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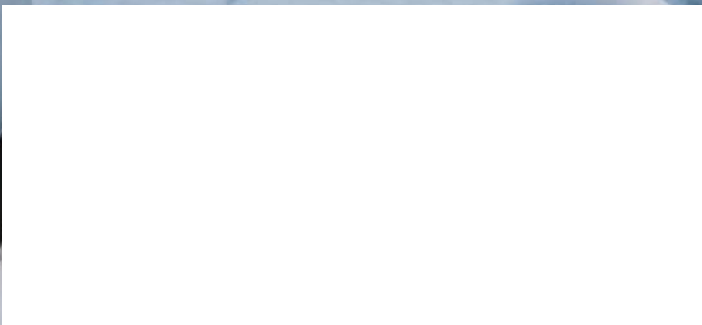
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Presented by:

- Robert A. Clifford, Founder and Senior Partner, Clifford Law Offices, Moderator

Panelists:

- Professor Robert Burns, Northwestern University School of Law, Chicago
- Hon. John C. Griffin, Supervising Judge, Commercial Section of the Law Division, Cook County Circuit Court
- Mary Robinson, Principal, Robinson Law Group, LLC; former ARDC Commissioner

The objectives of this program are to familiarize attorneys with the Rules of Professional Conduct involving pre-trial and trial issues. Typically, that involves evidentiary issues that face lawyers on a day-to-day basis – from witness preparation to spoliation of evidence, calling a party as a witness to influencers in closing argument. In particular, the objective of the course is to promote the civility of lawyers’ conduct in preparation of trial and during trial. Lawyers will be made more aware of the particular Rules that govern their conduct. Hypothetical questions will be posed and a discussion by the panelists will ensue, exploring various answers to the professional responsibility issues raised using the Rules of Professional Conduct as well as case law. The webinar will allow attendees to ask questions, including those on the internet, of the moderator and panelists who will respond to as many as possible during the two-hour program.

Date: Thursday, Feb. 18, 2016

Time: 2:30-4:30 pm CST

Place: Broadcast live via the internet from the DePaul Center, Room 8005
One East Jackson Boulevard, Chicago, IL

Registration is required to attend the free program.

In-person space is limited so please reserve your spot – first come, first served.

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John Levin reviews *Kafka's Law* by Robert P. Burns

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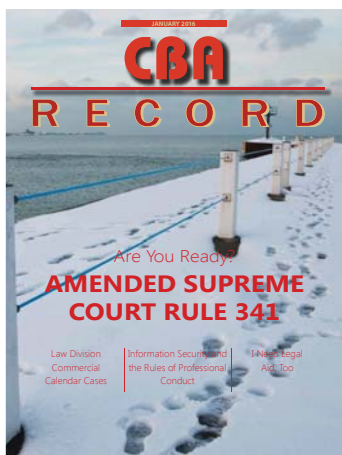
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PRESIDENT'S PAGE

BY PATRICIA BROWN HOLMES

The CBA's New Leadership Institute



The Association launches its new Leadership Institute later this month, and I'm proud to announce that the response from our leading law firms has been terrific. We have a full class of associates enrolled in our nine monthly leadership development training sessions that begin in late January at the CBA building.

The genesis of the new Institute came from meetings and focus group sessions with leaders and managing partners from our large and mid-sized law firms. We listened to your suggestions about the need to offer specialized training programs in leadership and business development for associates and younger lawyers to help them develop the personal qualities and skills to become future leaders in the legal profession and in our community. A special Leadership planning committee chaired by Clark Hill Managing Partner Ray Koenig III was formed 18 months ago. During that time the committee examined various leadership/business development programs offered by bar associations and universities around the country. We were also fortunate to recruit the assistance of John K. Mitch-

ell, a leadership/business development consultant from KM Advisors. John works with many national and international firms and will continue to work with the new Institute as a faculty member.

After conducting extensive research and examining existing leadership development programs, the Special Committee received the Board's approval to proceed with the formation of the Institute. The Committee also: (a) established the admission requirements and process, (b) developed the Institute's training curriculum, and (3) selected the inaugural faculty. The following is a brief description of the topics that will be covered in each of the monthly training sessions.

Basic Leadership—Level 1

Session A: Effective Leadership: What does it take to be a leader in your profession and your community?

This interactive session will involve a diverse panel of leaders in the legal and business community who will share their perspectives and personal advice/guidance about the qualities and skills needed to become an effective leader.

Session B: Personal Assessment: Identifying your leadership ability and developing a leadership roadmap.

Participants will be involved in personality assessment and will analyze results to discover their personal strengths/weaknesses and develop an awareness of how they interact with others.

Session C: Essential time management and critical thinking skills for leaders.

This session will concentrate on effective time management, critical thinking and tools to improve overall productivity.

Workplace Leadership—Level 2

Session A: The impact of unconscious bias and diversity in the workplace.

This session will focus on overcoming unconscious biases and how people learn, work and achieve their highest leadership potential.

Session B: Communication Strategies Part 1: How to effectively communicate with supervisors and workplace staff.

Participants will engage in interactive exercises to learn the tools for effective communications including: difficult conversations, resolving conflicts in the workplace, constructive feedback techniques and appropriate use of technology.

Session C: Communications Strategies Part II: Effective communications with clients and others outside of the workplace.

In this interactive session, participants will discuss how to deal with challenging clients within the rules of professional conduct, using technology and best practices for communicating with clients and others outside of the workplace.

Advanced Leadership—Level 3

Session A: How to effectively lead a team.

This session involves interactive exercises and instruction on: how to build a diverse and effective team, delegate effectively, provide constructive feedback, and appraise team performance.

Session B: Advanced public speaking and presentation skills.

Participants will learn advanced interactive public speaking skills (e.g., the characteristics of an effective speaker, self-confidence, body language awareness, drafting/preparing an effective speech and more).

Session C: Advanced Business Development and Networking Skills.

Participants will interact with a panel of business development leaders, law firm rainmakers, and corporate counsel about the fundamentals of building relationships, networking and client/business development strategies

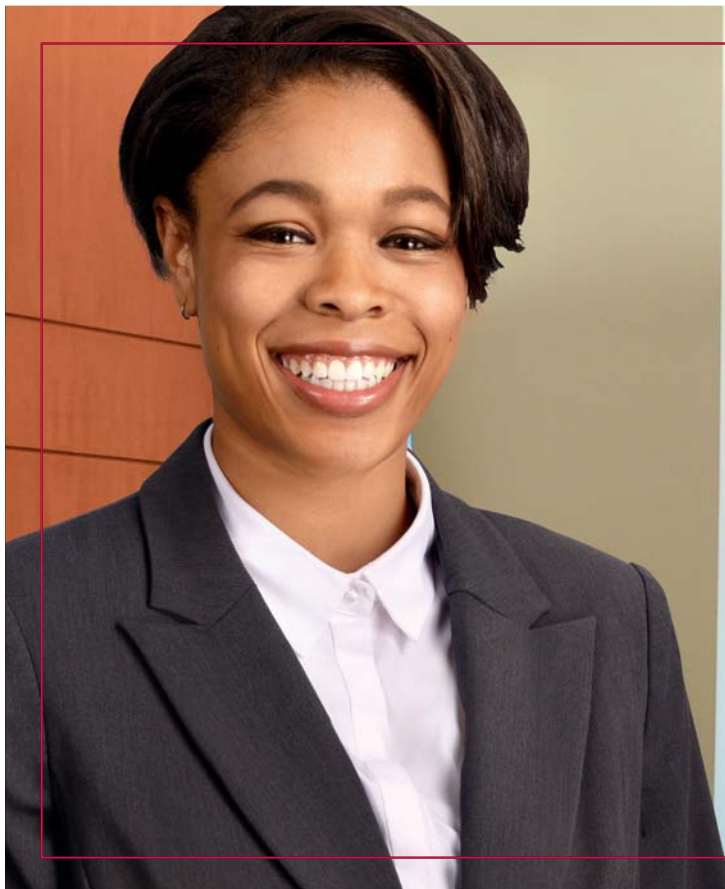
The Institute's inaugural class begins on January 28 and is limited to 20 lawyers who have been practicing 3-10 years. The

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.

monthly training sessions will be held from 5:30 p.m.–7:30 p.m. at the CBA. Attendance is required at the monthly sessions, and MCLE credit is available for qualifying sessions. Lawyers who successfully complete the Institute's training will receive a certificate.

The new Leadership Institute is destined to become one of the CBA's flagship training programs and will serve as a model program for other state and metropolitan bar associations. As lawyers, we play an important and unique role in society. The Leadership Institute will help ensure that today's lawyers are prepared to become tomorrow's leaders in Chicago's legal profession and in our community. For more information about the Leadership Institute visit www.chicagobar.org. ■




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LEADERSHIP INSTITUTE CLASS OF 2016

Congratulations to the members of the first class of the CBA's new nine-month Leadership Development Institute, which begins meeting later this month. For more information, go to www.chicagobar.org.



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Information Security and the Rules of Professional Conduct

By Daniel A. Cotter, Editorial Board Member

At a recent meeting of The CBA Cyber Law and Data Privacy Committee, David Winters and Dan Cotter, partners at the law firm of Butler Ruben Saltarelli & Boyd LLP, discussed the Illinois Rules of Professional Conduct and practical considerations for lawyers in protecting their clients' data. They covered a lawyer's ethical obligation relating to information security, relevant laws relating to information security, how the ethical rules have been applied to particular technologies and situations, and provided attendees with practical tips to consider in ensuring data security.

Winters opened by advising of the importance of security. Using the example of Earnest Byner, an outstanding running back who played for more than 14 years in the NFL who is best known for "the fumble," Winters noted that trust is one of the most important services a lawyer offers. If a lawyer loses that asset because of a data breach caused by not taking adequate steps to secure data in the attorney's possession, the trust the lawyer worked hard to engender will be gone.

Winters next addressed the various threats to data security: 1) "inside" threats (rogue vendors and employees), 2) physical security (file cabinets, trash, photocopiers, unsecured Wi-Fi); 3) lost or stolen devices; and 4) cyber-attacks. He also provided a number of examples of the "parade of horrors" involving security breaches caused by various actions or inactions of lawyers that have been in the news during the last few years.

Winters advised the committee of

relevant Illinois Rules of Professional Conduct ("RPC"). While there are a number of rules that affect an attorney's obligations of confidentiality and security of information, Winters focused on the two most important RPC's: Illinois Rule 1.1. (Competence) and Illinois Rule 1.6 (Confidentiality of Information). The duty of competence includes competence in the selection and use of technology; Comment 8 provides that a "lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." Winters informed the committee that Illinois Rule 1.6(e) had been 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. Winters discussed the amendments to Comment 18 to Rule 1.6, which set forth factors the lawyer should consider in the safeguarding of client information.

Keeping Watch

Winters next discussed other RPC's a lawyer must keep in mind when considering the security of client sensitive or confidential information. Rule 1.15(a) obliges a lawyer to safeguard client property (which would include data) even after termination of representation under RPC 1.16(d). He discussed the obligations of an attorney to supervise, including an obligation to supervise third party vendors providing technol-

ogy services. Winters closed his remarks on the RPC's by discussing the obligations of an attorney to warn clients about the risk of using electronic communications where there is a significant risk that a third party may gain access.

Cotter then discussed a number of laws that might be relevant with respect to data security and breaches, advising the committee of data notification laws that exist in 47 states, including Illinois, HIPAA and HITECH, data security laws and Gramm Leach Bliley. Cotter and Winters discussed Massachusetts Security Regulations, 201 CMR 17.00, which affects anyone in possession of a Massachusetts resident's data. The Massachusetts provisions require significant steps to ensure the security of such data, including encryption while data is at rest and in transit.

Ethics Opinion Guidance

Cotter next turned to application of the rules and law in various contexts, using various bar association ethics opinions. Cotter covered questions about encryption of emails, physical trash and disposal, a lawyer's physical space, and duties to lock down information. Cotter also addressed working at a coffee shop on unsecured Wi-Fi networks, referencing the facts and findings of The State Bar of California Formal Opinion No. 2010-179. Cotter advised the committee of potential issues working at home, on one's laptop, with portable data storage devices, and in the "cloud."

continued on page 14

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Introducing Girl Scouts to the Field of Law

By Beatrice Garrett
CBA Alliance for Women



The Chicago Bar Association's Alliance for Women, in conjunction with the Girl Scouts of Greater Chicago and Northwest Indiana, are gearing up for Project Law Track, which will be held April 12–May 14 of this year. The program consists of a series of three dynamic interactive evening sessions designed to introduce Girl Scouts to the fascinating field of law that will culminate in a half-day mock trial in the Federal Courthouse in downtown Chicago.

In 2011, Alliance committee co-chairs Regine Corrado, Partner, Baker & McKenzie and Maureen Aidasani, then in-house counsel at Grant Thornton and now the Director of Experiential Learning at Chicago-Kent College of Law, together with Alliance committee member Monica Weed, Executive Vice President, General Counsel and Corporate Secretary of Navigant Consulting, Inc., worked with several Girl Scouts to co-create the very first Project Law Track, a program largely designed by girls for girls. The program introduces girls to the many different opportunities that a legal career can offer, demystifying the portrayal of lawyers as seen on television and in the movies, and providing girls with the experience of stepping into the shoes of a trial attorney to prepare a case for a mock trial and try it before a judge in a Federal courtroom. Since the very first Project Law Track in 2011, Judge Rebecca R. Pallmeyer, United States District Court for the Northern District of Chicago, has graciously allowed the mock trial to take place in her courtroom. To participate in Project Law Track, girls 6th grade and older are required to complete an application and

The Specifics

Dates and Sessions for Girl Scout Project Law Track, April 12, 2016 – May 14 :

Session 1: Law (as seen on TV)

Tuesday, April 12, 2016, 5:30 – 7:30 at Girl Scouts Chicago Gathering Place, 20 S. Clark Street, Suite 200, Chicago

Session 2: Law School/Career Day

Thursday, April 28, 2016, 5:30 – 7:30 at Chicago-Kent School of Law, 565 W. Adams Street, Chicago

Session 3: Prepare Your Case

Thursday, May 12, 2016, 5:30 – 7:30 at Seyfarth Shaw, 24th Floor, 131 S. Dearborn Street, Chicago

Session 4: Try Your Case

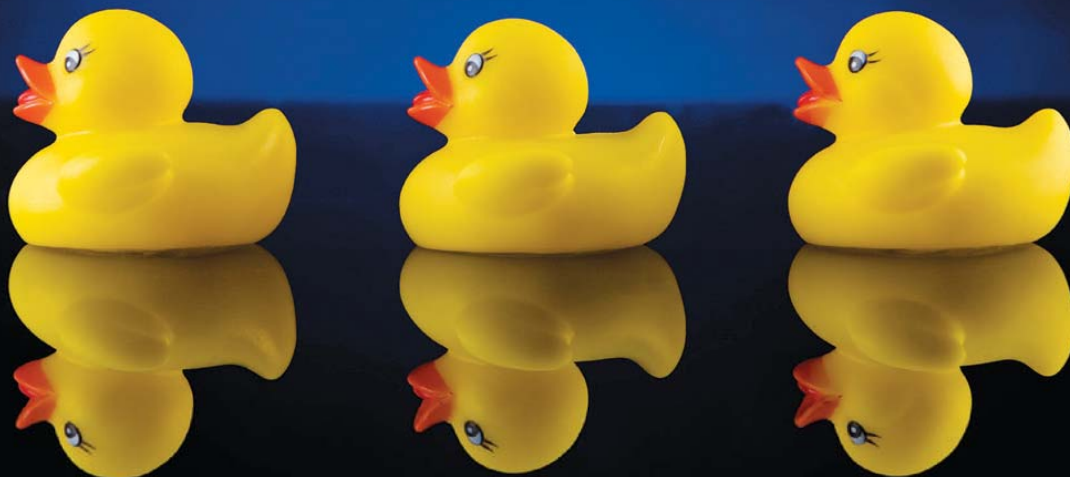
Saturday, May 14, 2016, 9:00 – 2:00 at Everett M. Dirksen U.S. Courthouse, 219 S. Dearborn, Chicago

If you are interested in volunteering, please contact Erica Byrd at byrd@garfield-merel.com. We will work with you to partner you with a girl participant as soon as the girl participants have been determined.

approximately 35 girls are chosen on a first come, first served basis. The girls must also sign a written commitment pledging to dedicate the necessary time to the program.

In order to fulfill the goals of the program, Project Law Track is looking for female attorneys who would be interested in serving as mentors throughout the four week program. We would like to partner each girl participant with a volunteer who will work with her during the program, with particular emphasis on helping her prepare for her role in the mock trial, which is the capstone of the program. Ideally, each volunteer could attend all four sessions of Project Law Track but at a minimum must be able to attend the mock trial prep session on Thursday evening, May 12, and be in attendance to support

her mentee at the mock trial on Saturday, May 14. Attorneys who volunteer have an opportunity to meet and work with other talented attorneys from diverse backgrounds and interests connected by the shared desire to give of their time, advice, knowledge, and insights to girls who may be planning a career as an attorney or who are just curious about the field of law. In turn, the girls will broaden their understanding of what it means to be an attorney, experience the possibilities that are available to them by working side-by-side with female role models, interact with their peers and attorneys in preparing for a mock trial, and learn that there are women who care and want to help them explore their future career options. ■



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Information Security continued from page 10

Cotter noted numerous ethical opinions have been issued relevant to the cloud topic, but that most of them were not recent, such as ISBA Ethics Op. 10-01 (July 2009), which addressed an attorney's use of a third party technology vendor. While the opinion dealt with Illinois RPC 1.6(a), it was issued several years before the recent adoption of RPC 1.6(e). Cotter cautioned that given the increased focus and ever changing area of cyber security, lawyers should stay abreast of developments and future opinions that are relevant.

Cotter strongly encouraged the group that when disposing of privileged or confidential data, a lawyer should shred such information, and should also shred data where there is any doubt regarding its confidentiality. Cotter closed by referencing several additional resources lawyers could access to make sure they are up to speed on their obligations to secure data.

Winters closed the presentation by providing ten ways a lawyer can better protect clients, including adopting and maintaining an appropriate security program, changing passwords to make them more secure, and shredding confidential, sensitive or privileged materials rather than throwing them away. ■

The CBA's Cyber Law and Data Privacy Committee meets on the third Tuesday of each month. For more information, go to www.chicagobar.org/committees.

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Mitchell



Solomon



Sanders-Reach

Technology can help tame the time commitment of client development. But technology alone can't generate clients—that is a human endeavor. A combination of strategies, goals and priorities in tandem with some simple technologies, can help you carve out time to plan and execute a client development plan.

The CBA's Law Practice Management and Technology Division with the Midwest Chapter of the Legal Marketing Association will host "Solid Strategy and Tactical Timing Technology for Development" on Thursday, February 18, 2016, from 12:00-1:30 p.m., at the CBA Building, 321 S. Plymouth Court, Chicago. In a single lunch hour, learn the tips and tricks your attorney peers use to meet their development goals.

LPMT Director Catherine Sanders Reach will cover technologies that can help tame the time commitment of client development. Speakers John Mitchell, a professional training coach at HMG/KM Advisors, and Christina Solomon, a client development executive at Freeborn & Peters LLP, will cover strategy, goal setting, calendaring, and more.

The program is sponsored by Jaffe, an award-winning full-service PR and marketing agency devoted exclusively to the needs of the legal industry. 1.5 IL PR-MCLE Credit (subject to approval). CBA CLE-Advantage members are free, members \$30, and nonmembers are \$60. To register, visit www.chicagobar.org/cle or call 312/554-2056.



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CBA Resources for New Lawyers

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MCLE requirements, new admittee to do list, career services, mentoring programs, seminars for new lawyers, practice pointer videos, solo start up boot camp and more. ■

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Credits earned at CBA committee meetings and seminars are automatically entered into the MCLE Credit Tracker. Credits for attendance at CBA committee meetings are generally posted within two

weeks of the meeting. Credits for attendance at seminars are posted by the 15th day of the following month (For example: credits earned at a March 3rd seminar will be posted by April 15th). For information on MCLE requirements and rules, please visit the MCLE board website. If you need additional assistance regarding your CBA MCLE credits, please email cle@chicagobar.org. ■

2016 Attorneys Diary Still Available

But selling out fast....The 2016 edition of the CBA's hard copy leather bound attorneys diary is still available for \$19.39 (member price including tax) in the CBA Bookstore, open Monday-

Friday from 9:00 am-4:30 pm. Copies can also be ordered online and mailed for an additional \$7.95. Questions? Call 312/554-2135. ■

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If you have not yet renewed your CBA membership, please do so now. Payments must be received by the end of February in order to maintain benefits and savings. You can renew by mail, phone (312/554-2020), fax (312/554-2054) or online (www.chicagobar.org). Checks and the following credit cards are accepted: Visa, MasterCard, American Express and Discover.

CBA programs and services can help you and your firm remain competitive. As your local bar association, the CBA offers you many ways to establish business and support networks, learn from experts and keep up with trends affecting the legal profession—without incurring travel costs, extra section fees and registration prices.

Check out www.chicagobar.org to see what's new at the CBA. We are proud to serve and represent you, appreciate your past support and look forward to your continued involvement in the important work of the Association. Questions regarding dues renewals should be referred to Bertha Cowart at 312/554-2020 or bcowart@chicagobar.org ■



THE CHICAGO BAR ASSOCIATION

Continuing Legal Education

Careers in Intellectual Property Law
February 2 • 4:00-6:00 p.m.

Hands-on Training: Introduction to Nuance Power PDF
February 3 • 2:00-3:00 p.m.

Campaign Finance and the Constitution
February 4 • 12:00-2:10 p.m.

The Cross-Cultural Lawyer
February 4 • 4:30-6:00 p.m. • Schiff Hardin LLP (complimentary)

eDiscovery and the Ethical Duty of Competence
February 9 • 12:00-1:30 p.m.

How To... A Comparison of Document Management Platforms
February 9 • 1:45-2:45 p.m.

Hands-on Training: Market Your Firm with Facebook Pages
February 10 • 2:00-3:30 p.m. (complimentary)

Convey Your Value in Your Job Search *Webcast Only*
February 11 • 12:00-1:00 p.m. (complimentary)

Hands-on Training: Using Google Drive for Document Storage
February 16 • 2:00-3:00 p.m.

How to Spot Ethical Adoption Issues
February 17 • 3:00-6:00 p.m.

Solid Strategy and Tactical Timing for Client Development
February 18 • 12:00-1:30 p.m.

How To... Conduct Advanced Legal Research Using Ravel Law
February 23 • 1:45-2:45 p.m. (complimentary)

2015 Labor & Employment Law Year in Review
February 24 • 3:00-6:00 p.m.

Hands-On Training: Make Excel Work for Your Law Firm
February 25 • 2:00-3:30 p.m.

State and Local Initiatives Advancing Sustainability
February 25 • 3:00-6:00 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

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Chicago Bar Foundation Report



I Need Legal Aid, Too

By Angelika Labno
CBF Administrative & Communications Coordinator

I need legal aid, too.

But not in the traditional sense. I am fortunate enough to have a home, a job, and good health. I need legal aid so that the community I live in functions better.

Shortly after I started at the CBF, I was tasked with penning the Campaign in Action blog series. The idea was simple: profile a legal aid organization supported through the CBF's Investing in Justice Campaign, and give an overview of their legal aid services.

My background, I should note, is not in law, but journalism. I had never paid much attention to the legal system before, let alone legal aid.

The thought of interviewing lawyers and getting caught up in "legal speak" was intimidating (phrases like "grievance process" come to mind). But then I discovered that we shared a common language in social issues. Having covered nonprofits and their work in the past, social issues were something I could understand.

In their individual (and sometimes collective) ways, each organization is trying to better a social issue in a legal context. Chicago Medical-Legal Partnership for Children, for example, tackles poverty from a new angle. A doctor can identify a social determinant of health, such as housing, and connect the patient



to legal assistance before the issue spirals out of control. Cabrini Green Legal Aid's expungement help desks give people a second chance at life through employment, which consequently affects the unemployment rate. Legal aid work leaves an impact that reverberates through the community. It affects us all.

In addition to making a difference in individual lives, many organizations have had widespread impact through advocacy or class action cases. Such cases seek to mend a broken system or to secure relief for a particular set of people. Uptown People's Law Center has 10 pending class actions against the Department of Correc-

tions, including one on the inadequacy of mental health and medical care provided for Illinois prisoners.

The Children's Initiative of the ACLU successfully forced extraordinary reforms on the state's Department of Children and Family Services and the juvenile justice system. Their advocacy helped more than 40,000 kids get adopted since the early 2000s, shifting the balance from long-term foster care to family permanence. In May 2015, their work resulted in a ban on solitary confinement of juveniles.

The impact doesn't have to be achieved in a courtroom. Youth Futures, a project of Chicago Coalition for the Homeless,



Wine Tasting

With music by The Chicago Bar Association
Symphony Orchestra & Chorus Ensembles

Friday, February 26, 2016 | 5:30–7:30 p.m.
CBA Building, 321 S. Plymouth Ct. Chicago, IL

\$50 Admission – All Are Welcome!

Wine tasting & small bites/appetizers

All guests will be entered in the grand prize drawing for a case of wine from John Vishneski's personal collection.

To purchase tickets, contact Tamra Drees, CBA Events Coordinator,
at 312-554-2057 or tdrees@chicagobar.org.

To benefit the CBA Symphony Orchestra & Chorus



THE 2015 CAMPAIGN IN ACTION SERIES

January	Expungement Help Desks (Cabrini Green Legal Aid)
February	Youth Futures (Chicago Coalition for the Homeless)
March	Special Education Clinic (Equip for Equality)
April	Domestic Violence Legal Clinic
May	The Family Defense Center
June	Chicago Medical-Legal Partnership for Children (Legal Council For Health Justice)
July	Center for Disability and Elder Law
August	The Children's Initiative (Roger Baldwin Foundation of the ACLU of Illinois)
September	Lawyers' Committee for Better Housing
October	Pro Bono Prisoners Civil Rights Project (Uptown People's Law Center)
November	Markham's Network of Court-Based Services

See the entire series at chicagobarfoundation.org/category/blog/campaign-in-action.

tries to better the lives of homeless youth by educating and connecting them to resources in order to meet real-life needs, like getting to school. Their Homeless Youth Manual breaks down complex legal information and includes practical information such as obtaining a birth certificate or state ID. It is expected to be available as an app by next August.

Legal aid work is approached holistically. Clients seeking legal aid often struggle with more than one issue. Legal aid organizations may offer supportive services or link them to services by partnering with social workers, psychologists, and doctors. They also partner with other community organizations to approach a social issue in a comprehensive way, especially in the case of immigration.

A stark realization is that sometimes, these organizations are one of a kind in providing niche services in Chicago. The Family Defense Center is the only legal aid organization that represents parents in child abuse/neglect investigations by the state. Domestic Violence Legal Clinic stands out for providing same-day emergency order of protections inside the Domestic Violence Courthouse. In the absence of such services, many people would be left in dire circumstances.

Through my interviews and site visits with various legal aid organizations, I

repeatedly heard the cry for more funding. Government funds, as witnessed with the budget impasse, are not something they feel they can rely on with any certainty. Through government advocacy and direct support, it's up to us to change that. It's up to us, the legal community, to support the work that they do for the poorest of the poor, the ones with the most at stake. Their clients are losing their homes, losing their kids, or literally losing their lives in detrimental conditions. They are the disabled, the elderly, and the ill.

If these organizations don't help them, it's likely that no one will. And that would leave devastating consequences for the entire community.

Through the Campaign, we can stop that from happening. The Campaign helps keep these organizations staffed. It helps keep their lights on. It allows them to create and carry out special projects that tackle specific legal problems more efficiently.

Most importantly, through the Investing in Justice Campaign, we're helping to close the justice gap. ■

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, Membership, Member Discounts 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!

Preparing for a Domestic Relations Trial

Wednesday, January 27, 3:00-6:00 pm

Experience Level: Basic to Intermediate

MCLE Credit: 2.75 IL PR Credits
(Subject to Approval)

Presented by: YLS Family Law

This seminar will address the ins-and-outs of trial preparation to help you prepare to step into the courtroom on day one. Get suggestions for drafting a comprehensive and manageable trial order, build your trial binder, file the appropriate pre-trial motions, and evaluate your strategy. Choose and prepare your witnesses (including experts), and present your case clearly and concisely. Gain strategies for effectively building financial claims, and present them at trial with the appropriate documentary and/or testimonial support.

Participants: Hon. Thomas J. Kelley Circuit Court of Cook County, Domestic Relations Division; Mitchell B. Gordon Bradford & Gordon, LLC; Gail M. O'Connor, O'Connor Family Law, P.C.; Andrew Vaughn, NuVorce, LLC; and Moderators Melissa Caballero, Law Offices of Jonathan Merel, PC and Mallory O'Connor, Reed Centracchio & Associates, LLC, Chairs, YLS Family Law Committee.

Save the Date - Complimentary!

The Cross-Cultural Lawyer



Law firms, law schools, corporations and others are increasingly seeing the value of diversity in the lawyers they hire or admit. Nevertheless, lawyers of diverse backgrounds often face unique challenges in their law practice, such as finding a path to partnership and focusing on networking and business development. This program will discuss the benefits of diversity in the legal profession – both from the employer and employee’s side. And the discussion will leave you with a deeper understanding of the broad range of diversity issues impacting today’s legal profession and how to be an effective cross-cultural lawyer. Networking strategies for lawyers of diverse backgrounds will also be discussed.

February 4, 2016 • 4:30-6:00 p.m.

Reception immediately follows • Complimentary
Schiff Hardin
233 S. Wacker Drive, Suite 6600, Chicago, IL 60606
1.5 IL MCLE Credit

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

Panelists:

Shannon Bartlett, *Director of Diversity Education & Outreach at Northwestern University School of Law*

Litza Mavrothalasitis, *Assistant Corporation Counsel, City of Chicago Law Department; Past President of the Hispanic Lawyers Association of Illinois*

Sailesh Patel, *Partner, Schiff Hardin; Past President of the Indian American Bar Association*

Moderator:

Kilby Cantwell Macfadden, *Assistant Attorney General, Office of the Attorney General of Illinois; Officer of the Women’s Bar Association of Illinois*

Sponsored by the YLS and Schiff Hardin LLP in conjunction with:

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- Chinese American Bar Association
- Decalogue Society of Lawyers
- Filipino American Lawyers Association of Chicago
- Hispanic Lawyers Association of Illinois
- Indian American Bar Association
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- Korean American Bar Association
- The Puerto Rican Bar Association
- Women’s Bar Association of Illinois



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MURPHY'S LAW

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR



CBA Past President Aurora Abella-Austriaco, CBA Executive Director Terry Murphy, Public Affairs Director Linda Heacox, and Social Security disability lawyer Frank Tuzzolino recently recorded advertisements at WBBM-AM studios at Two Prudential Plaza as part of a new initiative which began airing on WBBM in January. These will be followed by several other practice committee advertisements. Stay tuned.

The Chicago Bar Association is proud to announce its new Leadership Institute featuring nine monthly training sessions beginning on Thursday, January 28, 2016. Each of the monthly training sessions will be held at the CBA Building from 5:30–7:30 p.m. Ray J. Koenig, III, managing partner at Clark Hill's Chicago office, chaired the special planning committee that developed the Institute's curriculum and helped select the faculty/speakers for each session.

Enrollment in the new Institute will be limited to 20 lawyers who have been practicing 3-10 years. Training will feature individual and panel presentations on some of the following topics: Effective Leadership; Team Leadership; Essential Time Management; Successful Communication Techniques; Unconscious Bias in the Workplace; Advanced Public Speaking and Presentation Skills; and Business Development and Networking Skills. The Institute's faculty includes leading lawyers from the corporate, business, government and private sectors. Tuition for the new Leadership Institute is \$1,200 and includes materials and a reception for graduates.

MCLE credit is provided for qualifying sessions and associates who successfully complete the training will receive a graduation certificate. For more information and application process for admission to the new Leadership Development Institute, visit cle@chicagobar.org.

CLE in Switzerland

Don't forget to make your reservations for the CBA's 2016 International Continuing Legal Education seminar in Lausanne, Switzerland on March 29 and March 30. Optional pre-and-post travel destinations include London (March 26-27) and Paris (March 31-April 3). The CLE in Switzerland seminar is being co-sponsored by the Institute for Inclusion in the Legal Profession and is being hosted by **Marc S. Firestone**, Senior Vice President and General Counsel, Philip Morris International, Inc. Firestone also serves as Chairman of the Institute for Inclusion in the Legal Profession. The March 29-30 CLE program is being co-sponsored by a number of state and local U.S. bar associations and several international bar associations. The Switzerland program features an outstanding

array of national and international lawyers, corporate general counsels, and judges who will discuss topics including diversity, equality and inclusion in today's global law firms. In addition, **Keith Harper**, U.S. Ambassador to the United Nations for Indigenous People, will be a featured speaker.

A general counsel roundtable featuring **Maria Green**, Senior Vice President and General Counsel for Ingersoll Rand; **Richard Meade**, Vice President and Chief Legal Officer, International Prudential Financial; Marc S. Firestone, Senior Vice President and General Counsel of Philip Morris; **Juliette Pryor**, Executive Vice President and Chief Compliance Officer, U.S. Foods; **Michael J. Wagner**, Baker & McKenzie, **Lorraine McGowen**, Orrick, Herrington & Sutcliffe LLP, are just a few of the outstanding speakers. In addition, Second Circuit U.S. Court of Appeals Judge **Denny Chin** will conduct a trial reenactment and discuss the development of federal hate crimes.

For more information, contact **Tamra Drees** at 312/554-2057 or tdrees@chicagobar.org. For travel assistance, please contact our travel representative, **Mark Rotblatt**, at 312/751-0717 or vanchem@rcn.com.

2016 Nominating Committee

The 2016 Nominating Committee is in formation and pursuant to Section 8.3 of the Association's Bylaws will be selected before February 1. The Bylaws provide for a Nominating Committee consisting of 17 members selected as follows: Five committee chairs are randomly drawn by the Association's Secretary; three young lawyers, one of whom includes the current YLS Chair; four members are selected by the Past Presidents Committee—two of whom shall be past presidents and two at-large members—and four at-large members selected by the Board of Managers (none of whom may be members of the board). Under the Bylaws, the immediate past president one year removed, **J. Timothy Eaton**, serves as Chair of the Nominating Committee. The Nominating Committee will receive nominations for eight board vacancies, which expire at the annual

meeting on Thursday, June 23, and for the offices of Secretary, Treasurer and Second Vice President. Terms for service on the Board of Managers are two years and commence at the Annual Meeting.

Members wishing to nominate themselves or another member for an officer or board vacancy may do so in writing or by emailing their nomination to **Terry Murphy** at tmurphy@chicagobar.org. The Nominating Committee will also schedule an open meeting in early March, at which members can nominate themselves or another member. More information about the work and timetable of the 2016 Nominating Committee will be available on the Association's web site and will be emailed to all members in early February. For more information, please contact me or Tamra Drees at tdrees@chicagobar.org.

Women Lawyers as Lead Counsel and Trial Counsel

The Association is co-sponsoring with the U.S. District Court, Women's Bar Association of Illinois and the Black Women's Lawyer's Association of Greater Chicago a Symposium Spotighting the Benefits of Women Lawyers as Lead Counsel and Trial Counsel in Litigation. The Symposium will be held at the U.S. District Court on Thursday, April 21, from 1:00–5:45 p.m., followed by a reception at the CBA Building. The Symposium features an outstanding list of speakers including: Chief 7th Circuit Court of Appeals Judge **Diane Wood**; Chief U.S. District Court Judge **Ruben Castillo**; Chief Circuit Court of Cook County Judge **Timothy C. Evans**; U. S. District Court Judges **Amy St. Eve**, **Sharon Johnson Coleman**, **Virginia Kendall** and **Rebecca Pallmeyer**; **Zachary T. Fardon**, U.S. Attorney for the Northern District of Illinois; Circuit Court of Cook County Judges **LeRoy Martin, Jr.** and **Charles Burns**; CBA President **Patricia Brown Holmes** and an outstanding list of corporate general counsels and lawyers from Chicago's legal community. The Symposium is free. More information with a complete list of Symposium speakers will be sent to the members in the near future.

Congratulations

CBA Secretary **Jesse H. Ruiz**, Drinker Biddle & Reath LLP, was appointed president of the Chicago Park District's Board of Commissioners...**Joseph R. Tybor** was recognized posthumously by the Illinois Judges Association (IJA) for his outstanding service to Illinois' judiciary with an award named in his honor, which will be given each year by the IJA...**Michael J. Tardy** received the IJA's Amicus Curiae Award...**Mark A. VandeWiele** received the IJA's Seymour Simon Spirit Award...**Ronald D. Spears** received the Harold Sullivan Award...**Barbara Crowder**, **Laurence J. Dunford**, Judge **Martin P. Moltz**, **Margaret J. Mullen**, **Naomi Schuster**, and **Alfred M. Swanson** received the IJA's Presidential Service Award. **Stephen C. Mathers** received the IJA's Distinguished Service Award, **Raymond J. McKoski** received the IJA's Lifetime Achievement Award, and **Illinois Attorney General Lisa Madigan** received the IJA's Founder's Award...**Fredrick Hayze Bates** was appointed to the Circuit Court of Cook County...**Barry Kozak** has opened the law offices of Barry Kozak, concentrating in elder law, all aspects of retirement, and estate and legacy issues...**Alex Liberman**, General Counsel for Medline Industries, Inc., and **Gary Wachtel**, Director and Senior Counsel, Discover Financial Services, were appointed to the Legal Assistance Foundation's Board of Directors...**William J. Kresse** was appointed to the Chicago Board of Elections...**Anthony M. Ochs** has joined Levin Ginsburg as an associate...Judge **Roger G. Fein** was the featured speaker at the ISBA's Class of 1965 Distinguished Counselors Luncheon...**Amanda N. Catalano** and **John M. Fitzgerald** are new associates at Tabet, Divito & Rothstein LLC...**Christine M. Harney** was named a partner at Dussias Skallas LLC...**Thomas T. Field** was appointed head of the family law group for Beermann LLP...**Brian W. Easley**, Jones Day, was elected a fellow of the College of Labor and Employment Lawyers...**Susan Levy**, Executive Vice President and General Counsel of Northern Trust, will chair the Chicago Bar Foundation's 10th Annual Investing in Justice Campaign...

Timothy S. Tomasik, Tomasik, Kotin & Kasserman LLC, was named to the Summit Council and will serve again as an instructor at the 35th Annual National College Trial Advocacy Program at the University of Virginia...**Donna Haddad**, Senior Legal Counsel, IBM Corporation, is the new President of the Arab-American Bar Association...Judge **Thomas M. Donnelly** was appointed by the Illinois Supreme Court to chair the new Illinois Judicial College Board. Other board members include: Illinois Appellate Court Justice **Cynthia Y. Cobbs**; First District Appellate Court, 19th Judicial Circuit Judge **Daniel B. Shanes**; Circuit Court of Cook County Judge **Colleen F. Sheehan**; Associate Judge **Christy Solverson**, Murphysboro; and Associate Judge **Lisa Y. Wilson**, Peoria.

Marc N. Zubick was elected a partner at Latham & Watkins LLP...**Bradley M. Cosgrove**, Clifford Law Offices, was a speaker at the Illinois Trial Lawyers Association's medical-malpractice seminar...**Lorien Schoenstedt** was named an associate at Chuhak & Tecson PC...**Justyna Regan**, Miller, Canfield, Paddock and Stone PLC, addressed the Polish Parliament on commercialization of intellectual property...**Harold S. Dembo** and **Jeffrey M. Schwartz**, Much Shelist P.C., were speakers at Weiss & Co. on management of accounting practices...**Paul M. Drucker** has become a partner at Barnes & Thornburg LLP...**Michelle R. Valencic**, Clausen, Miller P.C., spoke in New York City on liability coverage issues raised by police misconduct...**Julianne M. Hartzell**, Marshall, Gerstein & Borun LLP, was appointed to the International Trademark Association's Design Rights Committee...**Patrick D. McHale** has joined the Cavanagh Law Group...**Thomas J. Kiser** is a shareholder in Polsinelli P.C.'s health-care and life sciences practice...**Robert J. Emanuel** has become a partner at Latimer, LeVay, Fyock LLC...**Patricia J. Whitten**, Franczek, Radelet P.C., is chair of the Illinois Council of School Attorneys...**Patrick A. Salvi**, Salvi, Schostok & Pritchard P.C., spoke at the Illinois Trial Lawyers Association's medical malpractice seminar...**Nathan J. Law** has become an associate at Segal, McCambridge, Singer & Mahoney Ltd...

Jerome T. Murphy has become an associate at Brenner, Monroe, Scott & Anderson Ltd...**Jeannine Cordero** was appointed by Governor Rauner to serve on Illinois' Advisory Council on the Education of Children with Disabilities...**LaShonda A. Hunt**, President of the Black Women Lawyer's Association and Chief Legal Counsel for Illinois Department of Corrections, was a special guest on the Association's "Justice and Law Weekly" TV program on WYCC Channel 20/PBS Television.

Stephen M. Passen and **Matthew A. Passen** spoke at DePaul University's seminar, "Civil Justice for Victims of Crime in Illinois"...**Daniel F. Cullen**, Bryan, Cave LLP, participated in a panel discussion on 1031 exchanges, Delaware Statutory Trusts, and umbrella partnership real estate investment trusts...**Howard S. Dakoff**, Levenfeld Pearlstein LLC, spoke at the 2015 State of Industry Seminar for community associations...**Marc V. Richards**, Brinks, Gilson & Lione, was elected Treasurer of the American Intellectual Property Association, U.S. Division...**Erin**

V. Halpin was selected by the American Institute of Family Law Attorneys for its *10 Best Family Law Attorneys for Client Satisfaction*.

Todd A. Smith, Powers Rogers & Smith P.C., spoke on class-action suits at the American Association for Justice's New Orleans program. Judge **Patrice Ball-Reed**, **Hugo Chaviano**, Illinois Appellate Court Justice **Robert E. Gordon**, **Sharon A. Hwang**, **Mary Meg McCarthy**, and **Sailesh K. Patel** received the Advocates for Diversity Award at the 2015 Unity Dinner...Epstein Becker Green P.C. announced the expansion of its Chicago office...**Peter G. Hawkins** and **Julia R. Lissner** are new partners at Ackerman LLP...**Keithan Hedrick** and **Kelsey Shulan** are new associates at Polsinelli...**David L. Weinstein** and **Stacey L. Smiricky**, partners at Faegre, Baker Daniels LLP, updated colleagues on "Holiday Hot Topics: A Cornucopia of Policies and Practices to Revisit Before 2016"...**Laura Henneman**, **Elangie Lozada**, and **Mandy Black** are new associates at Segal McCam-

bridge Singer & Mahoney Ltd...**Arsalan A. Nayani** is a new associate at Hinshaw & Culbertson LLP...**Katrina S. Christakis**, Pilgrim & Christakis, LLP, will speak at the CBA's Law at the Library Series on the topic of "Cleaning up your Credit"...**Timothy M. Whiting**, The Whiting Law Group, spoke at the Florida Justice Association's Seminar "Hell On The Highways: Motorcycles, Trucks and Roads"...**Michael R. Cedillos** and **Barry R. Horwitz**, Greenberg Traurig LLP, were honored by the Legal Assistance Foundation of Metropolitan Chicago...**Mitchell S. Sexner** and **Jenny R. Jeltz** were recognized by the American Institute of Criminal Law Attorneys in the group's top 10 client satisfaction list...**Jill S. Vorobiev** is a new partner at Sheppard, Mullin, Richter & Hampton LLP.

Condolences

Condolences to the family and friends of Joseph R. Tybor, Judge **Jean Prendergast Rooney**, **Richard Orlikoff**, **Roger Pascal**, **Ginger Wilson**, **William Floyd Wright**, and **Michael Durkin**. ■

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* American Bar Association Standing Committee on Lawyers' Professional Liability. (2008). *Profile of Legal Malpractice Claims, 2004-2007*. Chicago, IL: Haskins, Paul and Ewins, Kathleen Marie.

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Important Information You Need to Know!

**ABA/ROCKET LAWYER LAW CONNECT PARTNERSHIP
TARGETING SMALL BUSINESS LEGAL SERVICES**

The following state and local bar associations have expressed unified and strong opposition to the **American Bar Association's Law Connect pilot program** which was launched by the ABA in partnership with Rocket Lawyer on October 1, 2015. The ABA's Law Connect Rocket Lawyer program provides online legal advice to small businesses operating in Pennsylvania, Illinois and California at a cost of \$4.95 along with free advice for online follow-up questions.

In its October 1 press release announcing the program the ABA stated, "The new ABA service called Law Connect, will be an affordable way for small businesses in those states to get answers to fundamental legal questions. For \$4.95 a small business owner or representative can ask a question online of an ABA-member lawyer as well as a follow-up question. Those interested in additional legal advice can discuss legal matters further in a lawyer-client relationship." ABA President Paulette Brown stated, "ABA Law Connect is an exciting opportunity for the ABA and Rocket Lawyer to assist small businesses, connecting them with ABA members, and represents one of many efforts by the ABA to improve access to legal services."

After reading the ABA's press release, bar association leaders from our states contacted the ABA to express strong opposition to the Law Connect Program and formally, requested the ABA Board of Governors to reconsider this misguided and ill-conceived program at its November board meeting. Many state and local bar associations raised a number of serious ethical questions about the ABA's Law Connect Program and expressed strong dissatisfaction with the ABA for ignoring well established bar association lawyer referral programs which serve the public and small businesses in our states. It is important for the lawyers in our states to know that we strongly oppose the ABA's Law Connect program which reflects a "Blue Plate Special" mentality and naïve understanding of the scope of legal services that thousands of lawyers in Pennsylvania, California and Illinois currently provide to small businesses in our states. The ABA Law Connect program is not in the best interest of the public, the legal profession or small businesses that operate in our states. We want our members to know that the ABA is not listening to its constituent bar association members who remain strongly opposed to the Law Connect program.

**Illinois State Bar Association • Pennsylvania Bar Association
The Chicago Bar Association • Philadelphia Bar Association
Bar Association of San Francisco**

**Alameda County Bar Association • Allegheny County Bar Association • Baltimore County
Bar Association • Bar Association of Lehigh County • Berks County Bar Association •
Brooklyn Bar Association • Bucks County Bar Association • Butler County Bar Association
• California Lawyers for the Arts • Carbon County Bar Association • Centre County Bar
Association • Chester County Bar Association • Cumberland County Bar Association •
Delaware County Bar Association • Dauphin County Bar Association • Erie County Bar
Association • Lackawanna Bar Association • Lancaster Bar Association • Lawrence County
Bar Association • Lebanon County Bar Association • Mercer County Bar Association •
Monroe County Bar Association • Montgomery Bar Association • Northampton County Bar
Association • San Fernando Valley Bar Association • Schuylkill County Bar Association •
Westmoreland Bar Association**

By Richard Lee Stavins

Mandatory Non-Binding Arbitration

A Practical Guide to Law Division Commercial Calendar Cases



After 25 years in the Municipal Department, mandatory, non-binding court-annexed arbitration has finally come to the commercial calendars of the Law Division of the Circuit Court of Cook County. Here's a practical how-to guide, based on Circuit Court Rule 25 and recent experiences of the author.

IN THE MUNICIPAL DEPARTMENT THE PROGRAM

applies to all cases under \$30,000 and has worked remarkably well. In the Law Division, the program is limited to commercial litigation matters in which a money judgment is sought and allegedly where the value of the case is *below* \$75,000. However, the court has discretion to refer cases *above* \$75,000 to arbitration. Hence, realistically, there is no limit on the dollar amount of any commercial case that may be sent to arbitration. Personal injury cases are specifically excluded.

Referral to Arbitration

Unlike the Municipal Department, where vast numbers of small cases in room 1501 are quickly and routinely referred to arbitration, Law Division cases are referred to arbitration only if the assigned commercial calendar judge reviews the case and enters an order of referral. This often happens *sua sponte* at an early stage of case management, and may take all counsel by surprise.

The form order of referral to arbitration requires the parties to list all witnesses on the order. *Practice tip:* Unless you can remember the name of every potential witness in each of your cases, create a witness list and bring it with you to each case management session. Then, if an order of referral is entered, you can simply copy the names onto the order or append your list to the order.

Court-annexed arbitration is mandatory. If the court orders it, you must participate in good faith (more about that good faith requirement below under “award”).

The Lone Arbitrator

Law Department arbitration hearings are held at the same location as Municipal arbitration hearings: the Cook County Mandatory Arbitration Center, 222 North LaSalle, 13th floor, Chicago. Shortly after the commercial calendar judge enters the order of referral to arbitration, the Arbitration Center will assign the case to an arbitrator and set a hearing date. Unlike Municipal arbitration, which involves a three-arbitrator panel, the Law Division utilizes a single arbitrator per case, chosen from a pre-screened list. Arbitrators must apply to be on the list and must have experience as a commercial litigator or as a retired commercial calendar judge. Cir. Ct. R. 25.16. Quite likely, your arbitrator will be extremely competent. However, even if you are unhappy with the arbitrator selected, there is no provision for substitution of arbitrator. Arbitrators, on the other hand, may recuse themselves due to conflicts.

The hearing date assigned by the Arbitration Center will be about four months out from the referral date. If you have an unresolvable conflict on that day, talk to your opponent and get an agreement to change the date, and then call the Arbitration Center. Or, present a motion to the arbitration judge. One designated arbitration judge hears all motions that specifically relate to the arbitration. Currently, it's Judge Thomas Mulroy in Daley Center room 1906. For non-arbitration matters on your case, continue to go before your assigned commercial calendar judge.

Practice tip: Upon referral to arbitration, read Circuit Court Rule 25 carefully and docket not only the arbitration date but also the 14 and 30 day deadlines discussed below.

Counsel Meeting: 30 Day Deadlines

Thirty days before the arbitration hearing, all counsel are required to meet in person and exchange the documents listed below under “submittals to arbitrator” that must be sent to the arbitrator.

The four-hour time limit for the arbitration hearing, also discussed below under “hearing,” may not allow sufficient time to present all aspects of the case to a trier of fact, but it cannot be changed. To meet the deadline, all counsel need to act reasonably and should try to stipulate for the arbitration hearing things that they might not stipulate to at a full trial.

Commercial cases are often documents cases. Stipulate that all of the documents are in evidence without any further foundation, and waive the original writings rule. If the matter is a verbal contract case and the terms of the verbal contract are not seriously disputed, stipulate to those terms. If you cannot stipulate to everything regarding the verbal contract, stipulate to what you can, e.g. the offer, or the acceptance, or the consideration, or whatever. If the fight in your case is over the breach, and the damages are not really in dispute, stipulate to damages even though it tears you apart as a defense lawyer to do so. If you make the plaintiff spend time proving damages which you don't dispute, that may well cut into your own time for presenting your witnesses on liability. Stipulate that the objection “beyond the scope of the direct” is waived for all witnesses.

If a witness was deposed at a discovery deposition, and you feel you can do so, consider stipulating to the deposition transcript going into evidence as the testimony. The same thing is true for testimony by affidavit. These can sometimes be tough calls for attorneys. A witness demeanor on the stand—whether as a singer



or as a zombie—might make one side or the other really want that witness to testify live and to reject using a deposition or an affidavit.

Practice tip: Whatever is agreed upon at the conference should be reduced to writing in the form of a signed stipulation and submitted to the arbitrator.

Submittals to Arbitrator: 14 Day Deadline

The next deadline is 14 days before the hearing. By this day, all counsel must submit the following to the arbitrator's law office: the pleadings; each party's detailed statement of the case; witness list; exhibits; stipulations of fact; stipulations of law; reports; summaries; affidavits; itemization of damages.

Practice tips: In a typical commercial litigation case, with numerous exhibits, deliver everything to the arbitrator on paper and not by electronic means unless the arbitrator indicates otherwise. Also, send all parties' witness lists mandated by Rule 25.8.c to the Arbitration Center via email. Hopefully, they will use this to

arrange for expedited entry of all witnesses into the building on the hearing date. See "hearing" below.

Supreme Court Rule 237(b) probably applies to Law Division arbitration proceedings, so be certain that you serve a notice regarding any persons or tangible things you want your opponent to bring to the hearing.

Hearing

The hearing at the Arbitration Center is limited to four hours. It will start at 9 a.m. and end not later than 1:00 p.m. Everyone entering 222 N. LaSalle must stop at the reception desk in the lobby and get an elevator pass. The Arbitration Center should notify the receptionist of all names on your witness list to speed up the process.

Practice tip: Tell your witnesses they must bring a photo identification card to show at the lobby desk.

At 9 a.m., at the outset of the hearing, the arbitrator is required to meet in the arbitration courtroom with the attorneys and discuss exhibits, narrowing the issues,

format, time limits, affidavits, summaries, and the like. Know your position on these points in advance, so you are not taken by surprise. At the arbitration trial the Illinois Rules of Evidence apply, but the arbitrator has discretion to relax the rules. Cir. Ct. R. 25.9.2. This should be addressed at the 9 a.m. meeting.

The rule is silent regarding court reporters, but the author perceives no reason why they should not be allowed. The sole purpose is to memorialize the testimony of adverse witnesses for impeachment purposes at the future trial if the award is rejected. In Municipal arbitrations, the presence of a court reporter is usually a rare event.

Practice Tip: At the end of the trial, as everyone is about to pack up and leave, hand all counsel your summary of attorney's fees, discussed below under "rejection" of the award. Do not give a copy to the arbitrator.

Award

The arbitrator must file the award at the Arbitration Center within two days after the hearing. The Center will immediately email it to all counsel. The award will state no explanation. Its format is essentially the same as Municipal awards: "Award for plaintiff in the amount of \$X," or "Award for defendant." The arbitrator will also name on the award any party that did not arbitrate in good faith. Anyone so identified may be sanctioned up to \$1,000. In Municipal, failure to arbitrate in good faith can result in denial of the right to reject. S. Ct. R. 91(b). There is no such penalty in Law.

Rejection

Rejection of the award may be the most important part of the entire proceeding. Any litigant may reject the award, and the case will thereafter go to trial on all issues, as if the arbitration never occurred. Partial rejection is not allowed: the award is either rejected in its entirety or not rejected. The rejection form must be in writing, signed by the attorney AND the client, and filed with the Clerk of Court in Daley Center room 801, not at the Arbitration Center, within seven days after receiving notice of

Help Prepare Advance Directives for Seniors And Gain Practical Experience

Youg Lawyers Section members are invited to participate in a Serving Our Seniors volunteer event on February 18, 2016, from 1:00-3:30 p.m., at Mather's More Than a Cafe, 33 E. 83rd St., Chicago. The venue is conveniently located steps from the 79th Street Red Line stop. Last year's event was extremely successful, and we look forward to an equally good turnout.

The Serving Our Seniors program brings low-income seniors added security and comfort by drafting simple advance directives. These documents give seniors the confidence that when they become unable to personally direct their health and finances, their lives will go forward in the way that they want.

Volunteers do not need to have any experience with estate planning. Training is provided in two ways: (1) attend an in-person training with CLE credit on February 9, 4:30-6:00 p.m., at the Center for Disability & Elder Law, 79 W. Monroe, Suite 919, Chicago, IL; or (2) complete an online course at your convenience prior to the event.

To volunteer, RSVP by February 5 to Patrick Bushnell at pbushell@peckritchey.com.

the award. Contrast this with Municipal arbitration, where the rejection deadline is a more leisurely 30 days.

In Law arbitration, there are two penalties for rejecting:

First, a \$750 rejection fee must be paid to the Clerk of Court with the rejection notice.

Second, if the rejecting party does not get a better result at trial (i.e., does not beat the award), that party must pay all attorney's fees of the party who did not reject the award incurred in connection with the arbitration. That could be a huge penalty. To enable a potential rejector to know this number before rejecting, and therefore to think long and hard about rejecting, all parties must submit their summary of legal fees at the conclusion of the hearing.

Practice tip: Prepare this document with the same thoroughness that you would for a fee petition. Set forth an itemized time sheet, hourly rate, and the attorney's qualifications. As stated above, this should be distributed at the close of the hearing.

Judgment on Award

If no one rejects and your client was the prevailing party, then on the date the cal-

endar judge gave you or the date stated on the face of the award (or earlier, on motion, to speed things up), submit a draft order entering judgment on the award. If the award was for plaintiff, state the amount of the judgment, for whom, and against whom.

Post-Judgment Collection

Post-judgment efforts to collect the judgment ought not be necessary: If there was no rejection, presumably the judgment debtor intends to satisfy the judgment. But, if you suspect that there was no rejection by the loser not because of satisfaction with the award, but rather because of lack of ability to continue the fight, by all means have a citation to discover assets issued and served immediately. ■

Richard Lee Stavins is a partner in the law firm of Robbins, Salomon & Patt, Ltd. in Chicago. He concentrates his practice in trial and appellate litigation. He is a member of the CBA Tort Litigation and Circuit Court Committees.

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The CBA's Law Practice Management & Technology Division regularly sponsors demonstrations of hardware and software geared to legal professionals. In an hour or less, you will learn how to use common technologies to be more productive, efficient, and tech savvy!

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**Leadership
Development**

**By Matthew A. Passen
YLS Chair**

When I began my legal career as an associate at Jenner & Block LLP, I remember questioning the value of getting involved with the CBA or other bar associations. Sure, I heard from leaders at the firm like Terri Mascherin, Past-President of the CBA, who spoke about the importance of bar association involvement and encouraged associates to get involved early in their careers. But I wondered what value could the CBA provide me, a young associate at a large law firm?

Even though I've since moved on from "big firm" life, I wanted to answer that question as Chair of the YLS.

Learning to L.E.A.D.

This year, we are launching a new series of programming aimed at young associates at large and mid-sized law firms. The six-part "Lawyer Engagement and Development (L.E.A.D.) Series" kicked off on December 15 with its first program titled "Cross-Selling Strategies to Grow Your Book of Business." The program, hosted by Taft Stettinius & Hollister LLP, featured panelists from major law firms, accounting firms and banking institutions to discuss cross-selling strategies and techniques for young lawyers to implement in their practice. Special thanks to Trisha Rich, associate at Holland & Knight LLP, and Jonathan Amarilio, associate at Taft Stettinius & Hollister LLP, for putting this compelling series together.

Leadership Institute

The CBA also accepted applications for a formal leadership program targeted at associates at large and mid-size law firms. The "Leadership Institute," which begins in January 2016, promises to enhance the leadership skills and professional growth of attorneys who have been practicing between three and ten years. The faculty includes an impressive list of in-house general counsel, the program is particularly valuable to "big firm" associates with mostly corporate clients.

Networking

Finally, the YLS offers an array of networking opportunities for young lawyers of all practice areas and firm sizes. On December 17, we had our YLS Holiday Party at Holland & Knight with an incredible turnout of YLS members. Our social chair, Jonathan

continued on page 40

Look for announcements for the following upcoming sessions in the L.E.A.D Series:

January: Professional Ethics Issues at Large Firms, hosted by Holland & Knight LLP

February: Large Firm Economics, hosted by Greenberg Traurig LLP

March: Developing a Coveted Expertise, hosted by K&L Gates LLP

April: How to Generate Business by Serving the Community, hosted by Sidley Austin LLP

May: Life after Big Law, hosted by the CBA, and followed by reception



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THE AMENDED SUPREME COURT RULE 341

Why One Seemingly Minor Change Will Transform the Way We Write

By Jonathan Amarilio

The Illinois Supreme Court recently adopted several amendments to its rules, reflecting the ever-evolving nature of the practice of law in the information age. Most dramatically, the Court approved changes to Supreme Court Rule 341, governing the length of appellate briefs. Briefs will no longer be capped at 50 pages. Instead, litigants will have the option of using a 15,000-word limit for appellant and appellee briefs and a 7,000-word limit for reply briefs. Similar changes were adopted for cross-appellant and cross-appellee briefs, now capped at 30 pages or 8,400 words, and cross-appellants' reply briefs, capped at 20 pages or 7,000 words. This amendment was first proposed by Michael W. Rath sack and the CBA's Special Appellate Practice Committee, drawing support from the Appellate Lawyers Association and, surprisingly, opposition from the Illinois State Bar Association.

A seemingly minor change at first glance, this amendment represents an important advance in the practice of law. It will quite literally change the way we read and write. For better or worse, technology has changed the way we take in information. Study after study has shown that our brains interact differently with words on screen than with words on paper.



DAILY PRACTICE AREA UPDATES

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Learn more at www.chicagobar.org/newsstand.

We simply do not absorb information the same way in both media. In an age when most lawyers and judges are reading briefs on a computer screen, this important reality is often overlooked. Once recognized, however, the potential to influence how readers assimilate information has never been greater.

The implications of this reality for lawyers are profound. In a profession in which the outcome of high-stakes disputes can turn on a single word, the words we use and—as importantly—the words our audience actually reads means everything. Content displayed in the traditional pattern on a screen is absorbed less thoroughly and more impatiently than it is on paper. Shifting from a page limit for briefs to a word limit recognizes this fact. It gives the drafting lawyer not merely the opportunity to use an easier-to-read font, but also an opportunity to use “white space” on a page advantageously. This can be done by utilizing more headings, subheadings and bullet points to allow for easy assimilation; placing the most vital information at those spots on a screen where it is most likely to catch the eye; incorporating easy to understand charts and graphs and, more illustratively, even allowing for the use of pictures, which can be worth a thousand words.

The change in the way we read is already here. With the Supreme Court’s amendment to Rule 341, the change in the way we write will be close behind.

Word count: 437. ■

DIFFERENCES IN READING PATTERNS

On paper, our eyes are trained to methodically track from left to right (as your eyes are doing now), leading us from the top left of each page to the bottom right. On a computer screen, the eye is decidedly less meticulous. The dominant reading pattern on a computer screen follows an “F pattern,” and sometimes an inverted “L pattern,” with the eye starting in the upper left corner of a page and initially tracking content horizontally, as it would on paper, but then quickly dropping into a vertical sweep, scanning horizontally again only when something

(usually in the middle of the page)

catches its attention. See how that works?

MARKET YOUR LEGAL PRACTICE WITH SOCIAL MEDIA

Check out the CBA’s social media resources and see how you can stay in touch with colleagues, current clients and reach new clients online. Find valuable social media tips at www.chicagobar.org under the Resources tab.

SING BRAHMS’ REQUIEM WITH THE CBA CHORUS

If you enjoy singing classical music, the CBA Chorus invites you to join them for a performance of Brahms’ Requiem with the CBA Symphony Orchestra at St. James Cathedral on May 11, 2016. The 70-person Chorus is made up of members as well as their family, staff and friends. Rehearsals are held most Wednesday evenings from 6:00-8:00 p.m. at the CBA Building. No auditions are required. \$75 annual fee plus cost of music. For more information, contact Terry Kennedy at tkennedy@kennedytaxappeals.com or 312-641-0100.



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LEGAL ETHICS

BY JOHN LEVIN

What Now? After *North Carolina Board of Dental Examiners v. FTC*

By now you have probably heard of the U.S. Supreme Court case *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (135 S. Ct. 1101). This case broadly held that a state regulatory board is subject to the anti-trust provisions of the Sherman Act if a controlling number of its “decisionmakers are active market participants in the occupation the Board regulates”. The exception is if the board acted in accordance with a clearly articulated state policy and was subject to active supervision by the state. In *State Board of Dental Examiners*, the board was made up primarily of practicing dentists subject to only minimal state supervision. The board held that “teeth whitening is ‘the practice of dentistry’” and drove non-dentists out of the business. The FTC brought an action against them, which ended with this Supreme Court decision—much to the dismay of the dentists as well as professional regulatory boards in other states made of the professionals being regulated.

In his dissent, Justice Alito raised the issue that: “Determining whether a state agency is structured in a way that militates

against regulatory capture is no easy task, and there is reason to fear that today’s decision will spawn confusion.” And there has been a good deal of confusion, concern and activity on the part of states and their regulatory boards—including boards regulating lawyers.

In order to try and help, in October 2015, the FTC issued a Staff Guidance on two questions: “*First*, when does a state regulatory board require active supervision in order to invoke the state action defense? *Second*, what factors are relevant to determining whether the active supervision requirement is satisfied?” I am not sure the guidance has been much help in avoiding Justice Alito’s concerns about spawning confusion—but let’s see how it affects Illinois lawyers.

In balance, not much. Since lawyers in Illinois are regulated by the Illinois Supreme Court, and that court adopts and enforces the Rules of Professional Conduct and determines who can and cannot practice law, Illinois seems to come under the state action exception to the Sherman Act as described in *State Board of Dental Examiners* and the FTC Guidance. However, the Guidance (somewhat gratuitously) included the following example as one of the “scenarios that have raised antitrust concerns...A regulatory board controlled by attorneys adopts a regulation (or a code of ethics) that prohibits attorney advertising, or that deters attorneys from engaging



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

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

ETHICS QUESTIONS?

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

in price competition. *Cf. Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).”

The problem with these examples is the *Bates* decision was decided on the First Amendment grounds and in *Goldfarb* the Supreme Court specifically found that the price fixing was the result of private activity without state action. Neither case is relevant to Illinois, nor I suspect to most other states where the legal profession is under court regulation. However, *State Board of Dental Examiners* and the Guidance raise concerns that actions by bar associations or other private associations of lawyers will be subject to anti-trust allegations by aggrieved parties as a matter of course. It means that private associations of lawyers will have to be careful when issuing ethics opinions or proceeding against the unauthorized practice of law in order to avoid acting in ways that can be construed as attempts to restrain trade. ■

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

BY JEANETTE CONRAD-ELLIS

The Illinois Supreme Court Distinguishes the Accountant-Client Privilege from the Attorney-Client Privilege

Although both attorneys and accountants enjoy a general privilege of confidentiality with their clients, a recent Illinois Supreme Court case of first impression sets forth critical distinctions between the attorney-client privilege and the accountant-client privilege. *Brunton v. Kruger*, 2015 IL 117663. In both professions, the privilege encourages candor and confidential communication between clients and their professional service providers.

In *Brunton v. Kruger*, following her mother's death, June Brunton instituted a will contest against her brother, Robert Kruger, and several other family members. Brunton's parents had created several trusts and "pour over" wills. The trusts named Robert Kruger as trustee. Brunton was not named beneficiary under the trusts. Her complaint alleged that certain family members had exercised undue influence over her mother, who, also allegedly, suffered from diminished capacity when the trusts were executed. Prior to their deaths, Brunton's parents had provided confidential financial information, including: income, assets, and estate planning goals, to an accounting firm. The accounting firm had provided estate planning information to the attorney who prepared the trust documents and "pour-over" wills.

The attorneys for Brunton and the attorneys for the estates issued subpoenas for discovery seeking the Krugers' confidential financial information, as well as other documents the Krugers had provided to the accounting firm. In response to a subpoena, one of the firm accountants surrendered the confidential financial information to the Estates. However, the attorney for the accounting firm refused to honor the Brunton subpoena for discovery. The circuit court ordered that the tax documents be produced, but held that the estate planning documents were privileged. On review, the appellate court held that the client is the holder of the accountant-client privilege and that the testamentary exception to the attorney-client privilege also applied to the accountant-client privilege.

The issues before the Illinois Supreme Court were: "(1) whether the accountant's privilege belongs to the client who communicated information to the accountant or to the accountant who received the information; (2) whether a testamentary exception is applicable to the accountant's privilege; and (3) whether the holder of the privilege had waived it." The court then focused on the question of first impression, namely, whether the client or the accountant holds the privilege under Section 27 of the Public Accounting Act.

Section 27 provides: "Accountant as witness" "A licensed or registered CPA shall not be required by any court to divulge information or evidence that has been obtained by him in his confidential capacity as a licensed or registered CPA. 225 ILCS 450/27. The court held that

under the plain meaning of the words of the statute, "shall not be required by any court," the privilege belongs to the accountant and that even if the client were to consent to disclosure by the accountant, under the statute, the accountant could claim the privilege and refuse to divulge the requested information. This is a fundamental difference from the attorney-client privilege. The attorney-client privilege is owned by the client and may be waived by the client.

The court then distinguished the accountant-client privilege from the ten evidentiary privileges set forth in Article VIII of the Illinois Code of Civil Procedure. The court emphasized that the accountant-client privilege lies within the scope of a specific legislative act that governs the profession and is not merely an evidentiary privilege. More specifically, the court stressed that the legislatively created accountant privilege is "an attribute of the profession." The court went on to state that the privilege does not bar the client from producing information, but if the client has died, the accountant may invoke the privilege on the client's behalf.

The court next addressed the issue of whether the testamentary exception to the attorney-client privilege applies to the accountant-client privilege. The testamentary exception provides that when a will contest arises among disappointed heirs, otherwise privileged communications between the testator and the attorney may be admissible to resolve the testator's intent. The court noted that the attorney-client privilege is a common law doctrine, as is its testamentary exception. By contrast, the accountant-client privilege is a statutory privilege that contains but a single exception applicable when an investigation or hearing is conducted under the Act. Under the statutory exception, an accountant who is the subject of professional disciplinary investigation or hearing, may not claim the privilege. *Snyder v. Poplett*, 98 Ill. App. 3d 359 (1981). The *Brunton* court declined to create another exception to the statutory rule. The court held that any other exception must also be legislatively created, and

continued on page 40

Jeanette Conrad-Ellis anticipates receiving her JD in January 2016 from The John Marshall Law School where she is a Morrissey Scholar.

LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

Trust Accounting Q&A with the Experts

At the CBA's recent 2 hour CLE program "Everything You Need To Know About Trust Accounting" (now available to watch on demand) we had so many questions for our panelists that they didn't have time to answer them all. However, our intrepid experts—Dan Cotter, David Holterman and Mary Andreoni—took the time to respond to some of the attendee's questions below. Please note: The responses expressed here are solely those of the individual panelists. They are provided as only general input and should not be considered advisory opinions regarding any specific factual scenarios.

Q: If you work as a Guardian Ad Litem & receive money before you perform your duties, does that money need to be in an IOLTA account since you really don't represent a client?

A: [Mary Andreoni] If the "GAL" does not represent a client, ILRPC 1.15 is not triggered and the money in question does not go into an IOLTA account.

Q: Scenario:—Lawyer/Law firm is holding Settlement proceeds in IOLTA account. Client can't be located despite reasonable efforts made. There is a clear, signed, contingent fee agreement setting forth lawyer's percentage of fee to be earned for services rendered. Question: Can a lawyer/law firm take its portion of the proceeds pursuant to the signed fee agreement and leave the remainder of client's proceeds in the IOLTA account?

A: [Mary Andreoni] No. The law firm can withdraw its fees if the client specifically authorized the law firm to withdraw its

contingent fee from the settlement proceeds before the client disappeared. See, In re Walner, 519 N.E.2d at 908, and ISBA Opinion Nos. 95-11 (Jan. 1996) and 88-4 (Feb. 1989). Without the client's authority to the settlement distributions, the law firm must maintain the settlement proceeds in the IOLTA account until authority is obtained from either the client or elsewhere (e.g., court). See ISBA Op. 02-02 (Nov. 2002).

Q: Do you need to maintain an IOLTA account for ARDC purposes (it's part of annual registration) if you are not holding client funds?

A: [Mary Andreoni] No. Supreme Court Rule 756(d) requires all Illinois lawyers to disclose whether they or their law firm maintained a trust account during the preceding year and to disclose whether the trust account was an IOLTA (Interest on Lawyer Trust Account) trust account, as defined in ILRPC 1.15(f) of the Rules of Professional Conduct. If a lawyer did not maintain a trust account, the lawyer is required to disclose why no trust account was maintained.

A: [David Holterman] I agree. Rule 1.15 and its specific requirements to hold funds in an IOLTA or other client trust account are "triggered" when a lawyer comes to possess funds of a client or third person

in connection with a representation. (See paragraph a.)

Q: How would you handle an emergency matter (e.g., an Order of Protection) where the client retains you and asks you to file a case (for which the client must incur costs) on the same day, before the retainer check is able to clear?

A: [Mary Andreoni] The lawyer may pay the expense on behalf of the client, which is permitted under ILRPC 1.8(e)(1), and deposit the client's check into the lawyer's business account as reimbursement for the lawyer's advance.

A: [David Holterman] If the check is only for court costs and/or a flat fee charged by the lawyer, I agree it can be deposited in the lawyer's business account. If the client's check includes any additional amounts—e.g. for a security retainer—then the check should be deposited in the IOLTA account with the appropriate amounts withdrawn by the lawyer for reimbursement.

Q: Is it permissible to state in one's Client Engagement Letter that the attorney may withdraw funds from the security retainer account as the work is performed, and then send a statement at the end of the month? Must a statement actually be sent each time a withdrawal is to be made to give the client an opportunity to say "NO" even if it's agreed up front that the lawyer may withdraw funds as and when earned?

A: [Dan Cotter] Yes, it is permissible. While a statement is not required by the rules, it is best practices to stay in communications with the client. One of the biggest reasons for complaints against attorneys is lack of communication. The invoice or notice of work done for withdrawal is an opportunity to communicate with the client and keep the client informed of where the case or matter is at.

Q: Can the client advance a retainer for tax benefit (deductibility)?

A: [Mary Andreoni] No. The client's desire to minimize the client's tax obligations is not an appropriate use of an advance payment retainer. Advances covered by ILRPC 1.15 are funds received by a lawyer

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

Thanks to our panelists for being so generous with their time and knowledge! Learn more from the IL ARDC's Client Trust Account Handbook (www.iardc.org) and from the Lawyers Trust Fund of IL website at www.ltr.org

in connection with the payment of legal fees and expenses of the representation. An advance payment retainer must meet the requirements of ILRCP 1.5(c). The requirements of Rule 1.15(c) must be read in conjunction with the *Dowling* case. As such, an advance payment retainer must be used sparingly and only where it is in the client's interest as it relates to the client's responsibility to pay the lawyer's fees and expenses.

A: [David Holterman] In addition to *Dowling*, Comments [3A]–[3D] to Rule 1.15 are useful for understanding the requirements of paragraph (c).

Q: What does a sole practitioner do about succession/access to IOLTA funds after incapacity or death?

A: [Catherine Sanders Reach] There is guidance from the IARDC for succession planning and your IOLTA funds in *The Basic Steps to Ethically Closing a Law Practice*, from the Michigan Bar Association's guide "Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death" and in the Chicago Bar Association CLE program "Succession Planning to Cover Bumps in the Road."

Q: If you charge a fixed fee but the fee does not include a government fee and the client pays it separately and provides it to the attorney so that it can be included with the file that the attorney will mail to the government institution, does the government fee have to go in an IOLTA account?

A: [Dan Cotter] I don't believe so. If the check is made payable to the government, then the fees do not appear from this scenario to be entrusted to the attorney as fiduciary.

continued on page 40

Several "Keys" to Saving Time in Word

By Ivan Hemmans, ABA TECHSHOW Board 2016

For those select few who spend a significant amount of time drafting, revising, or reviewing documents in Microsoft Word, even the smallest productivity improvement can have a huge impact on how much work gets done. Here are a few simple keyboard combos that can help raise the productivity bar.

Shift+F3 to cHANGE cASE

Shift+F3 changes the case of selected text. If all lowercase text is selected, it capitalizes the first letter of each selected word. If each of the selected words begins with a capital letter, it changes all the text to uppercase. And, if all the words are already uppercase, it then changes the selected text to all lowercase letters. It's worth noting that the Change Case command toggles between sentence case — the first letter of the selected range as capital followed by the rest in lowercase — and uppercase if the last character of the selected text is some form of punctuation. Alternatively, use the mouse and click the Change Case button on Word's Home tab, in the Font group. The choices are: lowercase, uppercase, title case, sentence case, and toggle case. Of course, it is easier and faster to press the keyboard shortcut. Change Case lets you fix capitalization without retyping, which can save a lot of time. And saving time is always a good thing, whatever the case may be.

Shift+F5 to Browse by Edits

There are a number of ways to navigate through Word documents. It's possible to browse by page or to jump to specific text using Find. You can also browse by recent edits within a document. For lengthy documents, this can be a tremendous timesaver. Word keeps remembers the last three edit points within a working document. This becomes especially useful when revising a document. For example, if you make an edit on page 10, then jump back to page 2 and make a correction, and then type a bit of text on page 25, Word remembers. And that's when things begin to get fun. Press Shift+F5 to move the cursor back through the last three edit points. Press it once to go move back to the last point. Press again to jump to the second-to-last point. Press a third time to go to the third-to-last point. A fourth press returns you to where you were before you started jumping around in the doc. Word also remembers the very last edit point in a document after it's been closed. So, when you return to that brief tomorrow, press Shift+F5 to go right to the place where you last typed. Browsing edits is also possible through the use of Advanced Find, but the keyboard shortcut works faster.

What now?

Look for every opportunity to use these commands while editing documents. Start with just a couple and use them until they become second nature. After that, add more. Speed and efficiency will improve over time.

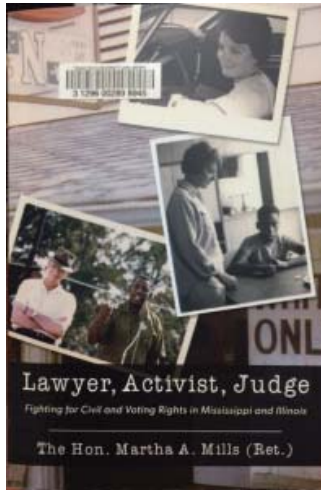
This article is but a taste of what awaits you at the ABA TECHSHOW 2016, March 16–19 at the Hilton Chicago. As a member of The Chicago Bar Association, we want you to know that you can get a discount on the ABA TECHSHOW 2016. This discount only applies to registrants that qualify for the Standard registration. You can register online and include this unique discount code: EP1610 to receive a discount.

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SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

Keeping the Flame



Lawyer, Activist, Judge: Fighting for Civil and Voting Rights in Mississippi and Illinois
By Judge Martha A. Mills (Ret.)
ABA Publishing, 2015



Reviewed by Daniel A. Cotter

During the 1960's, many in the South (particularly in Mississippi) tried to prevent the civil rights movement from developing a stronghold. However, many from outside the region who were "courageous and gutsy" left the

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comforts of their homes to fight for civil rights and justice, putting themselves at great personal risk. The Honorable Martha Mills (ret.) was one of those courageous individuals.

In her new book, *Lawyer, Activist, Judge: Fighting for Civil and Voting Rights in Mississippi and Illinois*, Mills tells her story of leaving a major Wall Street law firm, where she was a young associate, to join the Lawyers' Committee for Civil Rights Under Law. Justice Michael Hyman addresses Mills' work and her courage during her time with the Committee in his Foreword:

Judge Martha Mills (ret.) is an authentic lawyer-hero, a courageous trailblazer, and an enduring source of inspiration for those who know her accomplishments during the tense years of the civil rights movement. She participated in the events that changed the fundamental character of these United States.

At a time when few women lawyers and fewer women trial lawyers were in the profession, Martha boldly challenged the racial status quo and racial barrier in the South.

Mills' original plan was to go to Jackson, Mississippi for one month, then return to private practice at the White & Case law firm. However, she was "so appalled at what was happening that she returned a month later as a permanent staff member" of the Lawyers' Committee. The book opens with a description of Mills' birthday, May 11, 1967, a night Mills was out for a walk in Jackson and noticed a military tank headed her way. Later that night, Mills witnessed the death of civil rights activist Ben Brown. This chilling opening sets the stage for the story of Mills' journey.

Mills describes her college years at

Macalester College and her subsequent legal studies at the University of Minnesota. She then explains the creation of the Lawyers' Committee for Civil Rights Under Law and introduces the reader to some of the pioneering civil rights lawyers. Mills then explains the challenges that African Americans faced in registering to vote and in actually casting ballots. Poll taxes, literacy tests, governmental knowledge tests and other discriminatory tests were designed to keep African Americans from exercising their voting power in Mississippi.

Mills includes in her book a number of letters she wrote home during her time in Mississippi. Although her family was concerned about her safety and her rejection of a lucrative law firm position, Mills remained steadfast and committed to doing the Committee work.

Mills describes the trials, victories, defeats, and challenges associated with her work. She recalls the humor that Committee members displayed in "fighting the good fight" and explains the prejudice and discrimination that she said was embodied in federal Judge William Harold Cox in the Southern District of Mississippi. She explains her suspension as a lawyer in Mississippi, a frequent tactic that the Mississippi Bar Association and Mississippi judges used to prevent civil rights lawyers from being able to do their work. Mills closes the description of her time in Jackson by quoting from Charles Evers' memoirs, in which he noted:

The hardest thing I had to do was to fire our city attorney, Martha Wood, for breaking the miscegenation law. Martha Wood was a white woman, a good lawyer who backed civil rights. Around 1969, she fell in love with a local Negro cop named Jenkins. They married and tried to live in Fayette.

Mills moved to Cairo, Illinois (pronounced "care-oh" or "kay-ro") in 1969 and continued her work for the Committee. At the time, Cairo had a reputation as an extremely racist town; neither the local newspapers nor the citizenry were receptive to civil rights or the civil rights movement. Mills spent over a year in Cairo working on civil rights issues for the Committee. When

Join the CBA's Alliance for Women on January 26 and hear Judge Mills share insights from her journey as a lawyer, activist, and judge. Leave feeling challenged and empowered to make an even greater difference as a lawyer. Mills will sign copies of her book after the talk.

No RSVP is necessary. CBA members will receive IL MCLE credit for their attendance at the meeting. Learn more about upcoming Alliance events at www.chicagobar.org/afw. Questions? Email afw@chicagobar.org.

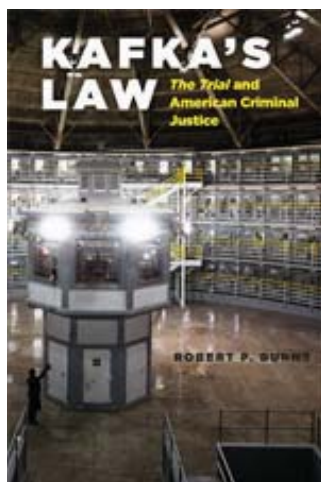
the Committee office became a legal service office, Mills decided to leave and headed to Chicago. After eight or nine months at the Legal Assistance Foundation of Metropolitan Chicago, she was hired by Schiff Hardin & Waite. She litigated at Schiff on various matters, and eventually took steps to become a judge. Considered for a federal judgeship, Mills went through the judicial evaluation process, noting that a federal judicial evaluation did not give her a favorable rating because most of her experience was in civil rights litigation. Mills closes by reiterating the importance of civil rights work and prods us by making it clear that it is never too late to get involved.

In April 2015, The Chicago Bar Association recognized Mills as one of its inaugural "Keeper of the Flame: Award of Courage Honorees" at the special event, "A Gala Dinner Celebrating the 50th Anniversary of the Civil Rights and Voting Rights Acts." The selection was a surprise to Mills until just before the gala took place.

Her courage, dedication and contributions to the civil rights movement and to leveling the legal and voting fields for African Americans are worthy of admiration by lawyers and lay people alike. As Justice Hyman states, Mills "made history again by confronting the injustices of racism in hundreds of cases involving civil and voting rights...."

The book is a must-read to help understand the importance of the Voting Rights Act of 1965 and to remind us of the struggles in which many such as Mills engaged to ensure that the right to vote would be every citizen's right and opportunity. ■

Kafka and the Criminal Justice System



Kafka's Law: The Trial and American Criminal Justice
By Robert P. Burns
University of Chicago Press, 2014



Reviewed by John Levin

Kafka's *Law*, written by Robert P. Burns, Professor at the Northwestern University School of Law, is a disquieting, yet very worthwhile book analogizing the world of Franz Kafka's novel, *The Trial*, to the American criminal justice system. *The Trial*, generally acknowledged as one of the great books of the 20th century, is the story of Josef K., a bank officer, who is arrested, interrogated and executed. All the time he is ignorant of what crime he is charged, what law he could have violated or how to defend himself in an incomprehensible court system.

The Trial has been the subject of many interpretations, including as a commentary on our fundamental existential

dilemma, our helplessness in the face of an unknowable God, our subjugation to an anonymous bureaucratic state and as a forecast of the rise of Nazism. As Burns states, "*The Trial* seeks to show what cannot otherwise be said and is *designed* to prevent reductionist reinterpretations." Therefore, "it is imperative to begin with an account of the story itself."

Given that *The Trial* is written to be experienced as a totality, Burns does an exceptional job of summarizing the high points and laying the foundation for his thesis. Here it is important to recognize that Kafka is writing in the context of the criminal justice system in the last years of the Austrian Empire. Like the European system today, the criminal process is essentially bureaucratic and inquisitorial, with the magistrate working together with the police to determine if there are facts sufficient to bring and win a prosecution. Following his summary, Burns sets out various perspectives on the novel, focusing heavily on the "actual characteristics of the legal system" described.

Burns states: "Kafka describes a legal order that amounts to a nightmare. I will turn next to an exploration of aspects of our own procedural ways wherein lurk some of those same qualities." He then carefully analogizes the legal system described in Kafka's work to our current criminal justice system. His analysis of "law in action" rather than "law on the books" results in the conclusion that: "[O]ur preferred method of actual criminal enforcement [is] interrogation and plea bargaining. ... [P]lea bargaining allows the prosecutor to play cards that often amount to offers that cannot be refused. Interrogation's methods can yield confessions that render the trial almost hopeless."

Burns' further statement – "[i]f you looked at our criminal justice system as it actually functions with the compassionate clear eyes of an artist, one might conclude that we were close to the world of *The*

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

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Ethics Extra continued from page 35

thus, the testamentary exception does not apply to the accountant-client privilege.

In addressing whether the holder of the privilege had waived the privilege, the court compared accountant-client waiver to attorney-client waiver. In the attorney-client privilege scenario, when the holder of the privilege (the client) discloses privileged information, that information is no longer privileged and is subject to disclosure in litigation. Having decided that the accountant holds the privilege in the accountant-client relationship, the *Brunton* court concluded that because the accountant, the privilege holder, had provided confidential information to the Estates, the accounting firm had waived the privilege. As such, the Krugers' confidential information was subject to disclosure, and Brunton was entitled to the confidential information.

The decision in *Brunton* does not address the ethical issue raised if a JD/CPA provides accounting services and invokes the accountant privilege as a shield for documents that otherwise would be unprotected under the attorney-client privilege or work product privilege. Serious consequences could result for both the attorney-client relationship and the accountant-client relationship especially where the attorney wearing the CPA hat invokes the accountant-client privilege against her client's wishes.

Both attorneys and accountants will undoubtedly raise other issues to be litigated. In the meantime, attorneys and accountants might collaborate to address and resolve issues for the benefit of both clients and the professions, rather than await litigated answers to the dilemmas posed by these two "at odds" privileges. ■

Law Practice Management & Technology Q&A continued from page 37

A: [David Holterman] I agree that a separate check made payable to the government entity can be passed on to the entity. If it is a separate check payable to the attorney, then it should be processed through the IOLTA account.

Q: If I represent a client who resides or works in another state, and I hold funds for him/her in a trust account, am I subject to trust accounting rules of the client's home state? Do the rules of one state or the other govern in the event of a conflict?

A: [Mary Andreoni] You should follow the rules of the jurisdictions in which you open the trust account. To the extent there are any inconsistencies between the rules of one state and the lawyer's licensing jurisdiction, those inconsistencies should be resolved by reference to ILRPC 8.5(b).

A: [David Holterman] Under the framework of Rule 1.15, the client trust account requirement follows the lawyer, not the client. Paragraph (a) states that funds should be deposited in a client trust

account "maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client." If the client trust account is maintained in the client's state, the lawyer must follow the trust account/IOLTA requirements of that state. ■

YLS Chair continued from page 30

Mraunac, attorney at Ogletree Deakins, has done an outstanding job organizing socials each month and finding generous sponsors for those events. I am always pleased to see so many new faces and such a diverse group of attorneys interested in networking.

If you have any suggestions for the YLS or questions about how to get involved, contact me anytime at mpassen@passen-law.com or 312/527-4500. ■

Kafka's Law continued from page 39

Trial[®]—may seem extreme, but is based on evidence taken from court records and the media. A recent example, occurring after publication of the book, is the experience of a high school senior in New York City who was arrested at a protest rally. He wrote of his experience and it was posted on the website Gawker. It is an example of how an essentially innocent teenager can be swept up into a Kafkaesque situation illustrative of that outlined by Burns. He writes that he was arrested simply for being at the wrong place at the wrong time, processed through a draconian police bureaucracy and released through a legal process most of the readers of this review would find troubling. The report can be found at: <http://gawker.com/stop-resisting-how-to-get-arrested-at-an-eric-garner-p-1672447442>. It is worth reading.

Burns concludes with recommendations on how to ameliorate the current flaws in our criminal justice system that focus on making the system "more democratic," that is, making the police and prosecutorial bureaucracies more open to public scrutiny. Burns maintains that "increased reliance on the jury is an important part" of these reforms, but also holds that the legislatures and appellate courts must exercise more oversight. Burns admits that such reforms are aspirational and will require the "efforts of people of good will in many forums."

Since this book was published, there has been significant public discussion about abuses within the criminal justice system. While Burns' suggested reforms are admittedly aspirational, there is a growing possibility that they may be implemented. Whether or not you are familiar with the works of Kafka or have experience with the criminal justice system, you will find Burns' analysis engaging and relevant. This book is a wakeup call to repair a broken system. ■



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