NOVEMBER 2017

# CBA RECORD

## CLE *in* Rome

**April 16-19, 2018**

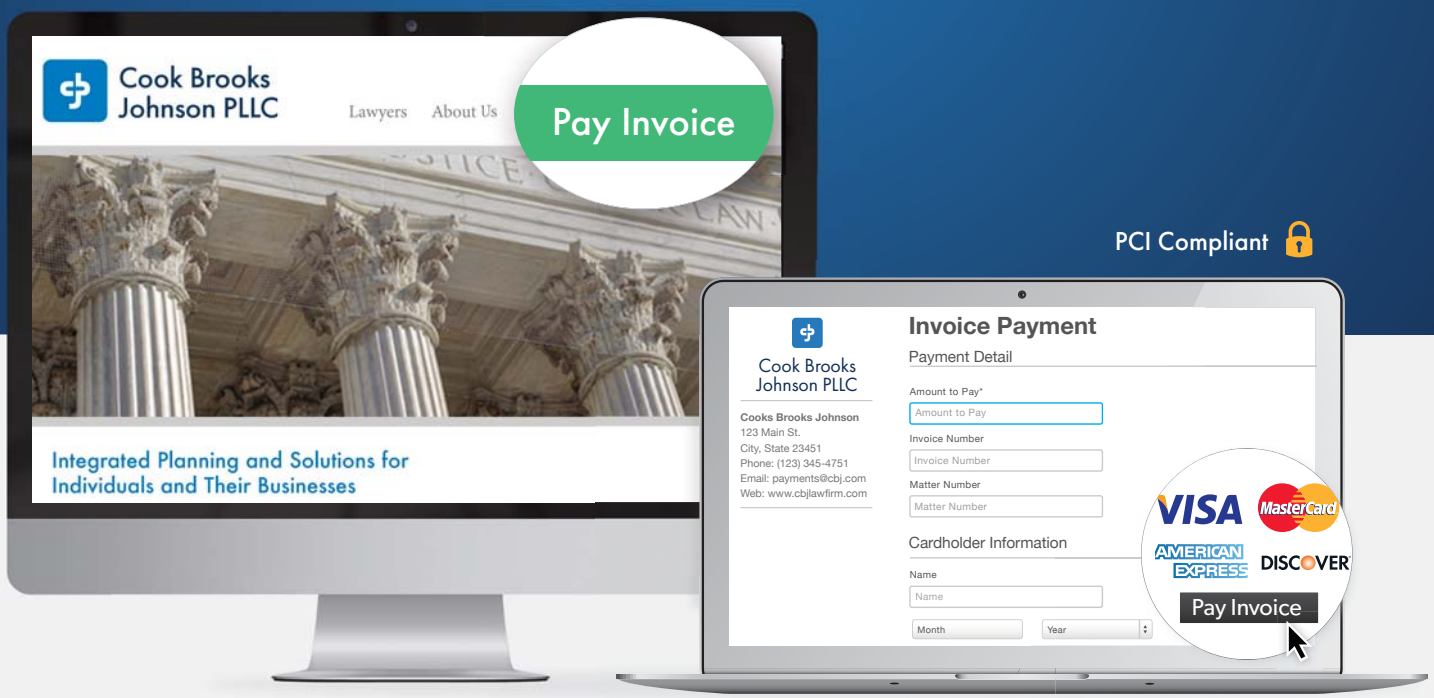
**Register Now at www.chicagobar.org/rome**

LawPay®

AN AFFINIPAY SOLUTION

THE CHICAGO BAR ASSOCIATION

**Proud Member Benefit Provider**



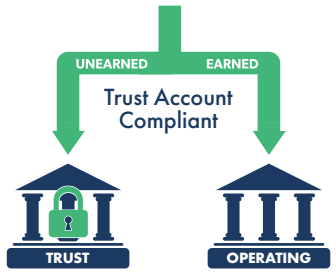

PCI Compliant

# THE EXPERTS IN LEGAL PAYMENTS

## The proven payment solution for lawyers.

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

VISA MasterCard DISCOVER AMERICAN EXPRESS




LawPay.com/CBA | 866.299.6061

# *Have a case to refer?*

# Look no further than McNabola Law Group.

*Competitive fees for referring attorneys*

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

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

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

MCNABOLA
LAW GROUP

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

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

# Legal Malpractice Insurance for CBA Members

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

*Other CBA sponsored programs:*

Life Insurance
Disability Insurance
Long Term Care
Health Insurance

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

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

CBA | INSURANCE AGENCY

# CBA RECORD




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




# CONTENTS


November 2017 • Volume 31, Number 7


## INSIDE THIS ISSUE



## YOUNG LAWYERS SECTION




### On the Cover

Members and guests are cordially invited to a special CLE event that will take place in Rome, Italy, on April 16-19, 2018. See Rome as you haven't seen it before! To get more information and to register, go to www.chicagobar.org/rome.

First Midwest | WEALTH MANAGEMENT

# Close working relationships.
# Skilled professional assistance.

FirstMidwest.com/Wealth | 800.369.4065

# Helping clients achieve their wealth management objectives.

First Midwest Wealth Management strives to be the corporate fiduciary of choice for families and individuals that need skilled professional assistance with their estate plans.

- We willingly accept difficult situations including disputed trusts.
- We coordinate with trust and estate attorneys.
- We have over $10 billion in assets.

## We offer a full range of Wealth Management Services[1]:

### Personal Trust and Estate Services

Trust Administration
- Revocable and Irrevocable Trusts
- Guardianship and Special Needs Trusts
- Directed, Complex or Disputed Trusts
- Charitable Trusts

Estate and Trust Settlement

Business and Closely Held Asset Advisory Management

### Investment Management

Asset Allocation

Portfolio Management

Investment Strategies

Individual Retirement Accounts

### Custodian Services

Trade Settlement

Corporate Actions

Reporting

### Wealth Planning Consultation

Estate Planning

Retirement Planning

Business Succession Planning

Liquidity and Cash Flow Analysis

Philanthropic Planning

### Real Estate and Agricultural Services

Farm Management

Land Trusts

1031 Exchanges

Consulting

### Institutional Asset Management

Nonprofits, Foundations and Endowments

Retirement Benefit Services

Trustee, Administration and Recordkeeping

[1] Wealth Management services are offered through First Midwest Bank. Most wealth management products are not FDIC insured.

**First Midwest** | PRIVATE BANKING

Dedicated Private Banker

Custom Credit[2]

Personal Cash Management

[2] May be subject to credit approval. Property insurance may be required.

EQUAL HOUSING LENDER Member FDIC

# EDITOR'S BRIEFCASE

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

## No Ordinary Silver Tray

Sometimes a silver tray is worth its weight in gold. This holds true for the hand-made sterling silver tray the Board of Managers presented to CBA President John J. Sullivan in 1969 as a keepsake for his year at the Association's helm. After almost 50 years, the tray has returned to the CBA thanks to member Steven Pflaum of Neal, Gerber & Eisenberg LLP, who spotted it for sale on eBay, and Executive Director Terry Murphy, who authorized Pflaum to negotiate with the Florida seller. How the silver tray ended up with the eBay seller, we don't know.

The hand-wrought silver tray, which was made by Spaulding and Co. of Chicago, measures over 12 inches in diameter and weighs 24.44 troy ounces. It is in good condition except for a few deep scratches. Throughout the tray are inscribed the signatures of the 1968-69 Board of Managers and officers, an impressive and accomplished group of lawyers. Among them were four (five counting Sullivan) future judges: George J. Schaller, Milton I. Shadur (Association Secretary), Robert A. Sprecher, and Philip W. Tone (Association Librarian); a future ABA president, Justin A. Stanley; a renowned civil rights attorney, William R. Ming, Jr.; the first female partner of McDermott, Will & Emery, Katherine D. Agar; a participant in the prosecution of Nazi war criminals at Nuremberg, William S. Kaplan; as well as several attorneys whose names continue to resonate within the legal community, including Howard W. Clement, Louis G. Davidson, Perry L. Fuller, Frank Greenberg, and A. Bruce Schimberg.


*The silver tray presented to CBA President John J. Sullivan can be viewed in the Terrence M. Murphy Lobby.*

Sullivan described his term as "demanding." Among his accomplishments were waging a campaign for a State Constitutional Convention; mobilizing members to represent, on a pro bono basis, individuals arrested for civil disobedience during the Chicago Democratic Convention; and, with the ISBA, introducing 57 legislative bills in Springfield.

A highly regarded attorney, Sullivan represented people arrested during the civil disturbances after the assassination of Dr. King. When officials refused to give bond hearings to the arrestees, Sullivan got them to relent. In 1967, he played a major role in removing the $30,000 ceiling on wrongful death awards in Illinois. Also, in the early days of the Watergate revelations, President Richard Nixon asked Sullivan to join his legal defense team. The two had been friends since serving together in the South Pacific during WWII. After a few weeks in Washington recruiting young lawyers to assist the president's then-chief lawyer, Sullivan decided to return to Chicago.

The Illinois Supreme Court appointed Sullivan to the appellate court in 1973, and he was elected to the seat in November 1974. Sullivan ran for the Illinois Supreme Court in 1980, losing to Seymour Simon. His decisions were once described as "craftsmanlike, precise, and thoroughly reasoned." He was considered a political independent and a talented jurist. He left the bench in 1989, and retired from the law five years later, moving to Sarasota, FL. Justice Sullivan died at age 94 in 2007.

On the appellate court, Justice Sullivan's opinions still carry weight. ■

*Rehearing:* "We, as lawyers, more than any other segment of our society, know that justice between human beings transcends in importance virtually every other value we have."–Justice John J. Sullivan

## Write for the CBA Record

The **CBA Record,** a multifaceted journal published seven times a year for members of the Chicago Bar Association, seeks your input. Issues include feature articles, commentary on legal developments and recent decisions, how-to articles, opinion pieces, discussions of ethical issues, and activities of interest to our members.

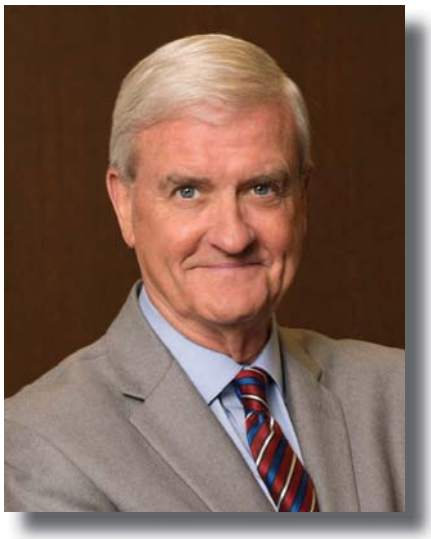
To obtain a copy of our Writer's Guidelines, go to www.chicagobar.org and look for the **CBA Record** under the Resources Tab.

**Attention Law Student Members.** It's time to renew your membership. Most law student memberships are valid through December 2017 unless you recently joined or prepaid dues for your entire law school term. Be sure to check your membership card for your expiration date. For only $12/year, there is no better way to jump-start your legal career. Law student membership offers you many ways to learn about the actual practice of law through free seminars, networking events, practice area committee meetings, career resources, and more. Learn what they don't teach you in law school! Call Kayla Bryan at 312/554-2135 or email kbryan@chicagobar.org for more information.

# PRESIDENT'S PAGE

**BY JUDGE THOMAS R. MULROY**

## What Is Our Future?



No one ever said that being a lawyer would be easy. Indeed, we have always suffered the slings and arrows of criticism. In 1591, or thereabouts, Shakespeare, no less, had the dastardly character of Dick the Butcher say: "First we kill all the lawyers." Some interpret the meaning of this line to be that without laws and lawyers to enforce them, Dick and his gang could steal and plunder with impunity.

The critics have always made lawyers' jobs stressful, but today it seems as though our profession is becoming increasingly competitive, harder and more demanding. In response, the CBA has embarked on an in depth study of the future of the practice of law in Chicago. Beginning last year, more than seventy five lawyers, judges, law students and law professors have been working to identify key issues in certain areas of our profession which can be improved. The culmination of this study will be a report identifying troublesome issues and proposing ways to make the practice a little easier. We have solicited and have received input from our members and we hope for more.

The working group has focused on: 1) The Judiciary and its case management and pro se resources and how to make the courts more litigant friendly; 2) Alternative business structures in law firms which are demanded by clients and how the solo firms and mid-size firms are coping with technology and economic changes and in finding new clients; 3) Soft skills, the stress of practice and how it affects the lawyer and alternative dispute resolution and its changing nature and impact on the practice; 4) Life and the practice of law, how clients' demands and expectations have increased and changed, how law practice management is more difficult than ever and the impact of social media on a lawyer's job; 5) Diversity and inclusion in the multi-generational work force and 6) Law schools and how they are working to prepare their students for the practice by practical course work. Technology, of course, runs throughout each category and is a major influence in how the profession has changed and evolved.

### A Profession in Transition

The legal profession and the economics of the practice of law are in flux; lawyers are losing their professional uniqueness and ethical considerations may be no longer paramount. The internet has caused the practice of law to speed up while the judicial system remains mired in the slowness of paper.

Law firms' lateral hiring has created a free agent market for lawyers, driven by the reporting of profits-per-partner, but finding a job immediately following law school continues to be difficult. Law schools' rising tuition has caused some schools to focus on teaching only "core" competencies demanded by employers to the exclusion of other skills that might make a student more-rounded. Compe-

tition for clients is more aggressive and public service and *pro bono* legal work has declined. Women and minority lawyers continue to struggle to be included in the fabric of their law firms. The sole practitioner is working harder to earn a living as competition increases. The globalization of the practice will soon become common and successful lawyers will represent clients outside of the United States.

Many young lawyers are dissatisfied with their profession, with the clients they serve and with their supervisors. In-house counsel complain that the cost of legal services is not always related to the value of the work provided. Some lawyers believe the profession is fixed on an unsustainable course driven only by profit.

What will our profession look like in the future? Corporate clients may demand to be billed based on the value the lawyer brought to the corporation from his/her work on a legal transaction rather than by the hours spent on the matter. Law firms may have more alternative business structures wherein firms will deliver legal services along with non-lawyer involvement, such as accountants, doctors or others. It may be that quality legal work will no longer define an excellent lawyer, but rather a lawyer's ability to solve problems using whatever skill is needed may become the measure of Chicago's top lawyers. Automated document review companies using cutting edge technology and artificial intelligence to sort, duplicate and review documents may take business from lawyers while assuring consistent quality of service, high-efficiency results, and lower-cost delivery. On line alternative dispute resolution will continue to evolve and grow as people become more at ease resolving disputes without being present in the same room.

### Wide-Ranging Challenges

Due to increased demand and extended retirement ages there are four generations of lawyers working together which poses technological, inclusion, social and cultural problems. Law firms and legal departments will continue put pressure on the lawyers' personal lives in order to cover the cost of their salaries which will increase dissatisfaction.

We sent a notice to our members that we would have a meeting on October 5 so they could comment and discuss these issues and problems and suggest solutions or alternative methods. The meeting was attended by 100 CBA members who had thoughtful insights which will help us prepare for the future and, hopefully, will help us make our jobs less stressful, call attention to certain pressing issues and may even fix some existing problems. It was a wonderful exchange of ideas and solutions.

Some of our extensive working group includes: Justice Michael B. Hyman, Justice Mary Mikva, Maurice Grant, Lynn Grayson, Dean Jim Faught, Theresa Frisbie, Dan Cotter, Paula Holderman, Matt Passen, Andrew Vail, Catherine Sanders-Reach, Jonathan Beitner, Lara Wagner, Dave Scriven-Young, Chasity Boyce, Mary Curry, Trisha Rich, Ben Alba, Patricia O'Brien, Megan Webster, Bob Glaves and many others.

Please help us in this continuing effort; you will find it stimulating and rewarding. ■

BREAKING NEW GROUND IN THE BATTLE AGAINST CHICAGO VIOLENCE

# CBA Hosts Lawyers Call to Action Summit

By Sally Daly
CBA Public Affairs Director

The CBA tackled some new ground in the fight against violence in Chicago neighborhoods, hosting a unique event designed to bring sorely needed legal services to help citizens in communities experiencing heightened crime and poverty.

More than 25 community and legal aid organizations across Chicago were represented at the first ever "Lawyers Call to Action" summit hosted at the CBA on November 3. The event was designed to give lawyers an opportunity to meet leaders from community organizations and to volunteer to provide legal assistance to those agencies and the citizens that they serve.

Enthusiasm ran high as lawyers circulated the room and spoke with dozens of representatives from community organizations for more than two hours to network and share contact information.

"This was a win-win opportunity for us because we were able to speak directly with attorneys to explain the legal services that we need to help the citizens of Little Village," said August Sallas, President of the Little Village Community Council who attended with two other members of his organization.

*Lawyers who attended the Call to Action event worked the room to meet with representatives from community service organizations to discuss their specific needs for legal services.*

"We are very excited about the connections that we were able to make here today."

The Call to Action event was the culmination of ongoing efforts by the CBA to address community violence, including a summit last May that brought together city leaders from the legal, law enforcement, criminal justice, religious, education, and health care communities.

Since that time, the CBA has continued to move the initiative forward, meeting with individual community service agencies to identify the legal needs of their clients and residents in areas of legal practice such as housing issues, wills and trusts, state licensing, foreclosure, child support, parental rights and expungement.

### Laying the Groundwork

"Chicago neighborhoods continue to suffer from an epidemic of violence that is destroying families," said CBA President Judge Thomas Mulroy. "Our goal was to help lay the groundwork for lawyers to channel their skills directly into communities to help provide legal assistance for citizens who need it most."

The Call to Action event began with a 1 hour MCLE program on pro bono engagement that explored how lawyers can make a positive impact in communities, particularly those that experience heightened crime and violence due to a lack of adequate infrastructure and resources.

The community agency representatives made a short presentation to the attorneys about the specific legal needs that they were seeking for their respective organizations.

The lawyers were then able to speak with representatives from the individual community agencies to discuss their specific legal needs and share their contact information for future services. ■

### NATIONAL PURCHASING PARTNERS

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


# **NOT JUST** YOUR **GO-TO** NURSING HOME **LAWYERS**

**This summer, we set the record for a jury verdict under the Illinois Nursing Home Care Act when we achieved a $4.1 million result for our client, surpassing the previous record set by our firm in 2006 of $2.9 million. Although we are proud of these results and our reputation in handling nursing home cases, our results in other serious injury, accident, and medical malpractice matters should not be overlooked.**

**We routinely obtain substantial results in medical malpractice matters and other personal injury matters. Recently we achieved a $9 million-dollar medical malpractice birth injury settlement. We have also set the Illinois record for the largest Jones Act settlement of $7.5 million for an injured boat worker.**

## OTHER NOTABLE RESULTS:

- **$17.7 Million Medical Malpractice/Brain Injury Settlement**
- **$14 Million Medical Malpractice Lung Cancer Verdict**
- **$10 Million Pedestrian Accident Verdict**
- **$7.6 Million Medical Malpractice Postpartum Bleed Settlement**
- **$6.5 Million Record Kane County Wrongful Death/Trucking Accident**
- **$6.5 Million Birth Injury Settlement**

LEVIN & PERCONTI

ATTORNEYS AT LAW

325 North LaSalle Street, Suite 450 • Chicago, Illinois 60654 • Phone: 312-332-2872 • Toll-free: 877-374-1417 • Fax: 312-332-3112
www.LevinPerconti.com • www.nursinghomelaw.com
Questions@LevinPerconti.com

# Desmond Clark Speaks at CBA

By William A. Zolla
CBA Record Editorial Board

Former Chicago Bears tight end Desmond Clark overcame an extremely difficult childhood in Lakeland, Florida, to become a star athlete at Wake Forest University, where he was the first member of his family to attend college. He later enjoyed a successful 13-year career in the National Football League, including being a member of the 2006 Bears team that won the NFC Championship and played in the Super Bowl.

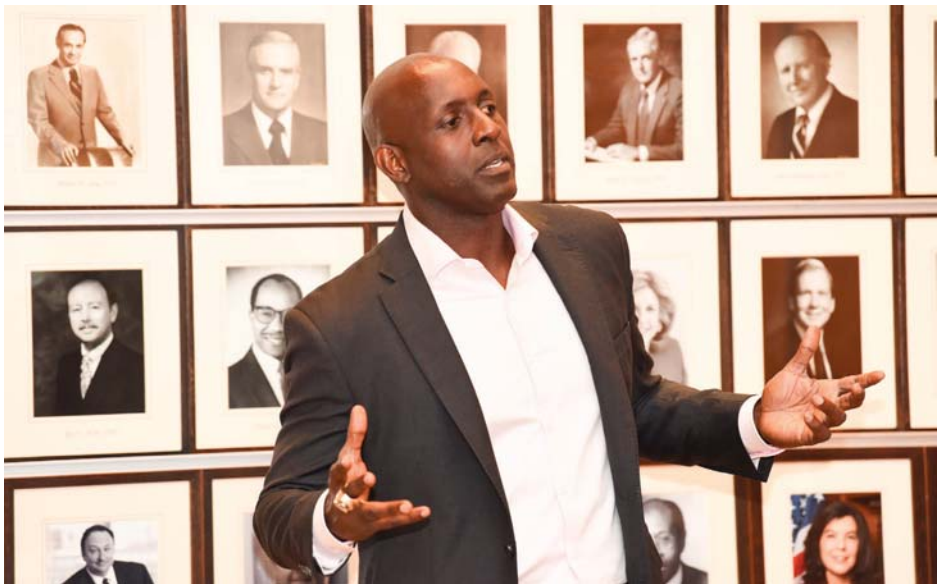
Clark, who currently works for a financial advisor and serves as president of the Chicago Chapter of the NFL Alumni Association, has continued to excel since retiring from professional football. He has written a book about his life journey, entitled "Before and Beyond the Game," and frequently speaks to groups about the lessons he has learned on his path to success both on and off the playing field.

Clark recently spoke at the CBA as part of its new "Signature Series" about his life story and the "Six Principles of Winning" he believes are essential to overcoming obstacles and achieving success. According to Clark, the six biggest keys to success are:

- Understanding that your reputation for honesty and reliability is your most important character trait. According to Clark, if you tell someone you are going to do something, you better do it because your name and word will ultimately determine whether you will be successful.
- Embracing the power of relationships by always making a concerted effort to broaden your network of friends and "extended family members."
- Mastering the small, mundane details of a project better than your competition.
- Practicing hard. In fact, Clark believes that in any competition, you should practice harder than you than you "play" because perfect practice leads to perfect performance.
- Being self-motivated; Clark urges people to ask themselves how good they want to be at something, set a bar for their success, and then focus on how to get better and reach the bar.
- Igniting your passion or purpose by tapping into what is fulfilling. For Clark, that means faith, family, fun, finances, charity, and how to make a difference brighten up people.

Finally, as a bonus principle, Clark urges people to follow their dreams even at the risk of failing. He believes that a person can fail at something without being a failure, and it is essential that people allow themselves the opportunity to fail rather than not pursuing their dreams.

In addition to his work and public speaking engagements, Clark actively supports the American Cancer Society's "Real Men Wear Pink" campaign in honor of his mother. ■



Desmond Clark addressed CBA Members and guests at the CBA's Signature Series. Photo by Bill Richert.

***Learn more about The CBA's Signature Series at www.chicagobar.org.***

#FBF #CBAHistory

THE CHICAGO BAR ASSOCIATION

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

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

# CBA Celebrates 50 Year Members

By Daniel A. Cotter
CBA Record Editorial Board

Among the 50 Year Members that celebrated on October 27 were (front row, left to right): Wayne B. Giampietro, Donald G. Mulack, Thomas R. Challos Jr, Sidney Ezra, Col. Bartlett J Carroll Jr., Arthur L. Berman, CBA President Judge Thomas R. Mulroy, Sherwin H. Leff, Lawrence S. Goodman, and Warren W. Mark. (Middle row, left to right): Ralph Muentzer, Sheldon M. Sorosky, Judge Michael P. Toomin, Sheldon Reitman, Alan J. Gertenrich, Judge Michael C. Zissman, Sylvia O. Decker, Judy Davis Thornber, James R. Pasquinelli, Thaddeus J. Gruchot, Thomas P. Durkin, Marvin Brustin, and Thomas J. Burke Jr. (Back row, left to right): Medard M. Narko, Michael R. Kuzel, William J. Holloway, JudgeWallace B. Dunn, Daniel B. Hales, Joseph L. Rand, John D. Purdy Jr, Patrick J. Agnew, Julius J. Zschau, Edward W. Bergmann, Jean Grommes Feehan, Errol Zavett, and Thomas C. Shields. Photo by Bill Richert.

In 1967 (I turned one in October that year), the President of the United States was Lyndon B. Johnson, his Vice President was Hubert Humphrey, and the United States population was just under 200 million but would cross that threshold early in 1968. The average cost of a new home was $26,400, a gallon of gas cost $.33, and a dozen eggs cost less than $.60. That same year, 96 men and 3 women joined The Chicago Bar Association and renewed their memberships over the next fifty years. The CBA recently held a luncheon to honor the 50-year milestone of this amazing class.

After welcoming comments from CBA President Judge Thomas Mulroy and a preview of the 2017 Bar Show by several cast members, who sang the show favorites "I Remember It Well" and "The Junior Partner," attendees heard from Arthur Berman, a member of the class. Berman reminisced about his career and the way the practice has changed in the last fifty years.

The 2017 50th anniversary class includes many of the leaders of our legal community over the last half century. Some other notables besides the three keynote speakers are:

- Col. Bartlett J. Carroll Jr.–Served in U.S. Army for 30 years, and 14 yeas as a guardian ad litem in the Public Defender Office.
- Judge Wallace B. Dunn–Served 26.5 years as an Associate Judge of the 19th Judicial Circuit, Lake County.
- Judge Thomas P. Durkin–Served for 22 years as a Judge in the Circuit Court.
- Wayne B. Giampietro–successfully argued in the supreme court, *Gertz v. Robert Welch, Inc.*
- Judge Michael P. Toomin–Served as a judge since 1980; currently Presiding Judge of the Juvenile Justice Division. Helped form the CBA's Juvenile Mentoring Program.

President Mulroy closed the day by toasting the members of the Class of 1967, noting that the profession has changed in many ways, with less camaraderie and less of a profession, but that members such as this group continue to make bar membership and The CBA in particular a thriving organization. The Chicago Bar Association congratulates this latest 50-year anniversary class on reaching this amazing milestone and pays honor to their contributions to the law and their personal achievements over the last five decades. Members of the CBA such as those in this class have made the Chicago legal community one of the strongest in the nation, and we thank them for setting a fine example of what belonging to The CBA and contributing to the legal community mean. ■

# CLE & MEMBER NEWS

## Looking for a Mentor? CBA Offers Two Options

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

**Alliance for Women's Mentoring Circles.** The Chicago Bar Association Alliance for Women's Mentoring Circles are designed to benefit women of all ages and in all stages of professional development because junior members learn from those with more experience, and mid-level and senior attorneys gain an invaluable opportunity to hone management skills, build relationships and develop referral networks. Under the traditional rubric of mentoring, experienced practitioners give and junior apprentices take. But in the AFW's Circles, each member is both a mentee and a mentor. Each circle is made up of 6 to 8 practitioners of varying levels of experience, and from different practice areas. The circles allow women to discuss many of the same issues at the heart of the AFW's mission: professional development, networking, and work-life balance. The circles offer a smaller, private forum, which allows each group to tailor solutions and strategies for their members. Circle discussions might touch on, for example, the balancing act of a new mother, the decision to change practice areas or a firm's promotional practices. They meet at least four times a year but some meet as often as once a month. If you are interested in becoming a member of a Mentoring Circle, you should be aware of the time commitment. We ask that you only sign up if you are willing to commit to attending regularly, and staying in touch with your circle. The benefits of the circles can only be achieved if each member of a circle is dedicated to making it a success.

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

## Save on Best Buy, Verizon, Staples, Expedia and More through National Purchasing Partners

The Chicago Bar Association has partnered with National Purchasing Partners (NPP) to offer members discount pricing on a variety of products. This program is free with no obligation to purchase. A few offerings include Best Buy, Expedia, Staples Advantage, PetFirst Pet Insurance, LifeLock and if eligible Verizon Wireless. Employee discounts available as well. To learn more, visit www.mynpp.com or call 800/810-3909. ■



## Free Membership and Free CLE for New Admittees

On November 9, approximately 1,300 new attorneys were admitted to practice law in the State of Illinois. CBA representatives were on hand to congratulate and welcome the new admittees who took their oath in the First District.

To help introduce the new admittees to the legal profession, the CBA offers an eighteen month complimentary membership which includes the 6 hour Basic Skills Course and the additional 9 hours of MCLE credit required within their first year. Additional benefits include participation in free noon hour practice area committee meetings and webcasts, new one on one career counseling resources, networking events, legal publications, leadership and pro bono opportunities to enhance resumes and much more. If you know a new lawyer who has not yet activated his or her complimentary membership, please encourage them to do so by calling the CBA's Membership Department at 312/554-2133.

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

The Chicago Bar Association

# MEMBERSHIP EXCLUSIVES

Savings and more!

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

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

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

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

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

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

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

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

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

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

## Law Practice Management & Technology Discounts:

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

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

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

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

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

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

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

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

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

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

**www.chicagobar.org/save**

# Chicago Bar Foundation Report

The Chicago Bar Foundation — Ensuring access to justice for all

## New Resources Help Lawyers Build Business and Increase Access to Justice by Providing Limited Scope Representation

**By Samira Nazem, CBF Director of Pro Bono & Court Advocacy, and Jessica Bednarz, CBF JEP Director of Innovation & Training**

The mantra of lawyers has long been "in for a penny, in for a pound." However, in 2013 a series of rule changes clarified the rules for "unbundling" and created new opportunities for lawyers to proverbially be "in for penny" by limiting the scope of their representation to discrete tasks, discrete issues, or discrete court appearances within an ongoing legal matter. Limited scope representation, often referred to as "unbundling" or "a la carte legal services," allows lawyers to help potential clients for only a portion of a case, so long as the agreement is reasonable under the circumstances and the client has given informed consent. Using these rules, lawyers can focus their representation on the most important or most complex parts of a case, while their client handles the simpler matters independently.

Limited scope representation is an umbrella term that encompasses a variety of legal services, both inside and outside the courtroom. Some examples of limited scope representation include:

- Preparing or reviewing a court document for a self-represented litigant;
- Coaching a self-represented litigant to appear in court independently;
- Drafting a demand letter or response letter;
- Offering brief legal advice on how to pursue a legal claim;
- Negotiating or reviewing a proposed settlement agreement; and
- Appearing in court on one specific date while the litigant is self-represented for all other court dates.

To read the rules governing limited scope representation or to access standardized court forms for filing and withdrawing limited scope appearances, visit: http://www.illinoiscourts.gov/CivilJustice/Resources/Attorneys/Limited_Scope_Rules.asp

The CBA is now accepting applications for the Limited Scope Panel from attorneys in these three areas of law. If you have questions or are interested in applying, contact Samira Nazem at snazem@chicagobar.org for more information.

### Increasing Access to Justice

One driving force behind the recent rule changes is a growing crisis that has taken place in the Illinois state courts over the last several years. The number of unrepresented litigants across the state has grown, and hundreds of thousands of litigants now appear in court without an attorney every year. Nearly two-thirds of defendants in civil matters are unrepresented, and for some types of cases, that number exceeds ninety percent. The large volume of self-represented litigants poses challenges for both courts and litigants alike. While some are "DIY litigants" who prefer to go it alone, the majority of unrepresented litigants would rather have an attorney—they simply can't find or can't afford one.

It is not just the poorest Illinois residents who find themselves self-represented in court; working and middle-class families are increasingly struggling to find affordable legal representation. Many of these families earn too much to qualify for already overstretched pro bono and legal aid resources available and too little to retain an attorney for the entirety of the case, leaving them with no choice but to represent themselves in court. Limited scope representation can be a big part of the solution for the significant numbers of families facing legal problems but lacking the resources necessary to hire a private attorney for the entirety of the case.

### Creating Business Opportunities

Recent reports have shown there is a huge untapped demand for limited scope representation, and yet the practice is largely ignored by private attorneys. This is a missed opportunity for a rare win-win arrangement that can benefit both clients and attorneys. For clients, limited scope offers predictability when paired with fixed fees; empowerment through choice and teamwork; and accessibility for those clients who have limited funds to dedicate to legal services. For attorneys, limited scope representation offers flexibility, control,

*Interested in learning more about limited scope representation?* Check out the following resources:

–**The Limited Scope Representation Toolkit** is a new resource for lawyers looking to expand or add limited scope representation to their practice. The toolkit includes checklists, sample engagement letters, best practices, and more.
*http://chicagobarfoundation.org/pdf/resources/limited-scope-representation/toolkit.pdf*

–**The CBA Limited Scope Referral Panel** is a new lawyer referral panel designed to connect litigants looking for limited scope legal services with attorneys who offer it in the areas of landlord/tenant, consumer/collections, and domestic relations law. For more information, contact Samira Nazem at *snazem@chicagobar.org.*

–**The Limited Scope Standardized Forms** have been approved for use in every courthouse in Illinois by the Illinois Supreme Court. The forms are for attorneys seeking to file or withdraw from a limited scope appearance under Rule 13.
*http://www.illinoiscourts.gov/Forms/approved/procedures/limited_scope.asp*

View the complete text of the Supreme Court Rules governing limited scope representation at *http://www.illinoiscourts.gov/supremecourt/rules/amend/2013/061413.pdf.*

and access to a large pool of untapped potential clients.

Contrary to popular belief, attorneys who have incorporated limited scope representation into their practice have not seen corresponding increases in their malpractice insurance premiums. Instead, many malpractice carriers support limited scope representation because the limited nature of the representation requires attorneys to carefully document the details of each representation in writing and to stay in constant communication with their clients, typically resulting in strong attorney-client relationships. Furthermore, clients who are more engaged in the process are also more likely to pay their bills in a timely manner if they haven't already been required to do so through an upfront fixed fee.

How do we know that limited scope representation can be successfully incorporated into a law firm's business model? Since its inception in June 2013, the CBF's Justice Entrepreneurs Project (JEP) has been teaching attorneys how to do just that, and today the majority of JEP Network attorneys offer limited scope representation to potential clients and are seeing the benefits firsthand.

Two attorneys who have succeeded in building a practice around limited scope representation are Alyease Jones and Roya Samarghandi. Both have found that limited scope representation allows them to open up their practices to a greater percentage of the population–namely low and moderate income people who feel they have been priced out of the legal market. Over a third of their practices are now unbundled, and in the case of Ms. Jones, that number is over fifty percent. Both attorneys offer document preparation and/or review, coaching (e.g., ongoing advice throughout the case from the sidelines or trial preparation assistance), and limited scope court appearances. Their unbundled service offerings have been met with overwhelmingly positive feedback from clients who are thrilled to be presented with flexible representation options that are predictable, transparent, and within their budget.

### Getting Started with Limited Scope

Are you ready to get started? Attorneys in Illinois now have two new resources to help them incorporate and expand limited scope representation into their practices. The first resource is a recently released Limited Scope Representation Toolkit, designed to serve as a practical resource for Illinois lawyers seeking to expand or add limited scope representation as one of their service offerings. The CBF developed the toolkit in partnership with the CBA, the Illinois Supreme Court Commission on Access to Justice, and The Lawyers Trust Fund of Illinois. The resources in this toolkit—including forms, checklists, and a sample engagement letter along with other key background—are intended to assist attorneys in understanding the limited scope rules and using them in an ethical and effective manner to make their services more accessible and affordable for clients who might not otherwise be able to afford full representation.

The second resource is the CBA's new Limited Scope Referral Panel that aims to connect prospective clients looking for limited scope representation with attorney offering such services. The CBA referral panel will offer a list of experienced private attorneys who offer limited scope legal services in the following areas of law: landlord/tenant, consumer/collections, and domestic relations. The referral list will be shared free of charge to prospective litigants at the courthouse through judges, clerks, and help desk attorneys. ■

## CBF FALL BENEFIT

Saturday, November 18, 6:30–10:00 p.m.

Museum of Science & Industry,
5700 S. Lake Shore Drive

***Event Co-Chairs:***
*Kimberly Halvorsen, Clifford Law Offices*
*Sang-yul Lee, K&L Gates LLP*

Bring the family and join us for a fun, casual evening at the Museum of Science and Industry! From eye-opening exhibits and unique activities for kids, to a sprawling silent auction, the CBF's biggest annual event is an unforgettable night in one of Chicago's most iconic museums. Guests will enjoy tasty comfort food, an open bar, and complimentary parking. Exhibit highlights will include Christmas Around the World and Holidays of Light, along with this year's special exhibit, Robot Revolution. Join us to celebrate the CBF's mission with food, fun, and friends!

Tickets are available at https://chicagobarfoundation.org/fall-benefit/tickets/. For more information, contact Elena Dennis at edennis@chicagobar.org or 312/554-8303.

# MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

**The CBA congratulates the 2017 graduates of its Leadership Institute–who were acknowledged at a graduation celebration hosted by the law firm of SmithAmundsen on Thursday, November 2. (L to R) Jeremy Gordon, Seyfarth Shaw; Jessica Schneider, The Chicago Lawyers' Committee for Civil Rights Under the Law; Merili Seale, Riley, Safer, Holmes & Cancila; Shaun Van Horn, Jenner & BLock; Caroline Manley, Center for Disability and Elder Law; Christina Olson, Seyfarth Shaw; CBA President Judge Thomas R. Mulroy; Joseph Motto, Winston & Strawn; Noah Frank, SmithAmundsen; Ben Waldin, Eimer Stahl; Shawn Staples, Much Shelist; Benjamin Schuster, Holland & Knight; Bruce Van Baren, Reed Smith; and Anthony Fuga, Holland & Knight. Photo by Bill Richert.**

Don't miss this year's Bar Show "Much to Sue about Nothing," which opens at DePaul's Merle Reskin Theatre on Thursday, November 30, and closes with a matinee performance on Sunday, December 3. For almost a century, the CBA's Bar Show has been entertaining members, their families, friends and clients. This musical comedy is an irreverent parody written and performed entirely by judges and lawyers–all members of the CBA. Like a fine wine, it has become a classic holiday tradition for Chicago's legal community. The cast, while singing and dancing, lampoons international, national, and local personalities who have made the news for better or worse during the past year. It is all in good fun and the members who perform, while not professional actors and actresses, are enormously talented and never fail to wow the audience. While "Much to Sue about Nothing" will have little resemblance to Shakespeare's comedy, the Bard would agree that laughter is good for the body and soul, and were he with us today, he might even crack a smile or laugh before calling his lawyer. Don't miss this "Last Call" for tickets to this year's Bar Show. Main floor seating is $45 per person and mezzanine seating is $35 per person. Order your tickets online at www.barshow.org.

### Illinois Supreme Court Annual Dinner

This year's Illinois Supreme Court Annual Dinner will be held on Friday, December 8, at the Palmer House Hilton. The evening will begin with a reception for members and guests at 6:00 p.m., followed by dinner at 7:00 p.m. Justice **Mary Jane Theis** will deliver keynote remarks on behalf of the Court. The Illinois Supreme Court Dinner was established by The Chicago and Illinois State Bar Associations in the 1930s to honor the distinguished men and women who serve on the Illinois Supreme Court. The only agenda for the dinner has and continues to be collegiality. Join your colleagues from Chicago and around the state at this special dinner and meet the distinguished men and women who serve on Illinois' highest court. Tickets for the black-tie optional dinner are $125 per person and $1,250 for a table of ten. For more information about this year's Illinois Supreme Court Dinner, contact **Kim Weaver** at kweaver@isba.org.

### Illinois Judges Association Annual Luncheon

The Illinois Judges Association's Annual Luncheon will be held on Friday, December 8, at the Palmer House Hilton. IJA President Judge **John P. Coady** (ret.) will preside. **Joel Weisman**, host of WTTW's "Chicago Tonight: The Week in Review" will be the keynote speaker. Tickets for the IJA's luncheon are $85 per person and $850 for a table of ten. For more information or to make reservations, contact IJA Executive Director **Kathleen Hosty** at 312/431-1283 or info@ija.org.

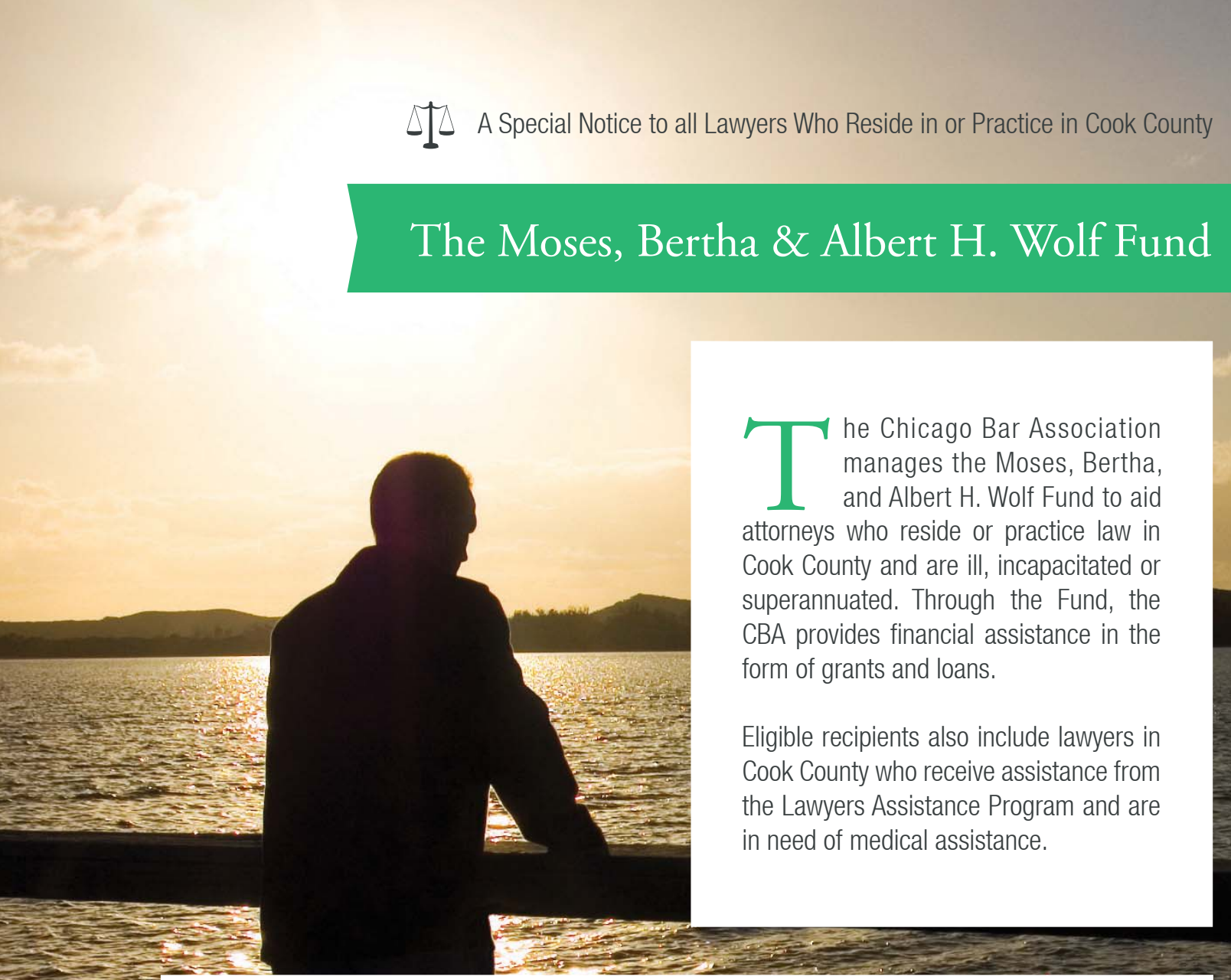
### Association Luncheon Celebrating the Federal Defender Program

Join your colleagues and friends from the U.S. District Court and Chicago's legal community in celebrating Chicago's Federal Defender Program, the first in the nation, and honoring the distinguished careers of **Terence F. MacCarthy** and **Carol A. Brook.** MacCarthy served as Executive Director of the Federal Defender Program from 1966-2009 and was succeeded by Carol Brook. In 1964, the Criminal Justice Act was enacted to establish a comprehensive system for appointing and compensating lawyers to represent defendants financially unable to retain counsel in federal criminal proceedings. MacCarthy did extraordinary work in training and recruiting volunteers and managing Chicago's Federal Defender Program.

The luncheon will be held in the Grand Ballroom at the Standard Club on Tuesday, December 12, at 12:00 p.m. Tickets for the luncheon are $50 per person or $500 for a table of ten. For more information or to make reservations, contact Tamra Drees at tdrees@chicagobar.org.

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

# The Moses, Bertha & Albert H. Wolf Fund



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

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

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

*– Wolf Fund Recipient*

THE CHICAGO BAR ASSOCIATION

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

# Law At The Library

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

**CBA members will offer their legal expertise in free seminars that will be held each month at Chicago's Harold Washington Library and the Evanston Public Library. The sessions are free and registration is not required. For a complete schedule of dates and topics for 2017-2018 go to www.chicagobar.org.**

## Congratulations

**U.S. District Court Judge Milton I. Shadur** (ret.) will receive the Association's "Lifetime Achievement Award" at a reception at the Standard Club on December 5…CBA Past President **Daniel M. Kotin** received the Francis J. Rooney/St. Thomas More Award for his outstanding and dedicated service to Loyola University School of Law...**David C. Hilliard,** CBA Past President and partner at Pattishall McAuliffe Newbury Hilliard and Geraldson LLP, was elected chair of the Newberry Library… **Margaret C. Benson**, received the Public Service Merit Award from Loyola University School of Law for her outstanding commitment to public service and social justice...**Karina Ayala Bermejo,** President and CEO of Instituto del Progresso Latino, received the Thurgood Marshall Award from ACC…**Thomas F. Geraghty**, Director of Northwestern Pritzker School of Law's Bluhm Legal Clinic, is retiring as the Clinic's Director after 41 years of outstanding service…**Kathryn Carso Liss,** is the new Director of the Schiller DuCanto & Fleck Family Law Clinic/Law Career Services Advisor at DePaul University College of Law...**Sandra Yamate**,CEO of the Institute for Inclusion in the Legal Profession, announced that the Institute will receive a generous grant from General Electric...**Suheily Natal Davis**, Senior Counsel, Global Labor & Employment, for McDonald's Corporation, is a new associate board member of the Illinois Equal Justice Foundation…**Tobin Taylor**, Managing Partner of Heyl Royster's Chicago office, is on the leadership team for the Chicago Bar Foundation's Investing in Justice Campaign and a team leader for the Greater Chicago Food Depository's End Hunger Campaign...U.S. Court of Appeals Judge **Richard A. Posner** (ret.) will be a featured guest on the YLS' new national podcast series, which will air on Legal Talk Network...Dr. **Helene Gayle** was named the new President and CEO of Chicago Community Trust...**Sara Gilloon** is the new Director of Legal Services for the Family Defense Center...**Sara Block** received the Family Defense Center's Outstanding Partnership Award for her innovative work to improve DCFS' interventions for families impacted by domestic violence…**Peter J. Birnbaum**, President and CEO of Attorneys' Title Guaranty Fund, will receive Chicago-Kent College of Law's Institutional Partner Award… **Francis Patrick Murphy**, Corboy & Demetrio P.C., will become Vice President of the Illinois Lawyers' Assistance Program.

The **Public Interest Law Initiative**, which was founded and organized by the CBA, will celebrate its 40th Anniversary on November 30. At PILI's anniversary dinner, **Bernard H. Shapiro**, Prairie State Legal Services, Inc., will receive the Distinguished Public Service Award, **Susan DeCostanza**, CVLS, and **Brij B. Patnaik**, Jenner & Block, will receive the Distinguished PILI Alumni Awards, and **McDermott Will & Emery LLP** will receive PILI's Pro Bono Initiative Award... **Thomas W. Abendroth,** Schiff Hardin LLP, is the 2017 recipient of the Austin Fleming Distinguished Service Award from the Chicago Estate Planning Council**... Peter Baugher** was a featured speaker on "New Perspectives in Alternative Dispute Resolution" at the Executive Guild Lawyers Association...**Ashly A. Boesche**, a partner at Pattishall McAulliffe Newbury Hilliard & Geraldson LLP, was elected President of the Chicago-Kent Alumni Board...**Seth I. Appel**, a partner at Pattishall McAuliffe Newbury Hilliard & Geraldson, was appointed National Chapter Coordinator of the Copyright Society of USA...Judge **David Hylla**, Chief Judge of the Third Judicial Circuit, is incoming Chair of the Conference of Chief Judges...**Joe Tilson**, Co-Chair of Cozen O'Connor's Labor & Employment Department, was named the 2018 Chicago Labor & Employment Law Litigation "Lawyer of the Year" by *Best Lawyers* in America...**Arthur J. Murphy**, Murphy & Smith Ltd., was a featured speaker at a seminar entitled: "Fundamentals of Arbitration"...**Robert D. Tepper** and **Phillip N. Coover** spoke at the Commercial Evictions and Foreclosures seminar...**Thomas R. Leavens**, Leavens Strand & Glover LLC, was a speaker at the National Business Institute webinar on festival law…**Robert A. Clifford**, **Kevin P. Durkin** and **Robert P. Walsh, Jr.,** Clifford Law Offices partners, were named to the Irish Legal 100 Group for 2017…CBA Past President **Kerry Peck,** Peck Ritchey LLC and **Diana M. Law,** LawElderLaw LLP, have been invited by the ABA to speak at the Alzheimer's Association's Dementia Conference in Delaware on "Navigating the Legal Realm of Alzheimer's."

**Skadden Arps Slate Meagher & Flom LLP** received the 2017 Law Firm Pro Bono Award from the Chicago Lawyers Committee for Civil Rights...**James L. Sawyer** was selected to lead Drinker Biddle & Reath LLP's Chicago office… **Ryan J. Rohlfsen**, a partner at Ropes & Gray LLP, led a roundtable discussion at Loyola University School of Law on "Anti-Corruption Enforcement Trends, Compliance Challenges and Best Practices for the Food and Beverage Industry"...**Michael H. Erde, P.C.** published "20 Estate Planning Tips"...**Michael Levy** is a new associate at Ladden & Allen Chtd....**Kathleen J. Swan** is a new partner at Locke Lord LLP... **Anita B. Mauro,** a partner at Thompson Coburn LLP, led a discussion on real estate tax incentives and enterprise zone benefits

to developers and Cook County property owners...**Patrick M. Collins** and **Jade R. Lambert** were added as litigation partners at King & Spaulding...**Katerina Tsoukalas Heitkemper** has joined Tressler LLP as a partner...**William Bogot**, a partner at Fox Rothschild LLP, moderated a panel on "The Highs and Lows of Marijuana Legalization" in Las Vegas…**Edward S. Weil** was selected to serve on Dykema Gossett PLLC's Executive Board…**Travis W. Life** was named a partner at Leavens Strand & Glover LLC…**John N. Gallo** is the new Chief Executive Officer and Executive Director of the Legal Assistance Foundation of Chicago…Administrative Law Judge **Patrick T. Driscoll** received the Roz Kaplan Government Service Award from the Illinois State Bar Association… **Laura Beth Miller**, shareholder at Brinks Gilson & Lione, was a featured speaker at the Practicing Law Institute's 2017 Patent Litigation Program…**Harold S. Dembo** was a speaker at the Practicing Law Institute's 19th annual Commercial Real Estate Institute…Illinois Supreme Court Justice **Anne M. Burke** and Chief Circuit Court of Cook County Judge **Timothy C. Evans** were honored at the Arab American Bar Association of Illinois' inaugural judicial reception…**Kevin J. Conway**, Cooney & Conway, served as MC for the Lawyers for the Creative Arts Program at the Palmer House Hilton, at which Greenberg Traurig shareholders **Francis A. Citera** and **Brett M. Doran** received the Lawyers for Creative Arts Distinguished Service to the Arts Award.

**Monette W. Cope**, Weltman Weinberg & Reis Co., LPA, was elected to the Board of Directors of Rainbows for All Children…**Brian L. Salvi**, Salvi Schostok & Pritchard P.C., partnered with the national safety campaign to End Distracted Driving…**Kirk W. Dillard**, Chairman of the Regional Transportation Authority of Northeastern Illinois, received the 2017 Local Distinguished Service Award from the American Public Transportation Association**…Christopher J. Hales** is now a partner at Burke Burns & Pinelli Ltd… **Jacqueline B. Carroll** was added as an associate at Bernstein Law Firm LLC… **Richard J. Geddes** and **Jennifer Quinn Broda** were added to Kennedys CMK… **John W. Campbell, Jr.**, principal at Schenk Annes Tepper Campbell Ltd., and **Allison M. Adams,** an associate at the firm, spoke at John Baker Welch's CPE University Series on Cyber Security…**Perkins Coie** recently celebrated its 15-year anniversary in Chicago…**Daniel A. Cotter**, a partner at Butler Rubin Saltarelli & Boyd, was named to the ISBA's Privacy and Information Security Law Section Council…**Jeffrey J. Koh** was added as an associate at Barack Ferrazzano Kircshbaum & Nagelberg LLP…**Swanson Martin & Bell LLP** have opened an office in Hammond, Indiana**…R. Patrick Bedell and Kevin F. Harris**, Bates Carey LLP, were featured speakers at a webinar "America on Opiods: The Issues, the Claims, and the Coverage"…**Patrick Salvi II** spoke at the Illinois Trial Lawyers Association's Update and Review Seminar…**Tina M Paries**, a partner at Bryce Downey & Lenkov LLC, was selected for membership in the Society of Illinois Construction Attorneys.

**Luke Harriman** was added as an associate at Much Shelist P.C.…**Charles R. Haskins**, an associate at Clifford Law Offices, and Chair of the Young Lawyers Section's Tort Litigation Committee, moderated a program on trial preparation and presentation…**Michael L. Weissman**, of counsel at Levin & Ginsburg Ltd., spoke on "Citations to Discover Assets, Fraudulent Conveyances and Piercing the LLC Corporate Veil"…**Jess Jordan** has been named an associate at McCready Garcia & Leet P.C… **Darren J. Hunter**, **Emily N. Masalski**, **Jacqueline M. Vidma**r and **Jason A. Higginbotham**, attorneys at Rooney Rippie & Ratnaswamy LLP, accepted Eaton Corporation Law Department Supplier Inclusion and Diversity Excellence Award at the Eaton

*continued on page 49*

By Richard Lee Stavins

The Three Rules of **Trip and Fall Cases**

# Open and Obvious, De Minimus, and Goldilocks

**Perhaps nothing in Illinois tort law is more filled with contradictions than the two rules that apply to trip and fall cases–open and obvious, and de minimus–and their two exceptions: distraction and deliberate encounter.**

### Open and Obvious Rule

The Illinois Supreme Court loves the Restatement (Second) of Torts, and particularly §343A, which sets forth the open and obvious rule. *Deibert v. Bauer Bros. Construction Co.*, Ill.2d 430, 434-35 (1990); *Bruns v. City of Centralia*, 2014 IL 116998, ¶16; *Ward v. Kmart Corp.*, 136 Ill.2d 132, 145-46 (1990). Section 343A, at 215-16 (1965), says:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.

The basis of section 343A is that owners and occupiers of land ordinarily are not required to foresee and protect against injuries resulting from dangerous conditions that are open and obvious. *Bruns v. City of Centralia*, 2014 IL 116998, ¶18; *Suchy v. City of Geneva*, 2014 IL App (2d) 130367, ¶22. The standard is whether a reasonable defendant confronted with the same situation objectively would appreciate both the condition and the risk involved.

This means that if an open and obvious defective condition exists on the defendant's premises, and the defendant should not objectively have foreseen that the plaintiff will fail to protect himself against it, then the defendant owes no duty of care to the plaintiff. The plaintiff's contributory negligence is turned into a duty question, with the defendant exonerated from owing a duty. Yes, the defendant gets two bites at the apple: once on the issue of duty and once on the issue of plaintiff's comparative fault.

### Open and Obvious: Law or Fact?

When the condition is undisputed, the issue of whether a condition is open and obvious is said to be a question of law for the court. *Perez v. Heffron*, 2016 IL App (2d) 160015, ¶12. As a result, defendants in premises liability cases frequently file summary judgment motions in which they contend that the defect that caused plaintiff to trip and fall was so large that it was open and obvious as a matter of law, and that therefore defendants owed no duty to plaintiff and are entitled to judgment as a matter of law. *Schade v. Clausius*, 2016 IL App (1st) 143162, ¶57.

Plaintiffs counter with the contrary cases that cast the issue as one that may present a question of fact, not law. *Bruns v. City of Centralia*, 2014 IL 116998, ¶18; *Alqadhi v. Standard Parking, Inc.*, 405 Ill.App.3d 14, 18 (1st Dist. 2010); *Duffy v. Togher*, 382 Ill.App.3d 1, 8 (1st Dist. 2008); *Buchakian v. Lake County Family YMCA*, 314 Ill.App.3d 195, 202 (2d Dist. 2000); *American Nat'l Bank & Trust Co. v. Nat'l Advertising Co.*, 149 Ill.2d 14, 27 (1992).

Where the defective condition looks like something that the plaintiff ought to have seen and avoided, and therefore is open and obvious, plaintiffs fall back on the two exceptions to the open and obvious rule found in Restatement §343A and its comments, and in Illinois case law: the distraction exception and the deliberate encounter exception. *Sollami v. Eaton*, 201 Ill.2d 1, 15 (2009); *Bruns*, 2014 IL 116998, ¶20.

### Distraction Exception to Open and Obvious

The distraction exception is found buried in Comment f to the Reporter's Notes to section 343A:

> There are … cases in which the possessor of land can and should anticipate that the dangerous condition will cause physical harm to the invitee notwithstanding its known or obvious danger. In such cases the possessor is not relieved of the duty of reasonable care which he owes to the invitee for his protection. This duty may require him to warn the invitee, or to take other reasonable steps to protect him, against the known or obvious condition or activity, if the possessor has reason to expect that the invitee will nevertheless suffer physical harm. Such reason to expect harm to the visitor from known or obvious dangers may arise, for example, where the possessor has reason to expect that the invitee's attention may be distracted, so that he will not discover what is obvious, or will forget what he has discovered, or fail to protect himself against it.

"[T]he distraction exception generally involves a situation where the injured party was distracted from the open and obvious condition because circumstances required him or her to focus on some other condition or hazard." *Waters v. City of Chicago*, 2012 IL App (1st) 100759, ¶15; *Bulduk v. Walgreen Co.*, 2015 IL App (1st) 150166-B (2016); *Ward v. Kmart Corp.*, 136 Ill.2d 132, 152 (1990). The distraction exception means that it is foreseeable to the defendant that the plaintiff's attention will be distracted from the dangerous condition because the plaintiff either "will not discover what is obvious, or will forget what he has discovered, or fail to protect himself against it." *Rusch v. Leonard*, 399 Ill.App.3d 1026, 1035 (2d Dist. 2010); *Shaffer v. Mays*, 140 Ill.App.3d 779, 782

(4th Dist. 1986).

For the distraction exception to apply, a circumstance must be present that either "required the plaintiff to divert his or her attention from the open and obvious danger, or otherwise prevented him or her from avoiding the risk." *Bruns*, 2014 IL 116998, ¶28. In *Bruns*, the Supreme Court found that there was no legally valid distraction because there was not "some other task at hand that required [plaintiff's] attention." In the *Bulduk* case, plaintiff was a Walgreens' customer looking at cosmetics on a shelf in defendant's store and did not see a large, open and obvious cleaning machine sitting in the store aisle where plaintiff was walking. The Appellate Court held that the distraction of looking at cosmetics on store shelves was a valid legal distraction. "She was not merely looking elsewhere…. Plaintiff was performing a task." *Bulduk*, 2015 IL App (1st) 150166-B, ¶¶22, 23.

In its decision in *Bruns*, the Supreme Court cited two cases where the plaintiff was legally distracted because some other task at hand required the plaintiff's attention: *Rexroad v. City of Springfield*, 207 Ill.2d 33 (2003), and *Ward v. Kmart Corp.*, 136 Ill.2d 132 (1990). In *Rexroad*, plaintiff was a student football player who fell into a hole in a motor vehicle parking lot adjacent to a school football field. The hole was open and obvious and the trial court granted summary judgment to the defendant parking lot owner. The Supreme Court reversed. Crucially, the Supreme Court said that the plaintiff was validly legally distracted from, or momentarily forgetful of, the hole in the parking lot by the fact that he was carrying a football helmet to another player who needed it.

In the well-known *Ward v. Kmart* case, plaintiff was exiting defendant's store while carrying in front of himself a large mirror he had just purchased. The mirror blocked his view ahead, and he walked into a post that he previously had seen when entering the store. The Supreme Court held that although the post was open and obvious, plaintiff was distracted by the mirror he was carrying and was momentarily forgetful, and that therefore the distraction exception to the open and obvious doctrine applied.

Some cases say that the distraction exception is valid even if the distraction was self-created by the plaintiff herself. "*Ward* [*v. Kmart*] imposed a duty of care on the store even where a customer created his own distraction." *Waters v. City of Chicago*, 2012 IL App (1st) 100759, ¶22; *Clifford v. Wharton Business Group, LLC*, 353 Ill. App.3d 34, 45 (1st Dist. 2004). Indeed, merely talking to other people can be a legally valid distraction. *Prochonow v. El Paso Golf Club, Inc.*, 253 Ill.App.3d 387, 398 (4th Dist. 1993). Other cases imply that the distraction cannot be self-created by the plaintiff. *Wilfong v. L.J. Dodd Construction*, 401 Ill.App.3d 1044, 1055 (2d Dist. 2010).

The distraction cannot be a part of the dangerous condition itself. It must be "something external to the dangerous condition." *Prostran v. City of Chicago*, 349 Ill.App.3d 81, 89 (1st Dist. 2004). In the Supreme Court's *Rexroad* decision, the distraction was the football helmet the plaintiff was carrying to another player, which distracted the plaintiff from a hole in the parking lot where he was walking. The distraction (the helmet plaintiff was carrying) was external to the dangerous condition (the hole in the parking lot).

Simply looking elsewhere does not constitute a legal distraction. If it did, then the distraction exception would swallow the open and obvious rule. *Bruns*, 2014 IL 116998, ¶34; *Schade*, 2016 IL App (1st) 143162, ¶44.

Defendants will always contend that plaintiff was not, but should have been, looking where she was placing her feet at the time of her fall. However, it is well established that a pedestrian is not required as a matter of law to keep her head down watching for defects. *Graham v. City of Chicago*, 346 Ill. 638, 640-41 (1931); *Shepard v. City of Aurora*, 5 Ill.App.2d 12, 19 (2d Dist. 1955); *West v. City of Hoopeston*, 146 Ill.App.3d 538, 543 (4th Dist. 1986).

The theoretical possibility of distraction is insufficient. There must be evidence that the plaintiff was actually distracted. *Bruns*, 2014 IL 116998, ¶22.

Although the natural inclination is to ask whether the plaintiff was distracted and stop there, the Supreme Court has made clear that the ultimate issue in the distraction exception is whether it was objectively reasonably foreseeable to the defendant that the plaintiff would be thus distracted. This can lead to an inquiry as to

whether a reasonable defendant objectively should foresee that a person on defendant's premises would be likely to be distracted in the way a particular plaintiff was distracted. However, in any given case, it is often anyone's guess how that will turn out.

### Deliberate Encounter Exception to Open and Obvious

The other exception to the open and obvious doctrine is the deliberate encounter exception. It applies where the plaintiff encounters a known or obvious danger because "to a reasonable man in this position the advantages of doing so would outweigh the apparent risk." *LaFever v. Kemlite Co.*, 185 Ill.2d 380, 391 (1998). The *LaFever* court and Restatement §343A, Comment f, give the example of an employee who walks onto a slippery surface to get to work.

The deliberate encounter exception generally applies where the plaintiff is an employee of someone other than the defendant, who must encounter the defendant's defect to get to work, although employment is not an absolute requirement.

### Open and Obvious Not an Automatic Bar to Recovery

"The existence of an open and obvious danger is not an automatic *per se* bar to finding of a legal duty on the part of a defendant." Courts must still apply the traditional duty analysis to the particular facts of a case, even where the danger was open and obvious. *Bulduk,* ¶26; *Jackson v. TLC Associates, Inc.*, 185 Ill.2d 418, 425 (1998); *Grant v. South Roxana Dad's Club*, 381 Ill. App.3d 665, 671 (5th Dist. 2008). That traditional duty analysis is the usual four step inquiry: (1) foreseeability that defendant's conduct will result in injury to another, (2) likelihood of injury, (3) burden of guarding against injury, and (4) consequences of placing that duty on the defendant. *Bulduk*, 2015 IL App (1st) 150166-B, ¶15.

### De Minimus Rule: Antithesis of Open and Obvious

Defendants who move for summary judgment because the defect was so large as to be open and obvious have been known to simultaneously argue the exact opposite in the same motion: that the condition was so small as to be de minimus. *Alquadhi*, 405 Ill.App.3d at 18.

If the condition is de minimus, then the defect is not actionable. *Putman v. Village of Bensenville*, 337 Ill.App.3d 197, 202 (2d Dist. 2003); *Burns v. City of Chicago*, 2016 IL App (1st) 151925, ¶22. Reviewing courts frequently state that there is no bright line test and that in determining whether a surface defect is de minimus and therefore nonactionable, each case must be examined on its own facts and no mathematical standard fixes the demarcation. *Avidson v. City of Elmhurst*, 11 Ill.2d 601, 604 (1957); *West v. City of Hoopeston*, 146 Ill.App.3d 538, 542 (4th Dist. 1986). However, they then sometimes proceed to draw bright lines. e.g., *Burns,* 2016 IL App (1st) 151925, ¶22; *St. Martin v. First Hospitality Group, Inc.,* 2014 IL App (2d) 130505, ¶14.

Plaintiffs often overlook the fact that in measuring the size of the defect under the de minimus rule, both "[t]he width and depth of the allegedly defective area should be considered in determining whether that area is of a minor, nonactionable nature." *West,* 146 Ill.App.3d at 542. Consequently, a defect whose small height (its vertical distance) might otherwise make it nonactionable will be deemed actionable if its length or width (its horizontal distances) are sufficiently large. In the *West* case, a defect width of just two inches was held to be "sufficiently wide that a reasonable man could anticipate danger to persons walking upon it," making the defect actionable, although its height was de minimus.

Where the defendant has a policy of repairing defects of the size involved or smaller, the defect, although de mimimus, will be held actionable. *Martinkovic v. City of Aurora*, 150 Ill.App.3d 589, 694 (2d Dist. 1986).

### Exceptions to the De Minimus Rule

Illinois courts occasionally have stated that the distraction exception is a viable exception not only to the open and obvious rule, but to the de minimus rule as well. *Putman v. Village of Bensenville*, 337 Ill.App.3d 197, 205 (2d Dist. 2003); *St. Martin*, 2014 IL App (2d), ¶19.

### Goldilocks Rule

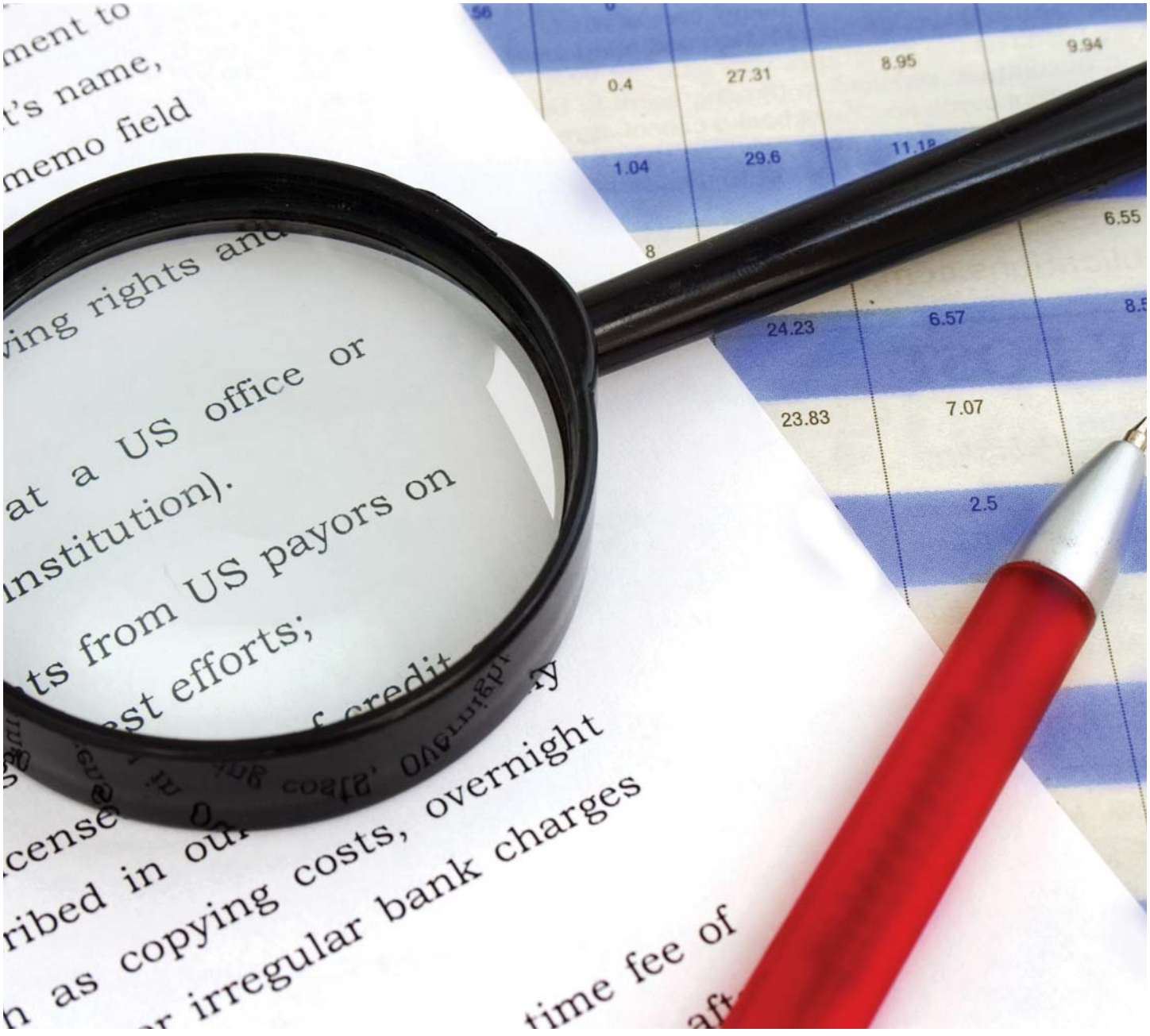
The reader may have concluded by now that if the defect is too large, plaintiff's case is subject to being dismissed on open and obvious grounds, and if the defect is too small the case is subject to being dismissed on de minimus grounds. The lesson is that unless the plaintiff can successfully invoke one of the two exceptions, plaintiff must depend on the Goldilocks rule: the porridge must be neither too hot nor too cold, but just right. To avoid dismissal, the defect must be neither too big nor too small, but right in between. ■

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

By Jennifer W. Sprengel and Anthony F. Fata

The New Mandatory Initial Discovery **Pilot Project**

# Leading the Future of Litigation in the Federal Courts



**Northern District of Illinois practitioners are operating under new rules requiring parties to produce material—whether favorable or unfavorable—at an early stage, even before motions to dismiss are decided. The rules, embedded in the Mandatory Initial Discovery Pilot Project (the "Pilot" or "MIDP"), went into effect on June 1, 2017 and will run for a three-year period. Almost all civil cases filed in the District will be affected by the Pilot.**

FOLLOWING SERVICE OF THE COMPLAINT, defendants must file an answer (even if they are also moving dismiss for failure to state a claim). Based on the complaint and answer, the parties must identify and describe witnesses and documents (whether favorable or unfavorable), their factual and legal theories, and other information. The parties must also produce the actual documents and electronically stored information ("ESI"). Parties must endeavor to resolve disputes regarding the initial discovery at an early stage and bring unresolved issues to the Court's attention before or during the initial case management conference. Proponents anticipate that this innovative program will encourage candid self-assessment, early settlements and, at minimum, a more efficient discovery and litigation process.

### The Pilot's Background

Acting on a recommendation by the Advisory Committee on the Federal Rules of Civil Procedure, the Federal Judicial Conference ("FJC") adopted the Pilot to explore whether expedited discovery will foster early settlements and more efficient litigation. The FJC's Chairperson, Supreme Court Chief Justice Roberts, is a major proponent of the Pilot. It is a natural extension of the 2015 Amendments to the Federal Rules of Civil Procedure ("FRCP"), including FRCP 1, which mandates that the courts and parties alike work to "secure the just, speedy, and inexpensive determination of every action."

Proponents recognized the need to test the Pilot in a large metropolitan court with a diverse and expansive caseload. The Northern District of Illinois agreed to serve as a test court for a three-year period. "Our district has always been on the cutting edge of litigation," Judge Ruben Castillo stated during the MIDP workshop held on May 22, 2017. District Judges St. Eve and Dow and Presiding Magistrate Judge Valdez are leading the Pilot's implementation.

### The Standing Order And Manual

The Pilot's core provisions are set forth in the Standing Order Regarding Mandatory Initial Discovery Pilot Project ("Standing Order"), available on the District Court's website, at https://www.ilnd.uscourts.gov/_assets/_documents/MIDP%20Standing%20Order.pdf.

The Pilot's discovery obligations replace the disclosure obligations set forth in FRCP 26(a)(1). Some overlap exists in the subject matter of disclosures, but there are significant differences in the timing, nature and scope of production. For example, the Pilot requires disclosure of favorable *and unfavorable* material even if the party does not intend to rely upon it (versus just favorable material on which the party intends to rely) and production of *actual documents and ESI* (versus just descriptions). These features are designed to encourage parties to candidly assess the strengths and weaknesses of their claims and defenses at a very early stage.

According to the Mandatory Initial Discovery Users' Manual, available at https://www.ilnd.uscourts.gov/_assets/_documents/Users%20Manual%20FINAL.pdf, the "MIDP courts will vigorously enforce the requirement to provide mandatory initial discovery responses through the imposition of sanctions if appropriate." Indeed, it is robust participation in virtually all cases, large and small, that will provide the information necessary to evaluate the Pilot's effectiveness.

### The Pilot's Expansive Reach

The Pilot applies to all civil cases filed during the three year period commencing June 1, 2017. An extremely limited subset of cases are excluded: administrative reviews, habeas corpus petitions, pro se prisoner actions, administrative subpoena challenges, federal government cases to recoup benefits or collect on student loans, actions to enforce arbitration awards, securities suits subject to the Private Securities Litigation Reform Act, certain patent cases, and cases transferred to the District by the Judicial Panel on Multidistrict Litigation. Every District Judge in the Northern District of Illinois has opted into the Pilot, with the exceptions of Judges Der-Yeghiayan, Gettleman and Kennelly. Senior District Judge Bucklo and all Magistrate Judges are also participating.

Unlike other early discovery mechanisms, parties may not opt out of the Pilot's disclosure obligations.

### Parties Must Immediately Begin Gathering Documents and Information

Because the subject matter of mandatory discovery is broad and includes all material "reasonably available" to the party, counsel should immediately begin working with their clients to identify pertinent material. The comprehensive default discovery topics are summarized below:

1. State the names, addresses and telephone numbers of "all persons" likely to have discoverable information "relevant to any


party's claims or defenses" and a "description of the nature of the information each such person is believed to possess."

2. State the names, addresses and telephone numbers of "all persons" who have given written or recorded statements "relevant to any party's claims or defenses" and "attach a copy of each such statement" to the response.

3. "List documents [and] electronically stored information ('ESI')" that you believe "may be relevant to any party's claims or defenses" whether or not the items are in your possession, custody or control. If too voluminous to list separately, "you may group similar documents or ESI into categories and describe the categories with particularity." Identify the "custodians" of the documents or ESI.

4. For each of your claims or defenses, "state the facts relevant to it and the legal theories upon which it rests."

5. Provide a computation of "each category of damages claimed by you" and "a description of the documents or other evidentiary material" on which the claim of damages is based.

6. Identify and describe "any insurance or other agreement" that may satisfy all or part of a possible judgment in the action or to indemnify or reimburse a party for payments made to satisfy the judgment.

All "reasonably available" pertinent material must be disclosed; no party will be excused from full disclosure simply because it "has not fully investigated the case." Standing Order ¶ A(1)(b).

Critically, and unlike other mandatory disclosure obligations such as those contained in FRCP 26, parties must provide information "whether favorable or unfavorable, and regardless of whether they intend to use the information in presenting their claims or defenses." Standing Order ¶ A(2).

### Mandatory Answer Even When Motions to Dismiss Are Filed

The Pilot requires defendants to file their answers in the time set forth in FRCP 12. Standing Order ¶ (A)(3). Defendants must do so even if they intend to move to dismiss for failure to state a claim. Only motions challenging jurisdiction or claiming immunity may defer the answer if "good cause" exists. The mandatory answer is designed to inform the parties' understanding of the scope of issues in dispute for purposes of completing their initial disclosures.

### Within 30 Days of the Answer, Parties Must Serve their Initial Discovery Responses

Within 30 days of the answer, parties must serve their initial responses to the mandatory discovery, i.e., description of witnesses, documents, ESI, legal claims and defenses, and insurance policies. Parties must also produce or make available hardcopy documents. Standing Order ¶ A(4), ¶¶ B(3), C(1). ESI production occurs later.

Parties may object to the mandatory initial discovery subjects to the same extent as with respect to party-initiated discovery, including objections claiming that the mandatory discovery "would involve disproportionate expense or burden, considering the needs of the case." Standing Order ¶ A(2). Boilerplate objections, however, are not permitted; rather, the party must "explain with particularity the nature of the objection and its legal basis and provide a fair description of the information being withheld." Withholding based on the attorney client privilege or work product protections requires a privilege log, unless the parties jointly agree that privilege logs are not required. Standing Order ¶ A(2).

The parties must certify that the initial response is "complete and correct." This is signed by the party "under oath," and by the attorney pursuant to Rule 23(g). Standing Order ¶ A(1)(b).

The parties do not file initial discovery responses with the Court, but rather file a notice of service with the Court. The Northern District of Illinois website contains information regarding how to electronically file the notice.

Two limited exceptions to the initial response deadline exist. First, initial responses are unnecessary if the parties jointly stipulate that there will be no discovery whatsoever in the case. Second, in an effort to promote early resolution, initial responses may be deferred "one time" for 30 days if the parties jointly certify that they have a "good faith belief" that the matter will settle within 30 days of the due date for their initial response. Standing Order ¶ A(4).

### ESI Is Due Within 40 Days of Initial Response

The parties must confer promptly regarding ESI and the protocol for disclosure,

retention, search terms, custodians, and technology-assisted review. Unless the court otherwise orders, each party must serve its ESI within 40 days of serving its initial response. Standing Order ¶¶ B(3), C(2)(c). The production shall be made "in the form requested by the receiving party" or, if no form is requested, "in any reasonably usable form." Standing order ¶ C(2)(d). If this deadline cannot be met due to the volume of ESI, the parties should meet and confer and seek early court intervention if necessary to work out a reasonable timeframe for ESI production.

### Continuing Duty to Supplement

Parties must supplement their initial responses not later than 30 days after "new or additional information is discovered." Standing Order ¶ A(6). In addition to serving the supplement on the other side, the party must file a notice with the Court.

### Resolving Disputes before the Initial Case Management Conference

The Pilot encourages the early resolution of disputes regarding initial discovery, including issues relating to objections, privilege, the quality of disclosure, and the timing of ESI production. Parties must act in good faith and are subject to FRCP 37(c)(1). Standing Order ¶ A(9). If the parties are unable to resolve disputes, they must present the dispute in a "single joint motion" or, if the Court directs, "in a conference call with the Court." Standing Order ¶ C(2)(b). Judges are encouraged to minimize motion practice through pre-motion conferences with the Court.

Before the FRCP 16 initial case management conference, the parties must conduct a Rule 26(f) conference and discuss outstanding mandatory initial discovery issues. Their FRCP 26(f) report to the Court should include (among the other required topics) a description of their efforts with respect to mandatory initial discovery and any outstanding issues. Standing Order ¶ A(7).

Judges retain discretion over this process and how best to apply the Pilot in each case. During the initial case management conferences, Judges will discuss compliance and resolve any disputes.

### Subsequent Discovery

After the initial discovery responses have been provided, additional discovery may proceed pursuant to the FRCP. Standing Order ¶ A(1)(a). The Pilot, however, is designed to front-load discovery efforts to promote early resolution, and if settlement is not forthcoming, a more streamlined second-stage discovery process.

### Evaluating the Pilot

At the conclusion of each case, the FJC will seek feedback from all participants to evaluate the Pilot's effectiveness. At the conclusion of the three-year test period, these evaluations will allow the FJC to make an informed decision on whether the FRCP should be amended to include the mandatory initial discovery approach permanently.

### Additional Resources

In addition to the Standing Order and Users' Manual, the District website has instructions on filing Pilot-related documents with the Court and an Online Training Webinar by Judges St. Eve, Dow and Valdez, available at http://www.ilnd.uscourts.gov/Pages.aspx?page=VideoM.

The FJC website has two video presentations for further information about the Pilot: one overviews the Pilot's goals and procedures; and the other contains a panel discussion by experienced with similar programs adopted in other courts. These are available at https://www.fjc.gov/content/321837/mandatory-initial-discovery-pilot-project-overview.

### Conclusion

The Pilot offers a unique opportunity for Judges and practitioners in the Northern District of Illinois to shape the future of litigation and the FRCP. Participation and related feedback on the Pilot will be an integral influence on whether and to what extent mandatory initial discovery will become a basic tenement of federal civil practice. ■

*Jennifer W. Sprengel and Anthony F. Fata are partners at Cafferty Clobes Meriwether Sprengel LLP, and Fata is a member of the* **CBA Record** *Editorial Board*

## Be Better. Be a Mentor.

### By Jonathan B. Amarilio YLS Chair

We all understand the career benefits of having a good mentor. A mentor can educate a young lawyer, sharing knowledge and expertise. A mentor can challenge a young lawyer, pushing her or him to be more than they are. A mentor can serve as a networker, vouching for a young lawyer and opening social and professional doors that may otherwise take many years to access. The benefits to mentees of such relationships are as numerous and idiosyncratic as the relationships themselves. Many of those reading this column may already have mentors in their lives—men and women without whom we would not be where, and possibly who, we are. Others may not have had the opportunity to form such a bond, or may have overlooked such a prospect before they realized its immense value. Either way, when we discuss the benefits of mentoring, we too often forget the mutual gain from these relationships: being a mentor can be every bit as rewarding as being a mentee.

I have been extremely fortunate to be the mentee and friend of several admirable and inspiring attorneys. Justice James R. Epstein (Ret.) and Justice Michael B. Hyman taught me to be wary of prejudgment, to allow the collective wisdom of the law to guide my judgment, and when that judgment in unclear or unjust, to do all I can to guide it toward what is right. J. Timothy Eaton, the finest legal advocate, counselor, and student of the law I have ever known, taught me–and continues to teach me–how to be a better lawyer and a better friend to others with each passing day. And the lessons I have learned from the most recent leaders of the CBA, including President Tom Mulroy; former presidents Dan Kotin, Dan Cotter and Aurora Austriaco; former YLS chairs Mary Curry, Paul Ochmanek, Matt Passen and Katie Liss; and all those other fine men and women with whom I currently serve and have previously served have aided me in my career more than I could ever hope–but will never fail to try–to repay.

Learning from these individuals and serving as a mentor to others has taught me many important lessons. You learn more about a subject when you're teaching that subject to others. You push yourself to be better when you're urging another to do the same. You strengthen your connections with others when you make yourself the bond between them. In other words, when acting on behalf of another, you often discover the best in yourself. And although you may feel unable to pay back the obligation you owe to your mentor, you can balance that debt by serving as a mentor to others, benefiting your mentee and yourself at the same time.

For those interested in such an opportunity, the YLS has no shortage of mentoring prospects. For instance, **Lawyers Lend-A-Hand to Youth** is partnering with the YLS this year to help channel our members' energy to tutor grade school children from underprivileged communities. The **Alliance for Women** has developed mentoring circles for our female members. The YLS is once again working with the **Legal Prep Academy** to mentor high school students interested in legal careers. And the **Lawyer-to-Lawyer** program provides opportunities for our members to both find a mentor and serve as a mentor to others: sign up now at www.chicagobar.org/mentoring. I urge all those reading this to take advantage of these programs. Be a mentor. Help others be better versions of themselves and, in so doing, discover the best version of yourself. ■

LAW FIRMS NOT IMMUNE TO THIS EVOLVING THREAT

# The Benefits of Having an Incident Response Plan for a Law Firm

By Brian C. Eaton

Data breaches today are becoming more of an inevitability than a possibility. Law firms are not immune to the evolving threat of data breaches. Most notably with the "Panama Papers" breach of Mossack Fonseca, to high profile New York firms, and the recent class action suit against a Chicago based firm, the legal profession has faced their share of very public data security issues. Law firms that are not prepared to deal with a breach are vulnerable to a worst-case scenario fallout from the event.

Data breaches in law firms are becoming more of a trend than an anomaly because law firms are a rich target for hackers. They can be storage houses of sensitive personal information, inside information on mergers and acquisitions, health care information and other types of data that can be used for identity theft. They are also generally perceived to be softer targets than some of their clients when it pertains to data security; thus, making them more appealing. Smaller to mid-size firms, may not be able to afford the substantial time and financial investments to stay protected. Large firms generally have to fend off more attacks because of the vast amount of information they hold. Also, while law firms may not have collected the health information or other data directly from individuals, under HIPPA and state breach

laws they will be held responsible for losing the data should it be breached.

Preparing for a breach can limit the liability that a firm may face and allows the firm to quickly restart normal business operations. One way to prepare for a breach is through the creation of an incident response plan. An incident response plan can ultimately lower the cost and liability that your firm or business may face should a breach occur. A plan ensures a proper response to the regulatory issues your firm may face without the pressure and time crunch of an active breach. A plan can focus on the information collection and storage policies currently being used or it can create the impetus to construct a new policy. It also can allow a firm to potentially limit its reputational damage that accompanies the announcement of a breach.

### Developing An Incident Response Plan

An incident response plan will typically include a step-by-step plan for what your firm can do when it suspects an incident may have occurred. An incident can include anything from losing a flash drive with client information to having your system penetrated and information stolen. An incident response plan should contain a general plan on how to evaluate different situations and decide the best path forward.

It should detail who needs to be contacted when something occurs. It needs to address how to document evidence related to the breach for potential litigation and insurance issues that may arise. Also, determining what kind of response from a regulatory and public relations standpoint will be necessary. An incident response plan acts as a tool to better prepare your law firm to address these issues that emerge from a data breach.

A cyber-attack could cripple normal communications avenues for a firm. Having secondary contact methods is a simple yet effective way to reduce potential chaos during an active breach. Litigation may emerge from the breach, and properly documenting your response could be crucial in mounting a defense. Figuring out how to document evidence during an active breach is likely to cause crucial details to be lost and wastes precious time. Finally, a strong and coordinated reaction to the breach will be required from regulators and clients. The firm will need to comply with notification laws and clients will need to be contacted to instill confidence in your firm moving forward.

### Reducing Liability

Preparing for a breach in advance can limit a firm's exposure to liability from regulators. Since no cyber defenses are considered impenetrable, a court or regulator will determine whether your actions were reasonable in safeguarding your clients' data. Having an incident response plan in place prior to a breach is a tangible way to demonstrate that your firm was taking the breach seriously and can thus limit its liability.

### Determine Which Laws Are Applicable in Advance

Having a plan can allow for a more thorough response to regulators when a breach has occurred. There are currently 47 states with breach notification laws, and that is not including separate obligations imposed under federal law. Navigating this morass of different laws is difficult and tedious under normal circumstances but becomes that much more difficult with the pressure and deadlines of an actual breach. For example, HIPPA requires notice of a breach within 60 calendar days. Failure to meet this deadline causes large financial penalties.

Knowing the states in which your firm operates in and knowing where your clients are located is crucial for compliance with breach notification laws. To determine which states breach notification laws are triggered depends on where clients are located, not the firm. For law firms, this will generally make things easier as attorneys are restricted to which states they can operate in by state licensing boards. A firm's breach response, however, must meet the notification requirements from their client's states.

Also, firms that have varied practice groups may collect information that subjects them to differing federal privacy laws.

## YLS HOLIDAY SOCIAL

Save-the-Date for the Young Lawyers Section Annual Holiday Social which will take place on Thursday, December 7, 2017 from 5:30pm-7:30pm hosted generously by the law firm of Jenner & Block (353 N. Clark St., Chicago, IL 60654). Get in the holiday spirit as you mingle with other young lawyers over complimentary beer, wine and appetizers! Hurry and RSVP at www.chicagobar.org/ylsevents as space is limited.

There is no all-encompassing federal privacy law. This sectoral approach to privacy regulations leaves businesses subject to different laws depending on the information they collect. While most businesses will generally only operate in one sector a firm may represent businesses across the spectrum of privacy regulations. Health information, financial information, and information held by educational institutions are just a few examples of information that is governed by separate laws. Knowing what laws are applicable to your firm will better prepare the firm for a breach.

### Data Minimization and Document Destruction Schedules

Another way to limit a firm's liability is by identifying what type of data you have and what data you need to function. This is known as data minimization. Electronic storage of records is cheaper than ever. In the past, when paper records were predominate, one file was not an insignificant amount of paper to lose. Today, someone could lose a small flash drive that could contain sensitive files. Evaluating the data your firm collects and stores is a smart way to determine if there is stored information that you do not need.

After examining and mapping the data your firm has collected, you may realize that you have more data than necessary to complete your services. Collecting and storing such information opens a firm to

***Early Bird Tickets Now on Sale for Disco Nights Casino Night.*** *Get ready to do a little dance, play a little cards, and get down tonight with the YLS at "Disco Nights," our 11th annual casino night fundraiser benefiting The Chicago Bar Foundation. In celebration of the CBF's 70th Anniversary, we'll be getting down 1970's-style in our best disco duds at an evening featuring table games, a Texas Hold'em Tournament, and food and drink at The University Club on February 23, 2018. Proceeds from the evening support the CBF's work in Chicago's legal community to make the justice system more fair and accessible for everyone.*

*Tickets are on sale now at www.chicagobar.org/ylscasino!*

unnecessary liability if that information was subject to a breach. The instinct to simply keep things forever needs to be resisted. Identifying what information you have and need can allow a firm to set up a routine destruction of data schedule. Firms should identify the data that they collect, determine how long they need to store that data based on regulations and firm use, and then create and follow through with a planned document destruction schedule. A routine schedule eliminates the possibility of suffering consequences for breached information that your firm no longer needs.

### Public Relations Response

How a firm responds to a data breach can go a long way in determining the perception of the firm's reputation. Any firm is going to sustain damage to their reputation and trustworthiness when a breach occurs, but the impact of that breach can be mitigated with a thoughtful and measured response to the breach. This type of response is much more likely if it has been prepared in advance without the pressure and time crunch of an active breach.

An incident response plan should designate who is allowed to speak for the firm on this issue, include prepared remarks and notification letters, and media contacts to get out in front of any story. Controlling the perception of your firm during a breach is crucial. The information that is being conveyed to the public should not come out in drips, but a complete statement about what happened and the steps that are being taken to remedy the breach. Restoring the public's trust in your firm is going to be difficult, but having a strong response to a breach can go a long way in re-establishing the reputation of the firm as someone that can be trusted.

These are just some of the benefits that can come through the use of an incident response plan. The creation of an incident response plan should simply be a part of your firm's preparation for a breach. Also, having training for employees on data security matters and firm policies addressing cyber security issues are key. Implementing an incident response plan can be a substantial first step in preparing your law firm for the new realities of the digital age. ■

## WHAT'S YOUR OPINION?

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

*Brian C. Eaton is an associate in the Business & Finance group at Taft Stettinius & Hollister LLP. He focuses his practice on Technology Law, specifically Privacy and Data Security.*

# DISCO NIGHTS

## A Casino Night featuring Texas Hold'em Tournament

**February 23, 2018**

**The University Club**
**76 E. Monroe Street, Chicago, IL**

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

**Head to the disco for an evening of casino games and a Texas Hold'em Poker Tournament.**

**All-Access Pass:**
Includes reception, casino games and a seat in the Texas Hold'em Poker Tournament.

$150 per player on or before 1/26/2018
$175 per player after 1/26/2018
*Rebuys/add-ons during 1st hour*

Come in Your Most Fabulous 70's Attire!

Prizes will be awarded for the best 70's inspired outfit.

**Casino Pass:**
Includes reception and casino games.

$100 per person on or before 1/26/2018
$125 per person after 1/26/2018

*All fees are non-refundable.*

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

**www.chicagobar.org/ylscasino**

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

CBA Young Lawyers Section presents

**Disco Nights**
**February 23, 2018**

The Chicago Bar Association Founded 1874 | The Young Lawyers Section YLS The Chicago Bar Association | The Chicago Bar Foundation Ensuring access to justice for all

## HIGHLIGHTS FROM THE ABA YLD AFFILIATE SHOWCASE

# CBA YLS in Denver

**By Emily Roschek**


Did you know that the Chicago Bar Association's Young Lawyer Section ("YLS") is nationally recognized? This October, YLS representatives traveled to Denver, Colorado to attend the ABA Young Lawyers Division Fall Conference. At the conference, young lawyers sections from various international, state, local, specialty, and affinity bar associations met to showcase their projects and to receive recognition for their efforts. The YLS had another banner year, having added the following five ABA YLD Awards of Achievement to its collection, plus an EMBRACING Diversity Challenge award from the ABA YLD Spring Conference in May:

- First Place Comprehensive (for the following YLS programs: (a) Access Success: Creating Opportunities for Attorneys with Disabilities, (b) Paths to Teaching Law, (c) Human Trafficking Awareness Week, (d) Illinois Bar Exam Boot Camp, (e) Pie Competition);
- First Place Diversity (Access Success: Creating Opportunities for Attorneys with Disabilities);
- First Place Service to the Public (Human Trafficking Awareness Week);
- First Place Service to the Bar (Paths to Teaching Law);
- Most Outstanding Single Project (Paths to Teaching Law);
- First Place EMBRACING Diversity Challenge (Access Success: Creating Opportunities for Attorneys with Disabilities).

### Paths to Teaching Law

The YLS received two awards for this program, which involved a panel of tenured and adjunct law professors from the

Northwestern Pritzker School of Law, the DePaul University College of Law, and the University of Iowa College of Law to discuss academic careers, including career paths to adjunct and full-time teaching, tenure-track careers in both doctrinal and legal writing courses, and visiting assistant professorships. 58 people attended the program and 195 watched the webcast.

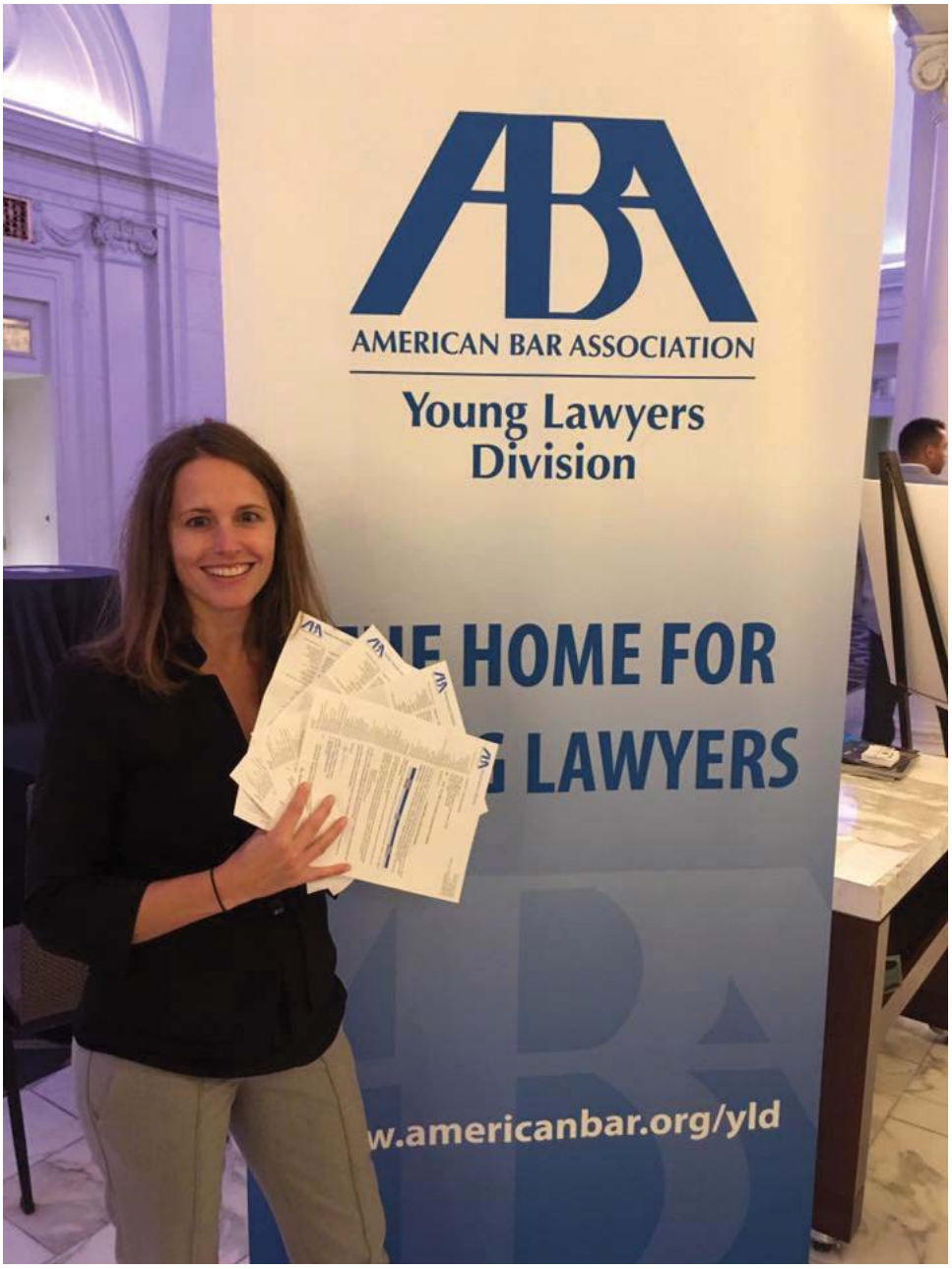
### Pie Competition

Past YLS Chair, Katie Liss, planned this family-friendly social event that attracted over 50 members, children, and guests who tasted 20 competition pies and raised funds for the Chicago Children's Advocacy Center in support of the Section's theme of "Protecting Our Children."

### Illinois Bar Exam Bootcamp

The YLS Law Student and Professional Responsibility Committees collaborated on a bar exam "bootcamp" series for law students in the Chicagoland area. The project featured a kick-off event entitled, Illinois Bar Exam Bootcamp, where law students were invited to discuss bar exam study tips with volunteer young lawyers at a round table networking dinner at the Chicago Bar Association building. The students were given a comprehensive overview of how to: (1) apply for the Illinois Bar; (2) navigate the character and fitness process; (3) manage stress during bar exam study. The presentation featured speakers from the YLS Professional Responsibility Committee, the Illinois Attorney Registration and Disciplinary Commission (ARDC), the Illinois Supreme Court Committee on Character and Fitness for 2nd District, the Lawyers Assistance Program (LAP), and Barbri.

Prior to the kick-off program, a Bar Prep Advice Survey was sent to all members of the YLS within their first five years of practice. Survey respondents were asked to provide study tips and advice for future Illinois Bar Exam takers with the goal of providing a crowd sourced bar exam advice guide. 130 members responded to the survey and the results were compiled in a booklet entitled, "Study Tips for Bar Takers: A Crowd Sourced Guide from Young Lawyer Members of The Chicago Bar Association." The booklet was distributed to event attendees at the Illinois Bar Exam Bootcamp kick-off event. As a result of the survey, the Law Student Committee developed a course outlining and issue-spotting workshop for law students and presented it at Chicago area law schools throughout the year.




### Human Trafficking Awareness Week

The YLS held its inaugural Human Trafficking Awareness Week during January 2017 to raise awareness on human trafficking and what action can be taken to protect trafficking victims. The week consisted of educational events discussing the prevalence of human trafficking, how attorneys can help, and the legal rights and remedies for sex trafficking victims. To publicize the event, the YLS made public service announcements on WBBM radio in several languages, posted YouTube videos of interviews with human trafficking experts, and published articles in the February/March issue of the **CBA Record** –all focused on the human trafficking awareness. Throughout the week, the YLS helped raise $2,085 for the Salvation Army's Anne's House, which is a long term trauma-based residential program in Chicago for girls aged 12-18 impacted by sexual exploitation.

## YLS BOOK AND SUPPLY DRIVE FOR LAWYERS LEND-A-HAND TO YOUTH TUTORING STUDENTS

Get in the holiday spirit this year by contributing to the YLS' book and supply drive for the students of the Lawyers Lend-a-Hand to Youth tutoring program! The tutoring program partners with the Montessori School of Englewood, a public charter school, to provide free one-to-one tutoring and mentoring to students from Englewood. To donate supplies, visit www.chicagobar.org/ylsevents and click the link for our "Amazon Wish List" and then purchase any of the requested items of your choosing. All books and supplies purchased from the list will be delivered to the CBA Building and packaged by YLS volunteers to be sent home with the students over their winter break from school. The YLS will host a pizza party to package the donated items on December 14, 2017 from 5:30-7:30pm. To attend and assist in packing the donated items, RSVP at www.chicagobar.org/ylsevents.

## DEAR SANTA LETTER PROGRAM

Help a child enjoy the holidays...answer a Dear Santa Letter! This holiday season, the Young Lawyers Section is distributing "Dear Santa" letters provided by Direct Effect Charities, a group that receives thousands of letters from disadvantaged youth from Chicago Public Schools requesting gifts from Santa.

Here's how it works: select a letter, purchase a few items the child has requested (approx. $25 or less), and mail the package directly to the child's school. Letters will be available to be picked up at the CBA in mid-November (stop by our 1st floor bookstore). Visit www.chicagobar.org/ylsevents for more details and to request letters. Complete instructions will be attached to the letter.

### Access Success: Creating Opportunities for Attorneys with Disabilities

This program won the ABA Award for Embracing Diversity Challenge, which includes a $1500 sub-grant to help build the program in future years. This program targeted attorneys and law students with disabilities, as well as law firms and law departments interested in expanding their own networks. It was co-sponsored by the National Association of Attorneys with Disabilities, the ABA Commission on Disability Rights, the ABA Law Practice Division, and the Institute for Inclusion in the Legal Profession. It featured a CLE seminar with an interactive panel discussion followed by an in-person networking reception and an online networking event powered by LexVita.com. The panel gave an overview of the protections afforded to disabled workers, specifically by the Americans with Disabilities Act and the Rehabilitation Act, and suggestions for how employers maintain compliance with the law. A panel of attorneys with disabilities discussed their experiences and thoughts on topics ranging from how cultural differences can affect the law school experience, to networking challenges, hiring practices, and relationships with co-workers and clients. Participants as well as anyone in the legal community could then create a profile on LexVita.com for a two-week online networking fair.

### Unveiling of @thebar

The CBA-YLS was also proud to announce its first-of-its kind bar association podcast, @thebar. The podcast received significant interest from conference-goers. We discussed implementation of the program and our interviews with the author of Gone Girl, Gillian Flynn, and with the author of Addicted Lawyer, Brian Cuban. Based on the strong reception it received, we would not be surprised if @thebar is nominated at next year's ABA Conference.

YLS Second Vice Chair, Octavio Duran, said of the conference, "we were thrilled to be recognized for all of the hard work that our YLS members put in this year, and we look forward to another exciting and successful bar year." ■

*Emily Roschek is the Director of ABA Legal Career Central and current CBA YLS Project Officer and member of the CBF Advocacy Committee. She is the Past Chair of the YLS Future of the Profession Committee and Past Co-Chair and Vice Chair of the YLS Professional Responsibility Committee.*

THE CHICAGO BAR ASSOCIATION PRESENTS
THE 94th ANNUAL BAR SHOW

# MUCH TO SUE ABOUT NOTHING!

*"...AN IRREVERENT MUSICAL PARODY WRITTEN AND PERFORMED BY LAWYERS, BUT ENJOYED BY EVERYONE!"*
- D. NOVO

*"...THE BEST SOCIAL AND POLITICAL SATIRE THIS SIDE OF NORTH AND WELLS!"*
- B. QUEATH

## NOVEMBER 30-DECEMBER 3, 2017
## Thurs-Sat 7:30 p.m.
## Sun 2:00 p.m.

DePAUL MERLE RESKIN THEATRE

## ORDER YOUR TICKETS NOW AT WWW.BARSHOW.ORG
## OR BY CALLING 312-554-2064

THANK YOU TO OUR SPONSORS

Quarles & Brady LLP
ReedSmith
KAUFMAN & Company
KIRKLAND & ELLIS LLP
VedderPrice
Holland & Knight
CITYWIDE TITLE CORPORATION
WINTRUST WEALTH MANAGEMENT

# CBA Abroad: An Unforgettable Experience with Fellow Members

**By Nicholas D. Standiford**


Looking to take a break from brief writing? How about a trip oversees? Earlier this year, the CBA hosted its annual international trip—this time, in London. From April 10-13, CBA members of all ages and legal practices enjoyed several unique legal and non-legal experiences that they won't soon forget.

The CBA offered the following MCLE programming, allowing attendees to earn four (4) MCLE credits in the process: a boat cruise through Runnymede with a lecture from one of the world's experts on the Magna Carta; a musical performance in the 12th century Temple Church (remember the DaVinci Code), and a dinner in the Grand Hall of the Inner Temple Inn-of-Court (arguably the site of Shakespeare's final performance). The trip also featured two events not otherwise open to the public: an opportunity to watch a trial from the well of an Old Bailey courtroom and tours of the House of Lords and the Supreme Court. The trip was a resounding success.

Trisha Rich, an attorney at Holland & Knight, remembers the trip fondly: "this year's London program was an incredible experience from start to finish. The best thing about the trip was the ability to gain an inside understanding of the British legal system through the eyes of those that practice there." Emily Roschek, Director, ABA Legal Career Central, similarly explained, "the CBA's CLE Abroad program is a great chance to be exposed to a foreign legal system, while having quality time with some of the brightest legal minds in Chicago of all experience levels. It's a perfect balance of organized tours, seminars, and dinners with enough time to explore on your own as well."

With the success of the London trip, CBA is excited to raise the bar in 2018. The CBA is pleased to announce that this year's trip will take place in Rome, Italy, from April 16-19, 2018. Rome will provide attendees with a chance to enjoy the city's unique blend of history and vibrant con-

temporary culture (and, hopefully, some local vino). Some of the highlights will be tours of the Italian courts, the Roman Forum, and the Borghese Gallery. CLE sessions will feature the following presentations from: Amanda Knox's criminal defense counsel; the Chief Prosecutor in Rome regarding mafia prosecutions; the American Embassy about immigration issues in Italy and Europe; and a presenter on the changing role of Italian women.

Past CBA-YLS Chair, Matthew Passen, Partner at Passen Law, had this to say about his time in London and the upcoming trip to Rome: "This was my first trip abroad with the CBA, and I'm already looking forward to next year in Rome. Aside from offering unique access to some of London's most famous sights, the trip allowed for ample opportunity to network and develop relationships with many leaders of the Chicago legal community."

Book your trip to Rome soon. Adventure, education, and international networking awaits. ■

For additional information about CBA in Rome, please contact Tamra Drees, CBA Events Coordinator, at the Chicago Bar Association, 321 S. Plymouth Court, Chicago, IL 60604-3997 or fax to 312-554-2054. Tamra can be reached at 312-554-2057 or tdrees@chicagobar.org.

# LEGAL ETHICS

BY JOHN LEVIN

## ABA Formal Opinion 477R and Client Data

Earlier this year I took a trip to Russia–simply as a tourist having never been to that part of the world. As I usually do before traveling to another country, I did some investigating into Internet security since we usually take a smart phone or tablet with us when we travel to keep in contact with the rest of the world.

I had been warned by friends that between the Russian government and Russian hackers there was not much security–so I did some research of my own. What I learned was that you should assume that any communication you make while in Russia is being intercepted and read (or listened to) and any device you bring to Russia will be corrupted and the information on it copied. The common advice was not to bring a "smart device" to Russia. So we didn't.

I noticed that our fellow travellers must have had the same advice since people were not constantly reading their tablets or checking their phones for emails. One person told me he had purchased a sim card for use only in Russia and was not using any password-protected sites while there.

This brings us to ABA Formal Opinion 477R (Revised May 22, 2017)– "Securing Communication of Protected Client Information". While I did not see the opinion until after my return, the opinion speaks directly to my experience. The opinion notes that "law enforcement discusses hacking and data loss in terms of 'when' and not 'if'[,]" and that law firms are targets of hackers. The opinion then states:

"A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security."

After reviewing the earlier ABA opinions addressing confidentiality and cybersecurity, the Opinion rejects "requirements for specific security measures (such as firewalls, passwords, and the like) and instead adopts a fact-specific approach to business security obligations that requires a 'process' to assess risks, identify and implement appropriate security measures responsive to those risks, verify that they are effectively implemented, and ensure that they are continually updated in response to new developments." The Opinion then engages in a discussion of the factors a lawyer should include in making the "reasonable efforts determination." The discussion is too lengthy to summarize here, and I recommend that all lawyers carefully review the Opinion.

Which brings us back to Russia. Unbeknownst to me at the time, I had followed the recommendations of the Opinion in analyzing the risks of disclosing confidential information and the cost and difficulties of safeguards. The resolution was to buy a flip phone for use in Russia and not transmit any sort of personal or confidential information. While this solution was not too inconvenient for personal use, it would certainly complicate any sort of professional communication. Unfortunately, the way the cyber-world is evolving, professionally we may be facing these sorts of complications soon. ■

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



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

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

**ETHICS QUESTIONS?**

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

**HAVING TROUBLE LOGGING IN?**

To access the members only section on our website, enter your CBA member number as your account number (do not enter any leading 0's in your member number) and then enter your member number followed by your last name (all lower case with no punctuation or spaces) as your password. Forgot your member number? Call 312/554-2135.

# ETHICS EXTRA

BY KASIM CARBIDE

## Locating Your Client: The Benefit of Due Diligence and the Price of Oversight

Zealous representation of a client is a fundamental aspect of life as an attorney. But, does that zeal include locating a client? A recent case tells the tale of an attorney who failed to exercise due diligence in locating a client to assure the client's appearance at a legal proceeding. *American Access Casualty Co. v. Alcauter,* 2017 IL App (1st) 160775. American Access Casualty Company ("AACC") sold a policy to Jose Alcauter which provided that "AACC could deny Alcauter coverage in the event that he failed to cooperate with AACC in any legal proceeding." When Alcauter and Kimberly Krebs had an auto accident, Krebs sought arbitration of the matter and was awarded $10,000 on the basis that "no evidence was presented" at the hearing and that Alcauter did not appear "despite having received a Rule 237 notice to appear." The trial court confirmed the award.

AACC then filed a declaratory action on the basis that it was not required to pay the $10,000 judgment because Alcauter "was given notice of the mandatory arbitration date and time" and that Alcauter's failure to appear constituted a material breach of the cooperation clause. AACC filed a motion for summary judgment in the declaratory action, which alleged:

> "[A]t least two letters . . .were sent to Alcauter's verified address by his counsel, and at least one letter was sent to Alcauter by AACC. ***Notably, none of the letters were returned by the post office. ***Furthermore, Alcauter's counsel called [his] client approximately 24 hours prior to the arbitration to remind him to attend***Still, Alcauter failed to appear for the mandatory arbitration [and] counsel was unable to present Alcauter's version of the events…."

AACC's coverage counsel, James Newman, signed the motion.

At the hearing on AACC's motion for summary judgment, Newman asserted that Alcauter "received a phone call approximately 24 hours before the arbitration in which he confirmed his attendance." Newman argued that "there [was] no dispute ***that [Alcauter] was aware of the arbitration and he didn't attend." The court denied the motion for summary judgment, noting that it had "some unanswered questions***that raise issues of fact as to the notice," particularly the telephone call.

The declaratory action proceeded to trial. Cliff Panek, an attorney at the law firm retained to represent Alcauter at the arbitration, identified letters sent to Alcauter to inform him of the arbitration date. Panek also testified that it was his firm's practice to call a client 24 hours in advance of an arbitration to confirm the client's attendance. Since there was no motion in the file for a continuance, Panek concluded that the client had been contacted and would be present at the arbitration. Panek also attested he was aware he could check certain websites to determine whether a client was incarcerated, but testified there was "no reason to" check in this manner.

Of utmost importance was Krebs's counsel's introduction of several documents corroborating Alcauter's incarceration, including the information listing the arrest, Illinois Department of Correction (IDOC) records showing Alcauter being taken into custody, and the same information available on the IDOC website. The trial court held that AACC owed Alcauter coverage since he could not have been at the hearing, and ruled that AACC's evidence "just flat out [did not] hold water against the evidence that [Alcauter] was in jail."

Thereafter, Krebs, the opposing party involved in the crash, filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 against AACC and Newman. The motion stated both parties "failed to conduct a reasonable inquiry into Alcauter's whereabouts because, if it had, it would have found out that he was incarcerated." At the hearing for the motion on sanctions, Newman "conceded that he did not believe that anyone made a phone call to Alcauter in jail about the arbitration." The trial court imposed sanctions against AACC and Newman for $12,678.75 in attorney fees and $865.96 in costs because AACC presented "zero competent evidence that Alcauter willingly refused to cooperate."

AACC and Newman appealed the imposition of sanctions to the Illinois Appellate Court for the First District. The court examined Illinois Supreme Court Rule 137 requiring that a party's attorney of record sign every pleading, motion, or other document filed by the party. Ill. S. Ct. R. 137(a)(eff. July 1, 2013). The court reasoned that when an attorney signs a pleading it, in effect, constitutes a

*continued on page 49*

*Kasim Carbide, a Francis D. Morrissey Scholar at the John Marshall Law School, will received his J.D. in the spring of 2018*

### PRACTICE AREA UPDATES

The CBA is pleased to ipartner with CBA Newsstand by *Lexology,* a daily email that provides valuable and free practical know-how.Learn more at www.chicagobar.org/newsstand.

# LPMT BITS & **BYTES**

BY CATHERINE SANDERS-REACH

## ENCRYPTING DOCUMENTS AND COMMUNICATIONS

# Keep It Secret, Keep It Safe

A longer version of this article first appeared in *Probate & Property* Magazine, Vol. 31, September/October 2017

The security landscape has become overwhelming for many lawyers. The last ten years have witnessed an increasing awareness that a lack of compliance with security best practices may put lawyers and their clients at great risk. The updates to the Model Rules of Professional Conduct in 2012, now adopted by nearly 30 states, including Illinois, served as a wakeup call to the fact that security and technology awareness are an essential part of running a law firm. Rule 1.1 (Competency) now requires a lawyer to understand the benefits and risks of relevant technology. The expansion of the comments in 1.6 (Confidentiality) includes taking reasonable precautions to prevent client information from unauthorized access as well as inadvertent or unauthorized disclosure. Recent ethics opinions promulgated by bar associations and disciplinary agencies regarding email encryption, cloud computing, records management, and related subjects provide guidance on how a law firm should go about securing a client's confidential information.

It does not stop at ethics opinions. Law firms also hold information protected by statute and regulation, including data breach notification laws in 48 states, HIPAA, FINRA, PCI, and others. Real estate attorneys have special requirements in residential real estate transactions involving mortgage financing. Attorneys acting as title agents in mortgage financing transactions have data security requirements under obligations expressed by TRID (Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure), enforced by the Consumer Financial Protection Bureau.

*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.*

### Create a Risk Profile

To comply with regulations and ethical requirements law firms should first map out their risk profile. What kind of data does the firm store and access? Transmit? Is it data defined by statute such as PII (Personally Identifiable Information), PHI (Protected Health Information) or NPI (Non-Public Personal Information)? Financial information? Read the laws and regulations to see what guidance they may provide to help protect the data. Next consider what the firm may keep that is privileged or confidential. How is that data protected? Look at where the data is stored, how it is transmitted, who has access to it, and what steps the firm takes to protect it–is it enough?

### Follow Best Practices

Security is a moving target. Don't let the firm get too complacent in its practices. The most important thing a firm can do to protect client data is to keep up with the latest recommendations in cyber protection and keep attorneys and staff constantly vigilant to maintain security and privacy protocols. Ninety-one percent of cyberattacks begin with a spear phishing email and 96% of executives cannot distinguish a phishing email from a legitimate one 100% of the time, according to an All Covered security study. Learn to know the signs of scams and do not sacrifice security for convenience.

For instance, there has been a lot in the news about scams involving intercepted and redirected wire transfer information, especially in real estate transactions. Do not send wire instructions via email. Tell clients whether to expect this type of information from the firm. Let clients know that the firm will ***not*** request wire transfer or electronic payment information or, if the firm does, exactly how and what it will look like.

### Encrypt Email Attachments

If the firm sends out documents via email that contain protected or sensitive information, such as NPI or PII, then at the very least those documents should be encrypted via password protection. Current versions of Microsoft Office (versions 2013 & 2016), Adobe Acrobat Document Cloud, and Nuance Power PDF Advanced provide password protection, which trigger encryption of the document. This encryption is enabled by setting a password to open the document. Strong passwords (at least 12 random characters,) should be employed. Also, do not email the password to the document with the attachment or even in a separate email. Call the client or use a secure messaging application to send the password in a different way than the document was sent. Tools on the market make it relatively easy for someone to access file content from older versions of Microsoft Office documents, bypassing the password altogether. There are more comprehensive ways to protect documents and communication, but this method helps protect the document from inadvertent and unauthorized access.

### "No Cloud" Options

Some law firms have a mistrust of any product or service that employs "the cloud." For this discussion, "the cloud" is

a server accessed through the internet not on premises owned and controlled by the law firm. The marketplace is coming up with alternatives to sending documents and messages that land or stay on third-party servers. Early in the days of file transfer people used FTP (File Transfer Protocol) servers. FTP required one party to have an FTP server and the other FTP client (software) to access the server to directly migrate files back and forth. The FTP protocols were not inherently secure so FTPS and SFTP (File Transfer Protocol that supports TLS and SSL cryptographic protocols) were born. FTPS and SFTP are still an option, but require a certain amount of savvy from the end users and support from IT professionals. However, other tools are arriving on the market that make secure, cloudless file transfer easy and user-friendly.

Binfer (www.binfer.com), a Chicago-based startup, integrates with many email applications and has a standalone interface. The simple premise is that the service allows transfer of files and folders of any size directly and securely without using third-party servers. The service is fast, almost faster than email. Features include password-protected batches of files, access revoking, reports, chats, file tracking, and more. The subscription prices are based on the size of the files transferred monthly, with 40GB file transfer at $9 a month to start, and there are pay-as-you-go prices.

## Conclusion

Law firms who have the responsibilities to keep data secure can follow the American Land Title Association Title Insurance and Settlement Company Best Practices (alta.org/bestpractices) even if the firm's attorneys do not act as title agents. Other useful security guidance is available through SANS.org, *Locked Down: Practical Information Security for Lawyers* by Sharon Nelson, David Ries, and John W. Simek (ABA Publishing), and the National Institute of Standards and Technology (NIST) Computer Security Division Computer Security Resource Center. Applying security best practices and standards need not be onerous or make it difficult for the firm or its clients. Better to be safe, not sorry. ■

# SUMMARY JUDGMENTS

## REVIEWS, REVIEWS, REVIEWS!

# Four-Legged Courage


**A Ruff Road Home: The Court Case Dogs of Chicago**
**By Susan Russell**
**American Bar Association, 2016**

**Reviewed by Rosemary Simota Thompson**

Profiles in courage sometimes have two legs–but sometimes four. This book is testimony to the courage and dedication of Safe Humane Chicago, its volunteer advocates, and Cook County court personnel, as well as the animals profiled within its pages. Attorney and CBA member Susan Russell tells the stories of more than 20 dogs entangled in the court system due to owners' neglect, brutality, and crime. Thanks to the work of Safe Humane Chicago, she can now celebrate the rehabilitation and redemption of these traumatized critters using uplifting stories and fabulous photography of the dogs and their new owners. Before Safe Humane Chicago stepped in with the Court Case Dog Program, such K9's were often warehoused in crates as evidence–without socialization and minimal human interaction–and often met an unhappy end. As the book states, these dogs "did the time, but never committed the crime," as silent victims of unspeakable cruelty.

Safe Humane Chicago's volunteer advocates attend court proceedings, tracking the progress of the cases and the status of the animals–now living, breathing "property" of the City of Chicago–due to voluntary relinquishment or court order. Appropriate K9 candidates for the Court Case Dog Program are screened by shelter volunteers, dog trainers, and behavior professionals. Whether Great Danes or Chihuahuas, dogs are evaluated for temperament, trainability, and their willingness to work to reach their full potential. Each dog's story shows that canine courage and humane treatment can lead to second chances.

Presiding Judge of the First Municipal District of the Circuit Court of Cook County, Judge E. Kenneth Wright, Jr., has overseen courtrooms hearing animal abuse and neglect cases since 2003. In the forward to *A Ruff Road Home,* Judge Wright noted that society has become more enlightened about animal abuse, and the need to strengthen laws that deter and punish offenders. Illinois, he observed, has some of the toughest laws against animal abuse in the country. Judge Wright noted: "For more than a decade, Safe Humane Chicago's Court Advocates have been fixtures in Chicago courtrooms where animal abuse and neglect cases are litigated. They have increased awareness of the laws, and they are a powerful reminder of the innocent victims that cannot be in the room. "Working together with police, prosecutors and judges, Safe Humane Chicago has spurred progress by giving voice to the voiceless victims of animal abuse and neglect in Cook County.

### A Typical Tale

Inside a dilapidated house with blood-spattered walls and the fetid odor of excrement and urine, a felon tried to sell a bully-breed female with scars all over her nose and ears to an undercover cop. To show the female's fighting prowess, the felon initiated a battle with a male pit bull. The police moved in, and found more dogs without food or water in this hell hole. Of all the combatants, only a young, mixed bully-breed female and a battle-scarred Staffordshire Bull Terrier male survived.

Safe Humane Chicago named the female Wigwam, and the scarred male, Cheeks. After extensive rehabilitation in body, mind, and spirit, both of these K9's found their forever homes. When a soldier returned from multiple tours in Afghanistan and Iraq, his transition was marred by the memories of friends' violent deaths and the horrors of war. When he adopted Wigwam, things began to change and the healing was mutual. Cheeks had a happy ending, too; he was adopted into a loving family, earned his Canine Good Citizen Certificate from the American Kennel Club, and was even certified as a therapy dog.

Thoughtfully written and brilliantly photographed, *A Ruff Road Home* is more than a coffee table book of animal stories with happy endings. It unflinchingly depicts animal abuse and neglect, as well as the courage, compassion, and resilience of genuine heroes–whether two-legged or four-legged. It is a book about redemption against all odds–both for the K9's and the people who love them. ■

*Rosemary Simota Thompson is a Sole Practitioner and a member of the CBA Record Editorial Board.*

**Ethics Extra**
**continued from page 45**

certificate that the attorney not only read the pleading but, that to the best of that attorney's knowledge and information after *reasonable inquiry*, the document is well grounded in fact. Thus, AACC needed to prove that it exercised "a reasonable degree of diligence in seeking [Alcauter's] participation and that [Alcauter's] lack of participation represented a willful refusal to cooperate." When Newman learned of Alcauter's incarceration, as evidenced by a certified mail receipt signed by Newman, he did nothing for 29 days. Even after that Newman failed to investigate the information, and instead filed a witness and exhibit list in preparation for trial, and proceeded to trial "knowing that he had no factual basis to support AACC's position." For these reasons, the appellate court affirmed the sanctions.

In other words, Newman and AACC were left with about $14,000 in attorney fees and expenses, and public admonishment simply because Newman failed to follow up regarding the whereabouts of his client. The information was readily available on the IDOC website, and had Newman reasonably inquired, he would have found it. Further, Newman had the opportunity to prevent frivolous litigation even after he discovered the truth, but he failed to disclose the new information and proceeded to trial anyway.

*American Access Casualty Co. v. Alcauter* sets the minimum standard for locating and notifying clients about the status of their cases. Although locating a client is not always easy, when a client does not respond to the attorney, particularly concerning an important hearing or deadline, the attorney should consider the consequences of not making every attempt to locate the client.

So, how should an attorney deal with a disappearing client? A local retired litigator suggests, "My contracts, when I practiced law, contained a clause that the client would provide me immediate notice of changes of address and telephone numbers. I think in today's world I would include e-mail addresses [as well]."

When a client fails to respond through typical modes of communication, the attorney's obligation to locate the client requires exhausting all possible means available. An attorney may hire an investigator to locate the client. If the investigator locates the client and warns the client to maintain contact with the attorney and the recalcitrant client fails to comply, the investigator can serve the client with the attorney's motion to withdraw for failure of the client to cooperate with the attorney. The investigator may file an affidavit detailing the attempts to serve and actual service of pleadings, motions, or other relevant documents. This case demonstrates and warns all current and future attorneys: The effort to keep track of your client is typically minimal, but the failure to take all necessary measures when the client does not respond may be costly both in dollars and in loss of reputation. ■

**Murphy's Law**
**continued from page 23**

Center in Cleveland…**Eric E. Walker**, a partner at Perkins & Coie, was named to American Bankruptcy Institute's 2017 40 under 40 Inaugural Class…**Jonathan S. Jennings**, a partner at Pattishall McAuliffe Newbury Hilliard & Geraldson LLP, has been re-elected to the Board of Directors for the Public Interest Law Initiative… Justice **James Wexstten** (ret) and **Jayne Reardon,** Director of the Illinois Supreme Court Commission on Professionalism, will receive the Illinois Bar Foundation's Distinguished Service to Law & Society Awards, and Justice **Mary Anne Mason**, Illinois Appellate Court, First District, will receive the Illinois Bar Foundation's 2017 Honorary Fellow Award.

### Condolences

Condolences to the family and friends of **George Bullwinkle, Jr**.

## Enhance Your Resume, Expand Your Professional Contacts, Make New Friends!

By getting more involved in the CBA, you can raise your profile in Chicago's legal community and meet other lawyers whose paths you may have never crossed. Even a small time commitment can reap big rewards. These are just a few examples of speaking, networking, leadership and other opportunities available through your CBA membership.

- Speak at a seminar, committee meeting or community event
- Write an article for the **CBA Record**
- Become a legislative liaison
- Evaluate judges through the CBA's Judicial Evaluation Committee
- Volunteer for a pro bono project
- Help out at a YLS community outreach project
- Do something fun...play in the CBA Symphony, sing in the CBA Chorus, perform in Christmas Spirits (the CBA holiday show), or help produce a legal cable TV show

For more information on these opportunities or to learn how to become more involved in the CBA, contact CBA Membership Director Karen Stanton at 312/554-2131 or kstanton@chicagobar.org.

# Office Services Showcase


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

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

---

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

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

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

---

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

866.782.9300
www.HotelEngine.com

HOTELENGINE.