**NWSBA CLE Discusses the Inevitable Death and Taxes**

“Nothing is certain but death and taxes,” according to Benjamin Franklin.

The Northwest Suburban Bar Association focused on both those certainties March 7, at its Spring Dinner Meeting/CLE.

The NWSBA’s own Joel M. Weiner discussed important 2013 tax issues for both law practices and clients. Scott Renfroe of the Attorney Registration & Disciplinary Commission covered lawyers’ ethical obligations, plus practical considerations when it comes to law practices, including what happens when an attorney dies.

Weiner’s presentation introduced the four major tax changes that have taken place this year: a new bracket, health care, Social Security and Medicare.

The American Taxpayer Relief Act of 2012 created a seventh tax bracket at the high end of 39.6 percent, applicable to individuals with adjusted gross income of more than $400,000 or joint filers with incomes of more than $450,000. “The new law will cost everyone in those categories a significant amount of increased taxes,” said Weiner.

In addition, the two-year, 2-percent temporary tax holiday for the worker portion of Social Security taxes expired, affecting all wage earners. “When people say, ‘Hey, I’m making less money now,’ they’re right,” said Weiner. The tax is on earned income of up to $113,700.

The Capital Gains tax increased from 15 to 20 percent for those in the 39.6 percent tax bracket and some personal exemptions were lost at the $300,000 level for married couples and at the $250,000 level for single filers. “This is going to affect a lot more people,” said Weiner.

The law DID retain some tax credits, including the $1,000 child tax credit and the earned income credit. Education incentives were kept, as were a number of individual tax extenders.

Social Security recipients received a 1.7-percent cost-of-living adjustment this year. Earners are now paying Social Security taxes on the first $113,700 in income, compared to $110,100 in 2012, and the maximum benefit is now $2,533 a month.

The Retirement Earnings Test Exempt Amounts also increased. Thus, if a client who’s about to turn 62 asks if he should start taking Social Security, Weiner said, “The answer is ‘maybe.’ You really have to do some math to see what’s in the best interest of your clients.”

Weiner also briefly covered Medicare, its various costs and its various services. The bulk of his presentation was on the Affordable Care Act, also known as “Obamacare,” with Weiner careful to stay away from the law’s politics.

The goal of the act was to provide insurance to everyone. “But that doesn’t mean there’s not a cost. It doesn’t mean there’s not taxes,” he said.

**Medicare**

Continued on Page 6
Over the past few years, politicians have been providing the public with more and more information that is inaccurate. And that’s led to people checking the information. For example, after we have a presidential debate “fact-checkers” verify the accuracy of the information the debaters provided.

Currently, Social Security is the topic of inaccuracies. It is sad that politicians use Social Security as a political hot potato. Almost every person in this country will have their lives touched by the Social Security system. Needless to say, when the politicians start talking about making changes to Social Security, everybody sits up and listens. Social Security and Medicare are the two largest federal programs, accounting for 36 percent of federal expenditures in fiscal year 2011.

The Social Security Act was passed in 1935, in the midst of the Great Depression. It relied for its core principles on the concept of “social insurance,” and contained the first national unemployment compensation program and aid to states for various health and welfare programs. Here is some information on that program, way back when: Individuals who received the first Social Security payments between 1937 and 1939 were paid a lump sum. The first check went to a man named Ernest Ackerman and was for 17 cents. The first monthly benefit check went to a woman named Ida May Fuller in Vermont on Jan. 31, 1940. The check number was 000-001 and was for $22.41.

The problem with the Social Security Trust Fund running out of money has existed since the inception of the Social Security Act, in 1935. When the politicians start talking about Social Security being bankrupt by 2016 or the need to reduce Social Security benefits or increase taxes, know that this is simply panic peddling. The Social Security Trust fund is solvent until at least 2033. (See http://www.cbpp.org/cms/index.cfm?fa=view&id=3774). This information comes from the Chief Actuary of the Social Security Administration, Stephen C. Goss. The 2033 date is a statistical calculation based on certain assumptions, which attempt to predict how the economy will perform for the next 20 years. I am not sure how even an actuary is comfortable predicting how the economy will perform for the next 20 years.

The problem that must be solved by 2016 is the vote to transfer money from the Social Security Trust Fund to the Disability Insurance program. This is similar to the vote to increase the national debt. The difference between increasing the national debt and allotting money for the Social Security Disability program is that the money for the Social Security Disability program is already available in the Social Security Trust Fund. The vote still takes an act of Congress. The politicians appear to be playing “chicken” on the vote like they did with the vote on increasing the national debt.

Maybe the politicians should spend 36 percent of their time trying to solve any problems with Social Security Act, if there is a problem, instead of playing politics with it.
The NWSBA would like to thank all its members who volunteered to work the Pro Bono Desk and as Court Facilitator in March at the Third District Circuit Court. Your time and effort is very much appreciated.

Pro Bono Attorneys:
- Brad Chelin
- Ellen Yearwood
- William Knee
- Lynn Palac
- Greg Martucci

Paternity Facilitators:
- Patti Levinson
- Becky Zeilenga
- Nichole Waltz
- Nicholas Figiel

Court Facilitator Attorneys:
- Michael Meschino
- David Pinsel
- Tony Calzaretta
- Brian Radke
- Susan Polachek
- Angel Traub
- David Jordan
- Dianne Ruthman

Legal Self Help Center
- Jeanette Danicki

Attorneys who volunteer for the Pro Bono Desk assist pro se litigants by answering general questions regarding small claims, landlord/tenant and divorce cases. The desk is open on Friday afternoons from 1:00 pm to 3:00 pm or until the last court call is done.

The Court Facilitator Program benefits the attorneys as well as the Judges who preside over Domestic Relations cases. In addition to assisting pro se litigants, attorneys who volunteer for this program are there to help settle all pending Domestic Relations cases. This program takes place on Thursdays from 9:00 am - 12:00 pm. We also need facilitators to assist the paternity call on Thursdays from 9:00 am - 12:00 pm.

Do your part! Sign up for these important programs and help give back to the community! For more information contact Connie Appier at the NWSBA office, 847-221-2601 or cappier@nwsba.org.

WestlawNext Available at the Third District Courthouse

Cook County Law Library would like to announce the availability of free access to WestlawNext at the Third Municipal District Court House in Rolling Meadows. The WestlawNext computer terminal is located in the Public Defender’s Office on the main floor, Rm. 141, and is available Monday through Friday, 8:30 am to 4:00 pm. WestlawNext is the latest iteration of the Westlaw legal research database service. WestlawNext has been described as “Google for lawyers”, i.e. very intuitive. WestlawNext allows users to search without having to first choose a database.

Cook County Law Library would like to thank the Public Defender’s Office for cooperating with the Library in this endeavor and providing the space necessary for this terminal.

If you have any questions, comments, or concerns, please feel free to contact Justin Piper at justin.piper@cookcountyil.gov.
Businesses that employ 50 or more people must offer an “affordable” plan for all employees or pay a penalty of $750 for each worker to the federal government. There are currently no caps on health insurance premiums. The Internal Revenue Service is the enforcement agency, he said; starting with the 2012 tax year, employers must report the aggregate cost of employer-sponsored health coverage on their employees’ W-2 forms. This is “for information only,” Weiner said. There’s no enforcement until 2014.

Scott Renfroe raised the uncomfortable specter of death and disability -- the lawyer’s own -- and how to plan for these situations.

The law’s effect can already be seen in mergers of hospitals and doctor groups. “Trusted partnerships are key to this whole thing. They’re going to form partnerships of all these providers. When an individual needs health care, he goes in and the members of the group will get paid as one,” not doctors individually.

“I don’t think anyone has a clue as to how it’s going to work,” he added. “The unfortunate part of this is that people who have made these laws don’t have a clue as to how it’s going to work.”

Weiner covered the law’s various intricacies, including rules for various-sized businesses, the employer mandate (a $2,000 tax paid by the employer on all full-time employees if the employer does not offer health insurance). Full-time is 30 hours a week, but 120 hours of part-time equals one full-time person), dependent coverage (children only, and not spouses), what’s considered “affordable,” required coverage and employer liability. On that last point, Weiner said, the employer is liable if coverage is unaffordable or does not provide minimum value, with a penalty of $2,000 for each full-time employee in excess of 30 employees.

The IRS will track who has insurance. Next year will usher in taxes to pay for ObamaCare, including taxes on health insurers on premiums collected, new fees on pharmaceutical companies, an increase in the IRS threshold for medical itemized deductions; a tax on medical devices, a major reduction in flexible savings accounts, additional Medicare tax, a Medicare surtax and even a 10 percent excise tax on indoor tanning services. “They’re thinking of taxing life insurance, annuities ... All these things are in the works.”

He was asked, “What’s the good news?”

“I can’t find it! No, in all seriousness, I’ve been in financial services for 28 years. I’ve never seen anything like this.”

**Death and Disability**

Scott Renfroe raised the uncomfortable specter of death and disability -- the lawyer’s own -- and how to plan for these situations.

The American Bar Association in January published a “scary, scary, scary” story, “Death of a Practice,” which centered on a Kansas City attorney’s practice and what happened as her cancer returned and she became more and more ill, even as she took on more and more clients.

“She did not have a plan in place,” said Renfroe. “The client work eventually got done, but it came at tremendous cost to other lawyers in the community who had to step up and take over. There was little or no money to be earned (by the other attorneys), the cases were all in a state of emergency and almost all were done pro bono.”

He posted other possibilities, such as the case of a young lawyer in his 20s who dies in an accident. His practice is on his laptop. He sole survivors are his parents, who don’t know how to turn the laptop on.

Renfroe told attorneys to spend time planning for such scenarios, so family members aren’t left in the lurch.

“It’s important you have a plan, you put it in writing and discuss details with at least one other person, preferably an attorney.”

*Continued From Page 1*
That on February 15, 2013, Jay A. Andrew, as the Secretary of the Northwest Suburban Bar Association, received the recommendations of the Nominating Committee for the following respective offices:

**PRESIDENT:**
Michael A. Meschino

**EXECUTIVE VICE-PRESIDENT:**
William F. Kelley

**FIRST VICE-PRESIDENT:**
Ronald F. Wittmeyer

**SECOND VICE-PRESIDENT:**
Nichole M. Waltz

**TREASURER:**
Jay A. Andrew

**SECRETARY:**
Michael Rothmann

**BOARD OF GOVERNORS:**
Allen S. Gabe, Colin Gilbert, Michael Lightfoot & Joseph Vito

Election of Slate will take place during Judges’ Night
Thursday, April 18, 2013 at Rosewood Banquets
You must be a member in good standing in order to cast your vote.

We thank Past President, Martin Glink, for his efforts as Chairman of the Nominating Committee, and extend our thanks to Nominating Committee Members: William Ensing, Angela Peters, Judge Ketki Steffan, and Ronald F. Wittmeyer.
In addition to being like-kind, to qualify under §1031, investment intent must be the taxpayer’s primary motivation for holding the replacement property. The IRS conceded that all of the requirements of a §1031 exchange had been met. The only dispute was whether the property had been held with investment intent at the time of the exchange. The Tax Court had previously ruled that to qualify under §1031, investment intent must be the taxpayer’s primary motivation for holding the replacement property.4

The IRS relied on the case of Goolsby v. Commissioner of Internal Revenue, the textbook case for §1031 exchanges. In Goolsby the taxpayers made the purchase of the replacement property contingent on the sale of their personal residence. In Reesink the decision to sell their personal residence came almost six months after purchasing the replacement property.

Surprisingly, the Court seemed to place the most weight on the testimony of an IRS witness. Mr. Reesink’s estranged brother. The brother testified that the Taxpayers had told him on several occasions that they did not plan to sell their personal residence until their children were out of high school. Noting that the Taxpayer’s eldest son was only 15 years old when they moved into the replacement property and was still in high school throughout all of the events surrounding the exchange, the Court found that the brother’s testimony supported the proposition that the replacement property was held with investment intent at the time of the exchange.

Conclusion

Although the Reesink decision did not establish any quantifiable guidelines, it did shed new light on factors that can influence a favorable outcome.

Property owners who want to convert replacement property into their residence should consider the following:

- Was there a bona fide effort to rent the replacement property? If so, make sure to document those efforts.
- How much time has passed between the acquisition of the replacement property and the conversion to a residence? The longer the better.
- What circumstances that led to the decision to move into the property? Be sure to document them, perhaps in a contemporary memo to the house file.

Reesink shows that taxpayers can prevail against the IRS. Holding time is important when analyzing an exchange, but it is not the only factor. Be sure to consider all of the facts and circumstances to build a winning case.

Section 1031 of the Internal Revenue Code permits taxpayers to exchange “like-kind” properties, rather than sell them outright. No gain or loss is recognized on the exchange, so the payment of taxes on any gain is deferred until some future date.

The taxpayer’s primary residence does not qualify as investment property under §1031. However, situations may change over time. What happens if the replacement property is held for investment at the time of the exchange, but the taxpayer later decides to convert it to his primary residence? Will that disqualify an otherwise valid exchange? There is no easy answer. A “facts and circumstances” test is used to determine the merits of each case.

In the case of Reesink v. Commissioner, the Taxpayers successfully defeated an IRS challenge to their exchange. The replacement property consisted of a single-family home, plus an undeveloped adjacent lot. Part of the purchase price was financed, and the loan application indicated that the property was acquired for investment purposes.

Their real estate agent advised the Taxpayers that they could rent the property for $3,000 per month. They posted flyers throughout town advertising the property for rent but did not publicize it in the newspaper, a strategy they had used for other investment property they owned. On two occasions potential renters visited the property, but ultimately decided that it was out of their price range. The Taxpayers never lowered their asking price, nor did they ever find tenants. A worker who performed maintenance at the property testified that he saw “for rent” signs posted every time he was there, which he estimated to be at least 10 or 12 times.

A few months after acquiring the replacement property the Taxpayers faced a liquidity problem. They owned three properties, all with mortgages, and also had a home equity line of credit. Coupled with the husband’s loss of income due to disability and their inability to rent the replacement property, their financial situation led to the difficult decision to sell their primary residence.

The Taxpayers considered two options: temporarily move in with a relative; or move into the replacement property. They did not consider purchasing a less expensive home. Ultimately they moved into the replacement property and continued to live there at the time their case was decided. Almost eight months had passed from the time the property was acquired in the exchange, until they moved into it as their primary residence.

The IRS conceded that all of the requirements of a §1031 exchange had been met. The only dispute was whether the property had been held with investment intent at the time of the exchange. The Tax Court had previously ruled that to qualify under §1031, investment intent must be the taxpayer’s primary motivation for holding the replacement property.

The IRS relied on the case of Goolsby v. Commissioner of Internal Revenue, the textbook case for §1031 exchanges. In Goolsby the taxpayers made the purchase of the replacement property contingent on the sale of the taxpayer’s former personal residence. The taxpayers made only minimal attempts to rent the property. Before purchasing it, the taxpayers sought advice from their Qualified Intermediary as to whether they could move into the property if renters could not be found.

Within 2 weeks after purchasing the property, the taxpayers began preparations to finish the basement, including having a builder obtain permits for the construction.

In contrast to Goolsby, the Taxpayers in Reesink placed flyers throughout town, showed the property to potential renters, and waited almost eight months before moving in. More importantly, in Goolsby the taxpayers made the purchase of the replacement property contingent on the sale of their personal residence. In Reesink the decision to sell their personal residence came almost six months after purchasing the replacement property.

To find out more, plan to attend the NWSBA Real Estate Committee’s next seminar on May 21st. Our topics will be: “§1031 (Starke) Exchanges: What Every Real Estate Attorney Needs to Know”; and “Cram It: Real Property Issues and Bankruptcy”. See Page 19 for Registration information.
Debtor-Creditor CLE
Scott Kuntz, Chair

April 3, 2013
5:45 PM - 9:00 PM
Forest View Education Center
2121 S. Goebbert Road
Arlington Heights, IL
Parking Lot B
Entrance #1 located off Goebbert Road

$50 - Members
$100 - Non-Members
After March 27th:
$60 Members & $110 Non-Members

Seminar will begin promptly at 5:45 PM and will include materials and a light dinner.

To receive full credit, attendees MUST be checked in by 5:45 pm.

This program is appropriate for ALL LEVELS.

Attorney fees and getting paid –
A perspective from the bench.
Hon. Sandra Tristano

Recent statutory changes affecting post-judgment procedures.
Scott C. Kuntz, Kuntz & Kuntz

Forcible Entry and Detainer suits:
Basic rules and requirements from the Plaintiff’s perspective.
Daniel A. Wolf, Schwartz Wolf & Bernstein LLP
Mary Brady, Guthrie and Brady

The Home Repair and Remodeling Act:
Recent statutory amendments and case law can significantly impact your clients.
Jay A. Andrew, Drost, Gilbert, Andrew & Apicella, LLC

Does Your Marital Settlement Agreement contain an implied hold harmless that is non-dischargeable in bankruptcy?
Daniel L. Robin, Daniel K Robin Ltd.

Can Bankruptcy Trustees attack divorce settlement agreements on the grounds of fraudulent transfers
Paul M. Bach, Bach Law Offices

Criminal Law CLE
Debbie Cohen, Lynn Palac & Matthew Medina
Co-Chairs

April 11, 2013
4:45 pm - 7:00 pm
Forest View Education Center
2121 S. Goebbert Road
Arlington Heights

$70 members / $100 non-members
After April 4, 2013:
$80 members / $110 non-members

Seminar includes a light dinner and materials.

The seminar will begin promptly at 4:45 pm. To receive full credit, attendees MUST be checked in by 4:45 pm.

This program is appropriate for ALL LEVELS.

RSVP by April 4, 2013 to avoid late registration fees.
(April) in 1865 Confederate General Robert E. Lee’s Army of Northern Virginia and Union General Ulysses S. Grant’s Army of the Potomac waged the last of their major Civil War battles at Five Forks, VA (a junction about ten miles southwest of Petersburg). In the early morning of this fateful rainy Saturday, Lee had ordered General George E. Pickett to “Hold Five Forks at all hazards”, which proved to be impossible. Superior Union forces under Union field commanders Generals Philip H. Sheridan and Gouverneur Warren attacked and successfully dislodged the outmanned Confederate forces at Five Forks. Deemed a Union victory because it forced Lee to abandon his plan to break out from the ever-tightening siege at Petersburg and escape southwest via the Southside Railroad and join General Joseph E. Johnston’s Confederate army in NC and because it additionally forced him to evacuate both Petersburg and the Confederate capital city of Richmond. On Sunday, April 2nd, Confederate President Jefferson Davis, who had days earlier sent his own family southward, led the morning Confederate evacuation of Richmond and headed south. Thereupon, Union forces entered the Confederate capital to a scene of utter confusion and raging fires started both by Confederates destroying government documents and looters. President Abraham Lincoln, who was a guest of General Grant at his nearby army headquarters at City Point, VA, toured, with his 12-year-old son Tad, the almost completely destroyed capital city on Tuesday, April 4th. The presidential party traveled up the James River from City Point on the U.S.S. Malvern and landed in Richmond near the infamous Libby Prison. Upon his arrival, Lincoln was confronted by a group of African-Americans one of whom exclaimed, “Bless the Lord, there is the great Messiah!” and knelt down before the President. Lincoln quickly responded that “You must kneel to God only, and thank Him for the liberty you will hereafter enjoy.” With his small escort, Lincoln wanted to tour the Confederate White House. He sat in the Confederate President’s office chair and was heard to exclaim: “Thank God that I have lived to see this. It seems to me that I have been dreaming a horrid dream for four years, and now the nightmare is over.” Lee, for his part, was forced to take his beaten army westward (not southward) hoping to somehow later to be able to link-up with Johnston’s forces in the Carolinas. On Friday, April 7th, Grant wrote Lee that “The result of the last week must convince you of the hopelessness of further resistance on the part of the Army of Northern Virginia in this struggle. I feel that it is my duty to shift from myself the responsibility of any further effusion of blood.” The following day, Lee replied to Grant that he did not agree with “the opinion you express of the hopelessness of further resistance...” however, “I reciprocate your desire to avoid useless effusion of blood, and therefore... ask the terms you will offer on condition of its surrender.” On Saturday, April 8th, a number of Lee’s subordinate generals confronted him with the unpleasant fact that the army was trapped and would not be able to break out and join Johnston. They then urged their commander to commence surrender negotiations, which he did. The Confederate defeat at the Battle of Five Forks led inevitably to the Palm Sunday, April 9, 1865, celebrated surrender of Lee’s Army of Northern Virginia to Grant at the home of Wilmer McLean at Appomattox Court House.

Crystal Lake resident Joseph C. Morton is Professor Emeritus at Northeastern Illinois University and author of The American Revolution and Shapers of the Great Debate at the Constitutional Convention of 1787. demjcm@comcast.net
IRS Practice and Procedures

By: Joshua Nesser, Lavelle Law, Ltd.

Employment Taxes and Severance Payments – In Re Quality Stores, Inc., 693 F.3d 605 (6th Cir. 2012)

**Why This Case is Important:** With the current state of the economy, many businesses are being forced to cut expenses in any way possible, including by making massive reductions in their number of employees. One question that both employers and their employees may have in these circumstances is whether employment taxes must be paid on any severance payments paid to employees whose jobs are involuntarily terminated. This case resolved that issue.

**Facts**

In Re Quality Stores was related to an agricultural retailer that closed 63 stores and nine distribution centers nationwide and terminated 75 employees. Later, the company closed its remaining 311 stores and terminated its remaining employees. In doing so, the company agreed to make severance payments to any employees whose jobs were involuntarily terminated. These payments were not tied to the receipt of state unemployment compensation and were not attributable to the provision of any particular services by the employees. The company did not require employees to prove that they were unemployed in order to receive severance payments. Because the severance payments constituted gross income to the employees for federal income tax purposes, the company reported the payments as wages and withheld federal income tax. It also paid employment taxes on the payments. The company later determined that the severance payments constituted Supplemental Unemployment Compensation Benefits (SUB payments) and not wages. Therefore, it filed requests for refunds of all FICA taxes paid to the IRS.

**Law and Conclusion**

The first question in this case was whether the severance payments were in fact SUB payments. To be classified as a SUB payment, a payment must be (1) an amount paid to an employee; (2) pursuant to an employer’s plan; (3) because a payment must be classified as a SUB payment, any payment must be (1) an amount paid to employees whose jobs are involuntarily terminated. This case resolved that issue.

Continued on the Next Page

**State Sales Taxes on Shipping Charges – IDOR General Information Letter 12-0029-GIL (June 15, 2012)**

**Why this Development is Important:** Illinois business owners often assume that amounts they charge their customers for shipping products are not subject to state sales taxes, based on the reasoning that shipping is a service and sales taxes are not charged on services. However, in certain instances, retailers are required to collect and pay sales taxes on their shipping charges. While the interpretation of Illinois sales tax laws with respect to shipping charges has always been somewhat unclear, this recent clarification makes it much easier for retailers to structure their transactions in such a way that no sales taxes must be paid on shipping charges.

**Law**

The Illinois Retailers’ Occupation Tax Act says that sales taxes are imposed upon people or businesses engaged in the business of selling “tangible personal” property at retail. According to regulations, sales taxes are imposed on shipping charges if those charges are included in the selling price of a product. If the buyer and seller agree on the delivery charges separately from the price of the product, the delivery charges are deemed to not be included in the product’s selling price and are not subject to sales taxes. In the past, retailers have tried, sometimes unsuccessfully, to meet this requirement (and therefore avoid paying sales taxes on shipping charges) by separately stating the purchase price and shipping charge on invoices or even using two separate contracts – one for the purchase of the product and one for its delivery.

**Recent Clarifications**

Finally, in this General Information letter, IDOR clarified this issue by stating that separating delivery charges from the purchase price on an invoice is not sufficient to avoid paying sales taxes on the shipping charges, while using two separate contracts is. If business owners feel that using multiple contracts is too much of a burden, they must file annual returns with IDOR to determine whether their purchasers have the right to pick up products directly from the seller, at no charge, or to request delivery at an additional charge. If they cannot, IDOR will acknowledge that any delivery charges were separate from the product’s selling price and will not require the seller to pay sales taxes on those charges.

The NWSBA Federal Tax Committee meets the second Wednesday of every month, except during the summer from 12:15 p.m. to 1:15 p.m. at Riley’s Cafe, 2765 Algonquin Road, Rolling Meadows, IL 60008. Please feel free to contact us. You can contact the committee chair Tim Hughes with any questions at 847.705.9698 or thughes@lavellelaw.com.
WHY ATG?

I have experience with other underwriters—ATG’s service is the best, hands-down. Placing a title order is fast and efficient thanks to their technology, but the human side is great too. And you can’t beat ATG for CLE. The quality, variety, and convenience are all outstanding. I’m in close contact with ATG staff on every transaction. As soon as ATG has closing figures, I know I’ll have my client’s HUD-1 or bottomline amount. Being an ATG member makes it easy to earn referrals; people have a positive experience with my services through ATG, they pass that on. ATG works for me. I mean that in every sense of the word.

Jon Sherry, Chicago
ATG Member since 2006

NORTHWEST SUBURBAN BAR ASSOCIATION

Real Estate Committee CLE
Scott Longstreet, Chair

May 21, 2013
5:45 pm - 9:00 pm
Forest View Education Center
2121 S. Goebbert Road
Arlington Heights
Parking Lot B
Entrance #1 located off
Goebbert Road

$50 members / $100 non-members
After May 14th:
$60 members/$110 non-members

Seating will include a light dinner and materials
The seminar will begin promptly
at 5:45 pm. To receive full credit
attendees MUST be
checked in by 5:45 pm.

This program is appropriate for
ALL LEVELS
RSVP by May 14, 2013
to avoid late registration fees.

$1031 (Starker) Exchanges: What Every Real Estate Attorney Needs to Know,
Hugh Pollard,
First American Exchange Company

Cram It: Real Property Issues and Bankruptcy,
Lorinne J.Cunningham,
Newland & Newland, LLP

Real Estate 5/21/13
______________________________________________________________________
Name       ARDC #
______________________________________________________________________
Address
______________________________________________________________________
City/State/Zip
______________________________________ ___________________________
Telephone     Email
____________________________________________    ________________________
Credit Card #: Sec. Code       Expiration Date
____________________________________________
Signature
Matrimonial Law Committee - Recent Decisions
By: Howard Bernstein

CUSTODY: STANDING BY NON-BIOLICAL PARENT


Petitioner and Respondent were in a long term relationship and agreed that Respondent would conceive children and they would raise the children as co-parents. Respondent gave birth to two children. The youngest child was born in 2008 and in 2009, the relationship ended. Responder refused to allow Petitioner to have any contact with the two children conceived by Respondent as a result of artificial insemination. Petitioner filed an action to establish parenthood and to set child support, custody and visitation. Respondent filed a 2-619 motion to dismiss the case because Petitioner lacked standing because Petitioner was not a biological parent and did not adopt the children. Trial court dismissed Petitioner’s petition with prejudice and Petitioner appealed. The Appellate Court reversed the trial court citing In re Parentage of M. 203 Ill.2d. 526 which involved a man who was in a relationship with a woman who decided to have the woman seek a sperm donor so that she could conceive a child and they would raise the child together as co-parents. The relationship did not last very long after the child was born and the biological mother filed suit to have her ex-boyfriend support the child. The former boyfriend alleged he had no duty to support the child because he was not the biological parent of the child. The ex-boyfriend was ordered to pay child support on the common law theory that he participated in the artificial insemination procedure by verbally consenting to raise the child as a co-parent even though his sperm was not used. Using the same theory, both women in this case participated in the decision to have Respondent artificially inseminated and they agreed to co-parent the children. The case was remanded for hearing on the best interests of the children for a custody determination. The loser would be directed to contribute to the support and there would be visitation rights set by the trial court just as in any other parentage case.

CHILD SUPPORT - CONTRIBUTION FOR COLLEGE


In the judgment for Dissolution of Marriage, Respondent (mother) was granted sole custody of the only child of the parties. Respondent filed an amended petition to modify custody and served a request to admit facts on Respondent consisting of 350 items. Respondent did not comply with the request to admit facts. Petitioner filed a motion to compel responses and a motion for partial summary judgment because Respondent’s failure to respond to the requests to admit facts amounted to an admission of those facts. The trial court entered a partial summary judgment in favor of Petitioner stating there had been a substantial change in circumstances and that Petitioner should be granted custody of the child as it was in the best interests of the child. The court also said the admission of facts by failure to respond was valid only up to the date of the ruling and allowed Respondent to keep possession of the child until there was a trial on the custody issue. Respondent appealed. In reversing the trial court, the reviewing court held that summary judgment should only be entered when a judgment is clear, certain and definite and enforceable by the court. The Appellate Court affirmed the trial court. Husband orally testified as to the terms of the oral agreement; that the terms were clear, certain and definite and enforceable by the court. The Appellate Court refused husband’s assertion that there was no enforceable agreement until the agreement was reduced to a writing and signed by the court.

Emancipation in the MSA was defined as the “child’s reaching age twenty-two, so long as the child is attending college full-time or completing college, or terminating full-time attendance at college, whichever shall first occur.” The MSA also provided for Petitioner to assume the expenses of the children in day care and private school, and that the support provision was in “in lieu of any other obligation by Respondent for education support.” Petitioner filed a petition to modify child support pursuant to Section 505(a) and for Respondent to pay for the college expenses of the children. The trial court modified Respondent’s child support obligation under Section 505(a). Respondent appealed stating that the Court should have used Section 513 (a)(2) in determining his obligation to contribute to college expenses. On appeal, the trial court was affirmed, with one dissent. The majority held that the language of the MSA clearly showed an intention to cover college obligations by having child support in lieu of Respondent’s obligation to contribute towards college expenses. The dissenting opinion would have used Section 513 (a)(2) in fixing a contribution for college because the MSA did not have an existing obligation to contribute to college. It was error to create responsibility for educational expenses by modification of child support pursuant to Section 505.

ORAL MSA ENFORCED


Parties were involved in a contested divorce. Husband was convicted of attempting to murder his wife and was sentenced to prison. Nine months after being sentenced to prison, the case came up for trial and husband’s attorney represented to the court that there had been an oral property settlement agreement that awarded the wife 52% of the marital assets and 48% to the husband. The Agreement also provided for the sale of an automobile and payment to the husband’s attorney for fees from the sale of the automobile. The judge read the terms of the oral agreement into the record and husband’s attorney represented to the court that the client agreed to these terms. Husband refused to sign the written judgment that contained the terms of the oral agreement. Husband claimed he had been coerced into the agreement. The sales price for the automobile was not agreed upon nor was there an agreement to pay his attorney’s fees from the sale of the automobile. The trial court entered a written judgment and husband appealed. Trial court’s decision was affirmed stating that an attorney may bind his client to an agreement where, as here, the attorney had authority to do so. Husband knew of the trial date and could have been present in court and the terms were not unconscionable when consider-
Deferred Action: Bridging the Gap to Comprehensive Immigration Reform

By: Alexis D. Martin, Newland & Newland, LLP

On June 15, 2012, the Obama Administration demonstrated its optimism for comprehensive immigration reform by announcing the Deferred Action for Childhood Arrivals (“deferred action” or “DACA”) program. Through DACA, the Administration shifted policy by classifying certain immigrants as low priority for removal. Thus, the Department of Homeland Security (“DHS”) can focus its enforcement resources on threats to national security and public safety. To implement this policy, deferred action grants individuals protection from removal for two years, stops the accrual of unlawful presence, and allows for Employment Authorization. It does not, however, provide any lawful status or pathway to residence or citizenship.

First, deferred action protects individuals from removal for a two-year period. At the end of the two years, the immigrant may apply for a renewal. Under current policy, there is no limit to the number of renewals for which an eligible immigrant can apply.

In addition, an individual whose case has been deferred is not “unlawfully present.” An individual’s accrued unlawful presence has serious immigration consequences for purposes of future inadmissibility. Thus, deferred action stops the clock on an individual’s accrual of unlawful presence, but does not excuse previous or subsequent periods of unlawful presence.

Finally, deferred action recipients can simultaneously apply for Employment Authorization, which has created some controversy. Once an individual has received Employment Authorization, she may obtain a Social Security card. Most states grant an individual her driver’s license if she has a Social Security card and meets all other qualifying criteria. However, several states refused to issue a driver’s license to deferred action recipients because they were not “lawfully present” under federal law. In response, on January 18th, U.S. Citizenship and Immigration Services (“USCIS”) clarified that DHS considers deferred action recipients to be “lawfully present,” though not “in lawful status,” thus removing the states’ proffered rationale to refuse driver’s licenses to deferred action recipients.

The benefits of deferred action are only available to a specific group. To be eligible, an individual must have been under the age of 16. As of June 15, 2012, the applicant must have entered the country without inspection or her lawful status must have expired. Moreover, the applicant must have continuously resided within the country for the five years preceding the official memorandum establishing deferred action, and be physically present in the United States when she submits her application. Thus, each applicant must demonstrate her physical presence in the United States on the present day, on June 15, 2012, and on June 15, 2007. In addition, eligibility is restricted to a strict age group: as of June 15, 2012, applicants must have been at least 15 years of age or under the age of 31. Furthermore, the applicant must currently attend school, have graduated from high school, have her general education development certificate, or be an honorably discharged veteran of the Coast Guard or Armed Forces. Finally, an applicant is not eligible if she has any convictions for a felony offense, significant misdemeanor, three or more misdemeanors, or if she poses a threat to national security or public safety.

Continued From Previous Page

For all its benefits, however, deferred action does not grant lawful status, a path to residency, or a path to citizenship. Yet, undocumented immigrants can rest assured that emerging onto the government’s radar by applying does not expose them or their families to more risk. USCIS policy mandates that information provided in deferred action petitions, regarding applicants and their family members, is protected from disclosure to U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”) for immigration enforcement proceedings. All information is protected unless the applicant is subject to a Notice To Appear, a referral to ICE, or if it will be used for non-removal purposes.

Continued From Page 6

Issues and stumbling blocks abound. Cases can go into receivership. The Appellate Court has held an attorney was not entitled to be compensated for work he did as a receiver (the Gmacek case, decided in 2012). Questions arise as to who the assisting lawyer represents. What authority do lawyers taking over have? And in geographically small areas, it’s possible that the few attorneys who might be available to help, could also be adversaries in pending litigation. “You may want to split the role in two,” Renfroe said.

The www.iardc.org website includes a wealth of material on planning for death or disability, including checklists, forms and documents that can be downloaded.

The rules of professional conduct were changed in 2010, he reminded the crowd, and comments -- which really explain what the rules are all about -- were adopted. Those comments are very helpful, he said. And they also suggest that “diligence exists after death.”

The situation can be very complicated. So, if nothing else, he said, “Do this: Write down all your passwords! Make a list of contacts, vendors, suppliers.

Although deferred action is but a temporary patch while we all wait, with high hopes, for comprehensive immigration reform, the first six months of the program have elicited a resounding response from eligible immigrants. Between August 15th and February 14th, 423,634 applicants have been approved and only 14,738 have been rejected. Perhaps the next six months will allow the remaining eligible immigrants to gain protection and lawful employment while new, comprehensive, and long-term legislation is examined.

“If someone had to come in and replace you tomorrow, could they open your computer? Could they access your voicemail?”

This information should be available and entrusted to someone the attorney respects and is close to. It could be a lawyer, spouse or both. Besides making a list of accounts, account numbers and passwords, he advised attorneys to talk to a banker to find out what forms are needed to let someone else access their money, such as a trust account. Meet with those who are helping once or twice a year to go over details. Have a power of attorney to let someone else step in and run the practice, with a list of files and instructions for the transition.

Attorneys can contact the Chicago or Springfield ARDC offices with questions, which should be formed as hypotheticals. “They’re happy to give information,” Renfroe said.

He emphasized it’s never too early to start planning. The consequences of inaction can be great. “Forty percent of businesses shut down by disaster don’t reopen.”

And he repeated, “Start with passwords.”

The Dinner Meeting, co-chaired by Michael Rothmann and Kenneth Apicella, was held at Chicago Prime Steakhouse in Schaumburg.
March Board Meeting Highlights

By: Jay A. Andrew, NWSBA Secretary

The March Board of Directors Meeting was held at the Association Office in Palatine, Illinois:

President Neil Good advised that the potential website upgrades to www.nwsba.org were currently put on hold as the website operator was taken over by a new company. The IT Committee was working with the previous company on developing several new changes to the website to drive more traffic there. In a fortunate turn of events the IT Committee had not made any contractual commitment to that company for the changes. It was determined that the Association would wait to see what happens with the new operator of the site before making any commitments in this regard.

President Good also provided an update on the status of the denial by the MCLE Board of one (1) hour of credit from the recent Matrimonial Law Committee CLE regarding the education of the FAFSA process. It was determined that there was no formal appeal process for this type of denial. It was recommended by the Board that the NWSBA make a formal suggestion that the MCLE process be amended to provide some form of appeal in these cases.

Nichole Waltz, Treasurer reported on the year to date income and expenses of the Association. She reported for the second month in a row that the Association was on target for its yearly projections. Currently, the net income is running over the budget numbers.

Second Vice-President, Ron Witmeyer reported on the status of the Legal Self-Help Center at the Third Municipal District Courthouse. He advised that the Center would be seeking more volunteer staffing. Jeanette the current volunteer would be leaving this Spring and the Center would need someone to replace her. He also reported that the recent Dinner Meeting at Chicago Prime in Schaumburg was a success. A late registering and walk up attendance caused the restaurant to make some last minute adjustments to accommodate the overflow crowd. Chicago Prime handled it very professionally.

First Vice-President, William Kelley provided an overview of the upcoming CLE programs by the Association.

Executive Vice-President, Michael Meschino reported on the status of the Golf Committee’s exploration of a new venue for this year’s outing and the status of scheduling his Installation Dinner, which is set for June 20th, 2013 at Maggiano’s Little Italy in Schaumburg.

Colin Gilbert made a presentation to the Board on how other organizations were obtaining CLE credit for Association meetings and suggested that the NWSBA look into this opportunity again. A motion was made and the discussion was tabled until the April Board meeting.

New Members: Gonzalo Gomez, Matthew Sheahan, Peter Janus, Anna Krolikowska, Taylor Layman, John Curry and Steve Perlis were approved. New Law Student Members: Matthew Hess, Maria Sarantakis, Erin Calandriello and Joshua Herzog were approved.

Upcoming social and CLE events were discussed:

- March 29, 2013 Estate Planning/Probate Committee Meeting, Ritzy’s Café, 7:45AM-9:00AM – Presentation by Daniel P. Felix on the New Illinois Directed Trust Statute
- April 3, 2013-Debtor Creditor Law CLE-Forest View Education Center-5:45PM-9:00PM - Featuring the Honorable Judge Sandra Tristano, Third Municipal District providing a view from the Bench on Motions for Attorneys’ Fees.
- April 11, 2013 Criminal Law CLE-Forest View Education Center-5:45PM-9:00PM
- April 18, 2013 JUDGE’S NIGHT, Rosewood Banquets, Rosemont, Illinois 6:00PM-10:00PM
- April 22, 2013 Civil Litigation CLE, Forest View Education Center-5:45PM-9:00PM
- May 1, 2013 Employment Law CLE-Forest View Education Center-5:45PM-9:00PM
- May 21, 2013 Real Estate Law CLE-Forest View Education Center-5:45PM-9:00PM
- May 23, 2013 Spring Luncheon & CLE Meeting-Westwood Tavern & Tap, Schaumburg-12:00PM-2:30PM

Members in the News

NWSBA President Neil Good (left), and Board Member Rafi Arbel attended the 125th Anniversary Gala for IIT Chicago-Kent College of Law Alumni Association on February 23, 2013 at Union Station Great Hall.

Photo courtesy of Bonnie Robinson, Bonnie Robinson Photo.

FRANK SCHUMACHER
Frank checked in with Executive Vice President, Michael Meschino, to say he was doing fine and was home recovering. He assured us that he will once again donate sleeves of golf balls for the 2013 Golf Outing. We wish Frank well!

Condolences

CLARE LAGATTUTA
Our condolences to long time member Nicholas Lagattuta on the loss of his mother, Clare, in March.

FRANK SCHUMACHER
Frank checked in with Executive Vice President, Michael Meschino, to say he was doing fine and was home recovering. He assured us that he will once again donate sleeves of golf balls for the 2013 Golf Outing. We wish Frank well!
PUB TRAWLER SPONSORSHIPS:

$275 Per Event (Standard)  $350 Per Event (With Website Banner Advertising)

If you have suggestions for a special guest or are interested in being a sponsor, please contact:

Colin Gilbert: cgilbert@kbdpc.com  847-934-6000
Joseph Vito: jvito@amfam.com  847-247-9548

Was Your Business Featured in the Newsbriefs?

If you have any questions or need assistance promoting your business, please contact:

Newsha Ahmadi  847-934-6000
Newsha@kdpm.com

There will be no Pub Trawlers in April due to the 2013 Judges’ Night Event

The Next Scheduled Pub Trawler Event will be on Thursday, May 16, 2013

Location and Special Guest To Be Announced!

Newsha Ahmadi  847-934-6000
Newsha@kdpm.com

Office Space

ARLINGTON HEIGHTS Offices for rent near third District. Please call Gary @ 847-797-8000

INVERNESS: Suite of four offices in Williamsburg Village Professional Office complex in Inverness, IL, owner’s offices are also in this six unit building. Lower level space is bright and airy and includes two secretory areas; two miles north of Interstate 90 at Roselle Rd, rent is $1,650 per month and includes CAM, utilities and real estate taxes; owner is a licensed Illinois real estate broker, please call (847) 336-5757.

ARLINGTON HEIGHTS, vicinity Palatine Road and Arlington Heights Road, 2 window offices, 2 support staff stations, 2 conference rooms, reception area, high speed copier/scanner and many other amenities including kitchen. Handicapped accessible. Possible referrals. Available immediately. Call (847)984-4900.

Real Estate

REAL ESTATE TAX REDUCTION REFERRALS
Amar & Lcollo, whose practice is confined exclusively to real estate tax assessment process, is accepting referrals of commercial, industrial, and multi-unit residential properties (seven units or more) from fellow NWS-BA attorneys. Co-counsel fees provided. Note all properties in the North and Northwestern suburbs are being reassessed in 2013. Amar & Locallo has offices in DuPage County to service the real estate tax needs of property owners in collar counties: Lake, Will, Kane, McHenry, DuPage, and Will Counties. Call Gary A. Newland 847-797-8000.

The Newsbriefs will run for $20.00 per month and are published as a service to our Members. Call 847-221-2601

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NORTHWEST SUBURBAN BAR ASSOCIATION

BULLETIN BOARD

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PROBATE & CHANCERY LITIGATION & PROBATE ADMINISTRATION

Asble for referrals, consultations and assistance w/regard to Probate Contests and Administration & Chancery Litigation (Probate-related, Trusts, Family disputes, Accounting and Partition, & more) Call Cary Lind

FORECLOSURE DEFENSE: Experienced Lawyers in Foreclosure Defense. We can help your clients with all aspects of foreclosure defense in Chicago and Lake, McHenry, DuPage, Kane and Will Counties. We practice Foreclosure Defense in Federal and State Court as well. Experienced with Robo Signing and other defenses. Call Gary A. Newland 847-797-8000.

VOE DON’T WANT TO LEAVE COOK COUNTY? No problem. We are open 7 days a week, Mon-Sat 10am to 9pm and Sunday 11-6pm. Located inside the Westfield Fox Valley Shopping Center, Fox Valley Law Center Ltd. is accepting referrals in bankruptcy, criminal, immigration, family law and much more. Our bilingual attorneys and staff can assist your clients in Kane, Will, Dupage, Kendall, and Dekalb counties. Call us at 650-236-2222 to schedule a consultation. The $100 consultation fee will be credited towards their retainers.

PROBATE & TRUST ADMINISTRATION—Also, Estate Planning, Real Estate transactions; Elder Law; Medicaid Eligibility & Social Security retirement benefits. Call Richard P. Miller, 847-981-9190 or email rpllaw@sbcglobal.net.

DISPUTES re: INSURANCE BENEFITS Experienced attorney (both Plaintiff and Defense) seeks referrals of disputes with Insurers and Employers of Employee benefit matters, especially of disability cases, as well as life and health insurance cases. Includes ERISA (employee covered lawsuits) federal actions, as well as Insurance Policy matters. Please call ROBERT H. MILLER at (847) 454-4509 or E-Mail to lite-rmg@att.net.

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COVERAGE ATTORNEYS NEEDED – We’re looking for experienced criminal/traffic attorneys to help cover overflow court dates on a per court date fee basis. Former prosecutors, public defenders or other experienced criminal/traffic attorneys are welcome to contact our office for information. Must have attorney liability coverage. Attorneys are agreed to ahead of time and are always paid immediately. Speak to Mitch at Mitchell S. Sexner & Associates LLC at 847-690-9990 x 0.
## CALENDAR

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<td>April 3</td>
<td>Debtor Creditor CLE</td>
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<td>April 11</td>
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