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I don’t know about the rest of you, but even this Minnesota girl is done with winter and cold weather; beside the salt is hell on my shoes and anyone who knows me knows I do love my shoes. I am dreaming of Spring, warmer weather and not having to worry about ice falling off of the roof to bean me when I go in and out of the courthouse. I’m also ready for something fun to occupy my time while I wait for my car to (finally) warm up. This month’s fun is the Grief, our other opportunity to make fun of ourselves and our friends; the first opportunity being Judges’ Nite which will be covered in detail in the May issue. As I am always happy to shake things up, I want to particularly thank Jonathan Crannell, Christopher Maurer, Christine McTigue, Terrence Benshoof, Melissa Piwowar and that one other contributor that asked to remain nameless for fear that his donuts might be spiked some Thursday. I hope you all enjoy this Grief and actually read and enjoy the serious stuff on this side of the magazine as well. Happy reading and stay warm.

Christopher Maurer is the poor editorial board member I sweet talked, or some would say suckered, into heading up this issue. He is funny, wholly inappropriate and pretty darn clever. At our meetings to put this issue together, there were several times that we had to put down our cocktails for fear of spilling them due to laughter. It doesn’t get much better than that and it doesn’t get much better than all of the other folks who helped put this issue together. Raleigh is currently a solo practitioner with a concentration in family law. She is a graduate of Purdue University and the Quinnipiac University School of Law and she spent her last year of law school as a visiting student at Chicago-Kent College of Law. She is an active member of the ISBA, DuPage County Bar Association and the Family Law Committee. She is the Second Vice President for the DuPage Association of Women Lawyers, a Director and the Treasurer for the DuPage County Bar Foundation and member of the Family Violence Coordinating Counsel Judicial and Law Enforcement subcommittee.

DCBA Brief welcomes members’ feedback.

Please send any letters to the attention of the editor, Raleigh Kalbfleisch, at email@dcbabrief.org
SHARON R. MULYK
for ISBA Board of Governors

...keep a strong DuPage voice at the state level...

“I have worked hard to build relationships within the Illinois State Bar Association for the benefit of DuPage County. There are many important issues being addressed by the state bar that affect our profession. I want to continue to cultivate those relationships and keep a strong DuPage voice present at the state level when these issues are being discussed. I am now asking for your support for the Board of Governors seat for the 18th Judi-

Bar Service

American Bar Foundation, Fellow (2012 - Present)
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Lawyer-to-Lawyer Mentor (2013 - 2014)

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DuPage Justinian Society of Lawyers, Member (2000 - Present)
President (2007 - 2008)

DuPage Association of Women Lawyers, Member (2006 - Present)
Change is good

BY LYNN C. CAVALLO

Oscar Wilde in his 1889 essay, “The Decay of Lying”, wrote “Life imitates art far more than art imitates life”. This presupposes that we create images or expressions that we desire or wish to see rather than create what we actually see. Individual artistic images, thoughts or expressions differ based on individual perception and may not necessarily reflect reality or truth. Such is also the nature of this month’s alter ego issue; THE DCBA GRIEF. Whether you are amused, confused or just confounded, this creative concoction is a must read.

Another creative concoction, so to speak, is the restructuring of DCBA substantive law committees, the structure of which was recently approved by your DCBA Board. The approval came at the recommendation of the Planning Committee, which devoted countless hours to the creation of a committee structure that is just plain dynamic. Substantive law committees will now be known as “Sections”. These Sections will be expanded to provide opportunities for leadership in a variety of areas and levels including membership on the Section Leadership Committee or Council. The Section Leadership Committee or Council will consist of 8-12 people from the Chair to a Secretary to additional members who will have specific responsibilities, such as oversight, membership, minutes, etc., and would ultimately ensure that each of the Section’s expectations or goals are met throughout the year.

The Sections will also provide all members many specific areas for involvement from legislative and case law updates to the development of programming to the enhancement of communication with other Sections through the appointment of liaisons. The results will be dramatic and rewarding. As a member, you will experience these results in improved educational offerings and communication. You will see it in an enhanced DCBA website, specific to your Section, and greater use of social media formats. If you are looking for opportunities for leadership, there will be many. So stay tuned and stay involved with the DCBA’s own creative concoction, the Section!

Lynn C. Cavallo, currently an Assistant State’s Attorney in the Felony Division, received her JD from Loyola University School of Law and was in private practice in DuPage County concentrating in areas of Real Estate, Estate Planning and Probate prior to joining the SAO in 2006.

APRIL 2015
The Law Firm of Momkus McCluskey, LLC has served the DuPage County community for the past twenty-five years. The firm accepts referrals and co-counsel relationships in the following areas:

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- Banking Law
- Healthcare Law and Regulatory Compliance
- Family Law
- Estate Planning
- Environmental Law
- Employment
- Appeals

For more information, please contact one of the firm’s members, Ed Momkus, Jim McCluskey, Jim Marsh, AngeloSpyratos, Kimberly Davis, or Jim Harkness.
A new group of participants in the DCBA Mentor program kicked off their year on February 27, with twenty pairs of mentors and mentees being briefed on this exciting PRMCLE program. The year-long event gives new lawyers the opportunity to learn practical aspects of the practice of law from those who have been “around the block” for a while.

President Lynn Cavallo, Executive Director Leslie Monahan, and organizer Lisa Knauf assembled the hardy DCBA Board members and committee chairs for the annual legislative breakfast on February 17, at the Lisle Hilton. Legislators participating included Michelle Mussman, Jeanne Ives, Mike Fortner, Kathleen Willis, Grant Wehrli, Patti Bullock and Christine Winger who all responded to Jim McCluskey’s comments on pending or proposed legislation of concern to the DCBA.

The 40th annual Judges’ Nite show, on March 6, featured the directorial debut of Nick Nelson. It was the Worst Show Ever (Wait. That didn’t sound right!). Seriously though, that was the title! Producer Christina Morrison and the cast and crew put together a spectacular show, and a silent auction to haul in some serious coin for the DuPage Legal Assistance Foundation. InBrief expects to recover from the laughter shortly, and will report on the follow up.

DCBA members will once again be participating in the “Human Race” 5K. This is a wonderful fundraising opportunity for the DuPage Bar Foundation and a great way to shake off the winter blues and get in shape. Your participation and donations are needed whether you’re a runner, walker, stroller or just plain meanderer. InBrief would really, really love to be there on April 25, but just recalled some important business in Poughkeepsie. If the sticker on your bumper reads “0.0,” you can still support the Bar Foundation with a check.

The annual Law Day lunch will soon be upon us, with Justice Anne Burke of the Illinois Supreme Court slated as the speaker on April 29. See more details elsewhere in the DCBA Brief.

People Notes Most of InBrief’s notes froze solid during the second coldest February ever, but we did note that Katherine May has joined the Trust Department at 5/3 Bank.

InBrief would love to let the DCBA membership know about changes in your law practice, whether it’s new partners, mergers, new associates, or new addresses. Our new spy equipment is on back-order, so send us the information through the DCBA Office, or to the DCBA Brief editors.

New Members InBrief welcomes these new members to the DCBA:

Attorneys: Adam S. Tracy, The Tracy Firm LLC; Mary Kostopoulos, Momkus McCluskey, LLC; Michael J. Navarro, Bugarsky & Navarro, LLC; Alena P Bugarsky, Bugarsky & Navarro, LLC; Mary Ann Leuthner, Prairie State Legal Services; Greta Rose Staat, Huck Bouma, PC; Rukhaya AliKhan; Nancy A. Donahoe, Office of the State’s Attorney; Brian Tierney. Law Students: Jerome Urbik; Anne Marie Lotko; Hanoch Kanhai-Zamora; Anthony Lopez; Aaron Novy; Adam Lichtenour; Christian Copple; Ryan Lowe; Evan M. Christenson; Tate Anderson; Nathan Davidson; Christina Beaderstadt; Fadya Salem; Annie Simunek; J. Ian Dible; Heather Egan; Valya Varbanova; Joshua Kunkel.

Paralegal Students: Mary Vanco; Colleen Vest; Magdana Sanishvili; Simona Kairyte; Meredith Emily McDonagh; Mallory Larson; Kathleen Quinn; Therese Sobieski; Susan Davis; Patrick Reavley; Jessica Leigh Piechocki; Kristal Michelle Solis. Affiliate Member: Jim Schultz, Cendrowski Corporate Advisors.
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Thank you Lynn and members of the bar. I appreciate the opportunity to speak to you this afternoon. Knowing how specialized the practice of law is, it’s difficult to come up with a topic that’s of interest to each of you. I’m supposed to speak on “The State of the Courthouse” and so to that end, I’m going to start with the 4th floor and work my way down. Hopefully, somewhere along the way you’ll hear something that is of interest to you and which relates to your practice.

Starting then with the 4th floor: that’s where the Felony and most Misdemeanor calls are heard. It will come as no surprise to you when I tell you that the number of trials was down last year. There were only 86 jury trials in the entire courthouse last year. That’s the lowest number since we have been keeping track. The criminal filings were also down slightly, only 2%, but they are down 29% in the last 5 years. There is a lot of activity on the 4th floor that involves the Probation Department. Last year our probation department prepared over 1000 pretrial reports to assist the judges in setting bonds for those defendants who can’t initially post the bond that is set in bond court. They also supervised over 2300 defendants who were on pre-trial release. Two of the goals of pretrial services are (1) ensure that defendants come to court, and (2) reduce the number of defendants who re-offend while on bond. In DuPage, the arrest rate for pretrial defendants is 9.5%, again, below the national average of 15%. This is due to the excellent job that our probation officers do supervising these individuals. SCRAM, which is the continual alcohol monitoring, the ankle bracelet like Lindsey Lohan made famous, continues to be popular with the judges. Last year over 400 defendants were ordered to wear a SCRAM device as either a condition of pretrial release or as a condition of a sentence.

Adult Redeploy is a program that the Probation Department continues to have success with. It is entirely funded by grants and is a program whereby a defendant who commits a technical violation of probation, which is something like a positive drug test rather than a new offense, is resentenced to intensive probation rather than the Department of Corrections. This intensive supervision includes 2 to 4 face-to-face meetings each month with the probation officer. The goal for 2015 is to divert 54 non-violent offenders from the Department of Corrections.

Also on 4, we have the Mental Health Court or MICAP as it’s known. Judge Bruce Kelsey handles that call. Approximately half of the applicants are accepted into the program and very few are terminated for non-compliance. The success of the program is due in great measure to the partnerships we have with the DuPage County Health Department, NAMI and the VA.

Finally, Drug Court is also on the 4th floor. That call is handled by Judge Alexander McGimpsey. Applications to drug court have plummeted in the last 2 years. They have decreased by 60%. Criminal defense attorneys are showing a preference for requesting TASC or high-risk probation sentences. If you are a defense attorney I’d love to talk to you about the reason for this change. Also in 2015, Serenity House will sponsor beds at their halfway house and recovery homes which will be designated for drug court participants only.

Moving down to the 3rd floor and Domestic Relations... A frequent complaint of family law practitioners is that they spend too much time in court waiting while pro se litigants attempt to navigate their way through a motion. In response to that, beginning March 1, 2015, there will be a new call in Domestic Relations that will be comprised only of cases in which both sides are pro se. Judge Beth Sexton has
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Thank you for 10 years of referrals and collegial support! Partners Rick Law, Diana M. Law, and Zachary Hesselbaum.
volunteered to take this call. While I’m talking about Domestic Relations, let me take a moment to thank the family law attorneys who volunteer at the pro se help desk and at night court. A special thank you to those attorneys who have stepped in at the last minute. These programs would not enjoy the success that they do without so much volunteer attorney participation. Wendy Musielak (wmusielak@ekcmlawfirm.com), the Chair of the Family Law Committee, is here today and she’d be happy to sign up any new volunteers or answer any questions you might have.

Supreme Court Rule 63 was modified in 2013 to say, “A judge may make reasonable efforts consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.” The Supreme Court has emphasized accessibility and the pro se litigant. This emphasis has led to standardized forms. As of today, 12 forms have been approved and accepted statewide. Ten more are in draft form and the numbers are only going to increase. We as judges are mindful of the Court’s goals and yet we are aware that we must be careful to provide information and not legal advice. It is to that end that Judge Blanche Fawell, as Chair of the Pro Se Litigation Committee, is committed to closely working with the bar association to provide information, not legal advice, to pro se litigants.

Also located on 3 are the 2 juvenile courtrooms. Last year the number of juveniles detained on DuPage cases decreased slightly to an average of 17 per day. The number of juveniles on home detention, however, increased to approximately 500, nearly 200 more than the year before.

The court reporters are also located on 3. I believe we have the best court reporters in the State of Illinois. We are the only circuit in Illinois where proceedings in every courtroom are taken by official court reporters in the courtroom or via electronic recording. We have 5 certified real-time reporters and if you want daily copy, our reporters can provide that.

Moving to the 2nd floor… Under the leadership of Judge Bonnie Wheaton, lawyers in her courtroom have begun using “Court Call” which allows attorneys and pro se litigants to appear by phone for routine status calls and motions. To take advantage of this, you need to set up an account with Court Call. There is a representative in the lobby or if you have questions you can stop by the Chancery Division and speak to one of the secretaries. They would be happy to answer any questions you have. Judge Wheaton tells me that the system is working well, saving the attorney’s time and the client’s money.

Also, while I’m talking about the 2nd floor, I should tell you about the numbers there. The civil filings were down 6% for the year, down 30% over the last 5 years.

Despite those numbers, our judges remain busy. There is a judge on call every minute of every day of the year. Judges are available to review requests for overheat orders, orders of protection, and complaints and warrants. As of January 1, we are utilizing a new statute which allows for the electronic signing of search warrants. A number of our judges are involved in committee work to improve the law, the legal system and the administration of justice. DuPage judges serve on a number of Supreme Court committees including: the Alternative Dispute Resolution Coordinating Committee, the Civil Justice Committee, the Juvenile Justice Committee, the Criminal Justice Committee, the Committee on Professional Responsibility, the Committee on Jury Instructions in Criminal Cases, the Illinois Juvenile Justice Leadership Council, the Committee on Education and the Special Supreme Court Committee on Child Custody. Each of those committees involves a substantial commitment for sub-committees, projects, study and research. This is all in addition to the judge’s primary duty which is to promptly resolve disputes.

Beginning in June, Judge Robert Anderson will be the president of the Illinois Judges Association. Currently, I am a member of the Committee on Evidence, the E-Business Policy Committee and I am a Commissioner on the Supreme Court Commission on Professionalism. In that role, let me take a moment to applaud the DuPage County Bar Association for its commitment to mentoring. Supreme Court Rule 795 provides that a lawyer mentor or mentee can earn 6 credit hours of professional responsibility for completing the bar association’s year-long mentoring program. The feedback received by the Commission has been overwhelmingly positive as reported by both the mentors and mentees. If you are an experienced lawyer, I strongly encourage you to join this program. If you’re a new lawyer — you need to do the same. It’s a great opportunity to hone your skills and to learn
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Hon. F. Keith Brown, (Ret.)
how to do things the right way. A new mentoring orientation starts February 27, 2015, and you can sign up online at dcba.org.

We have 3 full-time Spanish speaking interpreters who are office on the 2nd floor. The Administrative Office of Illinois Courts developed a statewide certification program. These 3 interpreters have passed everything but the oral portion of the exam, which will be offered next month. We expect that they will soon be certified. One of our goals is that our circuit provide either a “certified” or “registered” interpreter in criminal and civil matters when any individual is unable to understand and communicate effectively in a court proceeding due to limited English proficiency. One challenge to this is, of course, the additional cost of interpreters for civil proceedings. The Supreme Court is well aware of this. We are, however, taking a look at the way we schedule cases and we will be making adjustments to identify cases where an interpreter is needed and to better utilize our interpreters throughout the day.

Finally on 2, the Law Library went through some cosmetic changes this year. Looking ahead, we plan to expand Lexis and Westlaw training in the coming year.

That brings us to the 1st floor…. There is a room on the first floor where press conferences occur and where the media gathers when an extended media request is granted. In 2014 there were only 2 requests for extended media coverage. There have already been 2 requests this year. In total, since the pilot program started in 2012, there have been 22 requests, 20 in felony cases, 1 in misdemeanor and 1 in chancery for an election case. Of the 22, 8 were denied.

That brings us to the Clerk's Office and that’s where all of the action is. For some time now DuPage has been using e-filing and electronic court orders. Those things were the stepping stones that allowed us to become the first official e-record court in Illinois. As of January 1, the Clerk's electronic record is the official record of the court for many civil case types, e.g. adoption, law, small claims and chancery. Those civil calls do not have electronic orders yet so the procedure is this: the attorney prepares a paper order which is signed by the judge, that order is imaged, and the order and computer entries are now the official court record. The original paper order is not placed in the paper court file and those paper files will eventually be destroyed. Where a judge may have written on the file jacket in the past, and those entries were part of the record, handwritten entries on those files will be treated as notes because those paper files are not the official record.

Recently the 18th Circuit requested and received permission from the Supreme Court to e-file in criminal cases. That means we will be moving soon to electronic records in criminal cases. To accomplish the goal of an electronic record requires the cooperation and partnership of the legal community. You will see more computer technology available in the courtrooms. I have instructed the Clerk to expand e-orders and e-signature technologies beyond the Felony and Misdemeanor Divisions. Right now electronic orders for Juvenile Court are being tested. Those should move into production next week. Frequently used Domestic Relations orders will be next, followed by simple forms for the Law and Chancery Divisions. I understand that this isn’t a one size fits all. There are unique challenges to using computer orders in Law and Chancery, but we will work closely with the Presiding Judges to respond to their needs. In the near future, lawyers who practice in any division will be able to draft an order in their office, save it, go to court and modify it, if necessary, and send it electronically to the judge for an electronic signature. This will require training and practice. I’m confident, however, that once you begin using it, you will see the benefits that are currently enjoyed by 4th floor practitioners.

Many lawyers use the new application for the electronic presentment of motions. As the attorney of record, you can go online, enter the case number, view dates for presentment, select a date and a form is created with the address of each person who will receive notice. You sign the notice electronically, have the option to attach documents and hit “submit.” The notice has just been filed. You save a trip to the courthouse, a phone call to the judge’s secretary, time and money. As the attorney of record you also have online access to your cases through DuPagecase.org. You can view, schedule and print copies of documents from your office.

Regarding Facilities, there are 2 things I’d like to mention. We are currently exploring putting lockers outside the building for use by the public. Everyday people come to the courthouse by train, bus, taxi, they are dropped off by a friend, only to
realize when they get there that they can’t bring their phone or some other item of personal property into the building. You can see people hiding their belongings in the bushes or in the parking garage on a daily basis. They need a place to safeguard their belongings. There are safety concerns and other valid concerns related to this project, but if they can do this in Cook County — and they do — I am confident we can make it work in DuPage.

Secondly, I spoke to County Board Chairman Dan Cronin. He agrees that Wi-Fi in the courthouse is long overdue. As an attorney, he understands that while you are waiting in court you need access to your internet based case management system. You’ll be able to examine and share discovery, draft motions and make good use of your time. Chairman Cronin wanted to be here today to make this announcement but he had another obligation. He asked me to tell you that he is “absolutely, positively committed to bring Wi-Fi to the courthouse.” I want to thank our Clerk, Chris Kachiroubas, for his efforts in this regard. Without his help, this project would not be possible. I also want to publicly thank Chairman Cronin for his support and commitment to move expeditiously to make this happen.

This brings me to my last point. On my second day as Chief Judge, I met with the associate judges. I asked each of them to give me at least one good idea as to how to improve the way we do things. Some judges gave me pages of good ideas. In a room this size, I know a lot of you have good ideas as well. I’d like to hear from you. Send me an email at Kathryn.Creswell@dupageco.org and include your name and phone number so I can call you if I have questions. We want to get better. We want to become more efficient. If the bench and bar work together I know we can do that. I look forward to hearing from you. Thank you.
Ancient Roman Wisdom for Lawyers

BY CHRISTOPHER J. MAURER

The Roman Emperor and Stoic philosopher, Marcus Aurelius did not have a high opinion of his fellow man. This misanthropic attitude is evidenced by the grim affirmation that Marcus routinely made to himself every morning: “Begin each day by telling yourself: Today I shall be meeting with interference, ingratitude, insolence, disloyalty, ill-will, and selfishness — all of them due to the offenders’ ignorance of what is good or evil.” At first glance, this appears to be the advice of a sour-faced curmudgeon, but in fact, it is excellent advice for not only emperors, but also for attorneys and judges alike.

What our imperial friend was doing was steeling himself to the everyday trials and tribulations of dealing with other people and to the reality that other people can be difficult or nasty, not out of conscious malice, but because they don’t know any better. We as attorneys must do the same - accept the fact that we will encounter jerks every day and that such encounters are part of the natural order of things. By doing so, we won’t be incensed, or insulted or thrown off our game.

As members of the DuPage County Bar Association, we are at somewhat of an advantage in this regard. In my experience, the DCBA fosters a level of camaraderie and collegiality that is not found elsewhere in the Illinois legal community. This is not to suggest that any of us are saints in the jerk-department, or that our lawyers are less obnoxious than, say those in Cook or Kane. All of us, at one time or another have been guilty of one or more of the offenses described above by Emperor Marcus. All of us have let battles with our colleagues get personal, and all of us have used less than flattering terms to describe an opposing counsel or perhaps a litigant. However, the collegial connections we share

CONTINUED ON PAGE 17

Christopher J. Maurer is an attorney with the law firm of Anderson & Associates, P.C., where he has concentrated his practice in family law for over a decade in DuPage, Cook, Kane, Will and Kendall Counties. Christopher is a member of the DuPage County Bar Association. He is a trained Guardian ad Litem and certified Mediator for the 18th Judicial Circuit, and serves as a member of the DCBA Brief’s editorial board. Christopher received his Juris Doctorate from Loyola University School of Law in 1997 and his Bachelor of Science from the University of Illinois at Urbana-Champaign, College of Communications in 1994.
Hot Opp: Be Prepared
The world has changed. Again. And it will change again next week. Change can be dangerous. But with our experience, teamwork and strategic thinking, change can be an opportunity. It’s a new day. Get ahead of it.
as active members of the DuPage Bar allow us to more easily brush these temporary squabbles aside, to dispel grudges before they even form, and to get on with the job of practicing law and providing the best service we can to our clients.

Part of providing such good service consists of constantly reading about new ways to provide legal advantages to our clients – and this issue of the Brief fits the bill: Mark Trapp has provided us with an insightful article on a timely topic: the disparate treatment of drivers under the influence of medical marijuana versus those under the influence from recreational consumption.

Read on! And lest you still think that Ancient Romans like Marcus Aurelius have nothing to say to us in the modern era, I leave you with a quote from the orator and statesman, Marcus Tullius Cicero. Feel free to use it if your spouse is trying to drag you unwillingly onto a dance floor: “Nemo enim fere saltat sobrius, nisi forte insanit,” (No one dances sober, unless he is insane.). □
Medical Marijuana and the ‘Trace Law’: Why Treat Cheech Worse Than Chong?

BY MARK M. TRAPP

The enactment of the Compassionate Use of Medical Cannabis Pilot Program Act (“Cannabis Act”) has created two classes of drivers in Illinois – those who are legally permitted to drive with cannabis in their system, and those who are not. The unequal treatment sanctioned under the new law goes so far as to apply two different burdens of proof for driving under the influence, depending on the preferential status of the accused. Under current law, the State assumes authorized medical marijuana users are not impaired, but presumes the impairment of all other cannabis users. This unequal treatment may violate the equal protection clauses of both the Illinois and United States constitutions, because “[w]hen the law lays an unequal hand on those who have committed intrinsically the same quality of offense, equal protection is denied.”

Background
Section (a)(6) of the Illinois DUI Act prohibits driving with “any amount of a drug ... in the person's breath, blood, or urine.” Illinois courts have long interpreted this section, known colloquially as the “trace law,” to forbid any level of detectable marijuana in a driver’s body, regardless of whether evidence of impairment exists, “because there is no standard that one can come up with by which, unlike alcohol in the bloodstream, one can determine whether one is — driving under the influence.”

Thus, prior to passage of the Cannabis Act, according to the Illinois Supreme Court the trace law “create[d] an absolute bar against driving a motor vehicle following the illegal ingestion of any cannabis,” and this was “without regard to physical impairment.” However, the Cannabis Act amended the trace law such that the presumption of impairment

1 410 ILCS 130/1, et. seq.
3 625 ILCS § 5/11-501(a)(6).
5 People v. Fate, 159 Ill.2d 267, 270 (1994).
6 Fate, 159 Ill.2d at 271.
applicable against all other drivers “does not apply” to one holding a registry card “unless that person is impaired by the use of cannabis.” Accordingly, whether the State bears the burden of proving actual impairment now depends on the class of the defendant.

The Cannabis Act Treats Similarly Situated Individuals Differently

To illustrate the different treatment under the law, imagine two dope smokers, Chong and Cheech. Chong has a valid registry card under the Cannabis Act, Cheech does not. Both guys smoke the same joint in the same parking lot, and then get into separate vehicles to get some nachos and pizza. As they pull out of the parking lot, an accident occurs between the two vehicles, and both drivers subsequently test positive for cannabis. Although both smoked the same cannabis in the same parking lot, were in the same accident, and violated the same sentence of the same statute, Chong and Cheech will be treated very differently. Indeed, Cheech will be presumed guilty of DUI, while Chong will be presumed not guilty of the same crime.

This is despite the fact that the equal protection clause “requires equality between groups of persons similarly situated,” and precludes the government from making classifications on the basis of criteria wholly unrelated to the statute’s purpose. A review of the necessary elements shows that Cheech (and other disfavored drivers) could potentially raise a strong equal protection challenge against his unequal treatment under the trace law.

I. Chong and Cheech Are Similarly Situated

Within the context of the Illinois Vehicle Code, Chong and Cheech are similarly situated. In fact, they are exactly (not just similarly) situated: all drivers charged with violating the trace law have been charged with the exact same offense, under the exact same statute, and upon conviction, are subject to the exact same penalties.

Cheech’ possession of a registry card under the Cannabis Act does not change the analysis; to the contrary, it further demonstrates Cheech’s unequal treatment by the State. The fact that the State treats Cheech and other disfavored drivers less favorably is the problem; the State cannot sidestep constitutionally guaranteed protections simply by “legalizing” conduct for one class that remains illegal for another. To the contrary, “a state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated.” While the State may enact a strict liability statute such as the trace law, it must apply and enforce it against all citizens equally, rather than exempt certain favored groups from its harsh results.

In any event, the possession of a valid registry card allows Chong to use cannabis; it most decidedly does not allow him to drive a motor vehicle after doing so. Accordingly, any driver (whether authorized to use cannabis or not) who drives with cannabis in his or her system is in violation of the law. Thus, all drivers charged with violating the trace law are similarly situated.

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7 625 ILCS § 5/11-501(a)(16)(emphasis added).
8 Moreover, because a simple misdemeanor DUI constitutes “[t]he essential and underlying criminal act” of an aggravated DUI where an accompanying physical injury “turns the offense into a felony.” Martin, 955 N.E.2d at 1064, if Chong or another person is injured in the accident, Cheech may be charged with a felony. See also People v. Lavallier, 187 Ill.2d 464, 469 (1999)(“the essential and underlying criminal act remains the same: driving while under the influence”). In such a case, Cheech’s presumed impairment would also apply to the felony, compounding his unequal treatment and placing him (and other disfavored drivers) in much greater jeopardy of losing liberty than favored drivers, who face no such presumption. Martin, 955 N.E.2d at 1064 (“[W]hether proof of impairment is necessary to sustain a conviction for aggravated DUI … depends upon whether impairment is an element of the underlying misdemeanor DUI.”).
11 Id. (“the guarantee of equal protection prohibits the State from according unequal treatment to persons placed by a statute into different classes for reasons wholly unrelated to the purpose of the legislation.”).
12 People v. McCabe, 49 Ill.2d 338, 341 (1971).
13 See 625 ILCS § 5/11-501(b)(“The fact that any person charged with violating this Section is or has been legally entitled to use … cannabis … shall not constitute a defense against any charge of violating this Section.”). See also 410 ILCS §130/30(a) (5)licensed users prohibited from “Operating, navigating, or being in actual physical control of any motor vehicle … while using or under the influence of cannabis in violation of Section[1] 11-501 … of the Illinois Vehicle Code”; and 410 ILCS §130/30(b) (“Nothing in this act shall be construed to prevent the arrest or prosecution of a registered qualifying patient for … driving under the influence of cannabis where probable cause exists.”).
II. Chong and Cheech Committed the Same Offense

It is likewise clear that favored and disfavored drivers with any amount of cannabis in their system have committed “intrinsically the same quality of offense.”\(^{14}\) As stated by our state Supreme Court, “A driver with [cannabis] in his body violates section 11-501(a)(6) simply by driving.”\(^{15}\) Whether committed by Chong or Cheech, driving with “any amount” of cannabis in one’s system is the exact same offense.\(^{16}\) However, under the newly-amended trace law, Chong and other favored drivers are free from the same draconian presumption applied against Cheech (and other disfavored drivers).

III. The DUI Act Treats Similarly Situated Individuals Unequally

Because Chong and Cheech are similarly situated, the equal protection clause requires they be treated equally.\(^{17}\) But now the trace law actually mandates the unequal treatment of Cheech and other disfavored drivers. As noted above, prior to passage of the Cannabis Act, the trace law was a “strict liability” offense, applicable to all drivers equally.\(^{18}\) Now, whether the trace law is a strict liability offense depends upon the identity of the defendant: for Cheech, it is a strict liability offense, but for Chong it is not, and the State must prove the use of cannabis actually impaired his ability to drive.\(^{19}\)

The trace law operates such that the presence of “any amount” of cannabis in a disfavored driver’s “breath, blood or urine” creates an irrebuttable presumption of impairment, i.e., strict liability.\(^{20}\) However, for a favored driver like Chong (i.e., one “in possession of a valid registry card issued under” the Cannabis Act), the statute works the exact opposite (i.e., one “in possession of a valid registry card issued under” the Cannabis Act), the statute works the exact opposite manner as favored cannabis users to drive on the State’s roadways with active cannabis in their system; such individuals violate the law only when their actual impairment can be proven beyond a reasonable doubt. Prohibiting for one conduct allowed for another clearly constitutes unequal treatment.

The law’s unequal treatment of Chong and Cheech is stark, and meaningful: it is not a stretch to assert that Cheech has lost his presumption of innocence, while Chong retains his. To further illustrate the disparate treatment, imagine Cheech took a single puff of marijuana three weeks earlier, and had no active components in his system when the accident occurred, while Chong was smoking marijuana all day the day of the accident, had a lit joint in his mouth when the cars collided, and his test showed high levels of active components in his system. Regardless of this huge disparity, and the fact that Cheech might be able to scientifically prove he was not impaired by cannabis at the time of the accident, Cheech will still be presumed impaired, while Chong will not.

This is because, as applied to disfavored drivers, “impairment is not an element” of DUI under the trace law, as “[s]uch violations are essentially driving while presumed impaired.”\(^{22}\) In sharp contrast, when prosecuting a favored driver, the State bears the burden of proving beyond a reasonable doubt the individual was actually “impaired by the use of cannabis.”\(^{23}\) Even worse, because impairment is not even an element on which the State bears the burden of proof against a disfavored driver, the presumption of impairment is conclusive.\(^{24}\) Thus, Cheech stands certain of conviction, even in the face of unrefuted evidence that he was not impaired, while Chong may not be convicted in the absence of proof beyond a reasonable doubt of actual impairment.\(^{25}\)

In short, the statute’s presumption applies only against disfavored drivers, supplies the crucial element of their guilt, is irrebuttable in both misdemeanor and felony situations,\(^{26}\) and requires they be treated in the exact opposite manner as favored drivers. Whatever one thinks of the Cannabis Act, such unequal treatment is intolerable in a society built on the bedrock foundation of equal protection under the law.\(^{27}\)

\(^{14}\) Reed, 125 Ill.App.3d at 325.

\(^{15}\) People v. Martin, 955 N.E.2d 1058, 1064-65 (2011).

\(^{16}\) 625 ILCS § 5/11-501(a)(6).

\(^{17}\) McCabe, 49 Ill.2d at 341.

\(^{18}\) Martin, 955 N.E.2d at 1064.

\(^{19}\) 625 ILCS § 5/11-501(a)(6). While beyond the scope of this article, the amendment of the DUI Act may also have eradicated any notion of “a legislative purpose to impose absolute liability for the conduct prescribed.” 720 ILCS § 5/4-9. This could open the door to an argument that the presumption of impairment may no longer be applied. Id.

\(^{20}\) 625 ILCS § 5/11-501(a)(6). See also Martin, 955 N.E.2d at 1064.

\(^{21}\) 625 ILCS § 5/11-501(a)(6) (“this paragraph (6) does not apply” against a favored driver “unless that person is impaired by the use of cannabis.”) (emphasis added).

\(^{22}\) Martin, 955 N.E.2d at 1064, fn.1 (emphasis added). See also People v. Rodriguez, 398 Ill.App.3d 436, 439 (1st Dist. 2009) (noting section 501(a)(6) “properly created a per se offense without any element of impairment”).

\(^{23}\) 625 ILCS § 5/11-501(a)(6).

\(^{24}\) People v. Pate, 159 Ill.2d 267, 271 (1994)(Section 5/11-501(a) (6) “creates an absolute bar against driving a motor vehicle following the illegal ingestion of any cannabis … without regard to physical impairment.”) (emphasis added).

\(^{25}\) People v. Cervantes, 408 Ill.App.3d 906, 908 (2d Dist. 2011) (state must prove every element of offense beyond a reasonable doubt).

\(^{26}\) See note ix, above.

\(^{27}\) Skinner v. Oklahoma, 316 U.S. 535, 541 (1942)(“The guaranty of equal protection of the laws is a pledge of the protection of equal laws.”).
IV. The State Has No Rational Basis to Treat Cheech Unequally

Clearly, Cheech’s actual impairment is not affected by whether he is legally entitled to smoke the marijuana alleged to have caused any impairment. It is not clear how allowing Chong to drive free of the presumed impairment applied against Cheech furthers the purpose of the State’s prohibition against driving under the influence, which “is to protect the people who walk and drive on the public way.”

Our Supreme Court has stated the DUI Act “was intended to keep drug-impaired drivers off the road.” Obviously, allowing those most likely to use cannabis to drive does not advance the statutory purpose “intended to keep drug-impaired drivers off the road.”

Moreover, common sense indicates the level of risk to “the people who walk and drive on the public way” does not depend on whether the impaired drivers around them were legally entitled to smoke marijuana or not, just as the danger inherent in drunk driving does not depend on whether the alcohol was legally consumed or not. Accordingly, the Cheechs of our state have a ready-made argument that the classifications drawn by the trace law have no rational relationship to the purpose of the statute, and are based on criteria wholly unrelated to that purpose. Because of this, it is entirely arbitrary to classify Chong and Cheech differently.

To be clear, under the new trace law, the State has not decided Chong can smoke marijuana and Cheech cannot – the Cannabis Act accomplished that. Instead, it has determined Chong may drive with cannabis in his system and retain his presumption of innocence while Cheech may not. While the State is entitled to create “an absolute bar against driving a motor vehicle … without regard to physical impairment;” it most certainly cannot create and apply two unequal standards for what is inarguably the same offense.

To illustrate, consider that Illinois maintains a prohibition against driving with a blood alcohol concentration of .08 or greater. The Supreme Court has upheld this prohibition on the basis that the legislature rationally determined

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28 People v. Avery, 277 Ill.App.3d 824, 830 (1st Dist. 1995).
29 Fate, 159 Ill.2d at 269.
30 See Shepard, 152 Ill.2d at 499; and McCabe, 49 Ill.2d at 341. In a more recent decision, the Third District Appellate Court denied equal protection and due process challenges brought against the DUI Act, finding it “treats all individuals who ingest illegal substances the same.” People v. Rennie, 2014 IL App. (3d) 130014, P.22 (May 23, 2014). However, under the arguments advanced here, it is clear that all individuals charged with violating the trace law are not treated the same.
31 See McCabe, 49 Ill.2d at 341 (“it is required that there be a reasonable basis for distinguishing the class to which the law is applicable from the class to which it is not.”).
32 Fate, 159 Ill.2d at 271.
33 625 ILCS § 5/11-501(a)(1).
that level of alcohol constitutes impairment all by itself.\textsuperscript{34} Now imagine if the State distributed “Compassionate Use of Alcohol” licenses, carving out an exception to the strict liability alcohol statute exempting holders of such licenses from the presumption of impairment applicable against everyone else at an alcohol concentration higher than .08. The equal protection violation would be obvious, as it seems to be here.

Simply stated, the State can apply a standard that presumes impairment, or it can apply a standard under which the State must prove actual impairment. But it cannot apply two different standards of proof to the same statutory violation, according to the identity of the person charged. Because it has done so, the resulting inequality violates the equal protection clause.

V. The Subsequent Amendment has Entirely Undermined Fate and Martin

At the very least, the amendment of the trace law by the Cannabis Act has undermined the continued application of the case law upholding the pre-Cannabis Act trace law. The Illinois Supreme Court’s decision in \textit{Fate} was premised on the supposed necessity of a blanket prohibition against any level of drug in the blood or urine because the legislature had assumed there was no standard to apply to determine a cannabis user’s level of impairment.\textsuperscript{35} The \textit{Martin} decision followed \textit{Fate}’s reasoning, and stated clearly the principle on which it rests: “while it is possible to determine scientifically the amount of alcohol that renders a driver impaired, it is not possible to do the same for drugs.”\textsuperscript{36}

Clearly, both \textit{Fate} and \textit{Martin} rested on the notion that it was impossible to determine actual impairment from drugs. Accordingly, only because it accepted the notion that no standard under which impairment could be determined was possible, the Court in each case also accepted the State’s blanket standard of presumed impairment. However, the legislature of Illinois has now determined that actual impairment from the use of cannabis can be ascertained, at least for so-called “medical marijuana” users, and that a prosecutor is now required to show such a user is actually impaired by his use of

\begin{flushright}
\textsuperscript{34} See People v. Ziltz, 98 Ill.2d 38, 43 (1983).
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\textsuperscript{35} Fate, 159 Ill.2d at 270 (“flat prohibition ... was considered necessary because there is no standard that one can come up with by which, unlike alcohol in the bloodstream, one can determine whether one is - driving under the influence.”).
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\textsuperscript{36} Martin, 955 N.E.2d at 1064.
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cannabis. Thus, unless we are to believe the legislature has commanded the impossible (that is, determining actual impairment from cannabis) the assumption on which Fate and Martin were decided is no longer applicable. Accordingly, Fate and Martin may no longer be controlling, at least with respect to cannabis users.

Conclusion

Whatever one thinks of so-called “medical marijuana,” the fact that some cannabis users are now presumed guilty while others retain their presumption of innocence is indicative of a fundamental inequality under Illinois law. There is simply no rational basis for the distinction, and no citizen should be subject to such unfair and unequal treatment by the government. If the State wishes to keep its roadways free of those who have ingested cannabis, it may certainly do so. But whatever standard it applies to achieve this goal must be applied fairly and equally to all citizens. As noted by the U.S. Supreme Court, “The equal protection clause would indeed be a formula of empty words if such conspicuously artificial lines could be drawn.” Or, as Cheech might say: “Dude, that’s so wrong. You got a light man?”

37 625 ILCS § 5/11-501(a)(6).
38 A further challenge could also be brought under the due process clause. See Carella v. California, 491 U.S. 263 (1989) (“The Due Process Clause of the Fourteenth Amendment denies States the power to deprive the accused of liberty unless the prosecution proves beyond a reasonable doubt every element of the charged offense;” and “relieving States of this burden violate a defendant’s due process rights” and “subvert[s] the presumption of innocence accorded to accused persons”). The continued application of the presumption of impairment against disfavored drivers relieves the State of its burden of proof of the crucial element in a DUI – impairment – that it must prove beyond a reasonable doubt against favored drivers. This arguably violates the due process clause. Id.

39 One of the primary problems with the trace law is the essentially unfettered discretion it affords prosecutors. Because of the presumption of impairment, a positive test puts a citizen entirely at the mercy of the state’s attorney, who may cut favorable deals for some, but not for others. The equal protection clause should at minimum protect citizens from the exercise of wholly arbitrary power wielded by agents of the state.
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FEATURES

ILLINOIS LAW UPDATE:
NEW DECISIONS IN
CIVIL PRACTICE AND FAMILY LAW

DCBA UPDATE

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ISBA UPDATE
CIVIL PRACTICE
A claim against a city government alleging a violation of the Contracts Clause of the United States Constitution will fail upon the claimant’s failure to plead that the city government took any legislative action to impair the claimant’s contractual rights.

By Michael R. Sitrick

In Underwood v. City of Chicago, a group of retirees brought suit against the City of Chicago upon being notified that they would have to start paying or pay more for medical coverage which had previously been free or subsidized to them through pension benefits provided by funds for police, fire and other job classifications. The city ordinance allowing for the benefits expired in 2013 pursuant to a sunset clause. Plaintiffs argued that any reduction of their health care benefits or required increase in their contributions toward it violated the Pensions Clause of the Illinois Constitution. They furthered alleged that the City’s policy violated the Contracts Clause of the United States Constitution. The City removed the case to federal court and the district court dismissed it on the pleadings finding that the Pensions Clause did not apply to health care and that Plaintiffs’ Contract Clause Claim failed on its merits. Plaintiffs appealed. Notably, while the case was on appeal, the Illinois Supreme Court held that the Pensions Clause does apply to health benefits in Kanerva v. Weems, 2014 IL 115811 (July 3, 2014). Plaintiffs and Defendants subsequently filed briefs asking the Court to decide the merits of Plaintiffs’ claim—namely that “any participant in a pension plan who receives health care benefits—even if from another source, such as the City of Chicago—is entitled to keep them no matter what terms the payor attached.”

The Court vacated the district court’s dismissal of Plaintiffs’ state court claims alleging a violation of the Pensions Clause and remanded them back to the district court with directions to remand them back to state court for resolution noting its reluctance to resolve a novel issue of state constitutional law. With regard to Plaintiffs’ claim under the Contracts Clause, the Court rejected it and held that the Contracts Clause does not create a right to have all contract claims enforced in federal court but rather provides that “states may not enact any law impairing the obligations of contracts—that is, taking away entitlements that predated the change.” Here, the Court found that Plaintiffs failed to identify any legislative action by the City that impaired their contractual rights. Moreover, Plaintiffs did not contend that the City had adopted legislation overriding or otherwise blocking the enforcement of contracts about health benefits.

A minor’s compliance with a police officer’s statement that he had to search her family home does not constitute consent for a warrantless search under the Fourth Amendment.

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In Vinson, theä family,ä filed suitä against several law enforcement officers and two local governments alleging Fourth Amendment violations for conducting an illegal search of their home and its attached garage. Specifically, Plaintiffs alleged that three plainclothes officers from the County Sheriff’s Department, who were looking for a trailer and stolen lawn mowers, pulled into the driveway of Plaintiffs’ home while only their 14-year-old daughter and her younger brother were there. Alarmed by the men’s appearance, the daughter called her mother who was at work. While on the phone, the daughter saw one of the officers peer into the home through a window. He allegedly informed the daughter that he was a police officer and that “he had to” search the house was a statement describing what he was about to do and not a request for consent. Accordingly, the Court found that the pleading gave no indication of the existence of express or implied consent by the Plaintiffs’ daughter. Moreover, the Court further noted its doubt that the daughter had sufficient actual or apparent authority to allow a search of her parents’ home given her age. The Court, therefore, reversed the dismissal of Plaintiffs’ Fourth Amendment claims and remanded the case back to the district court.

FAMILY LAW
The modification of a custody agreement to award residential parent status to a father is warranted where he can show that the mother’s health and behavior constitute the occurrence of a change in circumstances which could lead to future harm of the child or otherwise adversely affect his welfare.


By Jennifer E. Byrne, Katie C. Galanes, Danya A. Grunyk, Victoria C. Kelly, Hillary A. Sefton, and Leah D. Setzen

In In re Marriage of Rogers, the wife appealed the trial court’s decision modifying custody from her being designated the residential parent of her minor child to the husband being designated as such. Originally, the trial court did not grant the modification, finding that “changed conditions alone do not warrant modification in a child custody judgment without finding that these changes affect the welfare of the children.” The trial court expressed great concern with its decision. The husband filed a motion to reconsider, and the trial court recognized that it placed too high a burden on the husband to show that the wife’s actions adversely affected the minor child.

On appeal, the Court found that the evidence was clear that the wife had had multiple psychotic episodes. Although the wife claimed that those events were the result of medication she was taking, the wife did not stop taking the medication, and did not seek further medical attention. Further, it was by pure luck that the child was not harmed. The Court also found that the wife was not a credible witness. Accordingly, the Court found that these changes clearly affected the child’s welfare insofar as they increased the risk of something bad happening to him. The statute allows the Court to modify custody upon a showing that a change in circumstances has occurred which could lead to future harm or otherwise adversely affect the child’s welfare. Therefore, the decision of the lower court was affirmed.

Removal of a child out of state can be warranted where the circumstances appear to be genuinely more favorable for the mother and child without negatively affecting the child’s relationship with the other parent.


By Jennifer E. Byrne, Katie C. Galanes, Danya A. Grunyk, Victoria C.
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In In re Marriage of Tedrick, a mother filed a petition to permanently remove her son out of state to South Carolina so that she could take a new job that was more desirable and secure. The trial court denied the petition after an evidentiary hearing in which it found that the removal was against the child’s best interest.

On appeal, the Court reversed and remanded finding that the trial court’s decision was against the manifest weight of the evidence. Specifically, the Court found that the motivation for the removal was not dubious and instead resulted in a better job for the mother, positively impacted her health, increased time spent between her and the child, and increased support of the mother’s immediate family. Further, the mother had made a considerable effort to facilitate continued contact between the child and his father. The Court held that concerns related to the child traveling alone via airplane were not a sufficient reason to deny removal, based upon the fact that the child was accompanied by both parents to the departure and arrival gates, was in the care and custody of flight attendants during the flight, had traveled alone at least two times by the time of the hearing before the trial court, and the child had not expressed concerns about traveling alone. The Court also found that the father had not diligently exercised his visitation rights as he had not opted to use two weeks of summer time with the child in 2013 and in 2014, and he sent the child to the mother’s daycare from Monday through Friday during both weeks. Lastly, the Court found that adjusting the parenting schedule to make the father’s visitation less frequent but for longer periods of time, particularly in the summer, would not negatively affect his relationship with the child.

If you wish to submit a contribution for inclusion in a future edition of the Illinois Law Update, please e-mail Michael R. Sitrick, Illinois Law Update editor, at sitrick.m@gmail.com.

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THANK YOU FOR YOUR SUPPORT!
A sense of humor... is needed armor.
Joy in one’s heart and some laughter on
one’s lips is a sign that the person down
depth has a pretty good grasp of life.
-Hugh Sidey, Journalist

Yay! It’s April. Over on the
other side of the magazine,
The Grief contributors have
put together some witty and insight-
ful commentary about our legal com-
munity. I’m guessing most of you will
spend your allotted DCBA Brief read-
ing time on that side. I’d love to do a
study where we drop the April issue
on the desks of 100 members and see
which side they flip through first. My
hypothesis is that the vast majority of
members will go to The Grief before
The Brief. Everyone loves a humorous
break in their day. A bit of laughter
can be renewing for the mind and re-
charging for the soul.

As a child I was blessed with a
grandfather who taught me all the clas-
ic jokes — got your nose, made you
look, pull my finger, etc. Family gather-
ings were not boring — there were joke
gifts, gags (like the time my uncle put a
remote farting noise machine under the
chair of my sister’s new boyfriend) and
the focus was on fun. Also imparted was
the ability to laugh at ourselves. If you
fell down, best to hop up and laugh it
off. There is very little that embarrasses
me after a childhood like that and it
gave me the ability to roll with the
punches and find the joy in life. Now
that I am a parent, it is my responsibili-
ty to teach my children these same things.

My husband and I are trying to
focus more on experiences with our
children than things — a difficult con-
cept for a seven and five year old today.
A recent vacation allowed us to play in
the surf of the Gulf of Mexico and ride
rollercoasters at Magic Kingdom and
Legoland. Lots of joy and laughter to
be had. The seven year old loves finding
new jokes (his current favorite: What
do you call a male cow that likes to sleep
a lot? A bull dozer.), I’m passing on all
of Grandpa’s jokes and trying to explain
sarcasm. A harder task is teaching my
sensitive son that when you fall down
there is no point in getting upset, find a
way to laugh at the moment and it will
be easier to move on.

I do enjoy the various ways that
our community finds ways to incorpo-
rate humor into our days. Judges’ Nite
was a roaring success with a new format
and feel. Hopefully, a few judges and
attorneys were able to laugh at them-
selves a bit. The other side of this issue
also has a new format and a new articles
text, editor at the helm. I’m sure it is chock
full of funny and more opportunities
for judges and attorneys to laugh at
themselves. I hope that the humor the
DCBA offers is helping you to roll with
the punches of being an attorney and
providing you a moment for renewal
and recharging. Laugh on.

Leap into DCBA Leadership

BY LESLIE MONAHAN

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Attorneys who accepted Legal Aid assignments in 2014 include:

Attorneys who closed Legal Aid assignments in 2014 include:
We have the expertise and ability to handle large, complex cases, including business litigation, construction disputes, contested estates and trusts, guardianships, employment matters, domestic relations and general civil litigation. Based in Wheaton, our practice is regional in scope and includes state and federal courts, administrative agencies and other tribunals.
Recently, the Illinois State Bar Association, led by President Felice, attended the ABA convention in Houston, Texas. Discussed at the ABA convention was the Limited License Legal Technician Board. The purpose of the limited practice rule for limited license legal technicians grew out of the Civil Legal Needs Study in 2003 commissioned by the Supreme Court which established that legal needs of the consuming public are not currently being met. The State of Washington will be the first justice system in the nation to admit another level of practitioner – the Limited License Legal Technician (LLLT). The LLLT allows for a non-attorney with certain levels of education, training and certification to provide technical help on simple legal matters such as selecting and completing court forms, informing clients of procedures and timelines, explaining pleadings and identifying additional documents that may be needed in the court proceeding. The LLLT was created because of the growing number of people unable to afford professional legal help. This is most true in the family law arena where courts in the 1970’s began reporting a large increase in family cases involving at least one party not represented by an attorney. This led to increasing numbers of non-attorneys offering help with legal documents and created a problem that challenged the State bar associations regarding the unauthorized practice of law. The 2003 Civil Legal Needs Study released by the Washington Supreme Court task force on Civil Legal Justice found 85% of the State’s low-income population had serious civil legal problems involving basic needs such as housing, employment and family stability, but only 15% were receiving any kind of legal assistance.

The following factors led to the LLLT Rule in the State of Washington:
1. Growth in the number of pro se litigants.
2. Significant increases in the cost of law school education which resulted in growing barriers for many interested in the legal profession. The average cost of public law school has nearly tripled since 2001 and 2013 law school enrollment was at its lowest level since 1977.
3. The proliferation of people or businesses engaged in unauthorized practice of law exploits the public and puts the legal profession in disrepute.

In order to qualify as a Limited License Legal Technician, the State of Washington has instituted a number of educational and licensing requirements. In addition, the LLLT must have significant experience supervised by a licensed attorney, pay an annual fee and show financial proof of ability to respond to damages resulting from his or her acts or omissions in the performance of services. The LLLT may not perform services outside defined practice area for which the LLLT is licensed and has continuing education requirements to maintain a license in Washington.

As many of you are probably aware, the number of pro se litigants in Illinois continues to rise. Many of the counties in the Chicagoland area have instituted programs to assist those unable or unwilling to bear the cost of an attorney including: pro se court days, night court, creating new court forms, websites and video tutorials. The challenges faced in Washington are those same challenges attorneys and litigants face in Illinois. If the program in Washington is successful, we should be on the lookout for similar licensing here. □
In our prosecution and defense of class actions throughout the United States in Federal and State Courts, we are proud of our recent accomplishments, which include the following:

**RECENT CLASS ACTIONS**

**Walczak v. Onyx Acceptance Corporation**
Class certification order affirmed by the Appellate Court. 365 Ill.App.3d 664. Represented class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,500 class members able to claim up to $2000. In addition to the damages payment, debt totaling $65,000 was forgiven as to all class members as part of the settlement.

**Lockett v. McGreet**
Representing a national settlement class of consumers who received alleged junk text messages from various national chains or corporations such as Domino’s Pizza, Cox Media, Burger King and Mattel. Class members able to claim up to $105. The total settlement fund is $16,000,000.

**Terrill v. Hilton**
Court certified a class of all customers of Hilton’s Oakbrook Terrace Hotels. Following successful interlocutory appeal (338 Ill.App.3d 631), judgment in favor of the class for millions of dollars in damages, prejudgment interest and all attorneys’ fees. Affirmed on appeal in Rule 23 Opinion. Class received in excess of 90% of overcharges with monies being mailed out to each class member following win on appeal. Settled identical cases on a class-wide basis against other national hotel owners including Marriott, La Quinta, Comfort Suites and Four Points.

**Jane Doe, et al. v. Trade School**
Court certified class seeking millions of dollars in refunds and other damages for all students who took a medical sonography course but did not obtain jobs in the field. The class claimed that Defendant violated the Consumer Fraud Act’s provision for vocational schools by failing to disclose that very few graduates obtained jobs. Appellate and Supreme Court refused to hear an appeal of class certification order. Case settled on class-wide basis with some students recovering up to $7,500.

**Boundas v. Abercrombie & Fitch**
Representing national class of consumers that received a $25 purchase reward card that allegedly did not contain an expiration date but which defendant claims should have contained an expiration date and will no longer honor. Class action certified by District Court and 7th Circuit denied request for interlocutory appeal of class certification in Abercrombie case. 280 F.R.D. 408.

**Daniels v. Hollister**
Representing national class of consumers that received a $25 purchase reward card that allegedly did not contain an expiration date but which defendant claims should have contained an expiration date and will no longer honor. Class action certified by New Jersey State Court.

**Shareholder Derivative Lawsuits**
We have or are representing shareholders of various corporations in shareholder derivative lawsuits involving claims against management including cases against DeVry, Cole Taylor Bank, and Nalco.

**Unpaid Overtime Class Actions**
Representing putative class members in a number of cases against employers seeking repayment of alleged unpaid overtime or for other wage and hour violations such as failure to pay minimum wages. We have obtained favorable class wide settlements in wage and hour and overtime cases.

**Erickson v. Ameritech**
Court certified consumer fraud claims for failure to disclose hidden voicemail charges. In 2005, Crain’s Chicago Business listed the settlement as the third highest settlement/verdict in Illinois.

**Class Action Defense**
Defended national marketing company in four Fair Credit Reporting Act class claims seeking over $100,000,000 brought in federal courts in Chicago and Maryland. Defended national residential mobile home rental chain in consumer fraud claims. Defend a number of large to mid-size companies in class claims throughout the country including defending a landlord in class claims alleging violations of Illinois security deposit laws, a municipality in claims involving alleged illegal fines, a medical services finance company regarding alleged illegal loans for plastic surgery procedures. Also act as advisors and co-counsel with attorneys who have asked us to assist them in defending their clients in class claims.

We are also investigating the following Potential Claims...

...and enter into referral and co-counsel agreements with attorneys who assist us in prosecuting class action or whistle blower claims:

- Violations of Federal and state wage claim laws by failing to pay overtime to salaried employees, forcing employees to work off the clock and failing to pay minimum wages.
- Whistle Blower claims involving fraud on the government or securities purchasers.
- Manufacturers, retailers and advertisers who materially misrepresent how a product works or performs or who knowingly sell a materially defective product.
- Junk text messages received from national or well established companies.

**Areas of Interest:**
- Wage & Hour Overtime and Minimum Wage Violations
- Whistle Blower (Qui Tam) Claims
- Unfair Check Overdraft Fees
- Healthcare Product Fraud
- Defective Car & Vehicle Products
- Insurance Fraud
- Fair Credit Reporting Act – FCRA
- Fair Debt Collection Practices Act – FDCPA
- Privacy Violations
- Violation of Car Repossession Statutes
- Vocational School Deception
- Excessive Late Charges
- Infomercials & Deceptive Advertising

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CLASSIFIEDS

ATTORNEY
Established, busy West Suburban Personal Injury and Workers’ Compensation law firm (Plaintiff) seeks experienced attorney to join its thriving practice. Minimum two years’ experience required. Spanish speaking a plus. Attractive salary and benefits package. Email resumes in confidence to mdalaskey@woodruff-lawyers.com

ASSOCIATE ATTORNEY
Established DuPage County Firm seeks energetic attorney to fill associate position. Experience in the practice areas of family and/or criminal-traffic and/or civil and/or real estate, required. Applicant must be motivated and possess exceptional communication and organizational skills, with the objective of becoming proficient in the general practice of law. Position will provide the right applicant with the opportunity to become part of an expanding practice with financial incentives on top of competitive base salary (+$50,000 commensurate upon experience). Abilities in legal research, writing and mastery of current related software, a definite plus. Please send resume and personal references to attywinthers@msn.com.

ASSOCIATE ATTORNEY
Geneva law firm concentrating in family law within Kane and neighboring Counties seeks Associate Attorney with minimum 3 years of family law experience. Fabulous work environment! Salary commensurate with experience. Please send resume and personal references to attorney@genevafamilylaw.com.

ASSOCIATE ATTORNEY
The leading western suburban Chicago law firm has an immediate need for an associate with five or more years of experience to join its Estate Planning Group. The ideal candidate must have experience working on sophisticated estate planning and estate administration as well as providing general business advice, excellent drafting skills, strong financial or accounting background, a deadline oriented attitude, and a desire to have significant client and referral source interaction. Please send current resume along with references to mschullo@huckbouma.com.

RECEPTIONIST/PART TIME
Small Wheaton law firm is looking for a friendly, energetic and trustworthy individual. Job duties include: answering phone; opening files; customer contact and computer entry. Please contact Jennifer Webber at (630) 933-9220 or email your resume to jwebber@beckhoulihan.com

LEGAL ASSISTANT/LEGAL SECRETARY
Downers Grove law firm seeks full-time paralegal/legal assistant/legal secretary. Must be reliable, organized and detail-oriented. Must have excellent computer skills, and be proficient in Microsoft Word. Law firm or business experience preferred. Firm areas of concentration include commercial litigation, corporate transactions, estate planning and real estate. Please send cover letter, resume, and salary requirements to KevinL@KLLAWFIRM.com

NAPERVILLE PROFESSIONAL BUILDING
2,500 to 6,000 sf of build to suit space at 1250 N. Mill St. Naperville. 10 minutes to courthouse. Call D. J. Oppermann at 630-665-0090 or email djoppermann@comcast.net.
TAKE YOUR WEBSITE TO THE NEXT LEVEL

WE manage your online presence while YOU manage your business.

OVĆ, INC. PHOTOGRAPHY SERVICES

OVĆ, INC. NOW delivers professional photos to help market your image and law firm.

“Jessica at OVĆ, INC was wonderful to work with.”
- Maxine Weiss Kurz
Weiss Kurz & Green, LLC

We offer different perspectives, professional business portraits and action shots

On location commercial, architectural, interior and exterior shots

Convenient Wheaton location with in-house photography studio
Law Day U.S.A. was established in 1958 by presidential proclamation and reaffirmed by joint resolution of Congress in 1961. Law Day is celebrated on May 1st of every year as a “special day of celebration by the American people in appreciation of their liberties and to provide an occasion for re-dedication of the ideals of equity and justice under the laws.” This year’s theme is Magna Carta: Symbol of Freedom Under the Law 2015 marks the eight hundredth anniversary of the signing of this document.

Illinois Supreme Court Justice Anne M. Burke will be our guest speaker. Prior to her tenure on the Supreme Court, Justice Burke served as a judge on the Court of Claims, special counsel to the Governor for Child Welfare Services, and as a justice on the Appellate Court, First District.

In addition to Justice Burke’s address, the recipient of this year’s Liberty Bell award will be announced, as well as the recipients of Legal Aid Pro Bono awards.

The Law Day luncheon is scheduled for April 29th from 11:30 to 1:00. The event will again be held at Le Jardin restaurant located at Cantigny. The price for a ticket is $30.

In addition, DCBA will host mock trials on May 1 and participate in Ask a Lawyer Day and Lawyer Outreach programs. All great ways to participate and celebrate. □

WHERE TO BE IN APRIL

Law Day Luncheon Is April 29th—Celebrating the Magna Carta

DCBA Benefit Highlight

Free Happy Hours!

Our free monthly happy hours are a great place for networking with fellow attorneys and judges, and meeting colleagues outside of the court room!