SEPTEMBER 2016

CBA RECORD

Committee Chair/Vice-Chair Directory Enclosed

LawPay®

THE WAY ATTORNEYS GET PAID

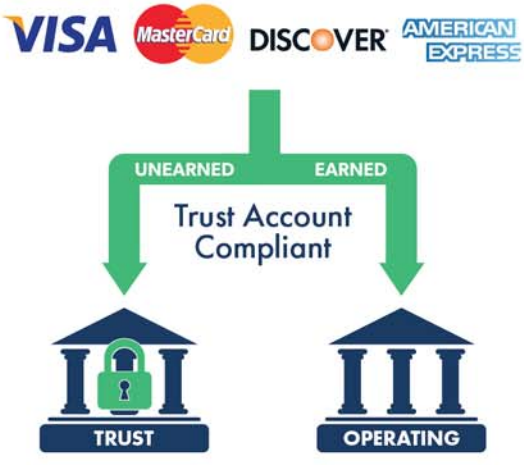
THE CHICAGO BAR ASSOCIATION

Proud Member Benefit Provider

1.95% & 20¢ per transaction | No swipe required | No equipment needed | $5–$20 monthly

The proven payment solution for lawyers.

Managing payments and growing revenue for over 30,000 law firms in the US, LawPay is the only solution recognized by the ABA. Designed specifically for the legal industry, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind your credit card transactions are handled the right way.



LawPay.com/CBA | 866.376.0950

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

COGAN & POWER, P.C.
ATTORNEYS AT LAW

Experienced Trial Lawyers.
Record-Breaking Achievements.

WE GET RESULTS

OVER $365 MILLION

Verdicts & Settlements

We are recognized among the top 100 consumer attorneys in Illinois by Leading Lawyers and Illinois Super Lawyers.

WE ARE PLEASED TO WELCOME...

Our Firm's New Partner

GEORGE BRUGESS

Mr. Brugess received a $22.4 M FELA (railroad injury) verdict soon after coming to the firm.

AND

Our New Associate

MICHAEL TERRANOVA

Mr. Terranova, a former U.S. Marine, represents seriously injured victims.

1 East Wacker Drive, Suite 510
Chicago, IL 60601
Phone: 312.477.2500
Fax: 312.477.2501

Learn more about us at:
www.coganpower.com

WE ARE DEDICATED

ACCIDENT & INJURY LAWYERS

With nearly 200 years combined experience, our attorneys are leaders in the legal and philanthropic communities. The firm welcomes your referrals.

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.*

CONTENTS

September 2016 • Volume 30, Number 5

INSIDE THIS ISSUE

YOUNG LAWYERS SECTION

On the Cover

This month's **CBA Record** cover celebrates the 93rd Annual Bar Show musical, "This Case is a Shamilton," which will be held from December1-4 at DePaul University's Merle Reskin Theatre. The cover was created by Bar Show cast member Larry Aaronson. Get your tickets now at www.barshow.org.

EDITOR'S BRIEFCASE

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

Three Suggestions for Rebuffing Weasels

Lawyers have earned a reputation for being nasty, confrontational, and mean-spirited. The public, and a number of lawyers as well, think this reputation to be entirely justified.

I suspect there is hardly a lawyer who has not experienced, let's call it, an "intense" conversation, in which an opponent descends into disruptive and disrespectful behavior. Actually, can any lawyer, without qualification, say he or she has never once crossed the fine line between acceptable and unacceptable advocacy. A momentary, rare lapse, however, differs markedly from habitual offenders.

Usually, lawyers with sharp tongues, short-tempers, or hostile demeanors earn well-deserved negative reputations in their local legal community. Not that they care one bit. And, you won't get an apology for their temper tantrums, at least not a sincere one.

Let's call lawyers who act this way "weasels," after the Least Weasel, a dangerous predator which is cunning as well as fierce in its efforts to get prey. Weasels enjoy creating tension and don't care if others get upset, especially their opponent or their opponent's client. They take pride in bullying, considering it an acceptable form of zealous advocacy. They prefer discourtesy to decency, conflict to cooperation, antagonism to accord.

There are many ways to respond to weasels. Space permits presenting just three.

Remain professional. Of primary concern is not how we cooperate with each other, but how we treat each other when we do not cooperate. If you happen to cross paths with a weasel, the one thing you must do is remain calm. That is what professionalism calls for and a professional does. React emotionally and the weasel wins.

I know it is easy to say the abuse should be endured with restraint and altogether another matter to maintain a composed demeanor, especially when you are burning mad inside. Sure it is difficult to resist barking back, but muzzle yourself. By facing the situation with maturity (something weasels lack), by preserving your integrity (again something weasels lack), you deny weasels the satisfaction of upsetting you. In addition, you think clearer when you are calm.

Just because weasels abandon professionalism is no excuse for your joining their herd. Weasels want nothing more than for you to crawl under slimy rocks with them. Judges are less inclined to assess blame when both sides behave unruly.

Respond with kindness, not in kind. Take the high ground; kill weasels with kindness. In following this advice, you stay a step removed from their game and undermine the ugly dynamic weasels try to create. Give weasels wide berth, and be as nice to them as possible. Also, a little humor can ease a tense situation.

Showing kindness is not a form of weakness, but an assertion of self-respect which is something sorely lacking in weasels. Only the most insensitive weasels keep their guard up in the face of overt kindness. I am not saying kindness necessarily will ease the conflict, but it might defuse things enough to allow civil conversation.

Seek help and support. While your ego may want to go it alone, the better approach is to find an ally to work things through with you. Get different perspectives on how-to or how-not-to proceed, especially when you are upset. This can be an eye-opener, a mouth-closer, or both. It also can restore your confidence and peace of mind. Even those experienced in parrying with weasels do better talking things over with a trusted colleague.

Maybe the best advice on the subject comes from the grandmother of sportswriter Grantland Rice who warned him to "never get into an argument about cesspools with an expert." ■

Rehearing: "When all you own is a hammer, every problem starts looking like a nail." –Abraham Maslow, psychologist

Connect with Lawyers and Judges in Your Practice Area

Chicago Bar Association and Young Lawyers Section

Committees

No extra fees to join to committees – it's included with your CBA membership!

CBA Practice Committees

- Administrative Law
- Adoption Law
- Alternative Dispute Resolution
- Animal Law
- Antitrust Law
- Asset Protection
- Aviation Law
- Bankruptcy & Reorganization
- Business Law
- Civil Practice
- Civil Rights & Constitutional Law
- Class Action
- Commercial Finance & Transactions
- Commercial Litigation
- Committee on Attorney Malpractice Law
- Consumer Credit
- Consumer Law
- Criminal Law
- Customs & U.S. International Trade Law
- Cyber Law & Data Privacy
- Domestic Relations
- E-Discovery
- Elder Law
- Election Law
- Employee Benefits
- Energy, Telecommunications & Water
- Environmental Law
- Federal Civil Practice
- Federal Taxation
- Financial Institutions
- Financial & Investment Services
- Food Law
- Futures & Derivatives Law
- Gaming Law
- Health Law
- Immigration & Nationality Law
- Insurance Law
- Intellectual Property Law
- International & Foreign Law
- Juvenile Law
- Labor & Employment Law
- LGBT Committee
- Local Government
- Media & Entertainment
- Mental Health & Disability Law
- Military Law & Affairs
- Municipal Departments
- Probate Practice
- Real Estate Taxation
- Real Property Law
- Securities Law
- Social Security Law
- Sports Law
- State & Local Tax
- Tort Litigation
- Trade & Professional Associations Law
- Traffic Laws
- Trial Practice
- Trust Law
- Workers' Compensation

Young Lawyers Section

Serving members in practice less than 10 years.

- Bankruptcy
- Career Assistance
- Civil Rights
- Corporate Practice
- Creative Arts
- Criminal Law
- Education Law
- Environmental Law
- Estate Planning
- Family Law
- Health & Hospital Law
- Insurance Coverage
- Intellectual Property Law
- International Corporate & Trade Law
- Labor & Employment Law
- Legal & Regulatory Compliance
- Professional Responsibility
- Real Estate Law
- Tort Litigation
- Women in the Law

And many more! See complete list online.

No other legal profession puts you in touch with so many attorneys and judges who live and practice in the Chicago area. Whether you are looking for a new position, a new client or expert advice in a specific legal area, you'll find it through the CBA committee network. **Join one of 130 legal specific committees today - no extra fee required.**

Join today at www.chicagobar.org/committees.

PRESIDENT'S PAGE

BY DANIEL M. KOTIN

Adapting for the Future While Maintaining Our Traditions

Technology is advancing at an unprecedented rate. Even though the legal system has been behind the curve in adapting to technology, our profession is now embracing this new reality, and we must be prepared for more advances that emerge virtually every month.

Twenty-five years ago, most written legal communication was conducted via U.S. Mail. Then, fax machines became the norm. Now, more than anything, our legal communication is done via e-mail.

Twenty-five years ago, legal research was performed using law books in libraries. Now, all research is on-line, and traditional law libraries have virtually ceased to exist.

Twenty-five years ago, court filings were all paper documents that were stamped by court clerks, copied, and mailed to other parties. Now, e-filing is required in many jurisdictions.

Despite what feels like a seismic shift in our legal landscape, the reality is that these changes are just the tip-of-the-iceberg, and many more dramatic changes are on the horizon.

For example, in England, small civil claims are already being adjudicated *entirely* on-line. Plaintiffs submit their claims and supporting evidence over the internet. Likewise, defendants answer claims and provide conflicting evidence on-line. Ultimately, a judge or magistrate decides the case based upon these submissions and distributes his or her judgment electronically. There is no face-to-face interaction between the parties, nor the judge.

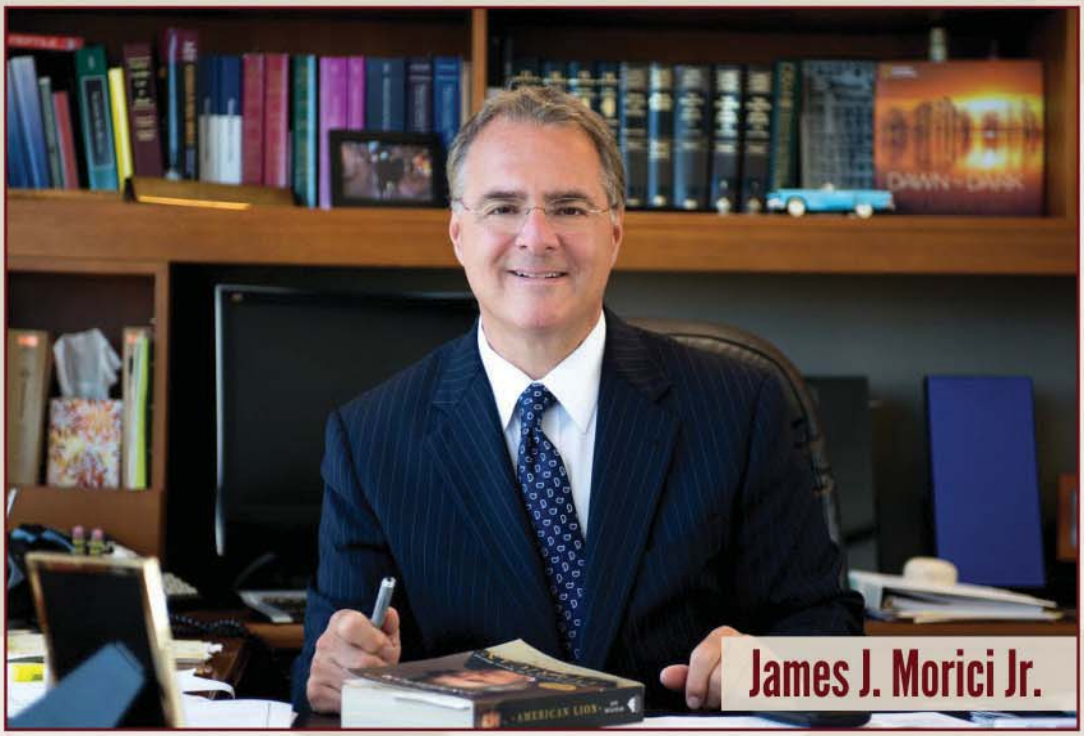
Although our American right to a trial by jury as well as due process protections may make this English method impossible in the United States, we must accept the fact that our legal system 10 years from now will look vastly different than it does today. With that I mind, we now must do what we can to stay in front of these changes and be prepared for them when they occur.

In our ongoing efforts to improve access to justice in our community, we continue to support the expansion of innovations in our small claims courts. Too often, Cook County residents cannot afford to participate in our legal system because court appearances require litigants to miss work, lose pay, and potentially lose their jobs. Judge Ken Wright, Presiding Judge of the First Municipal District, has implemented a "Flex Call," which affords citizens the opportunity to come to court before work in the morning or after work in the evenings and thereby participate in the justice system without compromising their livelihoods.

In a similar vein, we are exploring and promoting the concept of opening a branch courthouse in a big-box store in an underprivileged Chicago neighborhood. After all, if citizens can have their eyes examined and purchase glasses at Costco, why shouldn't they be able to adjudicate a legal dispute with their landlord at the same location?

Refer with confidence

Competitive Referral Fees
No Renegotiation When The Money Comes In



Personal Injury
Construction Site Negligence
Workers' Compensation

MORICI, ATTORNEYS AT LAW
FIGLIOLI & ASSOCIATES

312-372-9600
312-372-9602
mfa-law.com
mfachicago
150 N. Michigan Ave · Ste 1100 · Chicago, IL
6723 N. Northwest Highway · Chicago, IL
MFA LAW
MFA-LAW.COM

The **CBA Record** would like to thank Amy Cook for her years of service as Editor-in-Chief (2014-16). With Justice Michael B. Hyman returning to the helm, Cook will remain active in her position as Managing Editor, joining Associate Editor Anne Ellis and Publications Director David Beam in the work of the **CBA Record.**

We welcome your ideas, submissions, and feedback! Visit the **CBA Record** online at www.chicagobar.org to learn how to submit articles and send your feedback to us at publications@chicagobar.org.

Master Trial Prep

You Have a Trial Date. Now What?

Wednesday, October 19, 3:00-6:00 p.m.

Webcast Available. 2.75 IL PR-MCLE Credit

Presented by: CBA Commercial Litigation Committee

Considerations of jury and bench trials, opening and closing arguments, cross examination and expert testimony will be discussed.

Trial Preparation and Presentation

Wednesday, October 26, 3:00-6:00 p.m.

Webcast Available. 2.75 IL PR-MCLE Credit

Presented by: YLS Tort Litigation Committee

Circuit Court judges and local trial attorneys will discuss all aspects of trial preparation and presentation. Receive practical written materials and first-hand guidance on how to effectively try a case.

Register and learn more at www.chicagobar.org/cle.

As mentioned above, on-line dispute resolution faces Constitutional hurdles because due process cannot be satisfied by serving someone with a summons via e-mail. Yet voluntary electronic dispute resolutions is perfectly Constitutional, and we are exploring this possibility with some of our technology partners as well as with the courts. Stay tuned.

These advancements in technology are also impacting our daily involvement and interactions at the Chicago Bar Association. Each month, more and more members are participating in committee meetings on-line and attending seminars remotely through videoconferencing. These advancements have proven to be a wonderful option for members, resulting in unprecedented strong attendance at committee meetings and record-breaking success of our CLE programs.

Unfortunately, however, all of these technological advances do not take place without some collateral damage.

As a result of conducting so much of our professional lives over our smart phones and computers, our profession no longer requires the face-to-face interactions which give us, as practicing lawyers, opportunities to actually meet each other. For more than 200 years, interpersonal, face-to-face relationships have been fundamental to our legal system. Not only do such interactions facilitate dispute resolution and business development, but they also promote collegiality and comradery in an otherwise very stressful profession.

Although cynics may say that times are changing and the days of lawyers interacting with each other in the same room will soon be a thing of the past, the Chicago Bar Association rejects this premise, will continue to embrace these interactions, and will always promote events that encourage direct, in-person contact among lawyers. On that note, I have observed three recent events which support the conclusion that lawyers still appreciate time spent together.

First, the CBA will soon be completing its first year-long Leadership Institute. In this program, a select group of law firm associates participate in regular sessions to learn necessary skills for leadership and business development. Feedback from participants thus far indicates that they not only find the monthly programs interesting and valuable, but many of them would like the two-hour sessions to last *even longer*. We may accommodate this request for next year's class.

Second, and perhaps equally encouraging, was the YLS Meet the Committees Night that took place in early September at the CBA. On that evening, after work, more than 200 law students and young lawyers came to the CBA to learn about and sign up for the nearly 30 committees that our Young Lawyers Section operates. The energy from that event bodes well for the future of the CBA.

Third, and as even further evidence of the benefits of direct interaction, our friends at Lawyers Lend-A-Hand to Youth are launching a one-on-one tutoring program from 5:30 to 7:00 p.m. on Tuesdays at the CBA. There is already great interest in the program, but volunteers are needed. If you can help out, please contact Executive Director Kathryn McCabe at 312/554-2041 or kmccabe@lawyerslendahand.org.

So, as I conclude this column, we vow to continue adapting and striving to help our members and our legal system keep pace with a rapidly changing society. Yet, at the same time, we will never lose sight of the importance and value of lawyers spending time with one another in the same room. To that end, we will continue to facilitate and promote social, professional, and educational events at and around the CBA. ■

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.

WE ARE NOT JUST NURSING HOME LAWYERS

We may be the go-to nursing home lawyers in Illinois, but we have repeatedly 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:

- A $17.7 Million Medical Malpractice/Brain Injury Settlement
- A $6.5 Million Birth Injury Settlement
- A $6.5 Million Record Kane County Wrongful Death/Trucking Accident Settlement
- A $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 North 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
Questions@LevinPerconti.com

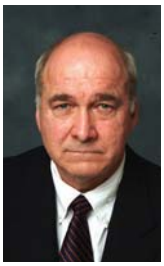
Nine Legal Giants to be Honored with Stevens Award

By Kaye Bolden Stovall
CBA Public Affairs Director

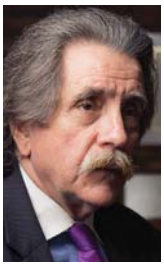
The CBA celebrated the accomplishments of nine distinguished lawyers at its 17th annual John Paul Stevens Award on Thursday, September 14 at Chicago's Standard Club. Special guest Retired U.S. Supreme Court Justice John Paul Stevens attended and honored this year's awardees.

The 2016-17 honorees included: George B. Collins; Partner at Collins, Bargione, and Vuckvich; Brian L. Crowe; Former Cook County Judge, Corporation Counsel for the City of Chicago during the administration of Mayor Richard M. Daley; Thomas A. Demetrio; Founding Partner of Corboy & Demetrio, P.C.; Thomas Anthony Durkin; Fellow of the American College of Trial Lawyers, Distinguished Practitioner in Residence at Loyola University Chicago School of Law, and Senior Research Fellow at the Center on National Security at the Fordham University Law School in New York City; J. Timothy Eaton; Partner at Taft, Stettinius & Hollister LLP; Josie M. Gough; Clinical Assistant Professor and Director of Experiential Learning at Loyola University Chicago School of Law; Joan M. Hall; Retired Attorney and Founder and Former Board President of Young Women's Leadership Charter School; Eileen M. Letts; Co-Managing Partner of Greene and Letts; Joseph L. Stone; Founding Director of the Loyola University of Chicago Law School Randy & Melvin Berlin Professor of Business Law Clinic.


Collins


Crowe


Demetrio


Durkin


Eaton


Gough


Hall


Letts


Stone

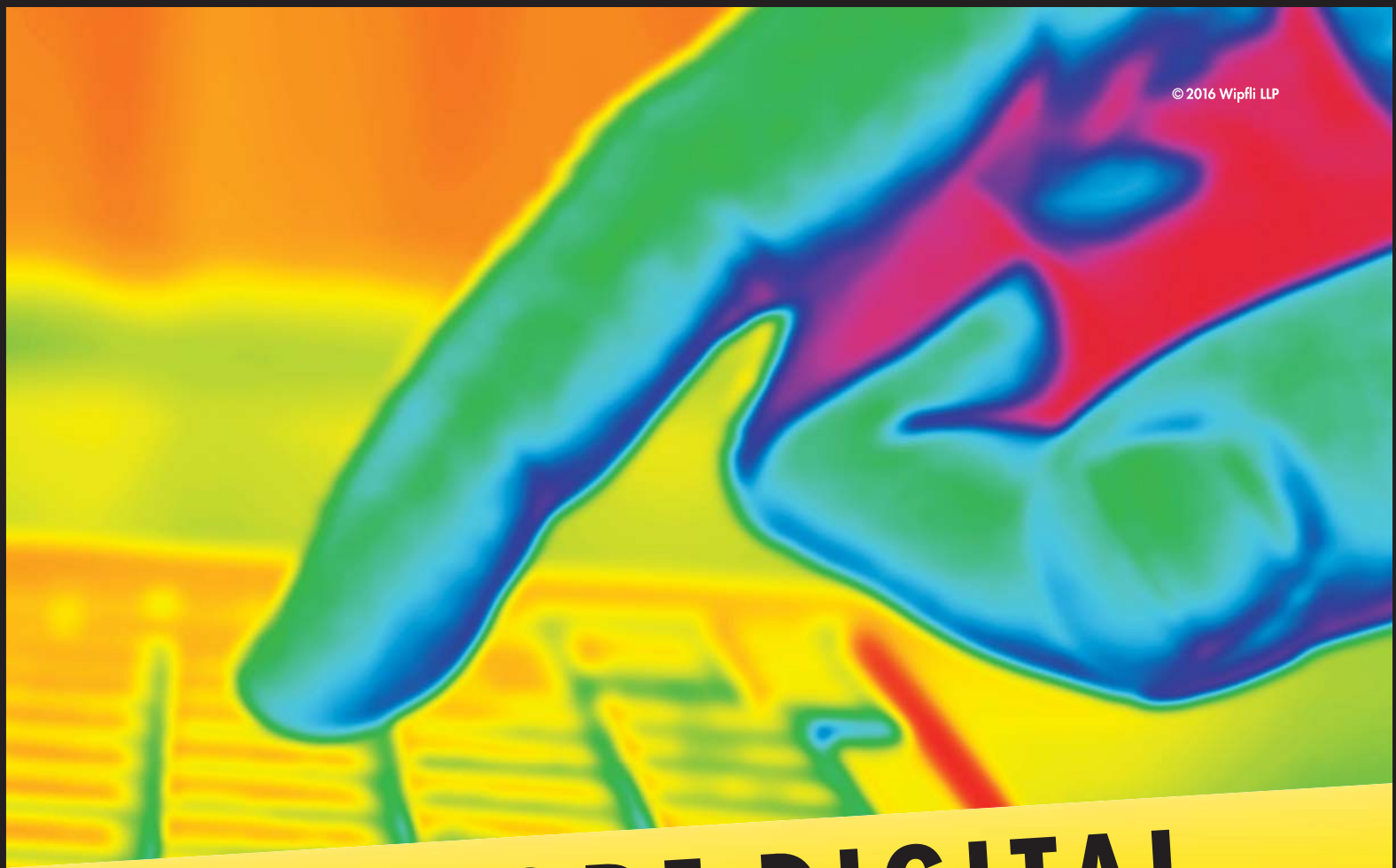
About the Stevens Award

The Stevens Award is named for Chicago native, The Honorable John Paul Stevens, retired U.S. Supreme Court Associate Justice who served from 1975-2010. The Stevens Award is the highest award presented by The Chicago Bar Association and honors attorneys and judges who have demonstrated exceptional commitment to their communities, legal field, and public service throughout their careers. ■

CBA Committee Directory

This issue of the **CBA Record** includes our annual Committee Directory, which provides contact information and standard meeting dates. The weekly CBA Ebulletin (check your inbox each Thursday) will include information on speakers, topics and MCLE credit availability.

Attend any meeting that interests you (or watch via webcast), and receive free MCLE credit at meetings that qualify. To join a committee, call 312/554-2134 or sign-up at www.chicagobar.org. New members are always welcome. You and your firm will benefit from the knowledge, experience and business contacts you will gain.



GET MORE DIGITAL FORENSIC FIREPOWER.

Uncovering and corroborating business fraud takes more than advanced technical knowledge and sophisticated digital tools. You need what Wipfli has: a seasoned team of relentlessly inquisitive, creative investigators with deep experience, diverse academic credentials and a remarkable track record.

Wipfli has built a digital forensic powerhouse that uncovers elusive criminal activity and extracts evidence that others had missed or were unable to retrieve. We've designed a custom, state of the art digital forensics lab that supports complex investigations, enabling us to help clients stop fraud and abuse, recover losses and prosecute criminal acts successfully.

wipfli.com/fraud

WIPFLI LLP
CPAs and Consultants

CHANGE IS COMING TO CBA MUSIC

The Chorus is Moving to a New Beat

By Dorothy A. Voight

This year promises to be an exciting one for the CBA Chorus. We're auditioning three candidates for the position of new CBA Chorus director because Rebecca Patterson, our director from the chorus's inception in 2006, retired at the end of the 2015–2016 season.

The Chicago Bar Association boasts one of the most robust avocational music programs in the country, offering a chorus, symphony orchestra, big band and chamber music ensembles. Members of the legal community have many opportunities to join other members in performing music in various ways. The CBA Chorus usually performs classical choral works with the CBA Orchestra, such as the Brahms Requiem, but has also performed with piano accompaniment or a cappella.

The mission and purpose of the CBA Chorus is to: 1) Promote and enhance the public's understanding and image of The Chicago Bar Association by sharing the musical excellence of its members; 2) Attract new members to the CBA by offering opportunities for civic involvement and artistic expression; 3) Promote civic service among CBA members; 4) Provide an opportunity for CBA members to exchange ideas and information through interaction in a social setting; and 5) Be a counterpart to the Chicago Bar Association Symphony Orchestra.

David Katz, founding music director of the Chicago Bar Association Symphony Orchestra said "When I asked Becky Patterson to form a CBA Chorus for performances of the Beethoven 9th Symphony ten years ago, I never imagined that the group would continue beyond those concerts to become an integral part of the Chicago Bar Association's musical life. Now that Becky has retired, we are in the midst of a most important search—to find just the right individual to lead the CBA Chorus into its second decade with the same dedication and skill. It is an exciting time. I can't wait for the season to start."

After learning that Rebecca Patterson planned to retire in May 2016, the chorus formed a search committee spearheaded by CBA Orchestra conductor, Maestro David Katz. The many applications received were narrowed down to three well-qualified finalists.

Each finalist will prepare the chorus for a concert over the coming year. Chorus members and Maestro Katz will get a sense of what each finalist's directing style and personality is like during this trial period in order to determine who will be the best fit.

At the end of the season, we'll select one finalist to be our permanent chorus director. Chorus members, the orchestra and even audiences will be asked for input.

Our three finalists are:

Stephen Blackwelder who is currently Music Director of the Waukegan Symphony and Director of the DePaul Community Chorus;

Christopher Windle who is the Concert

Choir Conductor and an Instructor at Benedictine University in Lisle, an adjunct instructor at Northwestern University's Beinen School of Music in Evanston, and Assistant Choirmaster of the Church of the Atonement in Chicago; and.

Dr. Christopher Owen who is the Director of Choral Activities and Assistant Professor of Music Education at Northeastern Illinois University.

Each will make his pitch for the director position by preparing a piece for the chorus to sing with the orchestra, and will also direct additional choral selections which the chorus will perform with piano only or a cappella.

First is Stephen Blackwelder's chance to shine, with works by Handel, Fauré and Mahler on November 16, 2016. The second concert, where we'll perform "Mostly Mozart" will be on March 8, 2017, and will be led by Christopher Windle. The third concert featuring works by Tchaikovsky and Vaughan Williams will be on May 17, 2017, and will be Christopher Owen's opportunity to work with the chorus.

In addition to these concerts with our director candidates, chorus members will participate in a chamber concert on September 16 at the Cliff Dwellers Club, with different ensembles and soloists from the CBA Symphony Orchestra and Chorus in a program of instrumental and vocal selections.

We're looking for additional singers in all sections to join the chorus. There's no need to audition, though potential members should have choral experience and be prepared to sing to an audience. If you find singing relaxing and enjoyable, and are free Wednesday evenings from 6:00 p.m. to 8:00 p.m., then you're the kind of person the chorus needs. Some members practice law to make a living, but we live to sing. Most chorus members are attorneys, judges, law students, paralegals, legal assistants, and secretaries, but we also have educators, realtors and persons in other professions. Some are accomplished musicians, but many are enthusiastic amateurs who are more familiar with statutes than staccatos.

Co-chair Rebecca Burlingham reminds us that "[T]he members of the CBA Chorus come from a variety of backgrounds and have a variety of interests, but they are all united by their love of singing and performing choral music. The great personal enjoyment it brings to them, and the camaraderie and energy of our group, keep them coming back year after year. At the end of each season, we look ahead with great interest and anticipation to the new experiences and challenges, and the unique musical opportunities, next season will bring."

Co-chair Terry Kennedy notes the professional networking opportunities that the Chorus provides and enjoys the social aspects of the Chorus, as well as the musical challenges.

Retiring director Rebecca Patterson says "Leading this extraordinary group has been a real privilege. There's a great spirit of camaraderie, and a dedication to excellence, and we also enjoyed a whole lot of fun in rehearsals and in performance."

If you can't sing, but enjoy music, please attend the concerts and provide your input on the director choice from an audience member's perspective. We perform at St. James Episcopal Cathedral, located at 65 E. Huron Street in Chicago.

Thanks to the chorus's volunteer leadership and Maestro Katz, the chorus and orchestra have performed two concerts at Chicago's esteemed Symphony Center. The first was Carl Orff's *Carmina Burana* in 2011 to mark the CBA Symphony Orchestra's 25th anniversary and the CBA Chorus's 5th anniversary. The second was *Something Wonderful: The Music of Rodgers and Hammerstein*, a custom program of songs only the CBA groups had permission to perform on April 26, 2015.

In 2010, the Chorus serenaded retiring Supreme Court Justice John Paul Stevens at a gala at the Chicago Hilton. The chorus has performed at Law Day events, holiday concerts at the Harold Washington Library and Navy Pier, and sang the National Anthem at US Cellular Field.

The CBA Chorus has also seized the opportunity to do some touring. In February 2013, the chorus and select members of the CBA Symphony Orchestra travelled to Springfield, Illinois to present *Lincoln and His America: A Musical Celebration*. This concert of Lincoln-era songs, instrumental works and narrative readings from the Civil War era was performed at historic Representative Hall in the Old State Capitol, where Abraham Lincoln once served.

In March 2014, the CBA Chorus went to New York to join the New York City Bar Chorus for a program of popular American songs in the historic New York City Bar Association Building. In November 2015, the New York City Bar Chorus came to Chicago to join the CBA Chorus in concert. The chorus looks forward to other opportunities to sing around the country.

Over the years, the CBA Chorus has sung in English, Latin, Italian, German, Spanish, French, Medieval English, Russian, Huron Indian, Quichua Indian, Chinese, Japanese, Indonesian and more.

As we move forward, we won't lament the loss of our former director, but will carry on her legacy as we begin our overture to a new era that will lead us to higher levels and challenge our abilities. The CBA Chorus intends to remain a dynamic part of the musical and legal community and invites you to support us as we move to a new beat. ■

(Dorothy A. Voight was assisted by Rebecca Burlingham and Ruth Kaufman in writing this article)

For more information about the CBA Chorus, visit the CBA's website (under the Services tab/ Entertainment/Music/Chorus.

CBA Approves RPost as Cyber Security Member Benefit

The CBA has approved RPost's RMail® service as a CBA member benefit. An all-in-one email extension for security, compliance, and productivity, RMail integrates seamlessly with Microsoft Outlook and Gmail, the two main email platforms used by legal professionals.

"Lawyers rely on email to communicate with clients, but changes to the rules of professional conduct, regulatory and legislative requirements, and a growing awareness of email vulnerability suggest a need for greater protection. RPost provides ways to add security and safeguards to confidential communication, combined with ease of use," said Catherine Sanders Reach, CBA Director of Law Practice Management & Technology.

"Lawyers understand that they must protect sensitive client information from data breaches," adds RPost CEO Zafar Khan. "This is critical for privacy concerns and compliance. RPost's RMail service is easy for lawyers, clients, and their staff to use in closing this risk gap."

RMail includes RPost's Registered Email™ certified e-delivery technology and simple-to-use email encryption. RMail works with any existing email address and sends to any recipient, without the need for extra software or downloads. RPost has won the World Mail Award for "Best in Security" and more than 20 bar associations have approved RPost's RMail® service as a preferred member benefit.

RMail is also providing an educational e-brief campaign that includes "RPost Tech Essentials," a weekly series of articles and online videos on technology trends and best practices. RPost is also offering a member discount on the RMail service. Learn more at www.rmail.com/cba

The global leader in secure and certified electronic communications, RPost has helped businesses enhance their security, compliance, and productivity for more than a decade. RPost is the creator of the patented Registered Email™ technology, which provides email senders with Legal Proof® evidence of delivery, time of delivery, and exact message content in the form of a Registered Receipt™ email record. Since inventing Registered Email technology in 2000, RPost has successfully commercialized software platforms to track, prove, e-sign, and encrypt, used by more than 25 million people throughout the world. Learn more at: www.rpost.com. ■

CBA membership is now more valuable than ever!
At $150 a plan year, the CLEAdvantage allows you to save time and money in meeting your MCLE requirements.

Unlimited CLE for Only $150!

CLEADVANTAGE

ANYTIME, ANYWHERE

100's OF SEMINARS + WEBCASTS
www.chicagobar.org


IN-PERSON


ONLINE


ON DEMAND

Save on Minimum Continuing Legal Education Costs with The Chicago Bar Association's Unlimited* CLE Plan – the CLE*Advantage*.

It's a simple and cost effective solution for CBA members. ***For $150 a plan year***, you will receive:

In-person attendance at an unlimited number of CLE and YLS seminars

Access to CLE Webcasts at www.chicagobar.org
**Both live and archived seminars receive Illinois MCLE*

Free CLE DVD rentals from the CBA Legal Bookstore

Members also receive:

Free Monthly Seminars with MCLE Credit!

- Free Illinois MCLE credit for attending in-person or live Webcasts of CBA and Young Lawyers Section committee meetings that qualify for credit. *No extra fees to join committees or attend noon-hour meetings!*
- Individual member access to a personal MCLE credit history report at www.chicagobar.org that enables members to track both CBA and non-CBA sponsored CLE.

To join the CBA or the CLEAdvantage Plan visit *www.chicagobar.org*

Non-members call: *312-554-2133* • Members call: *312-554-2056*

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

CLE & MEMBER NEWS

Is This Your Last Issue?

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

Here's just a sample of what you will miss if you do not renew: Free CLE seminars–enough to fulfill your MCLE requirements, live and webcast options, free Illinois MCLE credit through noon hour committee meetings–attend live or via webcast, free online MCLE credit tracker, unlimited CLE of your choice only $150 now through May 2017, new law practice management and technology software training, web resources, and low cost office consulting, free practice-area email updates, networking and business development opportunities, free solo/small firm resource portal, career resources, member discounts, and more. Plus, your membership helps strengthen the CBA's efforts to improve the administration of justice in Illinois and provide legal services to the disadvantaged.

Renew your membership now to maintain your savings and benefits. Renew 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.

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

New Chair/Vice-Chair Directory

It's that time of year again…all CBA and YLS committees begin meeting this month. 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 are sent to all members via the weekly CBA Ebulletin which is emailed every Thursday. This information can also be found at www.chicagobar.org/committees. Members may attend any meeting that interests them (ie 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 and offer 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. ■

Solo/Small Firm Lawyers: Managing the Mindset and Mechanics

Thursday, October 27, 4:00-5:00 p.m.
CBA Headquarters, 321 S. Plymouth Court., Chicago, IL

Presented by the CBA Career Assistance Program

MCLE: 1 IL-PR MCLE Credit, subject to approval

We know a legal career is a marathon, not a sprint. Making yourself known in order to sell your services presents more challenges, for many small firm and solo practitioners, than does running an actual marathon. Come discuss the hurdles and breakthroughs in establishing your name and reputation-in person, in print, and now, too, on social media-and how to deal resiliently with the inevitable stress and missteps along the way.

Kathy Morris of Under Advisement, Ltd., the featured legal career counselor of the CBA Career Advancement Program, will provide food for thought and field your questions.

Please come prepared to participate actively in this career-enhancing session.

Register and learn more at www.chicagobar.org/cle.

In-Person • Webcast

CLE

THE CHICAGO BAR ASSOCIATION
Continuing Legal Education

Paths to Teaching Law
September 29 • 12:00-1:00 p.m.

13th Annual Asset Protection Symposium
September 30 • 8:30 a.m. - 5:00 p.m.

Running for Public Office: How to Get on the Ballot & Win
October 5 • 3:00-6:00 p.m.

Wellness for Lawyers: Why, What + How
October 7 • 12:00-1:00 p.m.

How To... Auto-generate Tables of Authorities with Best Authority
October 11 • 1:45-2:45 p.m. (complimentary)

How to Form an Illinois Business Entity Part 1
October 13 • 3:00-6:00 p.m.

Patent, Trademark and Copyright Basics
October 18 • 3:00-6:00 p.m.

Legal Update on Temporary Visitor Driver's License
October 19 • 12:00-2:00 p.m.

Practical Advice for Trying Your Case
October 19 • 3:00-6:00 p.m.

7 Key Strategies to Growing Your Book of Business Through More Effective Networking
October 19 • 4:00-5:00 p.m.• Rockit Bar & Grill (complimentary)

Social Media De-mystified for 2016
October 20 • 12:00-1:30 p.m.

How to Form an Illinois Business Entity Part 2
October 20 • 3:00-6:00 p.m.

How To... Collaboration Using Tracked Changes
October 25 • 1:45-2:45 p.m. (complimentary)

Create a Website for Your Law Firm Workshop
October 26 • 1:00-4:30 p.m.

Trial Preparation and Presentation
October 26 • 3:00-6:00 p.m.

Solo/Small Firm Lawyers: Managing the Mindset and Mechanics
October 27 • 4:00-5:00 p.m.

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

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

The Chicago Bar Association

MEMBERSHIP EXCLUSIVES

Savings and more!

www.chicagobar.org/save

Alliant Credit Union - Below Market Loans, Free Checking
800•328•1935 x8616 • www.alliantpromos.org/cba

Avis Car Rentals (AWD #A851600)
800•698•5685 • www.avis.com/chicagobar

Budget Car Rentals (BCD #T720200)
800•455•2848 • www.budget.com/chicagobar

Carr Workplaces - Full, Part-Time & Virtual Office Space
312•577•7600 • www.carrworkplaces.com/chicagobar

Club Quarters Hotels (Password=Chicago Bar)
203•905•2100 • www.clubquarters.com

Credible Student Loan Refinancing
866•540•6005 • www.credible.com/partners/Chicagoar

CVS/Caremark Rx Savings Plus
877•673•3688 • http://chicagobar.rxsavingsplus.com

EsqSites - Law Firm Websites & Hosting (Offer Code: CBA)
877 SITES 123 • www.esqsites123.com

LawPay/Credit Card Processing
866•376•0950 • www.lawpay.com/cba

LexisNexis (Offer Code M-Chicago Bar Assn)
312•385•9706 • www.lexisnexis.com/bars

Magazine Subscriptions - Lowest Prices Guaranteed
800.289.6247 • www.buymags.com/chbar

Membership Visa Credit Card
888•295•5540 • www.chicagobar.org

National Purchasing Partners - Wireless, Travel & More
1.800.810.3909 • mynpp.com

RPost Registered Email Service & More
310-912-3668 • www.rmail.com/cba

Smokeball - Case Management for Small Law Firms
www.smokeball.com/chicago-bar-association

United Parcel Service - Save up to 26%
800•325•7000 • www.savewithups.com/cba

www.chicagobar.org/save

New for members!

The Chicago Bar Association Online Library

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

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

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

Getting Started:

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

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

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

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

Adoption • Alternative Dispute Resolution
Animal • Business Law
Antitrust Law • Asset Protection
Aviation • Bankruptcy • Civil Practice
Civil Rights • Class Action
Commercial Litigation • Consumer
Criminal • Customs • Cyber Law
Domestic Relations • eDiscovery
Elder • Election • Employee Benefits
Energy • Environmental • Federal Civil
Federal Taxation • Finance
Futures and Derivatives • Gaming
Health • Immigration • Insurance
Intellectual Property • International
Juvenile • Labor and Employment
Law Practice Management • LGBT
Local Government • Media
Mental Health • Military • Municipal
Probate • Real Estate Taxation
Real Property • Securities
Social Security • Sports
State and Local Tax • Technology
Tort Litigation • and more!

www.chicagobar.org/onlinelibrary

THE CHICAGO BAR ASSOCIATION
FOUNDED 1874

START YOUR

Career Right

Our New Lawyers Program protects you, your clients – and your financial future – against unintended mistakes. It's easy to apply and (really!) affordable. Your first year probably costs less than your annual smartphone bill.

For those who:

- **Have been active <3 years**
- **Are claims-free**
- **Are planning to go solo**

Visit isbamutual.com/newlawyer or call 800 473-4722 to get coverage now!

ISBAMutual
Lawyers' Malpractice Insurance

Chicago Bar Foundation
Report

The Chicago Bar Foundation
Ensuring access to justice for all

2016 Thomas H. Morsch Public Service Award Recipient

The Privilege of Giving Others Hope

Recipients of the 2016 Pro Bono & Public Service Awards are joined by event co-chairs Rebecca Eisner (top left) and Kelly McNamara Corley (top right).

By Timothy J. Hufman

Tim Hufman, a Supervising Attorney in the Housing Practice Group at LAF, is the 2016 recipient of the prestigious Thomas H. Morsch Public Service Award. His remarks in accepting the award at this year's CBA and CBF Pro Bono and Public Service Awards on July 18th were particularly compelling, and with his permission we are reprinting them in this issue.

We all know that life can be unfair—and sometimes even cruel.

I am reminded of a boy named Julio, whom I met in the 1970s while I was running a group home for teenage boys in

Congratulations to all the recipients of the 2016 CBA and CBF Pro Bono and Public Service Awards

Kimball R. Anderson and Karen Gatsis Anderson Public Interest Law Fellowship
Amanda Walsh, Legal Council for Health Justice

Exelon Outstanding Corporate Counsel Award
Eric Carlson, McDonald's Corporation

Leonard Jay Schrager Award of Excellence
Shaye L. Loughlin, DePaul University College of Law

Edward J. Lewis II Pro Bono Service Award
Lawrence A. Wojcik, DLA Piper LLP (US)

Maurice Weigle Exceptional Young Lawyer Award
Andrew F. Merrick, Jenner & Block LLP

Richard J. Phelan Public Service Award
Deborah Hagan, Office of the Illinois Attorney General

Thomas H. Morsch Public Service Award
Timothy J. Hufman, Legal Assistance Foundation

YLS Volunteer Opportunities

Law Explorers: The YLS Law Explorers Project sponsors lectures and activities for young men and women between the ages of 14 and 20 who are interested in careers in law and government. Volunteer attorneys meet with students from 100 Chicago area high schools every other Wednesday evening and participate in role plays concerning legal and ethical questions. Visit the Law Explorers Committee page at www.chicagobar.org for more information.

Serving Our Seniors: In 2009-10, the CBA helped the ABA to launch Serving Our Seniors. The program designed to assist young lawyers in providing low-income seniors with legal advice regarding the creation of basic estate plans, including powers of attorney for healthcare and property, living wills, and simple wills. Estate planning experience is not needed. Visit the Serving Our Seniors Committee page at www.chicagobar.org for information about upcoming events.

New York City. When Julio came to me, he was 15 years old and terribly scarred over his entire face and body due to third-degree burns he suffered as a boy when he was trapped in his Bronx apartment during a fire. Thereafter, whenever he did anything wrong, his parents punished him by holding a lit candle to his face. That abuse continued until his parents threw him out of the home at the age of 15 to fend for himself.

So here was this teenage kid knocking at my door—homeless, and scarred both physically and emotionally while growing up in one of the worst and poorest parts of the Bronx. Life had truly been unfair.

Over the years, when I have thought about Julio, I have wondered where I would be in my life today if I'd had to endure even one of the challenges he faced.

Is my presence before you today because of my accomplishments, or is it because of my good fortune? I think we all know the answer to that question. And if we are willing to be honest with ourselves, isn't what I am saying about myself true for most, if not all, of us in this room?

We are here not because of what we have done, but because of what we have been given. We are the privileged ones, and yet, the unfairness of life is also part of our stories. Some of you have experienced that unfairness in the form of discrimination based on gender, race, ethnicity, or sexual orientation. Still others have struggled with chronic depression or unexpected tragedies.

And yet, notwithstanding these struggles, all of you are in this room today as successful attorneys or other professionals. And you are here because each of you has refused to let the unfairness in your own life have the last word. You have persevered. And with the compassion that can come from such struggles, as attorneys we can stand with our clients and reach out to the Julios of the world and say, "that unfairness and injustice in your life does not have to be the last word."

What a privilege we have as attorneys to take on this role and offer the possibility of hope to those who gave up on this concept a long time ago.

At the end of the day, doesn't this kind of service to others begin to define a life of meaning? It is not based on a pursuit of our own self-gratification. And our worth will not ultimately be determined by our fleeting successes. Rather, it is only when we choose to exist in a world in which the needs of the Julios, or the duties of citizenship, or the call of God, or something else of this order crucially matters to us that our lives will rise above the trivial and strive towards the authentic. And isn't this the challenge that faces each of us who has been given so much?

The Julios are out there. The only question is, what will be our response when we find them knocking at our door? ■

MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Michael R. Lufrano (center), Executive Vice President and Chief Legal Officer, Chicago Cubs, presented retired U.S. Supreme Court Justice John Paul Stevens (right) with the flag commenorating the 1932 World Series at the Stevens Award Luncheon on Wednesday, September 14 at the Standard Club. The event was moderated by CBA President Daniel M. Kotin (left). Photo by Bill Richert.

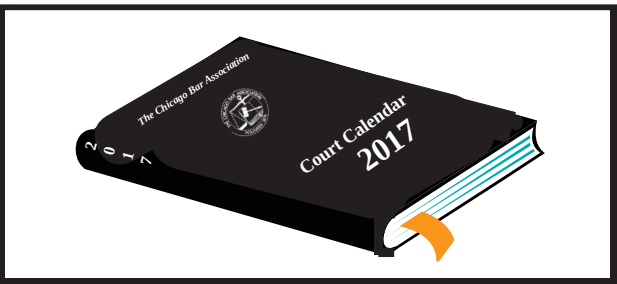
Archbishop **Blaise J. Cupich** will be our honored guest speaker at an association luncheon on Thursday, October 20, in the Grand Ballroom at the Standard Club. A reception for Archbishop Cupich will begin at 11:30 a.m. followed by the luncheon. Archbishop Cupich was ordained to the priesthood in 1975 and was appointed Bishop of Rapid City, South Dakota in 1998. Archbishop Cupich was appointed the sixth Bishop of Spokane, Washington in 2010 until his appointment as the ninth archbishop of Chicago in 2014. Archbishop Cupich received a Doctor of Sacred Theology and a Doctor of Sacramental Theology degrees from Catholic University of America. Before his appointment as Archbishop of Chicago, he served as Secretary at the Apostolic Nunciature in Washington, D.C. and as Chair of the USCCB Committee for the Protection of Children and Young People. Pope Francis appointed Archbishop Cupich to the Congregation for Bishops in 2016. Tickets for the luncheon are $75 per person or $750 for a table of ten. For more information or to make reservations please contact CBA Events Coordinator, **Tamra Drees** at tdrees@chicagobar.org or 312/554-2057.

CLE in London

See London like you've never seen it before! This year's CLE in London (April 10-13, 2017) is being hosted by our friends at LexisNexis and will be held at their International Headquarters. We have an outstanding Continuing Legal Education Program planned which includes speakers from London and the U.S. on: Access to Justice, Comparative Justice and Trends, Diversity/Inclusion, and Technology and Cyber Security. Some of the outstanding special events planned for members and guests include: private tours of the Houses of Parliament, The Supreme Court of England and Wales, the Central London Criminal Court (Old Bailey) and the Royal Courts of Justice. Also planned is a boat tour past Runnymede featuring a presentation about the Magna Carta from Robert Griffith-Jones, Reverend and Valiant Master of the world famous Temple Church; a tour of Windsor Castle; a reception and dinner at London City's oldest pub, Ye Old Cheshire Cheese which was rebuilt in 1667; and a closing dinner in the historic Main Hall at The Honourable Society of the Inner Temple, featuring the Chief Justice of the U.K.'s Supreme Court. In addition, a limited number of members who would like to experience a criminal trial at the Old Bailey will be invited by our Barrister friends to sit in the "well" (near the counsel's table) during a morning or afternoon session. Save the date for the Association's CLE in London program, April 10-13, 2017. A flyer announcing the program will be emailed to the members in the near future with hotel recommendations and program/event costs. For more information, contact Tamra Drees at 312/554-2057 or tdrees@chicagobar.org.

93rd Annual Bar Show– "This Case is a Shamilton"

The 93rd Annual Bar Show opens on Thursday, December 1, and runs through Sunday, December 4 at DePaul's Merle Reskin Theatre. The Bar Show is an irreverent musical parody written and performed entirely by lawyers and judges–all members of the CBA. The Bar Show has become a Chicago holiday classic and is a great way for members to entertain their clients, family and friends during the holiday season. 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 for one's health and the Bar Show is guaranteed to bring on a number of hearty belly laughs. So don't miss this year's Bar Show, "This Case is a Shamilton." Main floor tickets are $45 per person and Mezzanine seats are $35 per ticket. Orders of 10 or more tickets will receive a $5 discount. For more information or to order tickets, visit www.barshow.org.



The Chicago Bar Association

Attorney's Court Calendar 2017

Organize your day with The Chicago Bar Association's 2017 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 2017 Attorney's Court Calendar is $21.50 for CBA members and $25.50 for nonmembers (includes Illinois sales tax).

2017 CBA Attorney's Court Calendar

I would like to order ____ copies of the 2017 CBA Attorney's Court Calendar.
$21.50 CBA member/
$25.50 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 10, 2016.

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)

REDUCE STUDENT LOAN PAYMENTS THROUGH CREDIBLE

Credible allows members and their families to explore ways to save thousands on their student debt. With Credible, you can fill out one simple form and receive personalized refinancing offers from multiple lenders. You can also visit Credible via http://ow.ly/WrgYA to learn more about student loan topics, including student loan refinancing, student loan consolidation, student loan reduction, and student loan forgiveness.

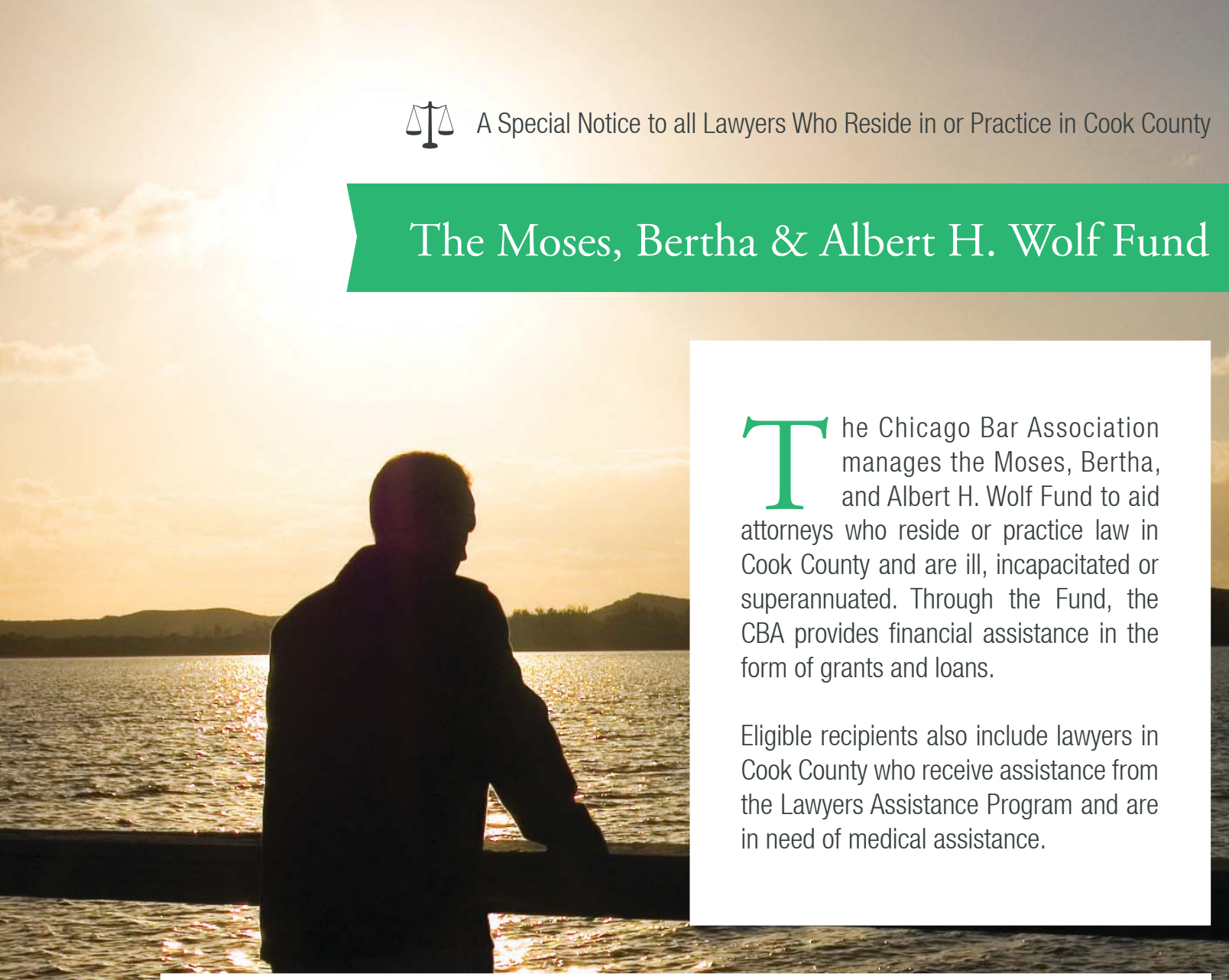
Congratulations

Congratulations to our 2016 Justice John Paul Stevens Award Honorees: **George B. Collins**, **Brian L. Crowe**, **Thomas A. Demetrio**, **Thomas Anthony Durkin**, **J. Timothy Eaton**, **Josie M. Gough**, **Joan M. Hall**, **Eileen M. Letts**, and **Joseph L. Stone**...legendary Chicago lawyer **Newton Minow** spoke to the City Club on the topic of "Inside the Presidential Debates: Their Impossible Past and Promising Future"... kudos to **Matthew A. Passen**, former chair of the Association's Young Lawyers Section, for receiving numerous First Place Awards at the ABA's Annual Meeting for outstanding young lawyer programming last year...**Thomas A. Demetrio**, Corboy & Demetrio, discussed "Concussions in the NFL: Whose Bell was Really Rung?" at the City Club of Chicago...**Robert A. Clifford**, Clifford Law Offices, P.C., is the new Chair of the ABA's Fund for Justice and Education...Illinois Supreme Court Justice **Anne M. Burke** was a speaker at the Kennedy Forum and Lawyers' Assistance Program on Attorney Mental Health and Substance Abuse...**Renee M. Schoenberg**, DLA Piper, and **Katten Muchin Rosenman, LLP** were honored by the ABA's Standing Committee on Pro Bono and Public Service for their commitment to providing legal services to the poor and disadvantaged...**Timothy C. Evans**, Chief Judge of the Circuit Court of Cook County, will receive the 2016 Chicagoland Distinguished Citizen Award from the Boy Scouts of America...**Philip Harnett Corboy, Jr.** is a member of the Democratic National Committee's permanent committee on credentials.

CBA/CBF presented awards to the following public service giants at the 18th Annual Pro Bono Awards Luncheon: **Amanda Walsh** received the Kimball R. Anderson and Karen Gatsis Anderson Public Interest Law Fellowship...**Eric Carlson** received the Exelon Outstanding Corporate Counsel Award...**Deborah Hagan** received the Richard J. Phelan Public Service Award...**Lawrence A. Wojcik** received the Edward J. Lewis II Pro Bono Service Award...**Andrew F. Merrick** received the Maurice Weigle Exceptional Young Lawyer Award...**Shaye L. Loughlin** received the Leonard Jay Schrager Award of Excellence...and **Timothy J. Hufman** received the Thomas H. Morsch Public Service Award...**Brian W. Duwe**, managing partner of Skadden, Arps, Slate, Meagher & Flom LLP, hosted the 5th Annual Conversation on Inclusion... Judge **William F. Gomolinski** received the President's Award from the Advocates Society of Lawyers... **James F. Botana** has been named managing principal of Jackson, Lewis, P.C....**Greene**

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

& Letts have merged with the Los Angeles firm of **Zuber Lawler & Del Duca**... **John C. Sciaccotta**, Goldgehn Davis & Garmisa, has been elected a member of the Federation of Defense & Corporate Counsel...**Daniel A. Cotter**, Butler, Rubin Saltarelli & Boyd, LLP, will speak on Privacy and Security at the American Conference Institute's 20th Annual Compliance Forum...**G. A. Finch**, Hoogendoorn & Talbot LLP, spoke at the Midtown Center for Boys about How to Become a Lawyer... **Richard D. Yant**, Krasnow Saunders Kaplan & Beninati LLP, was elected to the Union League Club's Board of Directors... **Phillip Barengolts**, Pattishall McAuliffe Newbury, Hilliard & Geraldson LLP, was appointed to the CLE Board of the ABA's IP Law Section...**Jonathan S. Jennings**, Pattishall, McAuliffe Newbury Hilliard & Geraldson LLP, was appointed co-chair of INTA's Minimum Standards Subcommittee...**Geraldine Soat Brown**, ret. U.S. Magistrate Judge, was added to JAMS Chicago Resolution Center...**Renato T. Mariotti** is a new partner at Thompson, Coburn LLP...**Joseph E. Silvia** is counsel to Schiff Hardin LLP... **Howard J. Swibel** spoke at the National Conference of State Legislatures on the Revised Uniform Unclaimed Property Act...**Elizabeth A. Kaveny**, Burke, Wise, Morrissey Kaveny, is the new President of the Illinois Bar Foundation...**Deane B. Brown**, Hughes, Socol, Piers, Resnick & Dym Ltd., was elected Third Vice-President of the Illinois Bar Foundation... **William T. Gibbs**, Corboy & Demetrio, chaired the Brain Injury Association's golf outing/dinner fundraiser...**Jenner & Block LLP** and the **University of Chicago Law School** announced the opening of a Supreme and Appellate Court Clinic for law students… **Ted A. Donner**, of Wheaton, was installed as President of the DuPage County Bar Association and **Shawn S. Kasserman** is the group's new General Counsel.

Karl D. Camillucci is an associate at Taft, Stettinius & Hollister, LLP...Illinois Supreme Court Justice **Mary Jane Theis** received the Socrates Dikastes Award from the Hellenic Bar Association and retired Illinois Appellate Court Justice **Themis N. Karnezis** received the Hellenic Bar's Lifetime Achievement Award...**Adam R. Vaught**, Hinshaw & Culbertson LLP, was named a partner…**Alan Pearlman** was the keynote speaker at the Phi Alpha Delta Law Fraternity's National Conference... **Carole E. Pechi** was named counsel at Polsinelli, PC...Illinois Appellate Court Justice **Jesse G. Reyes** received the Patron Award from the Diversity Scholarship Foundation...**J. Michael Hearon**, Senior Associate at Quarles & Brady LLP, was honored by the National LGBT Bar Association at the group's Lavender Law Conference and Career Fair in Washington D.C...**Mari Henry Leigh** and **Bruce R. Meckler**, partners at Cozen O'Connor, co-authored a chapter on budgeting and costs in the publication "Successful Partnering Between Inside and Outside Counsel"... **Gerald Haberkorn**, senior partner at Lowis & Gellen, LLC, was named to DePauw University's Board of visitors... **Shane M. Bradwell**, Kellie L. Mazzarella, and **Samantha M. Odyniec**, **Benjamin J. Nellans**, **Keith Rahman**, **Ivan Settimba**, **Joseph A. Falk** and **Sarah E. Flohr** are new associates at Segal McCambridge Singer & Mahoney, Ltd....**Brent Eisenberg** was named a partner at Matushek, Nilles LLC...**Tina M. Paries,** Bryce, Downey & Lenkov, LLC, spoke at the National Business Institute...**Nicole D. Milos**, Cremer, Spina, Shaughnessy, Jansen & Siegert LLC, spoke about how social media impacts your legal strategy...**Katherine L. Dzik** and **Krista D. Luzion** were named partners at Hall, Prangle and Schoonveld, LLC... **Deborah L. Gersh,** partner at Ropes & Gray, LLP, heads up the firm's new HIPAA Audits Resource Center.

David J. Feinberg was named a shareholder at Chuyhak & Tecson, P.C., **Nicholas A. McGowen** was named partner at Burke Warren MacKay & Serritella, P.C...**Amy Kosanovich Dickerson** and **Kendra B. Yoch**, Franczek Radelet, P.C., spoke at the Illinois Association of School Administrators Aspiring Superintendents Academy...**Jon E. Klinghoffer** and **Michael L. Sullivan**, Goldberg, Kohn Ltd., presented a webinar to the National Alliance for Public Charter Schools… **Todd A. Smith**, Power, Rogers & Smith P.C., spoke at the American Association for Justice Convention's Stalwarts/Hall of Fame... **Andrew Kopon, Jr.**, Kopon Airdo, LLC, was elected to the International Association of Defense Counsel...**Shook Hardy & Bacon, LLP** was honored by Equality Illinois for its "raising the bar" program... **Much Shelist, P.C.** was named to PILI's 2016 Pro Bono Recognition Roster... **James M. Witz**, Littler, Mendelson P.C., was named co-chair of the firm's unfair competition and trade secrets practice group...**James M. Theo** is an associate at McDonald, Hopkins, LLC...**Paul B. Porvaznik**, Davis McGrath LLC, presented a webinar to the Clearing Law Institute in

Washington, D.C...**John E. Thies**, Webber & Thies, P.C., is the new President of the Land of Lincoln Legal Assistance Foundation **Jodi J. Caro**, General Counsel and Secretary of Ulta Beauty, was honored by Aronberg, Goldgehn Davis & Garmisa's Women's Initiative Luncheon...**Ines M. Monte** is special counsel at Littler, Mendelson, P.C...**Kevin M. Sheehan** is a trial attorney at Dixon Law Office...**Antonio M. Romanucci,** Romanucci & Blandin, LLC, has made a generous contribution to The John Marshall Law School's pro bono clinic...**Sara Pugh** was named an associate at Polsinelli, P.C...**Robert W. Fioretti** has announced the formation of Roth & Fioretti, LLC... **Justin DeLuca** has been added to SmithAmundsen LLC's health practice group... **Sarah E. Flotte** was named partner at Michael Best & Freidrich LLP…**Leslie Davis** has joined Riley Safer Holmes & Cancila as a partner and **Joseph O'Hara** is a new associate at the firm…**Sara Su Jones,** an award-winning violinist and member of the CBA's Symphony Orchestra, was named one of Chicago's best female musicians by CBS Chicago.

Lawrence A. Stein, Aronberg, Goldgehn, Davis & Garmisa LLC, was appointed to the Illinois Bar Foundation's Board of Directors...**Gregory R. Meeder**, Holland & Knight, LLP, will moderate the Chicago Building Congress' 2016 Economic Summit...**Douglas C. Giese** was named an associate at Markoff Law LLC...**James B. Pritikin**, Beermann, Pritikin, Mirabelli, Swerdlove LLP, was named to the advisory board committee of the National Association of Parental Alienation Specialists...**Tejas N. Shah** and **Karlie J. Dunsky**, Franczek, Radelet P.C., spoke on U.S. Immigration and Global Migration Trends...**Martha O'Connor**, Ice, Miller LLP, has joined the Illinois Juvenile Diabetes Research Foundation's Young Leadership Committee...Chief Circuit Court of Cook County Judge **Timothy C. Evans** is being honored by the Boy Scouts of America's Pathway to Adventure Council on Thursday, October 20, at a dinner at the Cultural Center. Members and guests may register for this special event at www.PathwayToAdventure.org/JudgeEvans…**Michael L. Weissman**, Levin & Ginsburg, was appointed adjunct professor at The John Marshall Law School...**Dana M.. Kanellakes** was named partner at Tressler, LLP and **Kathleen M. Hart**, **Anita Jahanban** and **Michael K. McDonough** were named associates at the firm...**Bradley M. Cosgrove**, Clifford Law Offices, will speak at ITLA's update and review seminar in October... Judge **Robert J. Anderson**, **Robert Kelleher**, **Michelle Owen**, **Ruta Stropus**, the **Illinois Bar Foundation**, and **Michael Dortina** will be honored at the **Lawyers' Assistance Program's Annual Dinner** on Thursday, November 3, at the University Club of Chicago. To purchase tickets, register at www.lap2016annualdinnertickets.evenbrite.com.

The Public Interest Law Initiative will hold its Annual Awards Luncheon on Wednesday, December 7. For more information, go to www.pili.org/event/annual-awards-luncheon...Don't miss the CBA's **Barristers Big Band** Tribute to Johnny Mercer and Henry Mancini at the Harold Washington Library's Cindy Pritzker Auditorium on October 14 at 6:00 p.m.–best yet, tickets to the concert are free!

Condolences

Condolences to the family and friends of Honorable **Anthony Montelione, Arthur M. Sussman, Ronald Butler, Peter R. Sonderby Raymond Niro, Sr., Richard James Puchalski,** and **Gary W. Klages.** ■

By Daniel A. Cotter

Technology and Data Security

The Use of Technology by Lawyers and the Rules of Professional Conduct

Like everyone else, lawyers live in an environment where technology is constantly evolving. Attorneys and firms are increasingly the targets of hacking and phishing scams, and some law firms have been sued, facing allegations that the firms' data security practices were insufficient to protect confidential client information. On October 15, 2015, the Illinois Supreme Court amended Rule 1.6(e) of the Illinois Rules of Professional Conduct ("RPC") to require that lawyers make reasonable efforts to prevent unauthorized access to client data, and imposing an affirmative duty on lawyers to understand the relevant technology.

This article discusses some of the relevant rules of professional conduct, recent changes to those rules, and some considerations for lawyers in protecting their clients' and firms' data in specific areas of technology usage. On April 4, 2016, the Office of Court Administration for the New York State Unified Court System released amendments proposed by the New York State Bar Association to the New York Rules of Professional Conduct, which would make the New York RPCs consistent with both the ABA Model Rules and the Illinois RPCs.

Relevant RPCs for Illinois Lawyers

The Illinois RPCs contain a number of rules that affect an attorney's obligations of confidentiality and security of information, including Illinois Rule 1.1 (Competence) and Illinois Rule 1.6 (Confidentiality of Information).

The duty of competence under Illinois Rule 1.1 includes competence in the selection and use of technology. Comment 8 to Illinois Rule 1.1 provides:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Lawyers should understand the risks presented when they access data through practices such as cloud computing or "bring your own device" ("BYOD") policies, and when their acceptance of credit card payments may involve confidential client information.

Illinois Rule 1.6(e) was amended on October 15, 2015 (with an effective date of January 1, 2016) to adopt the ABA Model Rules change already in place and incorporate into the RPC an affirmative requirement for Illinois lawyers to guard against inadvertent or unauthorized disclosure. Rule 1.6(e) provides:

> (e) A lawyer shall make *reasonable efforts* to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(Emphasis added.)

Comment 18 to Illinois Rule 1.6 was also amended and substantially revised, providing in pertinent part (tracked changes kept to reflect the extent of the changes to the comment):

> [18~~6~~] Paragraph (e) requires a ~~A~~ lawyer ~~must~~ to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal

laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules.

Finally, Comment 19 to RPC 1.6(e) directly addresses the use of technology, providing:

> [19] When *transmitting* a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, *does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions.* Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the *sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement.* A *client may require the lawyer* to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

(Emphasis added.)

What measures are "reasonable" will depend on the facts and circumstances facing a particular lawyer or law firm, including the types of information collected and the cost of employing such additional safeguards.

A lawyer must also keep in mind a number of other RPCs when considering the security of client sensitive or confidential information. Rule 1.15(a) requires that a lawyer safeguard client property (including data) even after termination of representation under RPC 1.16(d). An attorney also has an obligation to supervise third party vendors providing technology services, including the vendor's storage and backup of data in the cloud. Finally, a lawyer has an obligation to warn clients about the risk of using electronic communications where there is a significant risk that a third party may gain access.

The New York Amendments

The New York Unified Court System recently issued its request for public comments to proposed amendments to the New York RPCs. The proposed amendments include changes to New York Rule 1.6(c) that would require lawyers to make "reasonable efforts" to safeguard confidential information, making the language substantially identical to the amended Illinois Rule 1.6(e) by converting the New York RPC 1.6(c) to an affirmative duty. New comments to New York RPC 1.6(c) (if the amendment is adopted) also are consistent with Illinois Comment 18 to Illinois Rule 1.6(e).

Practical Considerations–Encrypting Emails

One issue to consider with the revised Illinois rules and accompanying comments is whether attorneys are required to encrypt emails containing client data. With one exception, no bar association (including the American Bar Association) has addressed the question in some time. This may change in the near future.

Encryption of emails generally can take place at two stages: 1) data at rest and 2) data in transit. Data at rest is data that is stored physically in any digital form that is located within the lawyer's control and once transmitted to the client, in the client's control. Data in transit is data that is flowing over the Internet or within the confines of a privacy network such as a Local Area Network ("LAN"). Encrypting data in transit provides some protection from being obtained by unintended third parties, but hackers will still have an ability to hack into the data at rest.

The Illinois State Bar Association considered the question of sending unencrypted emails in ISBA Advisory Opinion 96-10 (reaffirmed in 2010), available at https://www.isba.org/sites/default/files/ethicsopinions/96-10.pdf, which advised that unencrypted email is acceptable:

> Because (1) the expectation of privacy for electronic mail is no less reasonable than the expectation of privacy for ordinary telephone calls, and (2) the unauthorized interception of an electronic message subject to the [Electronic Communications Privacy Act].

The Electronic Communications Privacy Act was passed by the United States Congress in 1986 and was designed to prohibit access to stored electronic communications and to prevent the unauthorized access by government to private electronic communications. The ABA concluded similarly to the ISBA, in Formal

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™

Opinion No. 99-413, issued on March 10, 1999 (available at http://cryptome.org/jya/fo99-413.htm) that:

> Lawyers have a reasonable expectation of privacy in communications made by all forms of e-mail, including unencrypted e-mail sent on the Internet, despite some risk of interception and disclosure. It therefore follows that its use is consistent with the duty under Rule 1.6 to use reasonable means to maintain the confidentiality of information relating to a client's representation.
>
> Although earlier state bar ethics opinions on the use of Internet e-mail tended to find a violation of the state analogues of Rule 1.6 because of the susceptibility to interception by unauthorized persons and, therefore, required express client consent to the use of e-mail, more recent opinions reflecting lawyers' greater understanding of the technology involved approve the use of unencrypted Internet e-mail without express client consent.

Both of the above-referenced opinions were issued in the late 1990s. Since that time, privacy and data laws on various levels have been passed, including Gramm-Leach Bliley, HIPAA, and Sarbanes-Oxley on the federal level. Accordingly, some in the legal arena, including Catherine Sanders Reach, Director, Law Practice Management & Technology at the Chicago Bar Association, have recommended that the ABA revisit its 1999 ethics opinion. At the very least, given the changed RPCs and the need to try to prevent unauthorized access to client information, lawyers should revisit encryption of emails and determine whether it makes sense to consider requiring encryption both for data at rest and data in transit.

While most state bar ethics opinions relevant to the attorney email question date to the late 1990s, the State Bar of Texas recently revisited the issue. Texas Opinion 648, available at http://legalethicstexas.com/Ethics-Resources/Opinions/Opinion-648.aspx, reaffirmed that email may continue to be used for communicating with clients, but that "some circumstances" may require the lawyer to advise her client "regarding risks incident to the sending or receiving of emails" and "to consider whether it is prudent to use encrypted email or another form of communication." Given the changes to the Model Rules and the amendments being adopted by states such as Illinois and Texas, lawyers should assess encryption of their emails.

Practical Considerations–Use of Public Wi-Fi

Another consideration for lawyers to address is the use of public Wi-Fi. Lawyers who travel or are out of the office frequently may be tempted to use the public Wi-Fi offered in airport lounges, hotels, or coffee shops. In light of the Illinois RPCs, including the comments revisions, lawyers should revisit this issue as well. Not many ethics opinions have been issued to date in this area, but given the changing technology and the reality that lawyers are increasingly the targets of hacking and phishing scams, lawyers should make sure they understand the technology and consider more secure alternatives.

The Standing Committee on Professional Responsibility and Conduct of the State Bar of California (The "Standing Committee") issued Formal Opinion No. 2010-179, available at http://ethics.calbar.ca.gov/LinkClick.aspx?fileticket=wmqECiHp7h4%3d&tabid=837, 2010 to address the question. The Standing Committee determined that use of public Wi-Fi presented security risks when used without other technologies, concluding:

> With regard to the use of a public wireless connection, the Committee believes that, *due to the lack of security features provided in most public wireless access locations, Attorney risks violating his duties of confidentiality and competence in using the wireless connection* at the coffee shop to work on Client's matter *unless he takes appropriate precautions, such as using a combination of file encryption, encryption of wireless transmissions and a personal firewall.* Depending on the sensitivity of the matter, Attorney may need to *avoid using the public wireless connection entirely or notify Client of possible risks attendant to his use* of the public wireless connection, including potential disclosure of confidential information and possible waiver of attorney-client

Illinois Lieutenant Governor to Keynote Alliance for Women Kick-Off

Join the Alliance for Women at their annual kick-off reception on Wednesday, October 5, 2016, from 5:00-7:00 p.m., at the CBA Building, 321 S Plymouth Court. Lieutenant Governor Evelyn Sanguinetti will be the guest speaker. Thank you to our generous sponsor Schiff Hardin. RSVP at www.chicagobar.org.

About Evelyn Sanguinetti

Evelyn Sanguinetti (born in Miami, Florida) is the 47th and current Lieutenant Governor of Illinois. Sanguinetti is the first Hispanic and first Latina lieutenant governor in Illinois history. Before becoming lieutenant governor, Sanguinetti served as a member of the Wheaton City Council, was an assistant attorney general under former Illinois Attorney General James E. Ryan, and practiced at a private law firm in Chicago. She has also worked as an adjunct professor at John Marshall Law School, her alma mater.

> privilege or work product protections, and seek her informed consent to do so.

(Emphasis added.)

The Standing Committee also addressed the question of a lawyer using her laptop or accessing data while on her personal wireless system at home. The Standing Committee advised that the attorney will not violate her duties of confidentiality and competency if the personal wireless system "has been configured with appropriate security features."

One challenge of public Wi-Fi is that hackers are using Wi-Fi "pineapples" and other tools to intercept key strokes, obtain passwords, and gain access to unsuspecting users' data. Many hackers are creating Wi-Fi connections that appear to be the Wi-Fi provided by the hotel, coffee shop or other provider, but are set up to easily obtain data of those using the connection. Lawyers should consider the issues raised by the California Standing Committee and whether public Wi-Fi affords them a "reasonable expectation of privacy." One way to address the issue is through the use of services such as Citrix to provide an enhanced layer of protection to the lawyer and law firm.

Practical Considerations–Using the Cloud

As noted above, Comment 8 to Rule 1.1 of the Illinois RPCs requires lawyers to understand the risks and benefits of technology, including the use of the cloud. Cloud computing is the Internet-based computing that provides shared computer processing and storage resources. A number of ethics opinions have looked at the issue and have generally found that with appropriate safeguards and consideration, lawyers may store their data with an offsite third party vendor.

For example, the ISBA issued Opinion No. 10-01 in July 2009, available at https://www.isba.org/sites/default/files/ethicsopinions/10-01.pdf, addressing the issue and concluding:

> [A] law firm may retain or work with a private vendor to monitor the firm's computer server and network, either on-site or remotely, and may allow the vendor to access it as needed for maintenance, updating, troubleshooting and similar purposes. Before doing so, however, the law firm must take reasonable steps to ensure that the vendor protects the confidentiality of the clients' information on the server.

As with the opinions on encryption and use of public and private Wi-Fi, the opinions on cloud computing are dated. Given the ongoing technological advances relating to cloud computing, the ABA and other state bars may also revisit this issue, especially in light of the changing rules of professional conduct and the imposition of affirmative duties upon lawyers to understand and be conversant in technology relating to client information.

Conclusion

As technology changes, lawyers' obligations to protect client information continue to evolve. The ABA and state bars have yet to opine on many of the issues relating to the use of technology by lawyers and whether attorney and firm practices violate the rules of professional conduct. Lawyers must review their firm's policies and practices and make "reasonable efforts" in their information security practices to "keep abreast of changes in the law and its practice." Illinois and other states RPCs impose affirmative duties on lawyers to take steps to ensure security of client data. Failure to take reasonable steps to ensure data safety and to understand the relevant technology may result in an ethical violation or lawsuit for an unsuspecting lawyer. ■

Daniel A. Cotter is a Partner at Butler Rubin Saltarelli & Boyd LLP, where he chairs the Insurance Regulatory and Transactions practice and is a member of the Cyber and Privacy practice, and is a member of the **CBA Record** *Editorial Board.* *Special thanks to CBA Director of Legal Practice Management, Catherine Sanders Reach, for her discussions with me in the privacy arena.*

Numerous ethical opinions relevant to the topic of cloud computing include:

- ISBA Ethics Op. 10-01 (July 2009)
- Pennsylvania Formal Opinion 2011-200
- North Carolina 2011 Formal Op. 6
- New York State Bar Ethics Opinion 842
- Alabama Ethics Opinion 2010-2
- Washington State Bar Advisory Opinion 2215
- Iowa Bar Ethic Opinion 11-01
- Vermont Ethics Opinion 2010-6
- Massachusetts Bar Ethics Opinion 12-03
- New Hampshire Ethics Committee Advisory Op. #2012-13/4

By G. Grant Dixon III

Negligent Entrustment in Illinois

Can I Borrow Your Car?

Allowing someone to borrow your car or other personal item as a quick favor is a scenario that nearly everyone has encountered. While the act of handing over the keys is often simple, doing so involves trusting the other to drive safely. But, this simple act can have dire, life-altering consequences for the lender if the person borrowing the property is not properly suited to use it.

NEGLIGENT ENTRUSTMENT INVOLVES THE lending of one person's property to another when the lender (sometimes called the "entrustor") should know that the receiver (sometimes called the "entrustee") is not qualified to use that property, *Zedella v. Gibson*, 165 Ill.2d 181,186 (1995). In those circumstances, the law imposes a duty not just to the entrustee but also to the entrustor and makes the entrustor liable for the negligent acts of the entrustee, *DuBois v. Rose*, 217 Ill.App.3d 277, 283 (1991).

Introduction to Negligent Entrustment Law in Illinois

Illinois negligent entrustment law is taken from the general rule of liability for negligent entrustment explained in the Restatement (Second) of Torts.

> It is negligent to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others, Restatement (Second) of Torts § 308 (1965).

Comment (a) to Section 308, further explains negligent entrustment. It says:

> The words "*under the control of the actor*" are used to indicate that the third person is entitled to use the thing or engage in the activity only by the consent of the actor, and that the actor has reason to believe that by withholding consent he can prevent the third person form using the thing or engaging in the activity, Restatement (Second) of Torts § 308 (1965).

Illinois courts have adopted these Restatement sections to form the law of negligent entrustment, *Samuels v. Checker Taxi Co.*, 65 Ill.App.3d 63, 66-67 (1978). In its most basic form, courts require an injured victim to prove two elements to successfully state a claim against an entrustor. First, the plaintiff must show there was an entrustment of a dangerous instrumentality, *Allstate Ins. Co v. Panzica*, 162 Ill.App.3d 589, 592-93 (1987). Second, the entrustment was to a person who was reckless or inexperienced and that entrustment caused the injury to the plaintiff. The first element is only about conduct, the second is about conduct and the instrumentality entrusted.

Within the first element (the "conduct" element) there are two sub-elements that must be proven to establish that a negligent entrustment occurred. First, the injured party must prove that the entrustor had a superior right to control over the item, *Zedella*, 165 Ill.2d at 187. Second, it must be shown that the entrustor knew or should have known that the individual they lent the item to was incompetent or unfit to use the item.

The first sub-element–superior right to control–is most often established by proving ownership of the object lent. For example, a car owned by one can be lent to another. This ownership generally establishes a superior right of control. Thus, the owner of the car legally has a superior right of control if he lends it to a non-owner. This alone can establish the requisite control for a negligent entrustment action, *Zedella*, 165 Ill.2d at 187.

Once a superior right to control is established, it must then be determined whether the entrustor knew, or should have known, of the entrustee's incompetence or inexperience in using the property, *Evans v. Shannon*, 201 Ill.2d 424, 434 (2002). This is established by offering evidence of the entrustee's lack of competence, skill, or experience that should have put the entrustor on notice regarding those problems, *Lulay v. Parvin*, 359 Ill.App.3d 653, 658 (2005). Factors often examined include age, training, certifications (or lack of them), and prior history using the item or similar items. If the evidence suggests that the entrustor should have had knowledge of the entrustee's lack of competence, skill, or experience, along with a showing that the entrustor had a superior right to control, then the plaintiff has fully established the first element of her cause of action for negligent entrustment.

After the various parts of control and knowledge are established, the focus shifts to whether the recklessness or inexperience of the individual entrusted with the dangerous instrument proximately caused the plaintiff's injury, *Evans,* 201 Ill.2d at 434. This is done by offering evidence of factual and legal causation. If a causal link can be made between the plaintiff's injury and the entrustee's recklessness or inexperience, then a full claim for negligent entrustment has been made. Here, it is worth remembering that questions of causation are almost always left for the jury, *Hamilton v. Fink*, 201 Ill.App.3d 81, 84 (1990).

Pleading Requirements

Because negligent entrustment is a form of negligence, practitioners can employ the familiar pleading rules applied to all negligence cases for negligent entrustment claims. Legally sufficient negligent entrustment claims must provide facts to establish the elements and sub-elements, *Teter v. Clemens*, 112 Ill.2d 252, 256 (1986). These include allegations of a superior right of control, entrustment of a dangerous instrumentality, incompetence of the entrustee, that the entrustor knew or should have known of the incompetence, and that an injury occurred as a proximate result of the entrustment and incompetence.

How Much Evidence is Necessary?

In nearly every negligent entrustment case, the entrustor will claim there was not "enough" evidence to establish that they knew or should have known of the entrustee's lack of competence or inexperience with the dangerous article. Most lawyers and judges wrongfully assume that the plaintiff must provide the court with specific and concrete examples of the entrustee's propensities for harm with that particular instrumentality. This is not the law in Illinois.

Plaintiffs in negligent entrustment cases do not need to provide specific proof that the defendant "knew of specific individual propensities for harm" *Gen. Agents Ins. Co. of Am. v. Midwest Sporting Goods Co.*, 328 Ill.App.3d 482, 488 (2002). Rather, if the entrustor knows the entrustment might result in harm, the cause of action can stand, *Gen. Agents Ins. Co. of Am.*, 328 Ill.App.3d at 488.

Small v. St. Francis Hosp., 220 Ill.App.3d 537, 542 (1991). There is no established "minimum threshold" that plaintiffs must pass to establish negligent entrustment. Instead, determinations of the entrustor's notice of the entrustee's incompetence, inexperience, or recklessness are looked at on a case-by-case basis.

Inevitably, defendants deny they knew of the entrustee's incompetence. In fact, not a single reported Illinois case contains a reference where the defendant entrustor admitted he knew of the incompetence of the entrustee. Thus, cases have considered whether the entrusting party had a "reason to know" of the entrustee's deficiencies as one possible standard, *Garland v. Sybaris Club Int'l, Inc.*, 21 N.E.3d 24, 46 (2014). Whether the party had a reason to know can be proven with facts regarding the entrustor's knowledge of the entrustee's past use of the item in question, *Lulay*, 359 Ill.App.3d at 658. There are even cases where a simple expression of concern about the entrustee's abilities under certain circumstances is enough to sustain the claim, *Garland*, 21 N.E.3d at 46.

Common Types of Negligent Entrustment Cases

Motor Vehicle Cases. One of the most common types of negligent entrustment cases involve entrustment of automobiles and motorcycles to unsafe or unqualified drivers. Within the context of negligent entrustment, an automobile or motorcycle is not a dangerous article *per se, Zedella*, 165 Ill.2d at 186. However, a vehicle may become a dangerous instrument if it is operated by a person unskilled in its use. As a result, a duty is then imposed on the owner of a vehicle not to permit someone who they know to be, or should know, is incompetent, reckless, or inexperienced to drive the vehicle, *DuBois*, 217 Ill.App.3d at 283.

To establish that a vehicle has been negligently entrusted, a plaintiff must first plead that the entrustor had a superior right of control over the vehicle, *Zedella*, 165 Ill.2d at 186-87. Superior right of control can be established in a number of ways, including showing that the entrustor bought the vehicle, paid for its insurance, had the title listed under his or her name or if the entrustee was allowed to drive the vehicle with express or implied permission, *Evans*, 201 Ill.2d at 434.

If the evidence provided shows that the entrustor did indeed have a superior right of control over the vehicle, then the claim can proceed to a determination of whether the entrustor knew, or should have known, the party entrusted with the vehicle was inexperienced, incompetent or unfit to operate the vehicle. Incompetence or inexperience can be shown in many ways. For example, a history of tickets or moving violations can demonstrate incompetence, *Northcutt v. Chapman*, 353 Ill.App.3d 970, 972 (2004). A number of prior crashes can serve as evidence of incompetence. Experience and age can be factors, *Small*, 220 Ill. App.3d at 542.

One potential way a plaintiff can show that a defendant-driver is incompetent, inexperienced or unsafe is by offering proof that the defendant did not have a valid driver's license. This can be done by showing the defendant either never obtained a driver's license or that his or her license has been suspended for an accumulation of driving violations or other reasons. A number of cases have been decided where a plaintiff alleging negligent entrustment of a vehicle has argued that the defendant's lack of a driver's license was clear proof that he or she was incompetent, inexperienced or unsafe behind the wheel.

Issues surrounding an entrustee's driver's license status or history can be offered as proof that an entrustor knew, or should have known, about the entrustee's incompetence, inexperience or unsafe tendencies behind the wheel. One example is *Giers v. Anten*, 68 Ill.App.3d 535 (1978). In *Giers*, the plaintiff appealed a trial court ruling that struck the plaintiff's negligent entrustment claim against defendant, Donald Anten. On appeal, the appellate court reviewed defendant and entrustee Donna Anten's driving record in an attempt to determine if striking the claims for negligent entrustment was warranted.

The court's review included evidence that Donna was involved in three prior automobile accidents, including one that occurred due to drunk driving. The drunk-driving accident caused Donna's license to be suspended for just less than three years. This suspension of her driving privileges, along with the three accidents that caused that suspension, were deemed sufficient evidence to reverse the trial court's holding that the plaintiff's claims for negligent entrustment should be struck.

This victory for the plaintiff is yet another example of how issues with an entrustee's driver's license can be presented as proof of incompetence, inexperience, or unsafe driving habits. The more glaring the issue, such as a complete lack of a driver's license or an extended time with a suspended license, the easier it will likely to prove that the entrustor had knowledge of the entrustee's deficiencies.

Firearm Cases. Unlike automobiles, guns are dangerous instrumentalities by their very nature. Several courts have considered whether gun shop owners could be liable for selling guns in various circumstances or whether municipalities or others can be held liable for entrusting service weapons with police officers.

Johnson v. Mers is an example of a court reviewing the issue of whether a municipality can be held liable for negligently entrusting a police officer with a service weapon, *Johnson v. Mers*, 279 Ill. App.3d 372, 378 (1996). In that case, defendant-police officer Rena Jensen shot plaintiff James Johnson in the head during a drunken quarrel in the plaintiff's mobile home. As a result of the gunshot wound to his head, Johnson sought recovery from the Village of Island Lake, which employed and issued Jensen her weapon under the theory of negligent entrustment. The court refused to hold Island Lake liable, however, because Jensen had purchased the weapon on her own. This meant that the Village of Island Lake held no ownership in the weapon and, therefore, the claim for negligent entrustment could not stand.

Similarly, in *Teter v. Clemens*, a five-year-old plaintiff was struck in the left eye by a pellet gun shot by the defendant's five year old grandson, *Teter*, 112 Ill.2d 252 (1986). The defendant had previously purchased the pellet gun, and his five-year-old grandson had obtained possession of it without his knowledge or permission. There was no doubt the gun was a danger-

ous instrumentality and the defendants had a superior right of control. However, the claim failed because there was no evidence that the gun came into the possession of the five-year-old boy through some neglectful act of the defendants.

Defendants tout *Teter* as a main victory, but a careful analysis shows it is extremely narrow in its holding. The plaintiffs did not allege where the pistol was kept or how it came into the possession of the shooter, *Teter*, 112 Ill.2d at 258. Thus, there was no evidence of entrustment to the minor and thus the complaint failed. Likewise in *Mers*, there was no evidence of superior control or ownership. The lesson of *Teter* and *Mers* is simple: plead how the instrument was entrusted to the entrustor by the entrustee. With appropriate facts, the negligent entrustment of a gun to another will create liability.

In *Latty v. Jordan*, a farm owner allowed a father, his son, and his son's friend to use the farm to do some hunting, 237 Ill. App.3d 528, 529 (1992). On the second visit to the farm, the farm owner allowed the father to use one of his rifles and placed no restrictions on their use. The father stored the farm owner's rifle under a mattress. The boys found it and while playing with it, the son shot and killed his friend accidentally.

The estate of the boy sued the farm owner contending he had negligently entrusted the gun to the father. Justice Barry concluded for the panel:

> In the case before us, the evidence allows a reasonable inference to be drawn that defendant knew of and acquiesced in the use of his .35 rifle by 11 year old Joseph on the day of the accident. Such acquiescence could support a finding of implied permission. Obviously, other inferences would also be reasonable and, therefore, a material issue of fact exists which requires a jury determination.

The court reversed granting of summary judgment.

The *Latty* case is an important one. It holds that the negligent entrustment need not be directly to the person who ultimately causes the injury. There, the entrustment was to the father but the father then negligently allowed his son to use it. This argument can be applied to virtually any other instrumentality including cars, motorcycles, and trucks.

Cases involving firearms present a unique set of problems. While guns are *per se* dangerous, savvy practitioners must remember that establishing a dangerous instrumentality is only one battle in a larger war. Plaintiffs must also plead and prove that the entrustor should have known of the incompetence of the entrustee. In firearms cases, showing little experience, training, or knowledge can overcome these hurdles.

Other Cases

Perhaps the most important negligent entrustment case in the last 20 years is *Garland v. Sybaris Club International, Garland*, 21 N.E.3d 24 (2014). There, one of several plaintiffs alleged one of the owners negligently entrusted his plane to a pilot. Under FAA regulations, the pilot

was, without question, qualified to fly the plane. However, one of the owners of the plane had confided to others prior to the flight that he did not feel that the pilot's skills "were up to par" given the flying conditions. Despite these reservations, the same owner boarded the plane and allowed the pilot to fly at night with a wintery mix of weather. The plane crashed, killing all on board.

The *Garland* court was called to examine whether these facts–an expression of a slight reservation–was sufficient to withstand a 2-619 motion to dismiss. The movant contended the pilot had no prior accidents, no prior violations, and was technically well qualified to fly the plane. The defense argued that the limited expression of reservation was certainly not enough to sustain a claim for negligent entrustment. The trial court sided with the defense and dismissed the negligent entrustment claim.

The Appellate Court reversed. The appellate panel highlighted the evidence in the case that the owner believed the pilot was deficient in operating the plane and lacked certain qualifications and certifications. Holding that disputed factual questions are for the jury to resolve, the Appellate Court reversed the dismissal of the negligent entrustment case.

The *Garland* case is an important one for many reasons. First, it shows that the entrustee can be technically competent and yet a claim for negligent entrustment can still lie. Simply having a license is not enough to determine skill. Second, an expression of reservation by an owner provides a question of fact for a jury to resolve on negligent entrustment. Third, prior "wrongful acts" of the entrustee are not necessary. The pilot in *Garland* had no prior citations or even documented problems with operating the aircraft. Plaintiffs should take note of this standard and highlight it in their pleadings.

In *Northcutt v. Chapman*, *Northcutt*, 353 Ill.App.3d 970 (2004), plaintiff argued a bank was guilty of negligent entrustment not for allowing someone to have a car but rather for loaning him the money to buy one. While the theory was novel, the court concluded that money was not a "dangerous article" and, therefore, the bank could not be liable for making the loan, regardless of the driving record of the driver.

While *Northcutt* stands for the proposition that a lender of money is not guilty of negligent entrustment, there are circumstances in which a loan might be negligent entrustment. What if a borrower for a car loan can provide no proof of a license yet the bank makes the loan anyway. Is that not negligently entrusting the vehicle to the driver? Without the bank's money, the purchase cannot take place. What if the driver's license is revoked for multiple reckless driving offenses and the bank knows that? Can the bank not ever be liable? For these reasons and many more, *Northcutt* can be limited to its facts and cannot be said to have any logical application beyond them.

Another interesting negligent entrustment case is *Lang v. Silva, Lang v. Silva*, 306 Ill.App.3d 960 (1999). There, a jockey was injured when he fell off the horse he was riding after it came into contact with another horse. The second horse was ridden by the defendant, who the plaintiff alleged caused the accident, and was negligently entrusted with the horse. The plaintiff cited the defendant's history of racing violations and suspensions as evidence of negligent entrustment, *Lang*, 306 Ill.App.3d at 975. It was shown that the defendant was charged with 12 racing violations in the prior 14 years that either resulted in race disqualification or suspension. After reviewing the evidence, the court concluded the plaintiffs failed to present sufficient proof of the incompetence of the jockey, and therefore the claim failed.

Lessons Learned

Plaintiff's counsel should be aware of these cases. Pleadings should be as specific as possible as to the incompetence of the entrustee and the knowledge that the entrustor had of it. Courts tend to strike and dismiss complaints with a paucity of facts compared to those loaded with them. Therefore, wise pleading suggests more not less. Evidence of serious problems with the entrustee–lack of license, prior bad acts, inexperience, youth–all weigh in favor of the cause of action. Likewise, pleading the specific knowledge of the entrustor can be critical, See *Norskog v. Pfiel*, 197 Ill.2d 60 (2001) (court held that plaintiff was required to show: (1) defendants were aware of specific instances of their son's prior conduct sufficient to put them on notice that the act complained of (a murder) was likely to occur; and (2) that the defendants had the opportunity to control their minor child.) And if the defendant denies specific knowledge cannot be proven, a mountain of incompetence can overcome a molehill of denial.

Courts have applied the theory of negligent entrustment to a variety of other items that can be deemed "dangerous" when used by incompetent or inexperienced individuals. Other items that have been involved in negligent entrustment cases include planes (*Garland v. Sybaris Club Int'l, Inc.*, 21 N.E.3d 24 (2014), guns (*Teter*, 112 Ill.2d 252 (1986), and, in other jurisdictions, even gasoline (*West v. East Tenn. Pioneer Oil Co.*, 172 S.W.3d 545, 547 (2005).

Similar to automobile cases, establishing a claim for negligent entrustment in non-automobile cases requires establishing the general requirements for negligent entrustment, *Garland*, 21 N.E.3d at 44. This means that the plaintiff must show that the entrustor negligently entrusted a dangerous item, or an item that becomes dangerous when used by an incompetent, reckless or inexperienced user, and that the entrustee's use of the item proximately caused the plaintiff's injury. Similar to automobile cases, this requires a showing that an entrustment did indeed occur and that the entrustor had knowledge of the entrustee's incompetence, recklessness, or inexperience.

Future Trends

The concept of personal responsibility for all decisions is a critical underpinning of all negligent entrustment cases. Juries and judges are rightly concerned about the safety of the public and are willing to protect victims as best they can from entrustors who bury their heads in the sand. Looking at recent negligent entrustment cases both in Illinois and in other jurisdictions, this concern can be seen more clearly now than in the past.

The future seems to be trending toward allowing more diverse negligent entrust-

ment cases. Examples of what are referred to as "first-party" negligent entrustment cases from other jurisdictions are *Hays v. Royer*, 384 S.W.3d 330 (2012) and *Martell v. Driscoll*, 297 Kan. 524 (2013). In both instances, the plaintiffs were first-parties who were injured in accidents caused by their *own* negligence after being entrusted vehicles by the defendants, *Hays v. Royer*, 384 S.W.3d 330, 331 (2012) and *Martell v. Driscoll*, 297 Kan. 524, 528 (2013).

Each court in those cases turned to the Restatement (Second) of Torts § 390 to determine that first-party negligent entrustment claims are viable under their state laws. This section is an illustration of a potential negligent entrustment scenario and reads:

> A rents his boat to B and C, who are both obviously so intoxicated as to make it likely that they will mismanage the boat so as to capsize it or to collide with other boats. B and C by their drunken mismanagement collide with the boat of D, upsetting both boats. B, C, and D are drowned. A is subject to liability to the estates of B, C, and D under the death statute, although the estates of B and C may be also liable for the death of D. *Restatement (Second) of Torts* § 390 comment (c), Illustration 7 (1965).

From this illustration the courts determined that as long as a state's contributory negligence laws did not already block the claim, an assertion of negligent entrustment is valid against an entrustor, *Hays*, 384 S.W.3d at 338 and *Martell*, 297 Kan. at 532. Once again, these are significant decisions that further expand the factual scenarios where negligent entrustment is applicable.

Another example of the expanding trend occurring in courts includes expansion of what can be entrusted. Traditionally, property included in negligent entrustment cases has been limited to cars, various type of guns, or other dangerous items. However, a recent case in Tennessee expanded on these items. In *West v. East Tenn. Pioneer Oil Co.*, 172 S.W.3d 545 (2005), the plaintiff alleged that the defendant, a gas station, entrusted gasoline to a clearly intoxicated individual, who was later involved in an automobile accident, *West*, 172 S.W.3d at 547 (2005). The plaintiffs asserted that when the gas station sold and assisted the intoxicated driver with pumping gas it entrusted him with it and that it was clearly foreseeable that the gasoline would be used in a manner that would place others in danger.

The Tennessee Supreme Court agreed with this claim and reversed the lower courts' decisions to grant summary judgment, explaining that the plaintiffs established a prima facie case for negligent entrustment. This, like the previous cases, is an expansion on property that is typically included in negligent entrustment cases. This expansion, once again, further highlights the pro-plaintiff shift in negligent entrustment decisions. Overall, when viewed as a whole, these cases clearly signify a definite trend. This means that more courts are willing to, and should continue to be willing to, allow plaintiffs injured by negligently entrusted property to file against the entrustor of that property.

Conclusion

Liability for negligent entrustment is expanding as courts face more difficult entrustment scenarios and lawyers seek to apply the law to those cases. The public is served well by this expansion as justice is done for these victims.

G. Grant Dixon III is the founder of the personal injury and worker's compensation law firm, Dixon Law Office, with offices in LaGrange, Chicago and Oakbrook Terrace. *Grant would like to thank Ryan Liss for his extensive research and writing contributions to this article.*

Getting to Know the YLS

By Kathryn Carso Liss YLS Chair

I invite and encourage every member to participate in at least one YLS activity this bar year. Whether it is a project, social, committee meeting, or seminar, I believe that you will get something more than expected from it.

The CBA has approximately 22,000 members, 9,000 of whom are in the YLS and therefore are designated as a "young lawyer" (*i.e.,* those in practice for 10 years or less, including law students). This designation of a "young lawyer" includes more than just attorneys who are under 35 years old. It designates one's time practicing law and is inclusive of attorneys over 35 years old. As the 9,000+ members of the YLS vary in age and stages in life, this year the YLS will offer more family-friendly events to include spouses, significant others, and children as opposed to strictly having happy hours right after work at a bar. Hopefully, this will be a way for our members to get to know another side of each other and assuage any anxiety about not knowing anyone at an event.

Our first family friendly YLS event was our annual Cubs' game on July 19th. Although the Cubs ended up losing 2 to 1 to the New York Mets in the ninth inning, a lot of fun was had by the YLS members in the right field bleachers!

The YLS' Social Committee hosted the second annual boat cruise on the evening of August 19th. Just under 150 YLS members, their significant others, friends, and colleagues spent an evening aboard a private charter boat on the Chicago River and Lake Michigan. Everyone had a great time. If you missed the boat cruise this year, be sure to sign up for it next year as the spots filled up quickly.

Another recent family-friendly YLS event was our first annual Pie Competition Fundraiser, which took place on Saturday, September 10th at the CBA. This was a new event the YLS co-sponsored with the Alliance for Women. CBA members were joined by family members and children as they enjoyed tasty pies baked by eleven CBA members who entered pies in the competition. A balloon artist and face painter also entertained the children in attendance. The competition was judged by a panel of celebrity judges, including Judge Raul Vega from the Cook County Domestic Relations Division, Char Rivette of the Chicago Children's Advocacy Center, and local actor and chef Brendan Murphy. After much deliberation, Candace Carter, a law student from the John Marshall Law School, took home first place for her Pecan Pie, Judge Rebecca Pallmeyer won second place for her Pumpkin Pie, and Paige Esterkin won third place for her End of Summer Berry Pie.

After the pies were judged, slices were sold to raise funds for our designated charity, the Chicago Children's Advocacy Center, a not-for-profit organization that helps protect children by investigating allegations of child sexual abuse through forensic interviews and family advocacy. The Chicago Children's Advocacy Center responds to an average of 2,000 reports of child sexual abuse per year and has had a tremendous impact in the Chicagoland community. I hope that everyone will be able to attend this fun event and support the Chicago Children's Advocacy Center!

There will be more exciting events

continued on page 47

Opening a New Door to Your Legal Career?

Finding a new job or making a career switch isn't always easy. We understand and offer a variety of assistance to members to help ease the path to the future you imagine.

Career Assistance Committee

Get tips and feedback from professional speakers as well as your colleagues at monthly meetings at the CBA. Past topics have included resumes, interviewing, salary negotiation, state of the job market and more. Sign up to receive email notice of meetings at www.chicagobar.org/committees. Free and open to all members.

Career Advancement Program

The CBA has partnered with local career counselor Kathy Morris to help lawyers navigate the Chicago legal job market. With over 25 years of experience, Kathy shares her intimate knowledge of our local market in complimentary one-on-one career counseling sessions at the CBA, seminars targeted to experience level and practice area, and more. Learn more at www.chicagobar.org/CAP.

Online Career Center

Search job openings and post your resume plus get everything you need to make your resume stand out, ace the interview, advance your career, and navigate the digital world through social media at www.chicagobar.org/careercenter. Our online career center also allows you to set up efficient job alerts that deliver job openings right to your inbox.

CBA Job Flash

As a supplement to the online career center CBA members receive the "Job Flash" in their inbox. The newsletter contains a current list of both local and national job openings. Not getting the Job Flash? Check your member profile at www.chicagobar.org and make sure your email is on file with the CBA (or call 312-554-2135).

Upcoming Career Assistance Committee Meetings:
Oct. 5 - Interview skills
Nov. 2 - Marketing Your Skills
Dec. 7 - Justice Entrepreneur Program

Find all this information plus links to helpful articles and videos at www.chicagobar.org/careers.

THE CHICAGO BAR ASSOCIATION FOUNDED 1874

The Young Lawyers Section YLS The Chicago Bar Association

Understanding Patent Damages: The Basics

By Lindsey G. Fisher and Kevin T. McElroy

Available remedies for intellectual property owners vary by intellectual property type. Monetary relief for patent damages generally falls into two categories: actual damages and reasonable royalty damages. Section 284 of Title 35 provides guidance to practitioners when calculating patent damages:

> "Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court." 35 U.S.C. § 284.

Section 284 suggests that a "reasonable royalty" calculation exists as a floor to damages. The most common calculation of actual damages takes the form of lost profits. Lost profits may be an available remedy to a patent holder who demonstrates that it would have made additional sales in the absence of infringement, whereas reasonable royalty damages are available to everyone.

Lost Profit Damages

In order to recover lost profits damages, the patent holder needs to demonstrate that it would have made additional sales "but for" a defendant's infringement. *State Industries v. Mor-Flo Industries, Inc.*, 883 F.2d 1573, 1577 (Fed. Cir. 1989). The Court of Appeals for the Sixth Circuit set forth a four-pronged test to determine if a patentee can receive lost profits (*Panduit Corp. v. Stahlin Bros. Fiber Works, Inc.*, 575 F.2d 1152 (6th Cir. 1978)), which is often referred to as the *Panduit Factors.* The four *Panduit* Factors are:

- Demand for the patented product or service;
- Absence of acceptable noninfringing substitutes;
- Manufacturing and marketing capabil-

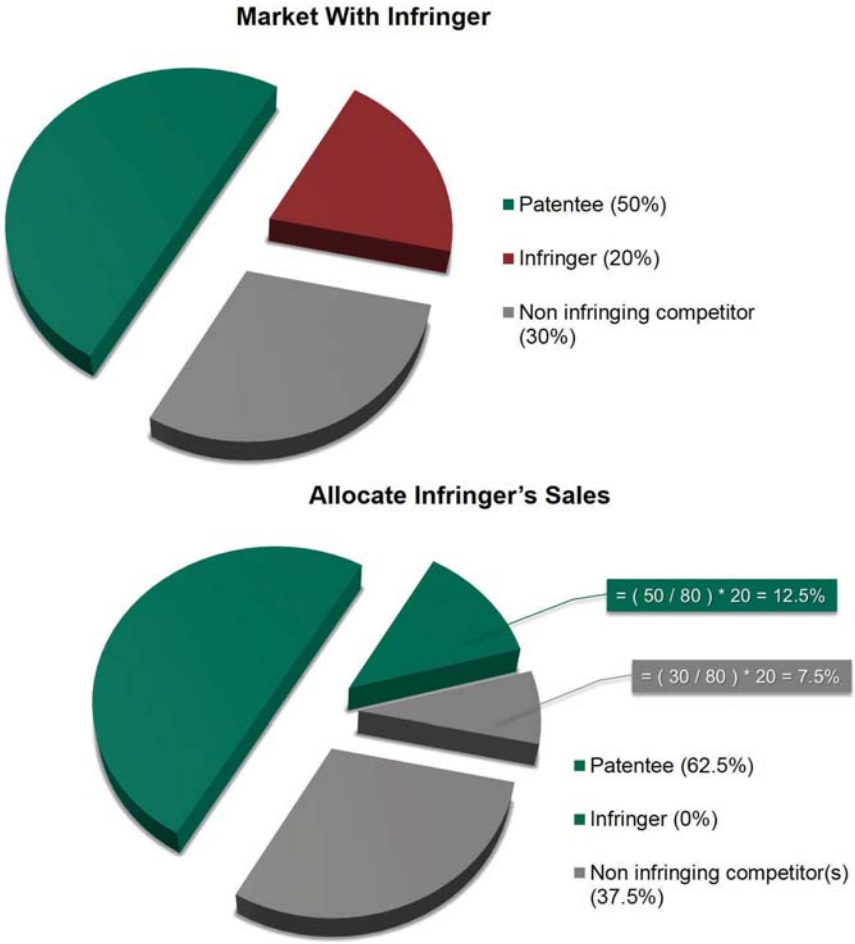
ity to exploit demand; and

- Amount of profit that the patentee would have made absent the infringement.

Panduit Factors 1 and 2 are often analyzed in combination with one another to determine if the factors are met. Demand for the patented product or service can be demonstrated in a number of ways, but most commonly it is shown through the historical sales or use of the patented technology.

The absence of acceptable noninfringing substitutes is a more complex and often technical analysis. The patent holder should be able to demonstrate that the purchasers and/or users of the patented product or service did not consider other available products or technologies as acceptable alternatives. Damages experts often rely on technical experts and company representatives for an understanding of the patented technology and the acceptable noninfringing alternatives available in the patentee's industry. However, even when acceptable noninfringing substitutes exist in the market, the Federal Circuit indicated in *State Industries v. Mor-Flo Industries* that a patentee may still be able to claim lost profits. To do so, a damages expert often constructs a theoretical "but for" world in order to: (1) determine what the market for the infringing product or service might have looked like had the infringement not occurred; and (2) quantify the additional sales the patent holder would have made. The graph at the right illustrates an example of how a patentee's market share may be adjusted to allocate for an infringer's sales.

The third *Panduit* Factor requires that the patentee demonstrate that it had the manufacturing and marketing capacity to make the sales that it claims were lost as a result of the alleged infringement. If sufficient capacity was not available to the patentee at the time of infringement, the patentee may instead show that it could have achieved the lost sales by increasing capacity if necessary. If the manufacturing and marketing capacity was unavailable at the time of infringement, the damages expert should conduct a thorough analysis



of the time and expenses associated with the additional manufacturing and marketing efforts necessary to produce and sell the patentee's claimed lost sales. Additional manufacturing costs may include labor costs for adding additional shifts, rental, property, plant, or equipment expenses. Additional marketing costs may include adding sales representatives, managers, or customer service agents. Any such costs that the patent holder would incur in order to achieve the necessary capacity should be deducted before making a lost profits conclusion.

The fourth *Panduit* Factor requires that the amount of lost profits be quantifiable to a reasonable degree of certainty. Lost profits are typically calculated by determining the revenue that would have been generated from the additional sales the patentee would have made (but for the infringement) and subtracting the incremental costs the patentee would have incurred to make and sell those units.

Reasonable Royalty Damages

Section 284 states that damages for patent infringement should be "in no event less than a reasonable royalty for the use made of the invention by the infringer." 35 U.S.C. § 284. While reasonable royalties are commonly thought of as a "backup" methodology to calculate damages for sales that the patentee could not have made, the "in no event less than" language in the statute is important. In other words, if reasonable royalty damages are higher than lost profits damages, the reasonable royalty damages should be applied. This scenario could arise when the patentee sells its products for a loss or makes lower incremental profit on a per unit basis than a reasonable royalty that could be charged to the defendant.

The District Court's opinion in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), mod. and aff'd, 446 F.2d 295 (2d Cir. 1971), cert. denied, 404 U.S. 870

Licensing Factors	Financial/ Business Factors	Technical Factors	Other Factors
1. Licensor's rates received for licenses to the patents-in-suit	5. Commercial relationship between parties	9. Advantages of patented product over old devices	14. The opinion/ testimony of qualified experts
2. Licensee's rates paid for comparable technology	6. Effect of selling patented technology in promoting the sale of other products	10. Nature and character of the patented invention, and the benefits to those who use it	15. The amount that a licensor (such as the patentee) and a licensee (such as the infringer) would have agreed upon at the time the infringement began, if both had been reasonably and voluntarily trying to reach an agreement
3. Nature and scope of license	8. Established profitability of patented product		
4. Licensor's established licensing policy	11. Extent to which infringer has used invention		

(1971), provides a general framework that is commonly accepted as relevant to the determination of a reasonable royalty. The *Georgia-Pacific* case identified 15 factors (the "*Georgia-Pacific* factors") that the court found pertinent to the determination of a reasonable royalty, while suggesting that the list was likely not comprehensive for all matters. Still, this framework has endured for over 40 years as a mainstay for patent damages analysis.

The last of the 15 *Georgia-Pacific* factors generally summarizes the task placed before damages experts in the calculation of a reasonable royalty. Factor 15, in full, reads:

> "The amount that a licensor (such as the patentee) and a licensee (such as the infringer) would have agreed upon (at the time the infringement began) if both had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee–who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention–would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a prudent patentee who was willing to grant a license."

Georgia-Pacific also posits the construct of a "hypothetical negotiation," a meeting between the two parties on the eve of the first infringement at which the parties agree to a royalty to compensate the patentee for the infringement. The decision describes this negotiation in terms that are consistent with factor 15 above:

> "Where a willing licensor and a willing licensee are negotiating for a royalty, the hypothetical negotiations would not occur in a vacuum of pure logic. They would involve a market place confrontation of the parties, the outcome of which would depend upon such factors as their relative bargaining strength; the anticipated amount of profits that the prospective licensor reasonably thinks he would lose as a result of licensing the patent as compared to the anticipated royalty income; the anticipated amount of net profits that the prospective licensee reasonably thinks he will make; the commercial past performance of the invention in terms of public acceptance and profits; the market to be tapped; and any other economic factor that normally prudent businessmen would, under similar circumstances, take into consideration in negotiating the hypothetical license."

The language above suggests a general, practical definition of a reasonable royalty as the amount the parties would have found acceptable given their business needs and limitations, and assuming a mutual desire to reach an agreement. With this goal laid out, damages experts and finders of fact can look to the other 14 factors to help determine the proper amount of such a royalty. These factors can be grouped in a number of different ways: some are qualitative while others are quantifiable; some relate to technological benefits while others look to economic considerations; some relate to licensing behavior while others relate to more general business dynamics. The table above summarizes the 15 factors and groups them into categories:

It is important to note that not every factor carries equivalent weight in every

situation; in fact, recent articles on patent damages have criticized approaches that weigh all factors evenly and base royalty analyses on the simple fact that more factors seem to suggest in favor of one party than the other. See, *e.g.*, J. Gregory Sidak, *The Meaning of FRAND, Part I: Royalties*, Journal of Competition Law & Economics (2013); John R. Bone *et al.*, *View from the Federal Circuit: An Interview with Chief Judge Randall R. Rader*, SRR Journal (2012).

Methods employed for reaching a quantitative conclusion vary considerably based on case facts, available evidence, and changing case law. Three methods drawn from asset valuation theory–the income approach, market approach, and cost approach–are often used in quantifying a reasonable royalty. These approaches are not mutually exclusive and, importantly, need not be considered as separate from the *Georgia-Pacific* factors. Rather, each approach can be correlated to similar logic embedded within the *Georgia-Pacific* Factors.

The income approach determines the value of an asset based on the future cash flows that the asset is expected to generate. Relevant indicators for the determination of a royalty based on the income approach include those *Georgia-Pacific* factors which relate to the profitability of the patented product, the technology's advantages over non-infringing alternatives, the benefits of its commercial embodiment(s), the portion of the patented product's profit or price that can be attributed to the technology, and the tendency of the technology to drive sales of non-patented products.

As patented products become more complex, a key challenge of using an income approach relates to isolating the value driven from the patented technology from the value driven by non-patented elements of the patented product. Various types of technical and business documents may be used to isolate value, however, recent court decisions have provided differing standards for applying such information.

The market approach determines the value of an asset based on the prices associated with similar transactions for similar assets in a certain market. Relevant indicators for the determination of a royalty based on the market approach include those *Georgia-Pacific* factors which relate to the past licensing behaviors or current licensing policies of either the licensee or licensor and historical royalty rates for the patent-in-suit or similar patents. The technical and economic comparability of licenses should be analyzed when using a market-based approach. Similarities and differences in any licenses reviewed should be analyzed and accounted for when determining a reasonable royalty under the premise of a hypothetical negotiation.

The cost approach determines the value of an asset based on an assessment of the costs avoided by the alleged infringer through its use of the patent-in-suit. The logic is in certain ways analogous to the income approach with one key difference–it tends to focus on the costs avoided by implementing an otherwise economically comparable non-infringing alternative rather than on the incremental cash inflows attributable to the patented technology over an economically inferior non-infringing alternative. Relevant indicators include many of the same *Georgia-Pacific* factors considered in an income approach analysis; however, they can be framed differently to provide a comparison between the patented technology and the costs of implementing an acceptable non-infringing alternative.

Reasonable royalty calculations can take different forms–some calculations identify a single lump-sum payment while others determine a running royalty using a royalty base comprised of units or revenue and a royalty rate that can be applied to that base. There have been several recent Federal Court decisions that have attempted to instruct on the proper composition of a royalty base that is sufficiently tied to the patented technology, including descriptions of standards for narrowing the royalty base to exclude extraneous, non-patented value in the royalty calculation. See, *e.g.*, *Cornell v. Hewlett-Packard*, 609 F. Supp. 2d 279 (N.D.N.Y. 2009); *LaserDynamics v. Quanta Computer*, 694 F.3d 51(Fed. Cir. 2012); *VirtnetX Inc. v. Cisco Systems, Inc.*, 767 F.3d 1308 (Fed. Cir. 2014). However, it remains understood, as the *VirntetX* court noted, that courts "have never required absolute precision in this task; on the contrary, it is well-understood that this process may involve some degree of approximation and uncertainty." ■

Lindsey G. Fisher, CFE, is a Director in the Dispute Advisory & Forensic Services Group at Stout Risius Ross where she assists clients and counsel with complex financial, accounting, and damages matters. Kevin T. McElroy is a Senior Manager in the Dispute Advisory & Forensic Services Group at Stout Risius Ross, and currently serves as Vice Chair of the Economics of the Profession Committee in the ABA Section of Intellectual Property Law.

YLS Chair
continued from page 42

spread throughout this bar year to help connect our members. If you do not put yourself out there, you are never going to make the contacts necessary to help you in your career and in life. Your next employer, case, friend, or even fiancé (yes, it has happened) may be unknowingly waiting for you at the next YLS event. So again, I invite and encourage every member to participate in at least one YLS activity this bar year. I look forward to meeting all of our members! ■

LEGAL ETHICS

BY JOHN LEVIN

CONTINUING DEVELOPMENTS ON A LAWYER'S DUTY TO DISCLOSE

Reporting Up or Out

In October 2003, this column discussed the brewing battle over attorney-client privilege under the then-newly adopted Sarbanes-Oxley Act. Pursuant to the Act, the SEC adopted regulations obliging a lawyer to report and disclose certain client actions, primarily to prevent the client from committing fraud and criminal violations. The Washington State Bar Association issued an Interim Formal Ethics Opinion finding that certain disclosure requirements under the SEC Rules were broader than those permitted under the Washington Rules of Professional Conduct, and a Washington lawyer could not reveal such protected confidences. This resulted in an exchange of letters between the SEC and the bar associations of several states over the issue.

The column anticipated further developments on the issue of an attorney's duty to disclose, stating at that time:

The SEC–as well as other governmental agencies–has long been attempting to push the legal profession toward having a public enforcement function. Such a function not only would force lawyers to violate long held confidentiality obligations to their clients, but would contravene the fundamental concept that the lawyer owes his or her obligation first to the client–not to the public.…Stay tuned for further developments.

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

The first "further developments" were amendments to ABA Model Rules 1.6 and 1.13 (adopted in most states, including Illinois, though with some local variations). As reported in the *ABA Bar Leader* in December 2003:

> By a 218-201 vote, the ABA Delegates amended Model Rule 1.6(b) to permit a lawyer to reveal confidential client information to prevent a crime or fraud that is reasonably certain to result in substantial injury to the property or financial interest of another. The ABA also voted to amend Model Rule 1.13 to require a corporate lawyer to report certain violations of law by officers or employees to higher authorities within the organization, unless the lawyer believes that disclosure would not be in the best interest of the organization.

The general concept underlying these rules is that the lawyer's client is the entity, and the duty of the lawyer is to protect the interests of the entity even if it may be against the personal interests of certain officers or employees of the entity,

The compromise between the ABA and the SEC seemed to work. But what if the lawyer does not "report up" or "report out" such information? This was the question brought in 2016 before the Michigan Attorney Grievance Commission concerning six former General Motors in-house counsel who failed to disclose either "up" or "out" information they allegedly had about defective ignition switches in GM cars that resulted in numerous injuries and deaths. As reported in the public media and trade press, the Grievance Commission declined to commence any disciplinary action against these lawyers after a complaint was filed by the father of an alleged victim. The Commission did not give reasons for taking no action, and there has been speculation–much of which revolves around the specific wording Michigan's Rules of Professional Conduct, which gives attorneys very limited discretion to disclose client confidences, even if necessary to prevent death or bodily injury.

Can an Illinois lawyer rely on Michigan's "no action" decision? I would suggest that the answer is No. Illinois Rule 1.6(c) states that: "[a] lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm." Comment 6 to Illinois Rule 1.6 is fairly explicit in stating:

Paragraph (c) recognizes the overriding value of life and physical integrity and requires disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm…Thus, a lawyer who knows from information relating to a representation that a client or other person has accidentally discharged toxic waste into a town's water must reveal this information

continued on page 56

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/.

WHAT'S YOUR OPINION?

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

ETHICS EXTRA

BY KIMBERLY GLEESON

Abuse of Discretion in Rewriting a Contingent Fee Agreement

In *Goesel v. Boley International (H.K.) LTD.*, the United States Court of Appeals for the Seventh Circuit held that the district court abused its discretion in rewriting a contingent fee retainer agreement in a minor-settlement case. 806 F.3d 414 (7th Cir. 2015). The Seventh Circuit found that the district court's belief that "fairness and right" required that the plaintiffs receive a larger share of the settlement than that called for in the retainer agreement did not justify rewriting the fee agreement.

Background

In 2009, the law firm of William, Bax & Saltzman, P.C. (the William firm) filed a personal injury lawsuit in Illinois state court for plaintiffs Andrew and Christine Goesel on behalf of their son, Cole, a minor whose injury led to the lawsuit. The defendants removed the case to federal court, and after four years of litigation the parties settled on the eve of trial.

The products liability case had certain procedural complexities because the complaint alleged that defendant Boley International's toy robot shattered and punctured 5-year-old Cole's eye, and the defendant is headquartered in Hong Kong. Discovery focused on experts such as chemists, toy-safety specialists, ophthalmologists, and rehabilitation counselors. Depositions were taken in seven states, and a video conference deposition was taken with the defendant in Hong Kong.

Under the Goesels' retainer agreement, the William firm was to receive one-third of the gross settlement amount and the Goesels were to cover litigation expenses. The court was required to approve the settlement due to Cole's minor status. Concerned that the Goesels would end up with only 42% of the total recovery, the district court modified the contingent fee, invoking "fairness and right reason." The judge deducted litigation expenses from the settlement before the William firm was distributed its one-third fee, leaving the Goesels with 51% of the total recovery. The firm appealed in its own right.

Appellate Court Reasoning

The Seventh Circuit found that Illinois law governed because judicial approval of minor-settlements is a matter of substantive law. Although a district court's award of attorney's fees is reviewed under a "highly deferential abuse of discretion standard," its discretion is not without limits. The court used two guidelines in its abuse of discretion analysis: the reasonableness of the fee and the interests of the minor.

In assessing the reasonableness of the fee, the court first determined that the fee agreed to by the Goesels was consistent with the prevailing market rate for similar legal services. Next, the court found that the fee was reasonable under Illinois Rule of Professional Conduct 1.5. Illinois courts have incorporated Rule 1.5's eight enumerated factors in their analysis of reasonableness, suggesting that:

> The trial court should consider a variety of additional factors such as the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation.

Noting the district court's acknowledgment that the firm did a "terrific job for the client" and the "extensive time spent by plaintiffs' counsel in the hard-fought battle," the Seventh Circuit held that the complex issues and the large amount of time and labor expended could not justify the district court's decreasing the contingent fee.

After deciding the fee was reasonable, the Seventh Circuit considered public policy for protecting minors' interests, noting that Illinois courts conceptualize minors' interests in two ways: (1) the individual minor's tangible well-being and (2) the courts' duty to safeguard the interests of minors as a class. First, the district court failed to determine whether the settlement amount was insufficient to compensate the minor. Instead, the district court criticized the firm for opining that the settlement would provide adequate compensation for the minor's pain and suffering. The Seventh Circuit found this criticism unwarranted, as the firm was fulfilling its responsibility to advise the court on issues concerning the minor's interests.

Second, the court acknowledged that minors as a class would likely be deprived of quality legal representation if reasonable contingent fee agreements were at risk of retrospective judicial modification in minor-settlements. Consequently, a court should only modify a retainer's terms if it has good reason to do so.

Moreover, the Seventh Circuit found that the district court's ruling rested on "nothing more than a series of unwar-

continued on page 56

Kimberly Gleeson, a Francis D. Morrissey Scholar at the John Marshall Law School, anticipates receiving her J.D. in May 2017.

LPMT BITS & **BYTES**

BY SUE ROBINSON

Simple Business Development Tips Every Lawyer Should Be Doing

Want some easy ways to get clients? Here are a few thing you should be doing, whether you're a novice or a maven at developing business.

Draft a business development plan. In short, it will focus you on your goals and give you a "home" in which to develop the steps to reach them. This is the *official* reason why you need a plan. The unofficial reason is this: how often do you lie awake at night thinking of all the things you "should" be doing but don't have time for? It's exhausting, it's a time waster, and it makes you feel guilty. By putting your thoughts and ideas into your plan—even as a placeholder in a "notes" section until you have time to slot it in—you've given yourself relief from thinking about it. And what is the reward for feeling less pressured and more organized? More energy!

Pick the low-hanging fruit—first! There will always be more client development ideas and opportunities than an attorney can tackle at any one time. To get you more comfortable with making time for client development, initially focus on the opportunities that will take less time and will likely have a more immediate payoff. Remember, all your ideas can find a home in your business development plan. Once there, they can be addressed in *your* time to meet *your* goals.

Put a square peg in a *square* hole. Identify the business development activities you are already comfortable with and move out on those. For now, ignore the rest. They will only zap your energy. If you like to present, then present. If you don't like to network, then don't. At some point you may likely have to get out of your comfort zone to reach higher goals, but once you have some check marks in the win column you will be more likely to step out. Don't worry about that now. Also remember that your plan is where you house what you like to do, what you don't like to do, and what you haven't tried but would like to—all of which is an immediate time-saver because you can seamlessly determine how you want to spend your time. Just leave the door open for future evaluation.

Find a teammate. Surprisingly, most attorneys do not seek out business development partners among their colleagues. Let's face it, most attorneys need to develop business and most of them likely feel like they are going it alone. Business development can feel isolating when you're trying to manage both it and your daily workload. Find someone like-minded and trustworthy and become each other's business development advocate. If there is no one among your colleagues, widen your circle. Odds are you know someone in the same position as yourself—a friend who works in commercial insurance, a cousin who is a CPA, your college roommate-turned-banker. Save time by having someone, in addition to yourself, looking out for your interests and any potential business development opportunities.

Develop and memorize your 10-second elevator speech. You always need to be at the ready to answer the question, "What kind of work do you do?" Make it succinct and make it interesting. "I recover insurance proceeds for my clients" sounds more interesting than, "I work in insurance recovery and counseling." The former invites your audience to prod for more information while the latter invites them to say, "Oh, how nice." Packaging your response into something more interesting will instantly move you from Phase 1 to the critical Phase 2 in the business development dance, thus saving you time figuring out how you're going to bridge from Phase 1 to Phase 2.

. Knowing what your challenges are is the first step to overcoming them. Everyone has one—or ten—challenges holding them back. Where we lose time is trying to ignore the fact that they exist and being anxious about it. Write them down and don't show them to anyone else—for now. Actually seeing them on paper usually alleviates the anxiety we feel over their existence. And oftentimes, they don't seem so bad once we actually see them. Once you accept the fact that you're not perfect and that you have challenges to work on, you can laser focus on the low-hanging fruit. The more challenging ones can be addressed later.

Get to know people on a personal level, wherever and whenever possible. One of the best ways to save time is to get to know people in a more personal way. Ask questions, encourage them to share with you. People love talking about themselves, if the person they are talking to is genuinely interested. This opens so many doors and moves us through the business development phases even faster. In the end, people want to do business with people they like. So get to know your target audiences in a meaningful and authentic way.

Know your work passion and know what makes you unique. Rather than slogging along and trying to develop business in *all* the areas where you work, first identify the specific work that gets your

Guest author Sue Robinson is Director of Marketing & Business Development at Chuhak & Tecson. Visit www.chicagobar.org/lpmt for articles, how-to videos, upcoming training and CLE, services, and more.

Web Highlight: Save Money on CBA Member Discount Programs

Save on Lexis, virtual and temporary office space, Alliant Credit Union, client credit card processing, car rentals, UPS, magazine subscriptions, legal software and more. Visit www.chicagobar.org/save 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!

engine going. Work doesn't seem like work when you find opportunities that allow you to focus on the challenges you enjoy and can sink your teeth into. Then, to find other areas of gratification, identify what makes you unique. And this is a struggle, no doubt about it. If you really think about it, though, there *is* something that you are capable of doing better than anyone else. But to find it, first understand that nowhere on earth does another person exist with your precise combination of traits—education, personality, experience, passion, friendships, interests, likes and dislikes, etc. Your uniqueness, and your ability to truly "get" that you are one-of-a-kind, is the basis for identifying the select areas of expertise that you—and only you—can provide your audiences.

Cut yourself some slack! Business development doesn't have to be off-putting and it's a fallacy to think that it's only successful for select personality types. *All* attorneys are capable of developing business; they just need to find their own bailiwick. ■

Interested in learning more? Check out the joint Chicago Bar Association/Legal Marketing Association CLE program "Solid Strategy and Tactical Timing for Client Development" in the CLE archives at www.chicagobar.org/cle

LPMT

The Chicago Bar Association
Law Practice Management
& Technology Division

Save on law practice management and technology tools with CBA membership:

Save!

LegalConference.com
Document sharing with real time video editing and a secure file system. Members save 30% on annual subscriptions. https://secure.legalconference.com/referral/chicagobar.aspx or 800-529-5121

Legal-lease
A platform dedicated to matching legal and other professionals with available shared law office space in established firms. Members get 15% savings when they sign up to list their spare offices on legal-lease. www.legal-lease.com/cba

LegalResearch.com
Nationwide expert level 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 seamlessly covers all the daily functions of the modern law office. Members get a 10% lifetime discount. http://bit.ly/ChicagoBarAssoc or 800-571-8062

Nextpoint
Nextpoint puts all your evidence in one place, so you can do what you do best: litigate. Members get a 10% annual discount on all Nextpoint subscriptions. www.nextpoint.com/chicagobar or call 888-929-NEXT

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

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

Smokeball
Smokeball empowers the small law firm to manage its emails and documents, creates documents faster through clever automation, and provides a digital filing system in the cloud. Members get 50% off the onboarding fee. www.smokeball.com/chicago-bar-association or 855-668-3206

See complete list of discounts at www.chicagobar.org/save.

NOTA BENE

BY KATHLEEN DILLON NARKO

RICHARD WYDICK (1937-2016)

Better Writing With *Plain English for Lawyers*

This summer the legal profession lost one of its most influential voices for clear writing, Richard Wydick. Wydick is best known for his short book, *Plain English for Lawyers* (Carolina Academic Press, 5th ed. 2005), said to be the best selling law book with more than 1 Million copies sold. Wydick set out to write something for lawyers that was the equivalent of Strunk and White's classic, *The Elements of Style*. His book has remained relevant and popular for nearly 40 years.

Plain English for Lawyers grew out of a 1978 article by the same name (66 Cal. L. Rev. 727 (1978)). Wydick wrote the article while on sabbatical in New Zealand. He said he needed a "portable" project. According to Wydick, his dean "sort of smirked and said, 'Well, go ahead young man, and give it a try,' and sent me off with two-thirds of a salary to New Zealand to write my Strunk and White." (Undated University of California at Davis video, https://www.youtube.com/watch?v=aBQ4_pge0HA). The article became popular, and Carolina Academic Press published an expanded book version, now in its fifth edition.

Kathleen Dillon Narko teaches teaches Communication and Legal Reasoning at Northwestern/Pritzker School of Law and is a member of the CBA Record Editorial Board.

As a professor and consultant, I have recommended Wydick's book for years. He diagnosed common legal writing problems and told readers how to fix them. He followed in the footsteps of David Mellinkoff and joined other advocates of plain English such as Bryan Garner, Joseph Kimble, and Wayne Schiess. I highly recommend *Plain English for Lawyers*, as well as works by these authors, to make your legal writing more clear and concise.

How to Write Better

Following Wydick's guidance and practicing his exercises will make you a better writer. The best tribute to Wydick is to remind ourselves of some of his lessons.

Omit surplus words

Wydick's first and probably most important advice is to "omit surplus words." Trimming the fat from your writing is a key first step in writing well. Although the phrase is not exclusively Wydick's idea (think "omit needless words" from Strunk and White), it takes on added meaning in the legal setting. In addition to creating clear and concise writing for your clients and judges, omitting surplus words will help meet word-count or page limits more easily. The beauty of Wydick's book is that it provides concrete ways in which to identify and cut out surplus words. These include:

Avoid Compound Constructions: Spot these when you see three or four words doing the work of one or two words. Some examples:

Compound	Simple
at that point in time	then
for the purpose of	to
in accordance with	by, under
with reference to	about, concerning

(All examples from Wydick, *Plain English for Lawyers*)

Compound constructions "suck the vital juices from your writing," according to Wydick. "Every time you see one of these pests on your page, swat it."

Avoid Word-Wasting Idioms: Often we use phrases that add nothing to the meaning of sentences. Train yourself to trim these phrases.

Verbose	Concise
despite the fact that	although, even though
in some cases you will find	often you will find
in the majority of instances the grantor will	usually the grantor will

Prefer the active voice

In active voice the subject of the sentence is the actor, e.g., "the plaintiff filed a motion." In passive voice, the subject is acted upon, e.g., "the motion was filed by the plaintiff." Sentences in passive voice are generally longer and can be ambiguous, as the examples below demonstrate.

Passive	Active
Our conclusion is supported by the legislative history.	The legislative history supports our conclusion.
The trust had not been intended by the trustor to…	The trustor had not intended the trust to…
After 180 days, this Agreement can be terminated	Either party can terminate this Agreement after 180 days.

Sometimes a writer may choose to use passive voice–where the actor is unimportant, unknown, or where the writer intends to hide the actor's identity. For example, "The subpoena was served on January 19" (actor unimportant); "The data files were mysteriously destroyed" (actor unknown); "The plaintiff's teeth were knocked out" (intentionally hiding the identity of the actor).

Choose Your Words with Care

Choose your words with care–pick concrete words, familiar words, and do not use lawyerisms. Concrete words "grip and move your reader's mind." Abstract words tend to be vague. Lawyers may want the wiggle room of a vague word, but we should resist for the sake of clarity. Watch out for attractive but vague words like "basis, situation, consideration, facet, character, factor, degree, aspect, and circumstances."

Abstract Words	Concrete Words
In our present circumstances, the budgetary aspect is a factor which must be taken into consideration to a greater degree.	Now we must think more about money.

Wydick was a great champion of simple, straightforward language. "Given a choice between a familiar word and one that will send your reader groping for the dictionary, use the familiar word," wrote Wydick. "The reader's attention is a precious commodity, and you cannot afford to waste it by creating distractions." Even when using familiar words, prefer the simple to the complex or "stuffy." Use the nickel word instead of the fifty-cent word.

Complex	Simple
Elucidate	Explain
Utilize	Use

Avoid lawyerisms. One of my professors in law school said if you learned the word in law school, don't use it in your writing. Although an overstatement–sometimes we need to write "motion for summary judgment"–the sentiment is sound. Lawyerisms or legalese "give writing a legal smell, but they carry little or no legal substance," according to Wydick. Non-lawyers may not understand them, and they add little or no meaning to the sentence.

Lawyerisms to Avoid
Aforementioned
Whereas
Hereinafter
Res gestae

Arrange Your Words with Care

In addition to choosing words that are easy to understand, a good writer needs to structure sentences to make it easy on the reader. In the English language, the easiest word order to understand is subject, verb, object. When lawyers separate these key elements, they "test the agility of their readers by making them leap wide gaps between the subject and the verb and between the verb and the object," according to Wydick. Such sentences tend to be unclear and hard to understand. Make it easier on your reader by keeping the subject, verb, and object close together.

Gap	Gap Closed
This agreement, unless revocation has occurred	Unless sooner revoked, this agreement expires
at an earlier date, shall expire on November 1, 2012	on November 1, 2012
the defendant, in addition to having to pay punitive damages, may be liable for plaintiff's costs and attorney fees.	The defendant may have to pay plaintiff's costs and attorney fees in addition to punitive damages.

In addition, Wydick advises lawyers to put modifying words close to what they modify. In a mind-bending example, putting the word "only" in any of seven places produces different meanings in the following sentence: "She said that he shot her."

It is generally more clear to put "only" immediately before the word it modifies. If that is still unclear, move it to the beginning or end of the sentence.

Ambiguous	Clear
Lessee shall use the vessel only for recreation.	Lessee must use the vessel for recreation only.
Shares are sold to the public only by the parent corporation.	Only the parent corporation sells shares to the public.

Train Yourself to Write Well

How do you learn Wydick's lessons? Practice. Wydick included exercises in each chapter to reinforce his lessons. Sit down and take some time on a regular basis to complete Wydick's exercises. Sometimes it can be difficult to find errors in our own writing. If you find that to be the case, edit someone else's work. Look for some of the errors described above and elsewhere in Wydick's book.

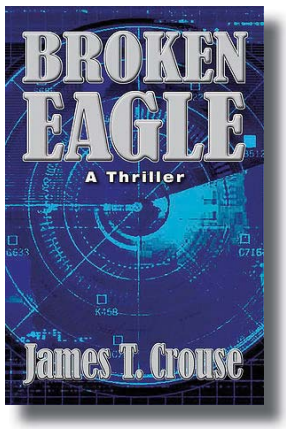
Your practice will pay off. This year I had the pleasure of working with a group of students in an Advanced Legal Writing course, implementing many of Wydick's ideas over 13 weeks. Every week the students completed an editing exercise based on one of Wydick's lessons. Some of them said this constant training improved their writing more than ever before, including one whose note was selected for publication by the law review.

We all had a copy of Strunk and White on our shelf in college. Add *Plain English for Lawyers* to the shelf in your law office. After all, there is a reason it has sold over 1 Million copies. ■

SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

Blending Legal Thrills and Military Action



Broken Eagle
By James T. Crouse
Caramount Island Publishing, 2016

Reviewed By Kevin P. Durkin

I recently sat down on the porch of my summer home to read the new legal/military/aviation thriller *Broken Eagle,* and within a few minutes was totally hooked.

The author's background as an experienced helicopter pilot who flew research and development and maintenance test flights for the Army comes through loud and clear in the book, as do his skills as an accomplished aviation lawyer with expert legal writing skills.

The book's lead character is Jake Baird, a former US Army hero turned lawyer. Jake has a sole practice with his loyal legal assistant, Florence Hilliard, in Raleigh, North Carolina. In the past, he has been frustrated handling cases against manufacturers of military aircraft because of the many real defenses they have in civil lawsuits–a lot of work and cost with no reward. Jake tells himself he doesn't want to handle these cases anymore until widow Lisa Thorpe comes to his office and says, "My husband died in a military aircraft crash, and I need to know why. There was not a better pilot in the Marines." Jake is still an Army Reserve aviator, and to him the loss of a military aviator was personal.

The aircraft involved was the experimental (and fictional) military helicopter XV-11, known as the Sea Eagle. Right after meeting the widow Thorpe, a mystery man shows up with a confidential, classified, Top Secret file about the development of the Sea Eagle that clearly shows to Jake that the aircraft is fatally flawed and will likely result in more deaths (among the flaws: the Sea Eagle has 20 common hydraulic lines, so a bullet in one could cause failures in multiple systems). The cooperative yet combative relationship Jake establishes with the mystery man is an interesting sub-plot.

Legal ethics come into play as Jake reviews the classified information. Using and not returning the documents immediately could result in Jake going to prison–or as he calls it, a one-way ticket to Leavenworth. However, not using the documents will mean that the XV-11's serious flaws will remain unrevealed, which Jake knows will result in more loss of life. Jake heroically takes the moral high road and realizes it's his job to make sure the Sea Eagle's flaws are exposed.

The book's focus on the "military industrial complex" shows the huge military aircraft manufacturing industry's close ties to the government. The competing interests here are the US Government, NAVAIR (Naval Air Systems Command), and the manufacturers (Apex Helicopters and Vertical Aerospace), all of whom have a huge investment in this flawed aircraft and anticipate lucrative contracts from civilian derivatives. There is no simple fix for the aircraft's design flaws , so the exposure would result in huge financial loss and likely ruin careers. But the flaws have been concealed from top government and industry leaders by rogue actors in the military and industrial procurement process who have been hiding the flaws from their superiors at NAVAIR and the aerospace contractors. These renegades will stop at nothing–including murder–to prevent this exposure. Thus, the race begins between Jake and the villains.

This thrilling tale takes many unpredictable twists and turns and is replete with fascinating characters and all-too-possible scenarios.

Crouse, an attorney, is currently writing several other novels involving the character Jake Baird uncovering justices and setting them right. The difference between James T. Crouse and some of the well-known legal fiction writers such as Grisham and Turow is that you don't know him yet. If Crouse's new books are exciting as Broken Eagle, you will know him soon enough! ■

Kevin P. Durkin is a Personal Injury, Wrongful Death and Aviation Accident Attorney at Clifford Law Offices. He was President of The Chicago Bar Association in 2006-07.

RESOURCES FOR NEW LAWYERS

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


The Chicago Bar Association's Barristers Big Band
presents the Music of
Johnny Mercer & Henry Mancini
NBC
Friday • October 14th 2016
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 © 2016

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.

Ethics continued from page 48

to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

I believe that were this matter to be considered under the Illinois Rules, the attorneys in question would have been found to have been in violation of the rules.

Issues related to a lawyer's obligation to the client versus obligation to the public continue to arise. ■

Ethics Extra continued from page 49

ranted criticisms." First, the district court unjustifiably criticized the William firm for commenting on whether the settlement was sufficient to compensate the minor's pain and suffering. Second, the court stated that the district court's "generalized reliance on 'fairness and right reason' appeared to be a rhetorical flourish." Finally, the Seventh Circuit found no support for the district court's characterization of the retainer agreement "as a contract of adhesion."

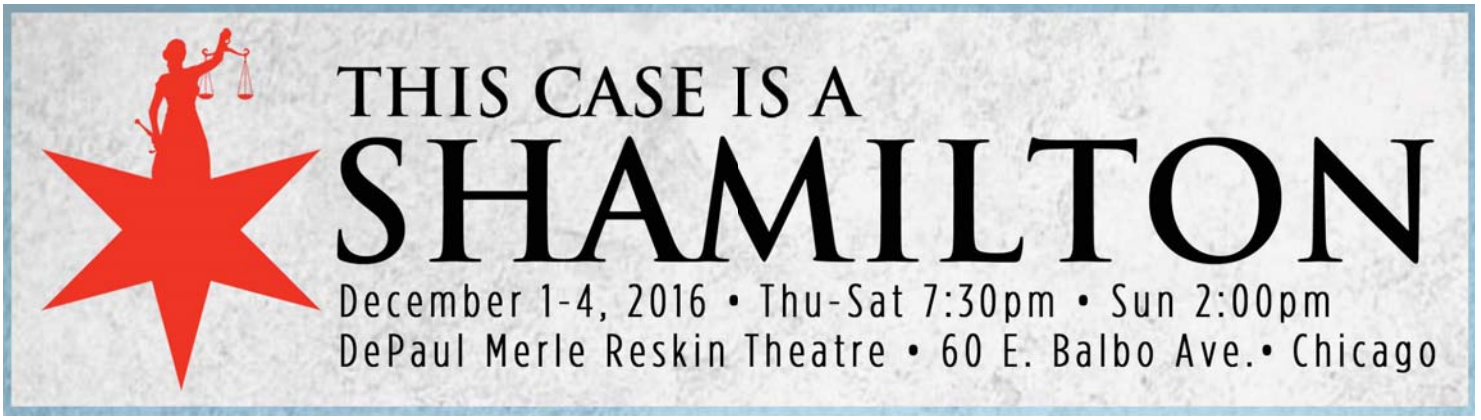
The William firm's representation was adequate, the fee was reasonable, and there were no factual findings that the settlement would be inadequate to compensate the minor. Consequently, the district court had abused its discretion in rewriting the contingent fee.

Fees for Computerized Research

Additionally, the William firm sought to recover nearly $10,000 for computerized research. The Seventh Circuit stated that "In fixed-fee [contingent] cases, these charges (computerized-research) are not separately recoverable; in lodestar cases, they are." Computerized research benefits an attorney charging a contingent fee because the fee remains the same even though the attorney spends less time researching. However, when an attorney charges an hourly fee, the hours in computing the lodestar will be fewer because of the time saved in researching. Therefore. the Seventh Circuit held that computerized-research costs were to be excluded from the recoverable litigation expenses. ■

CLASSIFIED ADS

The Chicago Bar Association presents the 93rd Annual Bar Show



Email/Fax/Mail-in Ticket Order Form

Join the Chicago Bar Association for an evening or afternoon of musical entertainment at the 93rd 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 before October 1, 2016 or for 10 or more
Mezzanine Tickets: $35 (no early bird or group discount)

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

Order your tickets online at www.chicagobar.org/barshow *anytime,*
OR by completing this form and submitting it by *no later than November 11, 2016*
(i) as PDF by e-mail to Awilda Reyes at areyes@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.

2016 BAR SHOW TICKET ORDER

	# Tickets Main Floor @ $45*	# Tickets Mezzanine @ $35	Total Amount Due
Thursday, December 1	_____	_____	$_____
Friday, December 2	_____	_____	$_____
Saturday, December 3	_____	_____	$_____
Sunday, December 4	_____	_____	$_____
		ORDER TOTAL:	$_____

*Main floor is only $40 if ordered before October 1, 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

Office Services Showcase

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.