' basketball arena) and MSG Network (the television network that locally broadcasts Knicks games). The Agreement (Article VII, Section 1(a)(7)(iii)(A)) states that "BRI for the Knicks for each NBA Season …shall include an amount equal to the net proceeds included in BRI attributable to the Los Angeles Lakers' sale, license or other conveyance of all local media rights …." Section 1(a)(7)(iii) includes further detail into BRI amounts for signage at Madison Square Garden and the percentage increase that will occur in each subsequent year.

### Salary Cap

While the NBA does have a "Salary Cap"–a maximum amount of money a team can spend–an NBA team can exceed the Salary Cap and is required to pay a tax to the NBA. Tax rates depend on whether a team has exceeded the Salary Cap in three or more of the last four NBA seasons (the "Repeater" tax rates) or has not (the "Standard" tax rates). The tax rates depend on the amount the NBA team is in excess of the Salary Cap. For example, for the Standard tax rates, an NBA team that is between $0 and $4,999,999 over the Salary Cap will pay a $1.50 tax for every dollar over the Salary Cap; the Repeater tax rate is $2.50 tax for every dollar over the Salary Cap. An NBA team that is between $15,000,000 and $19,999,999 over the Salary Cap will pay a $3.25 tax for every dollar over the Salary Cap; the Repeater tax rate will be $4.25 for every dollar over the Salary Cap.

*The "Forecasted BRI" for each future NBA season is as follows:*

*–2017-2018 Salary Cap Year*–Forecasted BRI: $5.318 billion

*–2018-2019 Salary Cap Year*–Forecasted BRI: $5.557 billion

*–2019-2020 Salary Cap Year*–Forecasted BRI: $5.807 billion

*–2023-2024 Salary Cap Year*–Forecasted BRI: $6.926 billion

### Other Provisions

Additional provisions and section headings offer a glimpse of the breadth of the Agreement:

- Proper admiration and respect is paid to elder players by awarding payment to those NBA players who retired before 1965 and did not receive a full pension benefit payment (Article IV, Section 1(a)(3)(ii));
- Marijuana Program, Steroids and Performance Enhancing Drugs Program, and Rand HGH Blood Testing (Article XXXIII, Sections 8, 9, and 14);
- Grievance and Arbitration Procedure and Special Procedures with Respect to Disputes Involving Player Discipline (Article XXXI); and
- The terms of a 401(k) Plan, Health and Welfare Benefits, and Post-Career

**National Purchasing Partners**

The CBA has partnered with National Purchasing Partners (NPP) to offer members discount pricing on a variety of products. Employee discounts also available. To learn more, visit www.mynpp.com or call 800/810-3909.

Income Plan for those players employed by Maple Leaf Sports & Entertainment and playing for the Toronto Raptors (Article IV, Section 1(d) and (e), and Section 4(c)).

### Changes from the 2011 Collective Bargaining Agreement

*Maximum Term Contract.* One of the biggest changes in the Agreement compared to the 2011 Collective Bargaining Agreement is set forth in Article IX, Section 1(e), titled "Maximum Term." A "Designated Veteran Player Extension" (defined in the Agreement) now covers six seasons from the date the aforementioned Extension is assigned. Thus, NBA teams can now extend veteran players for up to six years, as compared to five years from the 2011 Collective Bargaining Agreement. This six-year term is also available for a "Designated Player Rookie Scale Extension" under Section 1(d) of Article IX.

*Two-Way Players.* With the NBA making a recent investment in growing its NBA Development League (the NBADL), NBA teams "may enter into a Player Contract that provides a Player with a tiered Salary… based on whether the player is performing services on a particular day for (i) an NBADL team, or (ii) the NBA Team." (Article II, Section 11(a)(i)). These "Two-Way Player" contracts have a set salary in the Agreement of $75,000 for the 2017-2018 NBA season.

Determining whether a Two-Way Player accrues a day as an NBA player or as an NBADL player depends on the "Days of Service" section outlined in Section 11(b) of Article II. A Two-Way Player accrues one day with an NBA team if one of the following three things occur:

1) The Two-Way Player is on the NBA team's "Active List" for an NBA game;
2) The Two-Way Player participates in any practice, basketball drill, conditioning, workout, or other activity with one or more players on the NBA team under the direction and supervision of the NBA team; or
3) The Two-Way Player travels with or at the direction of (including remaining on the road with) the NBA team. However, if the only travel during that day is return travel to the NBA team's home city, and that travel takes place between 12:00 a.m. and 1:00 a.m., then it will not be considered travel. A Two-Way Player will also not accrue an NBA Day of Service traveling between the NBADL team and the NBA team.

Days of accrual are crucial for a Two-Way Player, as the individual can only accrue 45 Days of Service with the NBA team. Additionally, many limitations are associated with a Two-Way Player. The player's contract may not exceed two years, no NBA team may have more than two Two-Way Players on its active roster, and no NBA team can sign a Two-Way Player after January 15 of any NBA season (Article II, Section 11(d)-(f)).

### Surprising Provisions in the Agreement

*Travel and Hotel Accommodations.* NBA players live luxuriously. Article XVIII includes six sections that outline hotel requirements. For hotel arrangements, NBA Teams must arrange for a player's baggage to be "picked up by porters," have extra-long beds available in each hotel and be subject to a $5,000 fine if an NBA team commits a willful violation of this Section.

Certain aspects of the Agreement are extremely detailed. From the Agreement:

"Each Team shall provide first class travel accommodations on all trips in excess of one (1) hour…provided, however, that a Team's head coach may fly first class in place of a player when eight (8) or more first class seats are provided to players. In the event a Team's head coach flies first class in place of a player, one (1) player, designated by the Players Association, shall be paid the difference between the amount paid by such Team for a first class seat on the flight involved and the cost of the seat purchased for such designated player on that flight." (Article XVIII, Section 2(a)).

*NBA Player Bonuses & Fines.* There are a bevy of fines in the Agreement to set expectations, preserve the integrity of the NBA, and to ensure NBA players and NBA teams meet a high standard. A player who misses an NBA practice is subject to a $2,500 fine (Article VI, Section 1(a)(i)). Section 1(a)(iii) of that same section states that missing the third practice will cost that player $7,500. A player who fails or refuses to attend a promotional appearance is fined $20,000 (Article VI, Section 3). The NBA teams that negotiate a Player Contract with an agent not certified by the NBPA are fined $50,000 (Article XXXVI, Section 2).

*Additional NBA Player Income Streams.* Still, there are plenty of smaller income streams available to an NBA player. NBA players are obligated to participate in promotional activities for the NBA or their NBA team. An NBA player must make at least seven individual personal appearances, with at least two of those being in connection with season ticket holders. The NBA player will be reimbursed for all expenses incurred and will be paid $3,500 for each promotional appearance (Article II, Section 8(a)(i)). Thus, $25,000 in additional compensation is made by the NBA player for attending required promotional activities. As a reminder, the average NBA salary for the previous NBA season was $4,587,521.

The 598-page behemoth that is the NBA's new Collective Bargaining Agreement is full of important and interesting information. The Agreement is publicly available at the following link: http://3c90sm37lsaecdwtr32v9qof.wpengine.netdna-cdn.com/wp-content/uploads/2016/02/2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf. ■

*Matthew E. Misichko is an associate in the Commercial Practices Group at Handler Thayer, LLP. He is currently the Chair of the YLS Corporate Practice Committee.*

# Summit on the Future of the Practice of Law in Chicago


## Thursday, October 5, 2017

2:00-4:30 p.m.

The Chicago Bar Association | 321 S. Plymouth Court, Chicago IL 60604

The practice of law is changing, stress is increasing, job satisfaction decreasing, finding clients is more difficult, legal fees are on the rise and poor attitudes are widespread. It is our winter of discontent. We need your help.

Chicago lawyers, law schools, and judicial system are facing challenges which have lessened our enjoyment of our profession. The CBA has gathered lawyers from diverse practice areas, law schools, the judicial system and government service to study some of the challenges which exist in the profession, law schools and the judiciary.

The group will identify specific, current and difficult issues in particular areas and will present solutions to them in writing. Your assistance and input in this project will be invaluable.

The committee is focusing on these areas:

- **ADR-ODR and Conflict Resolution Skills**
- **Diversity and Inclusion**
- **Economics of the Practice of Law**
- **Justice and the Legal System**
- **Law School Trends**
- **Life and the Practice of Law**

To be effective at this initiative we need your input. Join us so we can discuss the most serious problems in each of these areas and most importantly, to get your input on the solutions. Working together to make our jobs and life easier.

Moderator:
**Hon. Thomas R. Mulroy**, *Circuit Court of Cook County; CBA President 2017-18*

**The Chicago Bar Association**
**Continuing Legal Education**

**www.chicagobar.org/cle or 312-554-2056**

EXPANDING THE SCOPE OF TITLE VII

# Will Sexual Orientation Become a New Basis for Employment Discrimination?

By Patricia N. Jjemba

**Under Title VII of the Civil Rights Act of 1964:**

*It shall be an unlawful employment practice for an employer—*

To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-2(a)(2), is often referenced in connection with its historic impact on racial discrimination laws here in the United States. Title VII of the influential statute extends the legislation to the workplace. And while race is an essential class protected under the provision, so too are the other categories outlined in the statute. Sex as a protected class, in particular, has been highlighted lately. Given that laws prohibiting same-sex marriage have been held to be unconstitutional, it seems natural to now consider expansion of the term "sex" as it relates to sex discrimination in the workplace and consider whether it includes discrimination on the basis of sexual orientation.

Historically, various courts of appeals have not interpreted Title VII as encompassing sexual orientation as a prohibited form of sex discrimination. The Supreme Court's silence on the issue resulted in a split on the issue among circuits, alliance groups, and government agencies. There are alluring arguments on both sides of the issue; however, as with most monumental turns in civil rights laws, it may take a case with the right set of facts to enter the judicial scene.

### A Convincing Case of Sex Discrimination

Earlier this year, the Seventh Circuit became the first circuit to decide that discrimination on the basis of sexual orientation is a form of sex discrimination. In *Hively v. Ivy Tech Community College,* 853 F.3d 339 (7th Cir. 2017), a former part-time adjunct professor sued her previous employer, alleging that the college denied her repeated attempts to obtain full-time employment because of her sexual orientation. The court recognized that Congress likely "had nothing more than the traditional notion of 'sex' in mind when it voted to outlaw sex discrimination." Moreover, if Congress intended to later specifically add sexual orientation to the list of protected classes under Title VII, it would have done so by formally amending the legislation. Yet, despite Congress's probable intent, the Supreme Court opined that an enacting Congress frequently does not and cannot anticipate future application of law. This inability to predict the future application of a statute, however, cannot block the statute itself.

The court in *Hively* touched on two key arguments. First, the comparative method considers whether, leaving all other variables the same, the outcome would have been different if a plaintiff was of the opposite sex. Essentially, if the plaintiff was a man married to, dating, or living with a woman, would the college have made a different decision regarding fulltime employment. Related to this argument is the idea of gender conformity and stereotypes, which the Supreme Court has previously ruled as a form of sex discrimination. The court in *Hively* found there was insufficient facts to delve into a gender stereotype consideration. Ultimately, under the comparative approach, the court in *Hively* found that "any discomfort, disapproval, or job decision based on the fact that the complainant—woman or man—dresses differently, speaks differently, or dates or marries a same-sex partner, is a reaction purely and simply based on sex."

Second, the Seventh Circuit raised the associational theory, an argument seen in historic cases like *Loving v. Virginia,* 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967), as it pertains to marriage and race. Under this theory, the statute's prohibition of racial discrimination applies even to those plaintiffs who were discriminated against based upon those with whom they associate. The court in *Hively* agreed with the plaintiff's appeal to apply the association theory to sex. Just as the Supreme Court found that changing the race of one's partner impacted the decision regarding the legality of miscegenation laws at issue in *Loving,* the court in *Hively* determined that changing the sex of one partner in a same-sex relationship would also alter the outcome regarding employment. Therefore, the alleged discrimination hinged on the distinction of sex.

### An Adequate Rebuttal

Also this year, the Second Circuit came to an opposite conclusion on the sexual orientation conundrum. It found that sexual orientation was not a basis for sex discrimination under Title VII. In *Zarda v. Altitude Express,* 855 F.3d 76 (2d Cir. 2017), the plaintiff, a skydiving instructor, claimed that he was released from his job because of his sexual orientation. Relying heavily on a precedent case, *Simonton v. Runyon,* 232 F.3d 33 (2d Cir. 2000), the court held that discriminating against a homosexual employee did not rise to the level of sex discrimination. *Simonton* decided that the term "sex" under Title VII specifically refers only to members of a class defined by gender as opposed to a sexual activity or affiliation. Additionally, the court in *Zarda* also considered the gender stereotype argument, but similar to the *Hively* case, the court found there to be insufficient facts to support an analysis under this approach. The plaintiff in *Zarda* may not have been an ideal plaintiff to further the theory of sex discrimination on sexual orientation grounds because the plaintiff reasoned he may have been fired because he made a claim for worker's compensation. Therefore, the court in *Zarda* was not convinced that sexual orientation was wholly at issue in this case and, even if it was, that it would be covered by Title VII's sex discrimination provision.

### The Case that May Set New Precedent

If history is any indication, the Supreme Court needs the following ingredients to hear a case: the right plaintiff, whose case addresses most, if not all, of the arguments for and against the issue at hand. The split between circuits already exists, and Ms. Jameka Evans of Atlanta, Georgia *(Evans v. Georgia Reg'l Hosp.,* 850 F.3d 1248 (11th Cir. 2017)) may present the right set of facts for the Supreme Court to hear her case.

Employed as a security officer for an Atlanta hospital, Evans left her position as a hospital security guard after what she alleges was persistent harassment and even physical assault at the hands of her employer, because of her sexual orientation as a woman attracted to individuals of the same sex. While the plaintiffs in other cases also allegedly endured embarrassment and strife, the facts associated with Evans's case may be appealing to the Supreme Court due to the arguments at play.

For example, under the comparative method, the Court may consider whether the outcome would have been different if Evans was a man. Evans could argue that she would not have experienced such harassment and assault if she were a man who wore a male uniform, men's shoes, and a low haircut. To go a step further, she may be able to assert the gender stereotype argument by noting that her nonconformity with gender stereotypes generally associated with women (mainly feminine-like traits and mannerisms) resulted in the employer treating her in an egregious manner. This may incline the Court to adopt the conclusion that sexual orientation aligns with the safeguards of sex discrimination protections.

Additionally, under the association theory, Evans could argue that her association with women as opposed to men equates to discrimination in a way that the Court has already prohibited in *Loving*. Evans must present specific facts in support of her theory, such as her interaction with her former employer's human resources manager. According to Evans and a witness, Evans did not publicize her sexual

## Free Seminars from West LegalEdcenter

The West LegalEdcenter can help you keep current in your practice area anywhere, anytime. With over 65 respected CLE providers, the West LegalEdcenter offers hundreds of online CLE programs including most CBA and YLS seminars.

And now, you can access two free CBA seminars on the West LegalEdcenter, by renewing your CBA membership by May 31. To receive this special offer, send in your dues payment by May 31 and make sure the CBA has your email address on file since the coupons are sent via email only (include your email address on your dues remittance stub or call 312/554-2135). In June 2017 and January 2018, you will receive an email with your free registration information. For more information on the West LegalEdcenter and to see current program listings, visit www.chicagobar.org and click on the CLE tab, then West LegalEdcenter.

## The Chicago Bar Foundation Fall Benefit

Join the CBF for a fun, casual evening at the Museum of Science and Industry. This event provides an unforgettable night in one of Chicago's most iconic museums. Highlights of the evening will include Christmas Around the World and Holidays of Light, with more than 50 unique trees from around the globe on display, along with this year's special exhibit, Robot Revolution.

Save the date to join us on November 18 as we celebrate the CBF's work with food, fun, and friends! Learn more at www.chicagobarfoundation.org/fall-benefit.

orientation, but the human resources manager pressed the issue and directly asked her about her orientation (thereafter being put on notice). Evans might argue that discrimination, harassment, or other mistreatment in the workplace was due to the manager's newfound knowledge about her sexual association. The Court already prohibits this kind of bias as it relates to race, color, religion, sex, or national origin, and may look to extend the prohibition to sexual orientation.

As strong as Evans's case may be, she may still fall short in her attempt to redefine "sex" under Title VII to encompass sexual orientation. In considering whether to take the case, the Court would have to determine whether the term is already self-explanatory or if its interpretation should be broadened. The answer to this question ultimately has the potential to draw the line on the interpretation of "sex." Whether the Court is ready to draw that line is a question that remains to be answered. ■

*Patricia Jjemba is an associate at a Chicago public interest firm. She litigates public interest matters in federal and state court. She is also Vice Chair of the YLS Civil Rights Committee. Patricia has committed her career to advocating for the civil and human rights of marginalized members of society through research, writing, and litigation both on and off the job.*

MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY

You can trust 30+ years
of experience protecting lawyers.

*Put your trust* in the carrier
created by lawyers,
run by lawyers,
exclusively serving lawyers.

- Direct writer that works exclusively with lawyers professional liability insurance
- Specializes in solo to mid-size firms
- Returned over $49 million in profits to policyholders since 1988
- Offers an array of services to mitigate risks

Protecting Your Practice is Our Policy.™

Get a fast quote today!
**www.mlmins.com**
or contact Bill Lansdon
612-344-4379 or blansdon@mlmins.com

# Professional Video Services for Law Firm Websites

**New CBA Member Service!**

**Increase Visitors to Your Website with Video!**

Stand out from the crowd with video. Introduce new and potential clients to your firm. Build client confidence. Connect with emotion. Deliver your law firm message with a human touch.

Boost Your Competitive Advantage!

- Connect with your clients
- Convert visitors into clients
- Convey what services and experiences your firm can offer
- Highlight the attorneys in your firm
- Improve your website search results
- Drive traffic to your social media sites

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

**Member Pricing:**

| | |
|---|---|
| 30-minute Initial Consultation | $75 |
| Video Production Set Up* | $500 |
| Single Attorney Video (1-5 min.) | prices start at $500 |
| Additional editing fees | $75 per hour |

*Nonmember pricing available upon request.*
**Parking/taxi and other fees may apply.*

**Conditions:**

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

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

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

See sample videos at www.chicagobar.org/video.

THE CHICAGO BAR ASSOCIATION FOUNDED 1874

# LEGAL ETHICS

BY JOHN LEVIN

## Applying Elements of "Justice" to Professional Conduct–North Carolina's Approach

I recently read a book on ethics. Not "legal ethics" based on rules of professional conduct and opinions of courts and bar associations, but the philosophic kind–running from Plato to current writers such as John Rawls. One characteristic these writers share is that they not only state what ethical conduct is, but analyze how to measure conduct against a set of standards to determine what is "ethical" and "just."

In the area of professional regulation, we lawyers spend a great deal of time measuring conduct against a set of agreed rules. However, relatively little time is spent measuring the set of agreed rules against what sort of behavior is "good" in the abstract.

The state of North Carolina has just taken the plunge. Its new Rule 8.6 states that subject to a number of specified exceptions,

> …when a lawyer knows of credible evidence or information, including evidence or information otherwise protected by Rule 1.6, that creates a reasonable likelihood that a defendant did not commit the offense for which the defendant was convicted, the lawyer shall promptly disclose that evidence or information to [certain specified authorities]…

The rule applies to any defendant, not only the client of the lawyer.

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

Comment 1 to the rule states: "The integrity of the adjudicative process faces perhaps no greater threat than when an innocent person is wrongly convicted and incarcerated." As a result, "the need to rectify a wrongful conviction and prevent or end the incarceration of an innocent person justifies extending the duty to disclose potentially exculpatory information to all members of the North Carolina State Bar, regardless of practice area" and "justifies the disclosure of information otherwise protected by Rule 1.6."

It should be noted that the Rule specifically provides that disclosure is not required if the information implicates a client or was acquired in a privileged communication between the attorney and the client. However, Rule 1.6 covers all "information acquired during the professional relationship with a client"–which is a far broader category of information than the exception.

From time to time the press has reported cases in which a lawyer learns in the course of representing a criminal defendant that a third person has committed a crime for which an innocent person was wrongly convicted. However, in such a case, the lawyer was prohibited from disclosing this information by Rule 1.6, and the innocent party remained in jail. The new North Carolina rule would allow disclosure in many instances.

The underlying ethical issue in such a matter was well stated by Inbal Hasbani in a Comment entitled "When the Law Preserves Injustice: Issues Raised by a Wrongful Incarceration Exception to Attorney-Client Confidentiality" in the *Journal of Criminal Law and Criminology* (Vol. 100, Issue 1: Winter 2010): "What kind of system allows a man to serve day after day in prison when lawyers know he is innocent? When the moral premise of the judicial system is to establish justice, how can the same judicial system require a lawyer to remain silent as innocent men and women remain in jail unjustly?" The issue has been the subject of numerous other scholarly articles.

The North Carolina rule goes part way to address the ethical concerns raised by scholarly debate. But more importantly, the North Carolina bar has applied ethical concerns essentially extraneous to the management of the profession to regulate professional behavior–incorporating elements of "justice" into the rules of professional conduct. ■

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

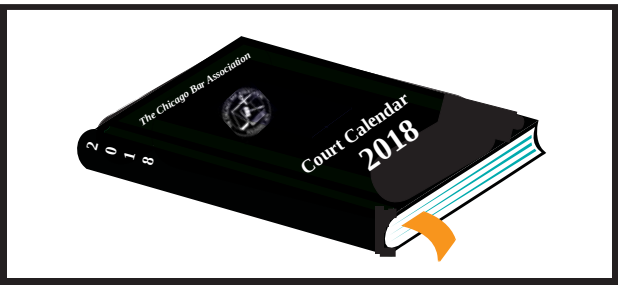
For more, go to http://johnlevin.info/legalethics/.

### 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.


### NEED SOME AFFORDABLE MEETING SPACE?

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




The Chicago Bar Association

# Attorney's Court Calendar 2018

Organize your day with The Chicago Bar Association's 2018 Attorney's Court Calendar. Our quality leather-bound book is designed to help you keep track of appointments and makes it easy to track billable time in hourly increments. The calendar allows you to include important information such as frequently called numbers, deadlines, and more. It also includes phone numbers and addresses for judicial circuit courthouses/circuit clerks, other frequently called legal numbers, and CBA member information.

**You'll always be on-time with the CBA Attorney's Court Calendar!**

The cost of the 2018 Attorney's Court Calendar is $22.50 for CBA members and $26.50 for nonmembers (includes Illinois sales tax).

---

## 2018 CBA Attorney's Court Calendar

I would like to order ____ copies of the 2018 CBA Attorney's Court Calendar.
$22.50 CBA member/
$26.50 nonmember (includes Illinois Sales Tax. Shipping and Handling: Enclose $7.95 for the first copy and a $3.95 per each additional copy).

Total Order: $_____

All orders must be prepaid and are non-refundable (also no credits available).

Save on Shipping! Stop by the CBA Legal Bookstore and pick up your copy in person after October 9, 2017.

Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

CBA Number _____ Phone _____

Payment Information:
☐Visa ☐MasterCard ☐American Express
☐Discover ☐Check Enclosed

Acct No. _____ Exp. _____

Name as it Appears Card _____

Signature _____

Mail to: The Chicago Bar Association
321 S. Plymouth Court, Chicago, IL 60604
Order online at www.chicagobar.org
Fax to 312-554-2054

For more information: 312-554-2130 (CBA Legal Bookstore)

# LPMT BITS & BYTES

BY CATHERINE SANDERS-REACH

## Three Basic Security Best Practices

First, Let's Talk About Passwords. You have heard you should be creating passwords that are between 8 and 12 characters long and include a mix of upper and lower case, numbers, letters and symbols. To help you create and remember a complex password try coming up with a passphrase–like Myd*ghasFleas! - but substitute letters with characters and numbers. Do not use common dictionary words or information about you like birthdays, children's names, last addresses, or middle names. You may also have heard you should change your password frequently. The really important key to making a safe and secure password is that you use a UNIQUE password for each login. If one account gets broken into then any others using those credentials are vulnerable.

Following this advice is a tall order. However, using a password management application can help. These applications are a great way to generate new, complex and unique passwords that are safely stored–you just have to remember the password for the service! Some examples are LastPass, Roboform and Dashlane.

Recently the National Institute of Standards and Technology (NIST) updated their Digital Identity Guidelines. The update, in addition to other items, removed the formerly best practices recommendations of frequently changing passwords and the requirement of creating compositionally complex passwords. Why? By making the requirements onerous people simply fail to follow them or adopt other risky behaviors, like putting passwords on sticky notes taped to the monitor. In fact, Bill Burr, the NIST manager who crafted the original document suggests in hindsight the original requirements were misguided. So, current thinking suggests using long and unique passwords for each of your logins, change your passwords if you are notified or fear they have been exposed, and take advantage of the many choices in password management applications available for individuals and teams.

Also, when you can set up two factor authentication. It is available in Microsoft Office 365, Google, Facebook, LinkedIn, practice management applications and many other services you use. Two factor authentication is something you know (a password) and something that you have (usually a phone). When you set it up you may put in your cell phone number. Then when you login - say to Gmail–you put in your username and password as usual. Then you will be asked for a code. The code is texted to you and is has a one time use. Enter the code and then you can access your account. Even if hackers got your password, without your phone they will not be able to login to your account without the code. Nifty huh?

### What Else Should We Worry About?

Well, do you use free wifi on your laptop, phone or tablet? Do you also use that device to store and transmit client confidential information? Free or even limited access wifi (like coffee shops that issue the same password to everyone) are notoriously insecure because of the real risk of interception or the creation of "man in the middle" networks created to ensnare those looking for the fastest, cheapest wifi.

For more information, including video tutorials on using many of these technologies, see lpmt.chicagobar.org/how-to.

There are a few easy ways to protect your client data. You can use your smartphone to provide a wifi signal, either by tethering it to another device or turning on the phone's hotspot. You can get a mifi card for internet access from your mobile carrier. Or you can subscribe to a mobile Virtual Private Network service like "Private Internet Access" for a mere $3.33 per month. Just don't be tempted to use free wifi, even if it "just to check personal email" on a device you also do client work on.

### You Should Protect Your Mobile Devices In Case One Is Lost Or Stolen

First, all mobile devices should have encryption enabled to protect data on the installed drive. So, how do you do that?

On iPhones you should set up a passphrase and make sure that "data protection enabled" is turned on in the settings. On Android phones enable a PIN to access the phone's features and then go into the security settings to enable encryption. The process is similar for iPad and Android tablets.

Windows mobile devices that are running Windows 7 Professional and more recent versions have an encryption tool called BitLocker already installed. Just search for it on the computer and follow the instructions to enable encryption protection on the laptop or convertible device.

Mac users will find an encryption tool called FileVault already installed. Simply go to System Preferences from the Apple menu, then click Security and Privacy then "FileVault". Follow the instructions to enable.

To enable encryption of external hard drives and thumb drives look for encryption software built into external hard drives and thumb drives as well.

Commercial encryption software from companies like Symantec, AxCrypt, or DiskUtility have encryption tools for any device.

Also, you should use software that uses GPS location tracking to locate your

*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.*

## Accept Client Credit Cards through LawPay

Recommended by 46 state and more than 50 local bar associations, LawPay is proud to be the preferred payment partner of more than 35,000 law firms. LawPay provides attorneys with a simple, secure, and online way to accept credit cards in their practice.

The LawPay platform was designed to correctly separate earned and unearned payments, giving you peace of mind that your credit card transactions are always handled correctly.

LawPay is proud to partner with the Chicago Bar Association, and any Chicago Bar members who sign up for a LawPay account will get their first 3 months free. To learn more or to get started, visit lawpay.com/cba/ or call 866/376-0950.


device and remotely wipe the drive if it is lost or stolen. For those with IT help there are some options they can help with. If you don't have help you can easily do this yourself.

On an iPhone or iPad enable "Find My Phone". If you lose your phone just log into iCloud.com and you can try to use the phone's built in GPS location to ping the phone and show the location on a map. You can also erase the phone's data. Your GPS does not have to be on, this will turn on the GPS on the phone.

Similarly, on Android devices go into your Google account in any browser to the "Find My Device" section. Select your device and then you can sign out of your phone, lock your phone, locate it or erase the data.

Third party applications like Lookout Mobile have similar features, plus anti-virus, safe browsing, privacy advisor, backup, and more for $3 per month.

Additionally to locate or remotely wipe a Windows or Mac laptop you can install and subscribe to Absolute's LoJack for Laptops or Prey (P-R-E-Y). Also, in online services like LinkedIn, Facebook, Twitter, Google, iCloud and others log on from a browser, go into your settings and "forget" the lost or stolen device. ■


In-Person • Webcast

CLE

THE CHICAGO BAR ASSOCIATION
Continuing Legal Education

**Illinois Forum on Pro Bono**
October 3 • 3:00-5:00 p.m. • Reception Follows

**Running for Public Office: How to Get on the Ballot and Win**
October 4 • 3:00-6:00 p.m.

**How To... Prepare Documents in Microsoft Word for eFiling**
October 4 • 3:30-4:30 p.m. • Members Free

**Summit on the Future of the Practice of Law in Chicago**
October 5 • 2:00-4:30 p.m. • Members Free

**A Modern Firm's Keys to Profitability**
October 6 • 12:00-1:00 p.m.

**Ethics and Commercial Litigation Finance**
October 6 • 12:00-1:00 p.m.

**How To... Collect and Track Digital Documents from Clients**
October 10 • 1:45-2:45 p.m. • Members Free

**You've Been Hacked! Now What?**
October 11 • 12:00-1:30 p.m.

**Real Estate Litigation: Commercial Evictions and Foreclosures**
October 11 • 3:00-6:00 p.m.

**Signature Series: Desmond Clark's 6 Principals of Winning**
October 12 • 12:00-1:00 p.m. • Members Free

**Signature Series: Improving Chicago's Neighborhoods**
October 17 • 12:00-1:00 p.m. • Members Free

**Patent, Trademark and Copyright Basics**
October 17 • 3:00-6:00 p.m.

**How To... Prepare Documents in Adobe Acrobat DC for eFiling**
October 17 • 3:30-4:30 p.m. • Members Free

**Workshop: eFiling in 5 Easy Steps Using File & Serve Illinois**
October 19 • 3:30-4:30 p.m.

**Legal Technology Innovators Showcase**
October 24 • 1:00-4:00 p.m. • Chicago-Kent • Members Free

**Role of Real Estate in Chicago's Segregated Landscape**
October 24 • 3:00-6:00 p.m..

**Social Media Ethics for Lawyers**
October 31 • 8:00-9:00 a.m.

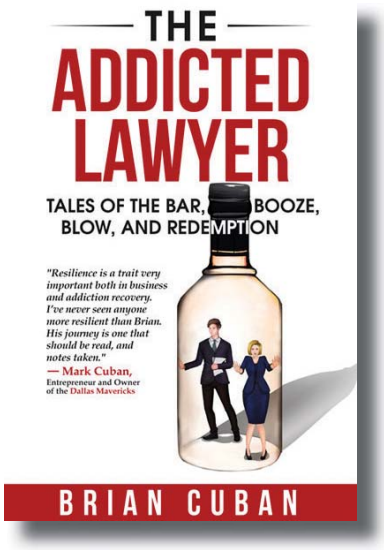
To register, call 312-554-2056 or visit www.chicagobar.org.
Programs are held at the CBA Building, 321 S. Plymouth Ct., Chicago, unless otherwise indicated above.

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.

# SUMMARY JUDGMENTS

## REVIEWS, REVIEWS, REVIEWS!

# A Book About Addiction and Lawyers




**The Addicted Lawyer: Tales of the Bar, Booze, Blow, and Redemption**
**By Brian Cuban**
**Post Hill Press, 2017**

### Reviewed By Daniel A. Cotter

The legal profession is generally seen as a stressful one, with unending client pressures and unreasonable time constraints. Faced with these and other stressors, lawyers often turn to alcohol and other substances. Indeed, according to a study released in early 2016 by the American Bar Association and the Hazelden Betty Ford Foundation, 21% of practicing, licensed attorneys qualify as problem drinkers, http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx. And drug use among lawyers is twice as high as the national average. See http://interventionstrategies.com/17-statistics-on-drug-abuse-among-lawyers/.

In *The Addicted Lawyer,* Brian Cuban (who recently recorded a podcast with YLS Chair Jonathan Amarilio) provides his own history of alcohol and drug addiction, including his long road to recovery. Cuban is the younger brother of Mark Cuban, owner of the Dallas Mavericks and a regular on Shark Tank. Brian portrays the challenges that the addicted face in admitting they have a problem and getting on the road to recovery.

Cuban traces his problems and addiction back to his childhood and the bullying and fat shaming he experienced as a teen. He began smoking marijuana and drinking at an early age, and eventually started using cocaine, Xanax, and other substances. Upon graduating from the University of Pittsburgh Law School in 1986, Brian moved to Dallas to join Mark and his other brother. He worked a number of jobs but had no motivation, and took the Texas bar exam several times before passing it. During his more than 20 years as an addicted lawyer he encountered three divorces, the loss of a number of jobs, and a number of other challenges. After many detours, Brian has been sober since 2007. Brian tells his story with honesty, self-deprecation and humor. He also explores the ABA study, and the study's lead author, Patrick Krill, discusses it in the book's preface. Krill calls the study a "call to action." Brian agrees with Krill, and in addition to telling his own story, Brian invites others–from law students to lawyers in various stages of their careers–to describe their addictions and their roads to sobriety. These glimpses of our peers is very eye opening, as well as concerning, and raises the question of why lawyers are more likely than the general population to have addiction issues, depression and anxiety. Younger lawyers are especially vulnerable to alcohol and drug abuse. One of the findings from the ABA study compared lawyers to other professionals, noting that:

> lawyers experience alcohol use disorders at a far higher rate than other professional populations, as well as mental health distress that is more significant. The study also found that the most common barriers for attorneys to seek help were fear of others finding out and general concerns about confidentiality.

Cuban concludes the book with questions and answers from several addiction experts on what lawyers and law students can do to be able to continue practicing while obtaining treatment and addressing their addictions. The one thing the book does not identify is how we as a profession can identify and help those who may have addiction issues. This book is one that truly should be a "call to action," and we thank Brian for identifying addiction's realities and for shedding light on the high incidence of addiction in our profession. ■

## Alliance for Women Mentoring Circles

The Alliance for Women's Mentoring Circles program will hold a kick-off meeting on Tuesday, September 26, at 12:15 p.m., at the CBA Building, 321 S. Plymouth Ct., Chicago, IL 60604. Learn how you can get involved in the program and/or rejuvenate your circle.

At the meeting, the Illinois Supreme Court Commission on Professionalism's Michelle Silverthorn will discuss the draft mentoring curriculum the Commission has put together. Our Circles will be asked to review the draft and provide feedback by the end of the bar year. This is a great way to rejuvenate your circle if you need discussion ideas and a plan for future meetings. Come prepared to share ideas, suggestions, or if you need to be placed in a new Circle to let us know! Have questions are our Circles? Email Mary K. Curry at mkcurry@polsinelli.com.


## Save an average of 26% off public hotel rates

Through Hotel Engine, a private hotel booking platform, members of The Chicago Bar Association have exclusive access to deeply discounted hotel rates. Take advantage of your complimentary membership to book at thousands of hotels across North America, South America, and Europe.

**Savings & Selection**
Save an average of 26% off public rates at 100K+ hotels, from boutique B&Bs and popular brands to luxury resorts.

**No Catch**
We keep our operational and advertising costs low to pass on the savings to you. That means no contracts, annual fees, or minimum spends.

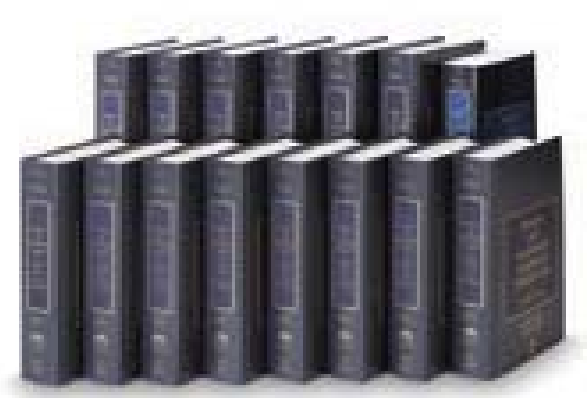
**Superior Service**
Relax with the help of our industry-leading technology and 24/7, U.S.-based customer support team.

## Sign up today through your company's unique link:
## HotelEngine.com/join/ChicagoBar

866.782.9300
www.HotelEngine.com

HOTELENGINE.

# The Ultimate Resource for the Commercial Litigator



**Business and Commercial Litigation in Federal Courts, Fourth Edition**
**Robert Haig, Editor-In-Chief**
**American Bar Association, 2016**

**Reviewed By Daniel A. Cotter**

Many commercial litigators practice in the federal courts, but until the first edition of *Business and Commercial Litigation in Federal Court*s published in 1998, there was no definitive treatise on the subject. The Fourth Edition, published by the American Bar Association Section of Litigation, adds twenty-five chapters to the Third Edition and has grown to fourteen volumes and 17,142 pages. The resource covers every conceivable aspect of commercial litigation, including chapters on construction, civil rights, e-commerce and many other substantitive areas. Robert L. Haig, a partner in the firm of Kelley Drye & Warren LLP in New York City, served as the Editor-in-Chief of this significant update and publication.

The multi-volume set is a unique and invaluable resource, and it has become the definitive work in this area of law. Business and commercial litigation has evolved over the past six years since the Third Edition was published, and the new volume includes a number of new subjects that have become more important in recent years, including marketing to potential business clients, teaching litigation skills, social media, regulatory litigation, civil justice reform, cross-border litigation, securitization and structured finance, advertising, and health care institutions. The Fourth Edition contains approximately 4,400 more pages of text than the Third Edition.

The Fourth Edition covers all aspects of a commercial case, from the investigation and assessment that take place at inception, through pleadings, discovery, motions, trial, appeal, and enforcement of judgment. A CD-ROM comes with the set that provides various jury instructions and forms, which are also found in the set.

Written by an illustrious team, the 296 principal authors of the Fourth Edition include 28 distinguished judges and many distinguished litigators. Chicagoans have a significant role in the set, including United States District Judges Edmond E. Chang, John W. Darrah, and Ronald A. Guzman of the United States District Court for the Northern District of Illinois; United States Bankruptcy Judge Donald R. Cassling of the United States Bankruptcy Court for the Northern District of Illinois; and the following well-known Chicago lawyers: Richard C. Godfrey, Catherine L. Fitzpatrick, and R. Chris Heck of Kirkland & Ellis LLP; Anton R. Valukas, Craig C. Martin, Robert R. Stauffer, Michele L. Slachetka, and Christopher Tompkins of Jenner & Block LLP; Robert A. Clifford and Michael S. Krzak of Clifford Law Offices PC; Daniel E. Reidy, Lawrence C. DiNardo, and Nicole C. Henning of Jones Day; Edward L. Foote and Peter C. McCabe III of Winston & Strawn LLP; Sean M. Berkowitz of Latham & Watkins LLP; Julian Solotorovsky and Matthew C. Luzadder of Kelley Drye & Warren LLP; Scott Mendeloff and Gabriel Aizenberg of Greenberg Traurig, LLP; John Hamill of DLA Piper LLP (US); E. King Poor of Quarles & Brady LLP; David M. Stahl and Lisa M. Cipriano of Eimer Stahl LLP; Gregory T. Fouts of Morgan, Lewis & Bockius LLP; and Steven D. Pearson of Cozen O'Connor.

This Fourth Edition is an amazingly comprehensive, step-by-step guide to the practitioner who litigates commercial cases in federal courts. From jurisdictional and procedural issues to substantive considerations, it covers all aspects of practice in the federal courts. Lawyers new to federal court practice–as well as seasoned practitioners–will find much guidance and useful information in this fourteen-volume set of Business and Commercial Litigation in Federal Courts.

Anyone practicing commercial litigation in the federal courts should have this set readily accessible to assist them in their practice. ■

*Daniel A. Cotter is a Partner at Butler Rubin Saltarelli & Boyd LLP, where he chairs the Insurance Regulatory and Transactions Practice. He is also a member of the CBA Record Editorial Board.*


THE CHICAGO BAR ASSOCIATION
FOUNDED 1874

The Chicago Bar Association's
Barristers Big Band presents

# THE MAGIC OF THE MODERN BIG BAND

**Friday October 13th 2017**
**Concert • 6pm Chicago Public Library**
Harold Washington Library Center
Cindy Pritzker Auditorium 400 South State Street
(Enter on S. Plymouth Ct. Side, One Block West)
**Chicago, Illinois Admission is Free!**

Graphical Antz • Copyright © 2017

**In-Person • Webcast**

# CLE

*Presented by Public Interest Law Initiative (PILI), Chicago Bar Association, Chicago Bar Foundation, Illinois Bar Foundation, and Illinois Supreme Court Commission on Access to Justice*

# Illinois Forum on Pro Bono

**October 3, 2017**
3:00-6:00 p.m.

Program will be held at The Chicago Bar Association, 321 S. Plymouth Ct., Chicago, IL 60604

In-person Attendance:
2 IL PR-MCLE Credit
(subject to approval)

Webcast Attendance:
1 IL PR-MCLE Credit
(subject to approval)

**Free!**

Other Learning Options:
-CBA Webcast
-DVD Rental
-Written Materials

**Schedule:**

| | |
|---|---|
| **3:00-4:00** | **Presentation (live and webcast)** |
| **4:00-5:00** | **Small Group Discussion (live only)** |
| **5:00-6:00** | **Networking Reception for Attendees** |

The Forum will bring together a cross-section of pro bono stakeholders to discuss the ideas and strategies to expand and enhance pro bono in Illinois. The program will include a presentation on the results from an ABA study on pro bono conducted in many states, including Illinois, over the past year by the person who designed and oversaw the survey. The work of Harvard Law School's Access to Justice Lab, which looks to evidence-based data to transform the legal system, will also be discussed. Attendees will also engage in small group discussions to devise strategies to expand and enhance pro bono in Illinois.

Speaker:
**April Faith-Slaker**, *Harvard Law School Access to Justice Lab*

**The Chicago Bar Association**
**Continuing Legal Education**

**www.chicagobar.org/cle or 312-554-2056**

THE CHICAGO BAR ASSOCIATION

*presents*

**The Chicago Bar Association Symphony Orchestra and Chorus**

David Katz, *Founding Music Director*
Stephen Blackwelder, *Chorus Director*
Marek Rachelski, *Resident Conductor*

*Anglo-African Composer Samuel Coleridge-Taylor's once world-famous cantata returns to Chicago!*

# *Hiawatha in Chicago*

**Samuel Coleridge-Taylor** "Hiawatha's Wedding Feast"
*A delightful setting of the poem by Longfellow for chorus, orchestra, and tenor soloist*

**Antonín Dvořák** Symphony No. 9 in E Minor "From the New World"

## Wednesday, November 8, 2017 at 7:30 pm

St. James Episcopal Cathedral — Wabash at Huron

Purchase concert tickets at: *http://hiawathainchicago.bpt.me* $12 advance / $20 door

# Office Services Showcase


Don't Go Bare

- **Coverage for Illinois Lawyers** including new & small practices
- **We're small firm friendly**
- **Get affordable coverage**

ISBAMutual
Lawyers' Malpractice Insurance

RETRIEVE CHICAGO
ACCIDENT AND INCIDENT REPORTS
**FAST!!**
We have picked up over 500,000 reports at Chicago Police headquarters in the past fifteen years. Costs are minimal and service is speedy.
Robin Enterprises Corporation
Phone: 312/440-4990
Fax: 312/440-4996
E-mail: lrobinent@gmail.com





Landex Research Inc.
PROBATE RESEARCH
MISSING/UNKNOWN HEIRS LOCATED NO EXPENSE TO ESTATE
Domestic & International Services for:
Courts, Lawyers, Trust Officers, Administrators, Executors
1345 Wiley Road, Suite 121
Schaumburg, Illinois 60173
Phone: 847-519-3600/800-844-6778
Fax: 800-946-6990
www.landexresearch.com

# ADVERTISE

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 Rebecca Martin at rmartin@chicagobar.org**

# Legal Malpractice Insurance for CBA Members

## Contact us to make sure you get the best pricing on your lawyers' professional liability insurance.

*Other CBA sponsored programs:*

Life Insurance
Disability Insurance
Long Term Care
Health Insurance

Tyler T. Sill
Vice President | Sales & Marketing
CBA Administrators, Inc.
321 S. Plymouth Court, 6th Floor
Chicago, IL 60604
tsill@chicagobar.org
Ph. 312.554.2077
Fax 312.554.0312

Visit www.chicagobar.org/insurance for complete details.

THE CHICAGO BAR ASSOCIATION FOUNDED 1874

CBA ADMINISTRATORS, INC.


LexisNexis, Lexis, Lexis Advance and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Copyright 2013 LexisNexis, a division of Reed Elsevier Inc. All rights reserved. LEX-2895