A Changing of the Guard

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May 2015
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I was offered the opportunity to be on the writing staff of Judge’s Nite this year and I did not hesitate to say yes. Besides, how often would I get the chance to poke fun at the Powers That Be without totally tanking my legal career? Needless to say, writing for the show was slightly daunting; I am generally funny by accident. Writing consisted of hacking up song lyrics to suit the story, deciding which judge or attorney to lampoon, staging suggestions, costume ideas and consuming as much beer and junk food as possible in a two hour period. Seriously though, we did not drink and drive since we all know better than that, but we sure put a hurt on some food that was really bad for us. I did a little musical theater in high school but had no other experience as a writer for a show.

I can understand why the same people keep coming back year after year to either write, act or be a part of the show. The camaraderie is great and it is quite a thrill to see something you have helped create make it to the stage; even if only bits and pieces of your writing or a few of your ideas are included. Hearing your lines come to life was a kick. I will say, all modesty aside, the show this year was truly the best I have seen and I sure hope I get asked back next year (hint hint Nick Nelson).

I want to personally thank everyone that participated in the silent auction and all of their generous donations. The money raised is so critical to the success and continuation of our Legal Aid program. Finally, we would not have raised nearly the amount we if not for the generosity of our donors and the items donated. Thank you to each of the donors. I won some really great wine and indoor skydiving; it’s going to be a heck of a spring.

Our generous donors were: Robert Erving Potter III, Potter School of Photography, Tasting DeVine, Cindy Allston, Phil Kramer and Cecilia Najera, Capri Restaurant, Downtown Downers Grove Management Corp., Brookfield Zoo, Shedd Aquarium, Chili’s, The Daily Scoop, Vintage Confections & Fairy Tales, A Shear Encounter, It’s a Bling Thing, Blue Seas Med Spa, It’s Fitness, Wheat Café, Alfie’s, Fire & Wine, Tony’s, IL Sagno di Barrella, Cooper’s Corner, Devereaux Design, Ltd, Jeans & a Cute Top, Angelo’s, Main Event, Lucky Strikes, Hyatt Lisle, Sarah Lange, The Patio, Law Offices of Paul DeLuca, Ra Sushi, Dr. Cathy Subber of Advanced Health of Naperville, Anderson’s Bookshop, Home Professions, Sheraton, Perry’s Steakhouse & Grille, Karate for Kids and Family Center, Solemn Oath Brewery and Tommy Nevin’s Pub, 1913 Restaurant & Wine Bar, Fire & Wine, Warren’s Ale House, Ivy Restaurant, The Bank, Jeff York, Marriott Naperville, Francesca’s Restaurants, Law Offices of Colleen McLaughlin, the Chicago Cubs, Dr. Marc Asselmeier, DuPage Medical Group Orthopedics, Momkus McCluskey, LLC, Lillig & Thorsness, Ltd, Eagle Ridge, A.

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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.

WHAT A BLAST
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DCBA Brief welcomes members’ feedback. Please send any letters to the attention of the editor, Raleigh Kalbfleisch, at email@dcbabrief.org

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DCBA BRIEF
DCBA Benefit Highlight

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The DCBA advances the practice of law and promotes the legal professional through community service and legal education. DCBA’s 2,800 attorney members have access to great member benefits. For more information about membership or sponsorship opportunities call us today!
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Ice on Fire
If you want to make a difference in the future of our profession, become a Mentor. The Lawyer to Lawyer Mentoring Program was established by the Illinois Supreme Court Commission on Professionalism. The Commission defines it as “an opportunity for experienced lawyers to provide professional guidance and share their judgment and skills with new lawyers.” The Program now includes 75 Sponsors across Illinois and DCBA is one of them.

To qualify as a Mentor, one must be active and in good standing on the Illinois Master Roll of attorneys; have no prior suspensions or disbarments in any jurisdiction; be admitted to practice law in Illinois not less than six years; and have no formal disciplinary complaint pending. To qualify for admission to the DuPage Mentoring Program one must also be a member of the DCBA.

The Mentoring Program is one year in length and is structured to provide flexibility for individual schedules. The Program pairs experienced lawyers with new lawyers. It is ideal for both members of large firms and for the solo practitioner. It not only hones professional skills and develops the capabilities of the promising new associate, it nurtures relationships among all attorneys.

The new lawyer, or mentee, must start the program no later than two years after admission to the Illinois Bar; be registered on the ARDC Master Roll of attorneys as active; practice or intend to practice in Illinois and be a member of the DCBA. The new lawyer is also required to complete the program within the first three years of practice.

At the conclusion of the one year program, Mentors receive a total of six professional responsibility credits as do the Mentees. New attorneys have the option to apply the six hours of mentoring PRMCLE credit to satisfy a portion of the 15 hour CLE requirement for new attorneys.

Once a mentee is accepted to the DCBA Mentoring Program and paired with an experienced lawyer, both are invited to a lunch hour orientation in the Attorney Resource Center. The DCBA holds two mentoring program orientations per year; February and September. But the support of the DCBA goes beyond the orientation and staff assistance that participants receive during the one year program.

I attended the February orientation and was grateful for the welcome given to the participants by Chief Judge Kathryn Creswell. Judge Creswell shared her personal experiences vis-à-vis a mentor and the important role played by lawyer to lawyer mentoring. The orientation was well attended and included many familiar faces. A number of our members find the experience very rewarding and have volunteered to mentor more than once. Without their dedication, the DCBA would be unable to offer the program.

And because the DCBA values the role of the Mentor as a positive force in the future of our profession, it supports the Mentors and Mentees beyond the commitment of one year. Current program participants are invited to a follow up meeting six months into the Program. Upon completion of the Program, all participants, as guests of the DCBA, are invited to a celebratory Happy Hour. All past Mentors/Mentees receive a quarterly newsletter in the months of January, April, July and October.

DCBA also offers a six-hour Basic Skills course that can be taken in place of the Mentoring Program or in addition to the Mentoring Program to obtain an additional 6 hours of credit.

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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.
toward their 15 hour requirement. New Admittee Members can choose 3 hours from the 75 hours of free CLE offered by DCBA each year to easily complete their 15-hour requirement.

Suffice it to say, both the Mentoring Program and Basic Skills course are designed to promote professionalism among all Illinois attorneys, address our Illinois professional responsibility requirement and to specifically assist our newer attorney members with the requirements they must fulfill.

Please consider becoming a Mentor. It is an invaluable gift, to not only a new lawyer, but to those who need representation. Only lawyers can ensure that law is, and will always be, practiced in the most honorable and professional manner. Make the investment.

The Illinois Trial Court Divorce Digest reports selected trial court decisions in the Illinois family law courts on a monthly basis. Decisions included are from Cook, DuPage, Lake, Will and other counties. The publisher, Maol Murray Sloan, began publishing the Digest online in March of 2010.

The decisions cover the gamut of issues including property allocation, maintenance, custody, child support, attorney fees, etc. The publication features profiles of Judges, attorneys and experts involved in each case.

The Digest is the only publication of its kind in the country. It educates and informs in real-time as to how Judges are dealing with the complex, sometimes contentious and life-changing decisions they make on an everyday basis in the domestic relations court of Illinois.

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Splash Page Photo by Jeffrey Ross Photography: Chief Judge Kathryn Creswell with her “understudy” Alycia Fitz flanking the COPE poster that was a huge hit in the show. Poster courtesy of Brent Christensen.
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Well, InBrief isn’t totally positive, but it appears that Winter is finally gone.

The DCBA went back to beautiful Cantigny for the Law Day gathering. Justice Anne Burke highlighted the event with a talk commemorating the 800th anniversary of the signing of Magna Carta. InBrief was just a youngster at Runnymede at the time and doesn’t remember too much about the actual signing!

Following the Law Day event, the DCBA participated in Lawyers Lending a Hand on April 30. It was actually more “lending a vein,” as the monthly activity took the form of a blood drive, featuring competition between government and private attorney groups to see who could donate the most blood. It was expected that there would be fierce competition between DUI prosecutors and collection attorneys, two groups skilled in the art of extracting blood. Of course, had there been any counsel from the IRS, well….

President Lynn Cavallo will be hosting the President’s Celebration on May 14th, at Noah’s in Naperville. The event will honor the DCBA’s Lawyer of the Year, and recognize those bar leaders and Committee Chairs who have done so much to make the DCBA great during the past season. See May’s “Where to Be” for more information and registration options.

As the DCBA rolls into June, the next Strategic Plan phase will go into effect, as the substantive law committees become sections, with new leadership concepts, and a greater emphasis on CLE offerings. June 4 will feature the Installation of Jay Laraia as the next President of the DCBA, with a dinner at the Medinah Shrine Center in Addison.

People Notes The Davi Law Group raises its flag over a new location, opening an office in downtown Joliet.

Chris Hage has taken a new position as Chief Real Estate Prosecutor for the Illinois Department of Financial and Professional Responsibility. He’ll be dealing with the misdeeds of real estate brokers and agents statewide.

Nancy Wolfe retired recently as First Assistant State's Attorney, but she’s coming out of retirement to take the position of Investigator General for DuPage County, according to an announcement by County Board Chairman Dan Cronin.

New Members InBrief welcomes these new members to the DCBA: Attorney Members: Jeffrey M. McCarthy, McCarthy Law Group, Ltd; Suzanne Kelliher, Dvorak & Kelliher, Ltd; Jason C. Tunquist, Lyons Law Group, LLC; Timothy Clancy; James D. Shepherd, Shepherd Law Office; Robert M. Prince, Chart & Prince P.C.; Evan J. Haim, Reimer Dobrovolny & Karlson LLC; Michael L. Lodermeier, Michael L. Lodermeier, P.C.; Peter J. Evans, Novak Law Offices; Tonya M. Parravano, Haskin Corrigan Tabis & Parravano PC; Emilio Moretti, Moretti Law P.C.; Vincent Canale, Keay & Costello, P.C.; Lesley Arca; Jennifer L. Schiavone; Chelsea Caldwell; Matthew A. Kirsh, Kirsh & Associates, Ltd., Affiliate Members: Jeffrey Hartman, 4Discovery. Legal Community Members: Lillian M. Fortman, Lil's Type Paralegal Services; Nicole Zivkovic, Hervas, Condon & Bersani. Student Members: Hannah Keller; Kathryn Brown; Brian J. Tuinenga; Emmanuel Santos Llamas, Dreyer, Foote, Streit, Furgason & Slocum; Marie Sarantakis, Law Office of Umberto S. Davi; Kathryn S. Robinson; Brian Hoppe; Wilma Jean Walker; Sudip Mitra; Erich Nathe; Elizabeth H. Bucko; Eric Vincent; Paulina Fira; Maria De Los Angeles Perez; Ben Holinga; Margaret Harvell; Susie M. Frieders; Tricent Washington, Thinking Outside The Box.
March 6 was a beautiful, sunny day; a portent of what was to be an outstanding 40th Anniversary Judges’ Nite. The crowd began to assemble at the Mac at 5:30, for cocktails and cordiality with the intermingled ensemble of judges, lawyers, guests, cast, band and crew. New Director Nick Nelson was putting on his first show, with a good number of new cast members, and even a few changes to the Judges’ Nite Band. But this was show number 40! It was expected to be spectacular and it did not disappoint.

The first question for any Judges’ Nite is whether the judiciary, potential targets for the barbs of the writers for the show’s dialog and song adaptations, will steel themselves for the merriment, and attend. That answer for this year’s event was a resounding “Yes”! Chief Judge Kathryn Creswell was joined by her colleagues from the bench, Bob Anderson, Dorothy French Mallen, Bruce Kelsey, Tim McJoynt, Ken Popejoy, Mary O’Connor and Bonnie Wheaton. Judges Liam Brennan, John Demling Tom Else, Rob Douglas, Paul Fullerton, Bill Ferguson, Rich Russo and Brian McKillip were also in the judicial entourage, as were Blanche Fawell, Ron Sutter, John Kinsella, Bob Gibson, Terry Sheen, Karen Wilson and Jim Orel. Rounding out the local judiciary were more recently appointed judges Ann Celine O’Hallaren Walsh, Robert Rohm, and Anne Therieau. Justices Joe Birkett and Michael Burke attended, as did Judge Russell Hartigan from Cook County (who will in the near future assume the ISBA reins as well). But really, really in attendance was Judge Mike Wolfe, who was presented with the Deep Gavel Award, by Jim McCluskey, having achieved that dubious distinction for last year’s musical salute, “What Does Judge Wolfe Say?”

The show always features a welcome by the DCBA President. Last year Pat Hurley set the bar a little higher with his duet with his wife, Cara Hurley. So, this year, President Lynn Cavallo came on stage to deliver her welcoming musical number, and then really got things rolling when State’s Attorney Bob Berlin joined her on stage for a duet!

The evening crowd packed the house, with over 325 engaged in deep legal conversation, reviewing and placing bids on the silent auction items, and munching hors d’oeuvres washed down with fine wines and cocktails.

Wow! Quite the show! The big purpose for this annual get-together, is more than just fun. Judges’ Nite raises
funds for the DuPage County Legal Aid Services Program, funds that are sorely needed in the current economy. Producer **Christina Morrison** had brought fund raising to a new level last year by introducing the silent auction, and this year increased the intensity, and generous donors helped raise $9,800 for the cause. Some of the big winners of the night were:

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Winner</th>
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<tbody>
<tr>
<td>Vacation at Siesta Key</td>
<td>Justin Smit</td>
</tr>
<tr>
<td>Galena Midweek Stay</td>
<td>Frank Markov</td>
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<tr>
<td>2 Chicago Bull's Tickets</td>
<td>Bob Schillerstrom</td>
</tr>
<tr>
<td>One Sampler Package &amp; Napa Valley Reserve Wine</td>
<td>Bob Boyd</td>
</tr>
<tr>
<td>Gibson's Gift Card</td>
<td>Raleigh Kalbfleisch</td>
</tr>
<tr>
<td>Ipad with wifi</td>
<td>Stacey McCullough</td>
</tr>
<tr>
<td>Wood Art Design</td>
<td>Baldwin Bump</td>
</tr>
<tr>
<td>Cubs tickets for four</td>
<td>Todd Scalzo</td>
</tr>
<tr>
<td>Vacation on Estero Island</td>
<td>Sharon Mulyk</td>
</tr>
<tr>
<td>Overnight &amp; Dinner</td>
<td>Ann Martin</td>
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<tr>
<td>Print of DuPage County Courthouse</td>
<td>Ted Donner</td>
</tr>
<tr>
<td>Cubs Tickets &amp; Pizza</td>
<td>David Sosin</td>
</tr>
<tr>
<td>Family Fun Package</td>
<td>Kim Davis</td>
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<tr>
<td>Romantic Get-A-Way</td>
<td>Margaret O'Connell</td>
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<tr>
<td>Custom Oil Painting</td>
<td>Denna Blair</td>
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<tr>
<td>Overnight &amp; Breakfast for Two</td>
<td>Cindy Allston</td>
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<tr>
<td>Taylor Swift in Concert</td>
<td>John Pcolinski</td>
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<tr>
<td>Napa Valley Wine</td>
<td>Ted Donner</td>
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<tr>
<td>Napa Valley Wine</td>
<td>Raleigh Kalbfleisch</td>
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<tr>
<td>Weekend overnight for two &amp; Dinner</td>
<td>Sharon Mulyk</td>
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<tr>
<td>Cubs Tickets &amp; signed ball</td>
<td>Jim Mulyk</td>
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<tr>
<td>Medinah Golf Threesome</td>
<td>John Pcolinski</td>
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<tr>
<td>Autographed Arnold Palmer photo</td>
<td>David Sosin</td>
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<tr>
<td>4 White Sox Tickets</td>
<td>Bob Gibson</td>
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<tr>
<td>Galena Weekend</td>
<td>Baldwin Bump</td>
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<tr>
<td>4 White Sox Tickets Lower Deck</td>
<td>Steve Armamentos</td>
</tr>
<tr>
<td>PGA Championship tickets</td>
<td>Chris Zaruba</td>
</tr>
<tr>
<td>BMW Championship tickets</td>
<td>George Frederick</td>
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</table>

Oh! And there was one more feature of Judges’ Nite Number 40 that brought down the house, but is not likely to be an annual part of the show, since we only expect **Ronald Nolen** to propose to cast member and JN Rookie of the Year, **Jennifer Burdette** once! Certainly for one happy couple in particular, this was decidedly not the Worst. Show. Ever. □
Our expertise spans a wide range of practice areas, including business services, banking, estate planning and administration, elder law, commercial real estate, and litigation. We take pride in representing businesses, banks and other financial institutions, as well as individuals and families. Our services encompass mergers and acquisitions, tax advice and planning, wealth transfers, asset preservation, and estate, trust, guardianship, and business litigation.
Lawyers are accustomed to stress, both the chronic and the episodic kinds, but we all know that sometimes the pressures of practicing law can be overwhelming. If you feel that you may be developing problematic ways of responding to stress, there is free and confidential help available to you through the Lawyers’ Assistance Program, Inc. (LAP). LAP is a strictly free and confidential not-for-profit that has been helping lawyers, judges, law students and their families for over 30 years.

At no cost to yourself, and in strict confidentiality, you can call to speak with one of their licensed clinicians regarding stress, anxiety, work-life balance, career transition, substance abuse, grief, addiction and/or any other issue that may be impairing your health or your professional judgment. LAP provides free and confidential individual assessments, short-term counseling, gender specific support groups, two weekly 12-step support meetings and referrals for continued treatment when indicated. LAP also offers the opportunity for confidential peer support from a trained LAP volunteer. Peer support volunteers are trained by LAP and hand-picked to meet your individual circumstances. LAP trained confidential peer support volunteers in DuPage County include:

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- Irene Bahr
- Honorable John Demling
- Brigid Duffield
- David Fish
- Beverly Helm
- Patrick Hurley
- Walter Jackowiec
- Kevin Kelly
- J. Richard Kulerski
- Elizabeth Looby
- Isabel Millard
- Colleen Minogue
- James Musial
- Christine Ory
- Laurel Palmer
- Jay Reese
- Thomas Riggs
- Chuck Roberts
- William Roberts
- Anthony Trotto
- Laura Urbik-Kern
- Vickie Voukidis
- Daniel Walker
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Whether you are in solo practice, a member of a firm, a judge, or a law student, LAP’s services are available to you. You can also call LAP if you are concerned about a colleague, a friend or a family member who is experiencing any of these problems. Our clinicians will help you find additional help for your loved one and assist you in coping with the stress that accompanies being a support system and/or caretaker for others.

The trained staff at LAP offer help in a respectful, non-judgmental way. LAP also offers presentations at law firms, law schools, and bar associations to help raise awareness about these issues, and the approaches available to address them. For more information, visit our website at www.illinoislap.org. Or contact us in our Chicago office, at 20 South Clark Street, Suite 1820, by calling 312-726-6607 or 800-527-1233. Or email us at gethelp@illinoislap.org. Don’t ignore the problem. LAP is here to help.
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- Estate Planning
- Environmental Law
- Employment
- Appeals

For more information, please contact one of the firm’s members, Ed Momkus, Jim McCluskey, Jim Marsh, Angelo Spyratos, Kimberly Davis, or Jim Harkness.
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THE INTERSECTION OF AUTISM AND THE LAW IN ILLINOIS 32
For decades, the Illinois Small Estate Affidavit has helped deceased client families with modest estates to avoid probate. The Small Estate Affidavit (SEA) has been a great tool to lighten the court dockets and provide efficient and prompt authorization for the distribution of estates with less than $100,000 of remaining assets.

That has all changed. Now, a family member of the deceased who signs the SEA must be on the hook for unknown or unknowable creditors and creditor’s attorney fees.

In the new document the family member affiant promises, “By signing this affidavit, I agree to indemnify and hold harmless all creditors of the decedent’s estate, the decedent’s heirs and legatees, and other persons, corporations, or financial institutions relying upon this affidavit that incur any loss because of reliance on this affidavit up to the amount lost because of any act or omission by me. I further understand that any person, corporation, or financial institution recovering under this indemnification provision shall be entitled to reasonable attorney fees and expenses of recovery.”

We can no longer recommend that anyone sign this new version of the SEA. There is too high a risk of future liability from unknown creditors. An “honest and reliable” affiant accepts full liability for unpaid debts, attorney fees, and costs. Creditors are given a statute of limitations that runs two full years from the date of the decedent’s death.

Please read the new statutory form.

We now recommend probate as the wise choice for the family representative. It’s sad to say good-bye to an old reliable friend... We will miss the old SEA form.

Rick L. Law, Esq.
History in the Making

BY ARTHUR RUMMLER

This edition of the DCBA Brief coincides with the celebration of Law Day. Outside of legal circles, not too many people know of the significance or even take note of Law Day. The idea was first conceived in 1959 under President Dwight Eisenhower. It was largely as an answer to the May Day celebrations in communist countries. This year Law Day recognizes the importance of the written law. In particular, the legal document of note is the Magna Carta which is 800 years old this year.

In the United States, our most important legal document is the Constitution which dates back to 1787. The Bill of Rights, containing the first ten amendments to the Constitution dates to 1791. Contrasting the relatively new law of these United States are the laws of other countries, some of which seem ancient in comparison. The Justinian Code, enacted under Roman Emperor Justinian dates back to 529 A.D. Before that, the Code of Hammurabi attempted to codify Babylonian law and dates back to 1754 B.C. In our neighboring countries of Mexico, Belize and Guatemala, the Maya established great cities exemplified by temples and pyramids and a culture which dates back to several millennia B.C. While the ancient laws differ drastically from our own vision of freedom and civility, it is clear that as societies evolve, so too do the laws that govern behavior and relations of the populace.

Getting back to the Magna Carta, we have a piece by Sean McCumber which explains the context of the document and the significant effect that it had on subsequent English law and by extension the law of our United States. The law was certainly important, but maybe not in the ways you were taught back in grade school. In addition we have an article on the timely subject of Autism from Jennifer J. Wood. As we continue to gain understanding of the autism spectrum it is important to examine the law as it relates to those who suffer and the people who care for them. A subject close to my own heart is from the area of Bankruptcy Law. B.J. Maley, a long time contributor to the Brief, pens an article regarding the effect of new judicial interpretations of the law as it relates to home mortgages. Can the written terms of residential mortgages be altered by way of bankruptcy law? Perhaps. The article looks at both sides of the argument.

Our fourth article this month is from Donald S. Rothschild and Brian M. Dougherty who bring an in depth look at surviving a motion for summary judgment in employment discrimination cases. The article identifies the most common elements of the law and the shifting burdens of proof in showing that genuine issues of material fact exist to sustain a case. Law Day is important and we are indebted to those who came before us for their efforts to further civility and justice. Thanks to the authors for their articles. We hope you enjoy the issue.

Arthur Rummler is a sole practitioner in Glen Ellyn, Illinois, concentrating his practice in all phases of bankruptcy, including consumer, business and trustee cases. Mr. Rummler is a 1987 graduate of the University of Michigan, Ross School of Business Administration and a 1991 graduate of the Chicago-Kent College of Law. He is currently serving as a member of the DCBA Brief Editorial Board and DCBA Assistant Treasurer.
Since its inception, the United States Bankruptcy Code has provided special protections to residential mortgage holders that other creditors do not receive. The legislative history indicates that this “favorable treatment was intended to encourage the flow of capital in the home lending market.”

One of the most notable protections in consumer bankruptcy cases is found in the anti-modification clause of 11 U.S.C. 1322(b)(2) which was enacted to protect residential mortgage lenders from modification of the terms of their mortgages. The anti-modification clause states that a Chapter 13 plan may “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.” (Emphasis added.)

In other words, while a Chapter 13 plan can generally modify the rights of holders of secured claims, it cannot modify the rights of holders of secured claims that are only secured by debtor’s principal residence. Some limitation on this general protection exists and can be found in 1322(b)(5) which provides that “notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due”. It is this provision that borrowers typically rely on to save their homes from foreclosure in Chapter 13 as it permits them to cure any arrearage existing at the time the bankruptcy is filed while maintaining current, post-petition payments so that the loan is reinstated over the course of the bankruptcy.

Among the modifications not typically available to borrowers with respect to home loans, is the ability to “strip down” a residential mortgage to the value of the property. For most other secured claims, the bankruptcy code allows borrowers to bifurcate claims into secured and unsecured
portions based on the value of the property securing the claim. In a Chapter 13, only the secured portion of a claim must be paid 100%, while the unsecured portion is usually largely dischargeable.

Over the years several exceptions have been carved out of this general protection. The most common is with respect to wholly unsecured junior mortgages. This exception occurs where there are multiple mortgages on a property, and the senior mortgage payoff exceeds the value of the property. For example, assume a home is worth $200,000.00. The first mortgage has a current payoff of $215,000.00, and there is a second mortgage of $25,000.00. The theory is that since there is no value in the property beyond the value that secures the first mortgage, there is no value at all to secure the second mortgage. Therefore, the second mortgage claim is not secured by “real property that is the debtor’s principal residence”; in fact, it is not actually secured by anything. If it is not secured by the debtor’s residence, it is therefore not entitled to protection of the anti-modification clause.

A majority of courts hold that the antimodification provision does not apply to a wholly unsecured subsequent or junior lien. The majority view focuses on the direction in Nobelman that “it is correct to look to § 506(a) for a judicial valuation of the collateral to determine the status of the bank’s secured claim.” The McDonald Court noted: “once we accept that courts must apply § 506(a), then it follows, even under Nobelman, that a wholly unsecured mortgage holder does not have a secured claim.” McDonald v. Master Fin., Inc.(In re McDonald), 205 F.3d 606, 611 (3d Cir. Pa. 2000). Nobelman’s reference to § 506(a) would be meaningless unless some portion must be secured pursuant to § 506(a) for § 1322(b)(2) to apply. Lam v. Investors Thrift (In re Lam), 211 B.R. 36, 40 (B.A.P. 9th Cir. 1997).

In re German, 258 B.R. 468, 469-470 (Bankr. E.D. Okla. 2001)3

Courts have also excepted mortgages secured by mobile homes from the anti-modification protection of 1322(b)(2) where the mobile home is not affixed to the realty on the theory that the mobile home is personal property which secures the debt in addition to real property, and thus the debt is not secured solely be real property which is the debtor’s personal residence. Of course, if the mobile home were actually attached to the real estate or it was otherwise determined to be part of the realty, the protection against modification remains. See, for examples, Williamson v. Wash. Mut. Home Loans, Inc. (In re Williamson), 387 B.R. 914, 922 (Bankr. M.D. Ga. 2008).

Another exception may exist where the property is the primary residence, but some portion of the property is used for another purpose such as renting to a third party or a commercial/business purpose. See for example, Judge Hollis’ recent opinion in In re Abrego, 506 B.R. 509, 514 (Bankr. N.D. Ill. 2014). It should be noted that there is much disagreement about applying this exception. Some courts have held that the exception only applies if a significant portion of the property is used for other purposes, if the other purpose produces significant income, or if the intent of the parties at the time the loan originated was that the property only be used as the principal residence, and many courts still maintain that as long as the property is used as a principal residence, even loans secured by multi-use property are protected.

Notably, the statute does not limit its application to property that is used only as a principal residence, but refers generally to any parcel of real property that the debtor uses for that purpose. So long as the only collateral is a single parcel of real estate, it matters not that that parcel may fulfill many uses or be divided into many units. The statutory requirements are fulfilled whenever the debtor principally resides in that real estate or some part thereof. In short, this court finds no ambiguity in the statutory language. Because the property serves as Macaluso’s principal residence, he may not modify in Chapter 13 the mortgage that that property secures.

In re Macaluso, 254 B.R. 799, 800 (Bankr. W.D.N.Y. 2000)

Other litigation over “additional security” which may remove a mortgage from the protection of 1322(b)(2) has to do with the language of the mortgages themselves. Many form mortgages contain language which appears at first glance to grant security in things other than the real estate. The Federal National Mortgage Association (“Fannie Mae”)/

3 See also: Zimmer v. PSB Lending Corp. (in Re Zimmer), 313 F.3d 1220 (9th Cir. Cal. 2002)
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Federal Home Loan Mortgage Corporation ("Freddie Mac") Illinois form mortgage for single family contains the language "TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the 'Property'." Other mortgages may contain similar or even broader language regarding property which secures the loan. Even mortgages on property intended to be the borrower’s principal residence may sometimes contain language granting security in rental payments though this is not standard.

Several cases historically held that such language in a mortgage did not remove the mortgage from the protection of 1322(b)(2) because the interests described are incidental to the mortgaged real estate and was “common boilerplate” language in many mortgages. The issue was addressed in the Northern District of Illinois as early as 1992 by Judge Erwin I. Katz who examined the issue with respect to a mortgage which included “‘rents, issues and profits thereof and all apparatus and fixtures of every kind for the purpose of supplying or distributing heat, light, water or power, and all plumbing or other fixtures’ that may be placed in any building on the property, as well as an assignment of ‘all the rents, issues and profits as additional security’ and the right to use insurance proceeds to repair the premises or to repay the obligation.” In re Jackson, 136 B.R. 797, 801 (Bankr. N.D. Ill. 1992). The court found that “with respect to the fixtures and insurance proceeds addressed therein, the claim is secured only by an interest in the real property used as the Debtor’s principal residence”, but that the pledge of an assignment of rents was an additional security interest as the “assignment of rents derived from the property does not automatically flow from a mortgage on the debtor’s principal residence as an incident of ownership” and thus removed the mortgage from the protection of 1322(b). Jackson, at 802, 803. Judge Katz acknowledged that there was a significant split of authority on the issue.

It was this split of authority which Congress tried to address as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). BAPCPA added definitions of “Debtor’s Principal Residence” and “Incidental Property” to the Bankruptcy Code.

(13A) The term “debtor’s principal residence”—

(A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

11 U.S.C. 101(13A)

(27B) The term “incidental property” means, with respect to a debtor’s principal residence—

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

11 U.S.C. 101(27B)

These definitions were in line with the long term bankruptcy policy of Congress to afford protection to residential mortgage holders by ensuring that 1322(b)(2)’s anti-modification protections applied even if the language contained “additional security” language of the kind described above. Courts even extended protection for additional security not included in the definitions above:

The definition of incidental property added by Congress through BAPCPA does not change the prohibition against modifying residential mortgages and it is unlikely that Congress, by defining “incidental property,” … The codification of “incidental property” appears to codify Davis and similar decisions and was not intended to limit “incidental property” to those items specifically described in § 101(27B). If anything, the broad general term “rights,” included in the list under § 101(27B)(B), should be read at least coextensively with the “bundle of rights” discussed in Davis.

Kreitzer v. Household Realty Corp. (In re
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**Walczak v. Onyx Acceptance Corporation**
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**Lockett v. MoGreet**
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 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 Case 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.

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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.

**Violation of Car Repossession Statutes**

**Privacy Violations**

**Fair Credit Reporting Act – FCRA**

**Defective Car & Vehicle Products**

**Whistle Blower (Qui Tam) Claims**

**Minimum Wage Violations**

**Manufacturers, retailers and advertisers**

**Junk text messages received from national or well established companies.**

**Wage & Hour Overtime and**

**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**
Notwithstanding Congress's attempt to codify opinions which held that such additional security common “boilerplate” language did not remove a mortgage from the protection of 11 U.S.C. 1322(b)(2), the controversy continues. On February 6, 2015, Judge Bruce W. Black issued his opinion in In re Victor J. Fini, case number 13-47450 in the U.S. Bankruptcy Court for the Northern District of Illinois [2015 Bankr. LEXIS 436]. In Fini, the mortgage contained fairly standard language regarding fixtures, improvements, water and mineral rights, etc., but also included the line “In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.” The debtor attempted to modify the rights of the mortgage holders asserting that the language extends the security beyond personal property that is incidental to the real estate and so the mortgage interest was not protected by 1322(b)(2). The mortgage holder argued that the language did not remove the mortgage from the protections under the line of cases described above.

In examining the new definitions of “Debtor’s Principal Residence” and “Incidental Property”, Judge Black concluded that “an interest in fixtures that arises under real property law is part of an interest in real property that is the debtor’s home, for our purposes” even though these definitions are limited to fixtures and have previously been ruled to be an non-exhaustive list of items which may be incidental property. Judge Black concluded that the mortgage gave the mortgage holder an incidental interest in both fixtures and in goods that could be removed and repossed under the U.C.C. thus removing it from the protection of 1322(b)(2). Since Judge Black’s opinion relies principally on the reasoning of the Reeves opinion, an opinion pre-dating the BACPA amendments by almost twenty years, many other courts may disagree particularly in light of the strong public policy in favor of protecting residential mortgages.

Although no notice of appeal of Judge Black’s decision has been filed as of this writing, it is likely that this issue and other related issues will continue to be litigated as borrowers and their attorneys continue to try to find exceptions to the anti-modification provisions of 1322(b)(2).

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6 “Davis” refers to the Sixth Circuit’s opinion in Allied Credit Cop. v. Davis, 989 F.2d 208, 211-12 (6th Cir. 1993). In Davis, “the Court held that the granting of a security interest in “rents, royalties, profits, and fixtures” did not take the mortgage out of the protection afforded by the § 1322(b)(2) exception because such interests are “incidental benefits” that do not constitute additional security under § 1322(b)(2). In Davis the Court emphasized that “items which are inextricably bound to the real property itself as part of the possessory bundle of rights” do not render the mortgage modifiable. Id at 213.” Kreitzer v. Household Realty Corp. (In re Kreitzer), 489 B.R. 698, 704 (Bankr. S.D. Ohio 2013)

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7 In re Reeves, 65 B.R. 898 (N.D. Ill. 1986)
Proving Discrimination Circumstantially Through Evidence Of Pretext

BY DONALD S. ROTHSCILD AND BRIAN M. DOUGHERTY

Trying to prove that one was the victim of employer discrimination is a mighty task. Often times there are no statements from decision-makers claiming, “you were fired because you [had this characteristic protected under federal law].” Court opinions are legion with statements recognizing that “direct evidence” of a discriminatory motive is typically absent. The next best evidence is circumstantial evidence whereby one can infer discriminatory intent from a myriad of facts. But since Illinois is an at-will employment state, employers can fire for a good, bad or no reason at all. This makes it difficult for an employee to get past summary judgment motions in federal court. To do so, the employee must show that the employer’s stated justification was “pretextual” or in other words, not the true reason for the termination.

This article will explore the ways that an employee can attempt to show pretext so that it can overcome a summary judgment motion and proceed to a trial on the merits. In a disparate discipline/termination case, it is also important to note that proving pretext will require a thorough understanding of the employer’s discipline policies and how other employees were treated under circumstances similar to the employee. Crafting narrowly tailored discovery requests is essential as well as articulating why the information is relevant. Otherwise, a court may rule in favor of objections raised by the employer that the discovery is not relevant to your client’s case.

Title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination on the basis of gender, race, color, creed, and national origin. 42 U.S.C. § 2000e-2(a)(1). In a Title VII disparate treatment case, the focus is one whether in making the decision, the employer was motivated by the employee’s protected characteristic.

An employee can prove her case under the direct method of proof by establishing that the employer had a discriminatory motivation, or by the indirect method of proof by making out a prima facie case and shifting the burden of production as set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1981).

Under the direct method of proof, an employee may present circumstantial evidence that the employer’s decision was motivated by an impermissible purpose. “[A] convincing mosaic” of circumstantial evidence allows a trier of
fact to infer intentional discrimination by the decision maker.\footnote{Rhodes v. Illinois Department of Transportation, 359 F.3d 498, 504 (7th Cir. 2004).} The circumstantial evidence must point directly to a discriminatory reason for the employer’s action at issue.\footnote{Id.}

Under the indirect method of proof, an employee must first prove a prima facie case of discrimination. If the employee demonstrates a prima facie case, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse employment decision. If the employer carries the burden of production, the complainant must demonstrate that the employer’s proffered reasons are pretextual. Even though the courts bemoan the use of the “direct” and “indirect” methods of proof, the ultimate question the trial court needs to ask is whether a reasonable jury could find prohibited discrimination.\footnote{Orton-Bell v. State of Indiana, 759 F.3d 768, 773 (7th Cir. 2014).}

For instance, in the typical discriminatory termination case, an employee relies on the “indirect” method and must demonstrate four elements at the summary judgment stage: 1) the employee was a member of a protected class; 2) she was performing her job adequately; 3) she suffered an adverse employment action; and 4) she was treated differently than similarly-situated employees not within the protected group.\footnote{Bass, 746 F.3d at 841.} Elements one and three are typically easy to prove. Elements two and four are ones where employees find the most trouble. The point of this exercise is to eliminate other rational explanations for the termination so that the only common element remaining is the protected characteristic.

As to the fourth element, the employee must show that similarly-situated employees outside the protected class were treated better than the aggrieved. Similarly-situated analysis looks to performance, qualifications and conduct.\footnote{Peirick v. Indiana University-Purdue University Indianapolis Athletic Department, 510 F.3d 681, 688 (7th Cir. 2007); Loyola Univ. of Chicago v. Illinois Human Rights Comm’n, 149 Ill. App. 3d 8, 18 (1st Dist. 1986).} For example, there are four employees: one female and three males, working in the same department, subject to the same employment standards and sharing the same supervisor. All four take office supplies for personal use and the supervisor knows this. Yet, the female is terminated for that reason and not the males. The female employee would use her male counterparts as “comparables” arguing that they engaged in the same conduct and were not fired. The only difference among the four is that the aggrieved employee is female and not male.

**Legitimate, Non-Discriminatory Reason.** At the summary judgment stage, the employer’s burden is producing (not proving) evidence showing that it had a legitimate, non-discriminatory reason for the adverse employment action. Such reasons could include poor performance, excessive absenteeism, downsizing or violation of company policies. It is this latter category that employers should be wary because it is easy to get tripped up along the way, opening the door for the employee to argue that his termination was pretextual.
Pretext. To survive summary judgment, the employee needs to come forward with evidence of pretextual reasons for the termination. Pretext requires showing that the employer’s stated justification is dishonest. Pretext “means a lie, specifically a phony reason for some action” or ‘deceit to cover one’s tracks.’ An employee may demonstrate that the employer’s reasons are unworthy of credence through evidence showing (1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate his discharge, or (3) that they were insufficient to motivate discharge. To support this, an employee may offer evidence that the employer’s reasons are weak, implausible, incoherent or inconsistent, and thus, the trier of fact can infer that the employer did not act for the non-discriminatory reasons it stated. In short, is the employer’s belief objectively reasonable?

Suspicious timing and non-decisionmaker’s response. Suspicious timing along with employee’s positive performance reviews creates an inference of discrimination. In discovery, an employee’s performance reviews should be obtained and reviewed. If the reviews show no warning or violations of company policies, but the employer asserts that violations of company policies, but the employer asserts that a violation occurred during the review period, this is one bit of favorable information.

Another piece of information that may be relevant is whether the employee’s supervisor actually agreed with the termination. Sometimes a termination may not come from the employee’s immediate supervisor, but from human resources or some higher authority.

Misinterpreting company rules. Pretext can also be inferred from inaccuracies or inconsistencies in the employer’s proffered reason for termination, selective enforcement of a policy, or when the employer violates its own policies.

For instance, a policy states that employees cannot use “valuable” business items for personal use. The employee takes some pencils home for personal use and is fired. Human resources and upper management disagree on whether the pencils are considered “valuable” items. One person says yes, and the other says no. Another says that the policy is applicable only to items over $5.00 in value. If the employee is terminated for a policy violation, relevant evidence includes terminations for all comparable policy violations, identifying any discrimination charges that were filed as well as any subsequent litigation. It is possible that one or more employer representatives were deposed who may have provided useful evidence.

Similarly-situated employees outside the protected class were treated better. An example of this principle would be the level of investigating the misconduct. Was the employee forewarned of an investigation and interview with company investigators or was the employee interrogated under a lamp in a dark room? The nature of any investigation can surely set the tone for how important (or unimportant) the employer considered the misconduct. One would suspect the level of seriousness to increase based on the gravity of the violation. But one must keep in mind that this principle requires examining employees outside the protected classification. If you are alleging gender discrimination, your comparables are male employees, not females.

Comparable misconduct treated differently. If comparable, serious misconduct was treated differently by the employer, this is a significant consideration. This can come into play when the employer has a list of offenses that are grounds for discipline. Let’s say that offenses A,

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10 Once a case reaches the trier of fact, pretext is still useful evidence. An employee may attempt to establish that she was the victim of intentional discrimination by showing that the employer’s proffered explanation is unworthy of credence or is pretextual. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143 (2000). The trier of fact may consider the evidence establishing an employee’s prima facie case and inferences properly drawn therefrom on the issue of whether the defendant’s explanation is pretextual. Id. at 143, 147. “Proof that the [employer’s] explanation is unworthy of credence is: circumstantial evidence of intentional discrimination. Id. at 147. An employee’s prima facie case, combined with evidence of pretext, permits the inference of discrimination. Id. at 148.

11 Fischer v. Avandale, Inc., 519 F.3d 393, 403 (7th Cir. 2008).

12 Russell v. Acme-Evans Co., 51 F.3d 64, 68 (7th Cir. 1995).


14 Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir. 1988).


16 Gordon, 246 F.3d at 889.

17 Hasan v. Foley & Lardner, 552 F.3d 520, 528-29 (7th Cir. 2008).

18 See Peirick, 510 F.3d at 592 (no warnings prior to termination is evidence of pretext); Prochaska v. Menard, Inc., 829 F.Supp.2d 710, 722 (W.D. Wis. 2011) (noting long history with company, outstanding performance and then termination).

19 Petrick, 510 F.3d at 693; Gordon, 246 F.3d at 890 (management’s disagreement over definition of violation).

20 Baker v. Macon Resources, Inc., 50 F.3d 674, 677 (7th Cir. 2014).

21 Huff v. UARCO, Inc., 122 F.3d 374, 380-82 (7th Cir. 1997).

22 Gordon, 246 F.3d at 886-87, 890 (noting the “inability on the part of … management to provide any consistent definition” of the violation); Hitchcock v. Angel Corps., Inc., 718 F.3d 733, 738 (7th Cir. 2013); Williams v. Bristol-Meyers Squibb Co., 85 F.3d 270, 275 (7th Cir. 1996) (excellent example of misinterpretation of a policy).

23 Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971, 978-79 (7th Cir. 2006); Zevulovitch v. Porter, 400 F.3d 1041, 1050 (7th Cir. 2005); see also Baisch v. Cook County Sheriff’s Dept. of Corrections, 2012 WL 1068774, at *7 (N.D. Ill. Mar. 29, 2012) (collecting cases) (applying discipline in an “uneven manner”; plaintiff disciplined before investigation ensued, unlike other employees).
B and C are listed as being “immediate termination” offenses. Three males violate offense A and are not fired. A female violates offense B and is fired. While the offenses are different, an argument can be made that they are of comparable seriousness and should be used for comparative purposes. If the employer has a disciplinary procedure it other employees committed comparable offenses and were not terminated. The employer overstates its reasons for

Departing from usual procedures. Another indicia of pretext is “procedural irregularities.” For instance, an employer may grossly misstate the seriousness of the offense because there is evidence that other employees committed comparable offenses and were not fired. If the employer has a disciplinary procedure it follows for investigating terminable offenses and does not follow it, this could be potentially helpful evidence as well. This is why employee handbooks and other policy statements are crucial items in discovery.

Delay in addressing concerns. Employers cannot monitor every event at work, but there could be things capable of monitoring. For instance, using email or the internet for personal business. If an employee is fired for this based on a one-time event and the employer is capable of easily monitoring employees’ activities, then it calls into question how serious the violation actually was. Another item to be on the “look out” for is multiple employment policies and whether certain policies are even applicable to the same employees. A company may have policies that pertain to one set of employees and not another or have different standards. It is possible for an employer to claim that an employee violated a policy that was not even applicable to the employee’s job.

Illinois is an at-will employment state, employers can fire for a good, bad or no reason at all. An employee’s supervisor is fair game as well. This is especially true if the supervisor gave the employee glowing performance reviews and after the last review, the employee was found to have consistently violated a policy and was fired. Did the employer investigate the supervisor as well? Did the supervisor agree with the termination decision? This issue deserves exploration as the case may be.

Overstating the reasons for termination to justify its actions. Pretext can also be shown when the employer overstates its reasons for termination. For instance, an employer may claim that the employee breached a policy for which others were also terminated, but it may turn out that the other employee terminations were for less serious infractions that are in no way comparable to the employee’s termination.

Post hoc justification. Pretext can be shown by after-the-fact justifications by the employer. Shifting reasons for termination is also evidence of pretext. Any employer may want to “pile on” the employee by providing various reasons during litigation as to why the employee was terminated. But some of these reasons may not have actually motivated the adverse employment decision because they were never contemplated. An employer whose termination decision was documented may also give inconsistent explanations during a deposition that do not coincide the actual employment decision. This is all fodder in order to defeat summary judgment.

Conclusion. Conducting discovery in a discrimination case requires a thorough understanding of the reasons for the termination. It is also crucial to consult with an employee-plaintiff to get a firm understanding of the work environment, supervisors, co-workers and employment policies that governed employee behavior. It also helps if the employee is aware of other terminations or human resources decisions concerning effectively maintaining that they fired Rodgers for poorly performing a task that was not a legitimate employment expectation, while retaining the white employee whose job it was to perform that very task.)

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24 Rodgers v. White, 657 F.3d 511, 520 (7th Cir. 2011); Doherty, 2007 WL 1662651, at *5 (“sharp departures from [employer’s] standard disciplinary practice can be used to question the employer’s ‘honesty and motivation.”); Gordon, 246 F.3d at 890-91.

25 The Seventh Circuit requires the comparable employee to have engaged in a “comparable set of failings.” Taylor-Novotny v. Health Alliance Medical Plans, Inc., No. 13-3652, slip op. at 26 (7th Cir. Nov. 26, 2014), quoting Burks v. Wisconsin Dept of Transp., 464 F.3d 744, 751 (7th Cir. 2006).

26 Trujillo v. PacificCorp, 524 F.3d 1149, 1158 (10th Cir. 2008).

27 Plotke v. White, 405 F.3d 1092, 1106 (10th Cir. 2005) (“grossly exaggerating a terminable offense is evidence of pretext).”

28 Peirick, 510 F.3d at 692-93.

29 See Rodgers, 657 F.3d at 519 (“The defendants, then, are
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discipline. This is especially true in disciplinary cases that result in termination. It is often difficult to show that an employee is similarly-situated in all material respects to another employee outside the protected class who may have engaged in similar behavior and was not disciplined/terminated. The cases are full of examples of pretextual reasons that could help defeat an employer’s summary judgment motion.

Employers must strike a delicate balance between imposing discipline as they see fit and possibly (yet unintentionally) meting out discipline that could be viewed as discriminatory treatment. Employers with questions on these fronts should consult with their attorneys, and likewise, attorneys should periodically require their client to review their employment policies and terminations to see if there are any outstanding issues that could possibly be used against an employer in future litigation. □
The Intersection of Autism and the Law in Illinois

BY JENNIFER WOOD

Recent case law in Illinois indicates that the state’s legal system, as a whole, is both unprepared and unforgiving of the effect of autism on the law. The ever-increasing diagnoses of autism spectrum disorder are overwhelming all aspects of our public support systems and the related legal entities, as well as changing the basic nature of all areas of the practice of private law. On its face, this immediately highlights the need for increased resources, funding, training, and education within the legal system.

As the diagnoses for autism spectrum disorder will likely increase in the years to come, our legal system in Illinois will face significant challenges, particularly in the areas of Criminal Law, Family Law, and Foster Law.

Intersection Explained

Autism spectrum disorder manifests itself in a variety of ways. Most notably, those affected by autism can experience significant difficulties with social interaction, including a lack of eye contact, inability to read facial expressions or social cues, inappropriate physical proximity, and seemingly unsuitable commentary or conversations. Some have a tendency to fidget, flee, or wander, and may be non-verbal.

Others are even further impacted by a pronounced sensory affective disorder, and urgently avoid things displeasing to their senses and uncomfortable to them. Inversely, some with sensory affective disorder seek out more intense sensory input, which can run averse to mainstream interests and understanding, and be interpreted as injurious behavior or sexual deviancy, for example. These behavioral tendencies in some, in combination with the oft-misunderstood social communicative idiosyncrasies that can characterize those with autism, predispose them to be both victims and perpetrators by the very nature of their disorder.

Thus, autism is relevant to both knowledge and intent, both of which are necessary for legal prosecution. Autism impacts both legal concepts. For those severely impacted by autism, their knowledge of the prohibited consequences may be significantly distorted by the severity of their disorder. Oftentimes, however, those with autism are extremely intelligent and therefore, automatically assumed to be knowledgeable and, consequently, culpable.

With respect to intent, those with autism are fundamentally disadvantaged by the Illinois legal system. Courts impute intent using the “reasonable person” standard. However, the reasonable person is a legal fiction and has been referred to as “an objective yardstick against which to measure the culpability of real people.” Yet, for every 1 in 68 real people, this “real” person is an autistic person;

therefore this measure is not objective or reasonable.²

There are a number of recent cases featuring autism. Perhaps this is because the diagnoses of those on the spectrum have been steadily rising, and perhaps this is because our laws and legal systems are incompatible with the disorder. Acting on the proposition that both are true, the intersection of autism and the law is producing numerous, published results in case law in Illinois, and warrants further inquiry.

Criminal Law

In Illinois, when autism has been used as a sword, parties have experienced varying degrees of success depending on the degree of the legal transgression. The more serious the crime, the more inconsequential autism will be in adjudicating the result. In other words, the more grave the offense, the less likely the courts are to permit autism as an excuse.

In People v. Frank-McCarron, a mother who was convicted of first-degree murder for killing her three year-old autistic daughter and sentenced to 36 years in prison, tried to prove, on appeal, that she was insane at the time of the murder.³ In short, the defendant theorized that she believed, “[T]o get rid of autism I had to kill a child.”⁴ She attempted to use autism as an excuse for murder.

People v. Sargent further demonstrates that individuals with autism are especially vulnerable to criminal predators.⁵ In 2010, the Supreme Court of Illinois upheld the sentence of natural life imprisonment for a stepfather convicted of predatory criminal sexual assault of his two stepsons, one autistic, the other a preschooler.⁶ Expressive challenges make an autistic person, at any age, an ideal target for a sexual predator, as one with communication difficulties is unlikely to report abuse. The same challenges place an autistic person at any age, an ideal target for a sexual predator, as one with communication difficulties is unlikely to report abuse. The same challenges place an autistic person at any age, an ideal target for a sexual predator.

The relevance of autism can present a distressing challenge for the trier of fact. With autistic parties, it is challenging to determine where the innocence ends and the culpability begins. One such controversial case in Illinois is that of People v. Ramsey, decided by the Illinois Supreme Court in 2010.⁷ The defendant, Daniel Ramsey, who has autism, became angry by a comment his girlfriend made, and then murdered several people as a result.⁸ A close examination of the record indicates that Mr. Ramsey’s problems with Asperger’s Syndrome (a form of autism) were well-established long before the crimes took place, and specifically itemized as part of the legal proceedings. Considering that autism, and Asperger’s Syndrome specifically, were recognized as legal impairments by various recognized governmental agencies, including the Social Security Administration, at the time of Ramsey’s trial, it is curious that Mr. Ramsey was sentenced to death, considering his impairment was widely known and well-documented, yet he was afforded no treatment.⁹

Family Law

When autism is a factor in a divorce, the disorder can have a meaningful effect on all aspects of the dissolution, from the calculation of child and spousal support to the determination of custody. If a child has autism, a court will need to consider this carefully when making a custody determination. Fitness for the long-term custody and care of an autistic child is quite different from the legal definition of fitness for parenting in Illinois. The care of an autistic child can be extremely challenging and requires an exceptionally dedicated individual with pronounced emotional fortitude. Thus, fitness for parenting an autistic child exceeds the standards of a typical custody determination. Without more information about the disorder, those who determine custody might not consider the factors that alter the practical meaning of fitness within the context of autism.

Autism can restrict parenting rights in Illinois in many respects. For example, in In re Benevento, a mother lost custody of her minor daughter due to the effects of autism in

4 Id. at 388.
5 People v. Sargent, 239 Ill. 2d 166, 940 N.E.2d 1045 (2010).
6 Id.
7 People v. Ramsey, 239 Ill. 2d 342, 942 N.E.2d 1168 (2010).
8 Id. at 351-352.
9 The Official Website of the U.S. Social Security Administration, Social Security (available at http://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm).
her adult son who lived in the same residence.\textsuperscript{10} The Illinois Appellate Court upheld an award of custody of a three-and-a-half year-old girl to her father on the basis that her mother also had an 18 year-old autistic son (from another marriage) who frequently masturbated.\textsuperscript{11} While the mother denied that her son ever masturbated in the presence of her daughter, and presented evidence in court proving that he had moved out of her home, the court still maintained that there was a “very real concern over the behavior of [the son]. . .”\textsuperscript{12}, even though this type of sensory behavior is directly related to a diagnosis of autism.\textsuperscript{13}

\textit{Nolan v. Peters}, demonstrates the development of the Illinois legal system’s understanding of autism.\textsuperscript{14} In Nolan, even though the trial court approved a change of custody to the father of an autistic child because his home was more organized, the appellate court reversed, recognizing the importance of the mother’s role in improving the potential for the child’s autistic condition such as by initiating his individualized education plan (or IEP-a child’s plan for special education in the public school system; a legally binding document).\textsuperscript{15} Reverting to the best interest standard of 750 ILCS 5, Sec. 602 (a), the Nolan court prioritized the IEP above the residential environment, thus signaling the impact of autism on custody.\textsuperscript{16}

The special education needs of an autistic child can be informative in other critical matters, such as removal of children to another state. In \textit{Cosmini v. Cosmini}, while the mother of two children, one with a diagnosis of autism, did not have unlimited resources or extraordinary circumstances, the simple fact that the father of the autistic child was in denial that he had autism, was enough for the court to rule in the mother’s favor and grant removal.\textsuperscript{17}

Autism can be a factor when petitioning the court to modify child support. A diagnosis of autism brings with it additional costs that can include therapy, medication, customized equipment, specialized treatment, residential care, and limitless other possible expenses. In \textit{Gantner v. Manne}, four years after being awarded sole custody of and child support for her two children, one who has autism and the other who is also diagnosed with special needs, a mother petitioned the court for an upward modification in the amount of support she received.\textsuperscript{18} The court was receptive to the mother’s pleas for additional assistance, referring to her financial burdens due to special needs expenses as “crushing”, and ordering an upward modification of child support payable by the father.\textsuperscript{19}

\textbf{With autistic parties, it is challenging to determine where the innocence ends and the culpability begins.}

\textbf{Foster Law}

Over 17,000 youths currently make up the Illinois foster care system, and, of those 17,000 youths, more than one-third of them are enrolled in the state’s special education programs.\textsuperscript{20} Placement of these at-risk and in-need youths follows the same pattern being set in family law courts; the person who shows interest in the special needs of the children is the person (or entity) who is awarded custody.

As more and more children are diagnosed with autism, one particular type of special needs child in the Illinois foster care system is on the rise: the autistic child. There is no shortage of cases in recent years requiring state intervention for the welfare of autistic children that results in their removal from the family home and placement in foster care. In the majority of these cases, parental rights are terminated for the same primary reason parents in divorce cases lose custody of their children, they fail to get their autistic children the help they need.

In \textit{People v. Huffman}, the trial court noted that the foster parents provided an autistic child with speech and occupational therapy and other services for his developmental delays that he had never received before.\textsuperscript{21} The court found that the

\begin{itemize}
  \item \textsuperscript{10} \textit{In re Benevento}, 18 Ill. App. 3d 16, 454 N.E.2d 766 (1983).
  \item \textsuperscript{11} Id at 19.
  \item \textsuperscript{12} \textit{Id}.
  \item \textsuperscript{14} \textit{Nolan v. Peters}, 2011 Ill. App. Unpub. LEXIS 622.
  \item \textsuperscript{15} Id at 35-36.
  \item \textsuperscript{16} \textit{Id}.
  \item \textsuperscript{17} \textit{Cosmini v. Cosmini}, 2012 Ill. App. Unpub. LEXIS 220; 2012 IL App (1st) 112801U.
  \item \textsuperscript{18} \textit{Gantner v. Manne}, 2011 Ill. App. Unpub. LEXIS 2903; 2012 IL App (1st) 102381U.
  \item \textsuperscript{19} Id at 16.
  \item \textsuperscript{21} \textit{People v. Huffman} (In re R.H.), 2012 Ill. App. Unpub. LEXIS 1529; 2012 IL App (4th) 120092U.
\end{itemize}
child had “dramatically improved” for this and other reasons, and so the birth parent’s rights were terminated.22

In People v. Arissa, the court terminated the parental rights of a birth mother for not following through on an early intervention referral for her autistic child.23 The failure of a parent to take the recommendations of state agencies seriously is not looked upon favorably by Illinois courts. In People v. J.H.N. (In re M.M.), the Appellate Court for the Third District affirmed termination of a father’s parental rights for not making a significant effort to learn sign language in order to communicate with his non-verbal, autistic son, after being ordered to do so at a permanency review hearing.24

Ultimately, the simple reality for most of the autistic children in Illinois who will end up in foster care is that they will be placed there because their parents cannot manage either their behavior or care. People v. Rosanna reflects what life is like for autistic children whose parents cannot commit to life with their disorder.25 The court record indicates that the mother in this case was “a loving parent, but not a capable parent,” in light of the “very demanding challenge” presented by autism.26

The Future

Some rulings illustrate a continued resistance by Illinois courts to recognize the relevance of autism or acknowledge that it warrants special consideration in specific legal circumstances. For example, consortium actions ask for benefits that a person is entitled to receive due to a loss of companionship, cooperation, affection, aid, or financial support. In Koskela v. Martin, the court declined to recognize a paternal consortium action involving autism.27 In Koskela, the father of a non-verbal daughter with severe autism was injured in an accident.28 Her father, now permanently hospitalized, was previously responsible for driving her to school and for all of her personal care and supervision due to the gravity of her disorder.29 The Illinois Appellate Court was wary of extending loss of consortium beyond spouses for fear of extending the boundaries of potential litigation too wide.30 The Appellate Court expressed that, “While we are sympathetic to plaintiff’s circumstances in the pending matter . . . [t]he determination of where a negligent act in this instance has an end to its legal consequences is best left to the legislature.”31

The Illinois Appellate Court showed similar reluctance to rule in the spirit of protecting autistic persons lest it should limit public policy in Downey v. Wood Dale Park Dist.32 In Downey, an autistic child died after being improperly supervised during a summer camp outing.33 His parents relied on the special duty doctrine, but the court reasoned that no special duty existed in Downey based on the following distinction:

[T]he complaint alleged that the Park District “was uniquely aware of [the (autistic) child’s] disabilities, including but not limited to his inability to perceive danger, inability to follow instructions and his propensity for unpredictable behavior.” However, the complaint did not allege that the Park District knew that [the child] was likely to break away from his fellow participant’s hand or that [the child] might suddenly run into the street, which are the particular risks which endangered [the (autistic) child].34

Had the complaint alleged that the Park District knew these specific behaviors would result from a lack of supervision, and had the plaintiff been able to prove that the Park District had this specific knowledge, then the Park District would have been liable under the special duty doctrine.

This demonstrates a prodigious setback in the legal understanding of autism. The disorder itself is characterized by this very lack of predictability, which, by definition means that such behavior cannot be expected, projected, or itemized in advance. To require such warning of those for whom this is impossible due to a disorder, is a legally discriminatory expectation. Additionally, to exempt the autistic, because of the nature of their disorder, from a legal exception that would otherwise allow them recovery, is equally as inequitable.

In the end, the Downey court hesitated to place blame upon the Park District for fear that permitting such legal liability in one instance would ultimately make park districts everywhere liable in a multitude of circumstances and therefore, eventually, unable to service the general public.35 On

22 Id at 15.
26 Id at 205-206.
28 Id.
29 Id at 569.
30 Id at 572.
31 Id at 571.
33 Id at 198.
34 Id at 204.
35 Id at 204-205.
the surface, this appears to be decidedly at odds with the various provisions of federal law articulated in the Americans with Disabilities Act (ADA).36 In this respect, Illinois must be prepared to find another way to protect the public policy it values while respecting federal laws of equity.

School districts can also be very resistant to the unique changes and creative solutions that autism requires. Therefore, Illinois courts are frequently called upon to interpret statutory law related to education. Two examples of such judicial interpretations involve the same provision of the Illinois School Code at play in two unrelated school districts. While Illinois School Districts No. 302 and No. 4 tried to restrict the application of legal disability provisions to autistic students, the courts in both K.D. v. Villa Grove Cmty. Unit Sch. Dist. No. 302 Bd. of Educ., and Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4, reached the same conclusion, that service dogs for autism must be allowed in schools under 105 ILCS 5/14-6.02.37

As the diagnoses of autism in Illinois continue to increase, it is important to prepare Illinois legal systems to deal with this unique subset of parties, perpetrators, and victims. Of critical importance in the years to come, will be increased opportunities for lawyers, judges, and other legal advocates to learn more about autism through continuing legal education opportunities, thorough research, interaction with experts, and receptivity to creative solutions. □


The extension of auto insurance coverage to a policyholder’s “relative” is determined by the language of the policy, which, if ambiguous, will be construed against the policy drafter. Where the “relative” is a student of the policyholder and not a party to the insurance contract, his or her intent to remain at school or return to Illinois has no bearing on coverage. **State Farm Mutual Automobile Insurance Co. v. Progressive Northern Insurance Co.**, 2015 IL App (1st) 140447, 2015 WL 1393543 (March 27, 2015)

By Michael R. Sitrick

In this action, plaintiff State Farm brought an action for a declaratory judgment that its underinsured motorist coverage did not apply to the son of its policyholder, who had been injured in a car accident while away at school in Colorado. The parties agreed that the State Farm policy at issue provided coverage to “relatives” which it defined as “a person related to you or your spouse by blood, marriage or adoption who resides primarily with you. It includes your unmarried and unemancipated child[ren] away at school.” The undisputed facts showed that the policyholder was the father of the claimant at issue who was unmarried, unemancipated and living in a campus-owned apartment in Colorado at the time of the incident. However, during vacations and holidays he returned to Chicago and divided his time equally between his mother and father’s homes, both of which he considered his residences. Despite having keys to both homes and keeping possessions there, he used his father’s address for the billing of school, health care and health insurance services. The trial court granted summary judgment against State Farm finding that the son was entitled to coverage as a relative because the “second sentence [of the definition of ‘relative’] must be read in the disjunctive” and the second sentence provided coverage for an “unmarried and unemancipated child away at school.” The trial court reasoned that “[i]f this sentence were not in the disjunctive, then those children would never be insured under their parents’ policies, because the children would ‘primarily’ reside at school, not at home.”

On appeal, the Court upheld the trial court’s interpretation of State Farm’s policy that a child who is away at school does not have to also prove that he or she primarily resides with the policyholder in order to be classified as a relative for the purposes of being entitled to coverage. In support of its reasoning, the Court noted that ambiguities in language must be construed against the drafter. Moreover, it noted that if compliance with both lines of the definition of “relative” were required, the second line could never be satisfied since a child cannot be both “away” at school while still residing with the policyholder. The Court also dismissed State Farm’s arguments that the fact that the policy holder’s son had registered to vote in Colorado and obtained a driver’s license there disqualified him from coverage. The Court found that the language of the policy in no way excluded children who obtained driver’s licenses or voter registration. Moreover, it found that the son’s intent to remain in Colorado or return to Illinois was not at issue since he was not a party to

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the contract. Accordingly, the Court affirmed the trial court’s judgment.

FAMILY LAW
A claim for child support arrearages against an ex-spouse’s estate will be time barred if brought more than two years after the ex-spouse’s death. In re Marriage of Ross and Pruitt, 2015 IL App (2d) 130961, 2015 WL 630477 (Feb. 11, 2015)
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 Ross and Pruitt, a former wife filed a claim for child support arrearages against her former husband’s estate following his death. The trial court initially denied the petition stating a lack of jurisdiction but later granted the former wife’s motion to reconsider. The wife was awarded arrearages totaling $65,976.46, which included back child support plus statutory interest. However, she was denied attorney fees. The former husband’s estate appealed challenging the trial court’s judgment which had granted the former wife’s motion to reconsider. The wife’s claim was time-barred under an identity between the causes of action exist and arise from a single group of operative facts stemming from a marital settlement agreement that was found to have been entered into on good faith after both parties had ample opportunity to conduct discovery.

The doctrine of res judicata will bar a section 2-1401 claim for relief from judgment on a dissolution of marriage order and other related claims where an identity between the causes of action exist and arise from a single group of operative facts stemming from a marital settlement agreement that was found to have been entered into on good faith after both parties had ample opportunity to conduct discovery.

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 Lyman, the husband and wife entered into a marital settlement agreement, which was incorporated into a divorce judgment. The wife later filed petitions for breach of the settlement agreement arguing that she was fraudulently induced by the husband to enter into it and accept an agreed upon award without his disclosing certain assets held by his company that, following the settlement, resulted in a substantial payout to him which was not accounted for in the settlement. The husband then moved to dismiss the wife’s amended section 2–1401 petition pursuant to sections 2–619(a)(4) and (a)(9). The husband also moved for sanctions against the wife under Illinois Supreme Court Rule 137. The trial court granted the husband’s motion to dismiss and motion for sanctions.

On appeal, the Court affirmed in part, reversed in part, vacated in part, and remanded with directions. Specifically, it first found that the wife’s second amended Section 2–1401 petition did not cure any defect from her initial petition. Therefore, it determined that she failed to satisfy section 2–616(a), finding as a matter of law that the trial court properly dismissed the wife’s amended and second amended Section 2–1401 petitions pursuant to Code sections 2–619(a)(4) and 2–619(a)(9). The Court concluded that the trial court properly applied the doctrine of res judicata and then rendered a final judgment of dissolution, which incorporated the marital settlement agreement. In its decision, the Court reasoned that an identity between the causes of action existed because they arose from a single group of operative facts stemming from the marital settlement agreement; the same parties were involved in the judgment of dissolution and the post judgment litigation; and the parties negotiated and bargained for the amount the wife would receive in exchange for the husband receiving 100% of his interest in business entities. As such, res judicata applied not only to the judgment of dissolution, but also to matters that could have been decided. The Court further held that the trial

2 Grunyk & Associates, P.C., Naperville, IL
3 Grunyk & Associates, P.C., Naperville, IL

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court committed error by granting the wife leave to replead the exact same breach of marital settlement agreement claim in her second amended Section 2–1401 petition without any amendment to cure the defective pleading. As such, the issue was forfeited. Finally, the Court found that the order entered by the trial court suggested that no evidence was taken on the issue of sanctions, as the trial court did not base its determination upon evidence taken at a hearing or matters of record that justify foregoing an evidentiary hearing. Therefore, the Court concluded that the trial court must vacate its order granting the husband’s motion for sanctions. In so doing, it noted that awarding sanctions on this novel issue was probably unwarranted, and accordingly remanded the matter for a hearing to determine the propriety of awarding attorney fees to the husband under Section 508(a).

A motion for a finding of non-paternity will be barred under the statute of limitations where the moving party had knowledge within the limitations period that there was a question as to the child’s paternity but only later raised the issue in an attempt to avoid child support. In re Marriage of Ostrander, 2015 IL App (3d) 130755, 2015 WL 782105 (Feb. 25, 2015) 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 Ostrander, the wife appealed from the denial of her motion to reconsider where the trial court stated that a finding of no paternity through a DNA test performed on her husband—eight years after the birth of her child—was sufficient to terminate his parental rights and child support obligations. The issue on appeal was whether the statute of limitations barred the husband from bringing the action to terminate his obligations.

The statute of limitations issue was raised for the first time in the wife’s motion to reconsider. The husband argued that since the issue was not raised in her original response to his “motion regarding finding no paternity,” the issue had been waived. However, the Court found that the trial court elected to address the issue and ruled on the merits of the wife’s motion. Upon reviewing its application, the Court found that the trial court misapplied it by improperly placing the burden of proof on the wife as to why the husband’s paternal relationship with the child had existed since birth, where the statute states that, as an affirmative defense, the burden was the husband’s to establish that he had only “obtained knowledge of relevant facts” within the two-year period before bringing the motion. Here, the record showed that the husband had had knowledge since the child’s birth that it might be his. In addition, the husband offered no evidence that he had only recently learned that he was not the biological father, other than the new DNA test. In support of its decision, the Court also relied on the Fourth District’s reasoning that, “it is wrong to make a child a part of a family unit and pass over substantial concerns regarding the child’s paternity only to raise them years later in an attempt to avoid child support.” In re Marriage of O’Brien, 247 Ill. App. 3d 745, 750 (1993). Moreover, the Court found that the trial court had erred in not appointing a Guardian ad litem for the minor child as her interests were not adequately represented. Therefore, the Court reversed the order of non-paternity and remanded the matter for setting of child support.

Section 13.5 of the Illinois Parentage Act allows a court to order the return of a minor child who has left the state with a custodial parent prior to the non-custodial parent’s filing of a parentage action. Hedrich v. Mack, 2015 IL App (2d) 141126, 2015 WL 660149 (Feb. 17, 2015) By Jennifer E. Byrne, Katie C. Galanes, Danya A. Grunyk, Victoria C. Kelly, Hillary A. Sefton, and Leah D. Setzen

In Hedrich v. Mack, the father appealed from the court’s decision to allow the mother to remove their minor child from Illinois to Minnesota before a paternity action had been filed. The father filed a petition to establish paternity four days after the mother had left with their child. Approximately two weeks later, he filed an emergency petition for injunctive relief pursuant to section 13.5 of the Parentage Act seeking the child’s return when the mother failed to bring him back to the state. At the hearing on the petition, the mother moved for a direct verdict on the grounds that the trial court lacked authority to order the return of the child because she had been removed from the state prior to the father’s filing of the parentage action. The trial court granted the mother’s motion finding that section 13.5 of the Parentage Act did not apply once the minor child had been removed, stating “the only right that could be protected by 13.5 is the right to enjoin removal, not to return a child when there was no case pending.”

On appeal, the Court reversed the trial court’s decision finding that

CONTINUED ON PAGE 50
Ann Celine Walsh is a homegrown product of DuPage County. Judge Walsh’s lifelong ambition was to become a lawyer and ultimately a judge. She believes being a judge is the epitome of public service. Every day in Traffic Court, she thoroughly enjoys explaining to the public their rights to and procedures in the courtroom.

Judge Walsh’s interest in law began in high school. While at Hinsdale Central High School, she participated in the Mock Trial Competition during her sophomore year through her senior year. The Hinsdale Central Mock Trial team achieved great success at the state and national levels. She credits her high school teacher and mentor Ann Hittle as the force that launched her career as a lawyer.

After high school, Judge Walsh attended Miami of Ohio University where she majored in English Literature and Speech Communication and graduated with honors. She was very involved in peer education, advising and counseling her fellow students on drug and alcohol issues. During one summer, she interned at the Public Defender’s Office in Washington, D.C. as an investigator. These experiences confirmed that she wanted to serve the public in the legal profession.

Her skills of organization, attention to detail and logical reasoning were honed at the law firm. In the fall of 1995, Judge Walsh entered Chicago-Kent College of Law. In addition to a full classload, she became quite involved in the Chicago Kent Justice Foundation. She participated in the Litigation and Alternative Dispute Resolution Program and Criminal Clinic where she learned the “nuts and bolts” of criminal defense law. She spent many hours assisting her law professor and representing clients in Cook County.

After graduating from college, Judge Walsh was employed at the prestigious law firm of Jones, Day, Reavis & Pogue as a project assistant in the environmental law department.

During the summer of her first and second year of law school, Judge Walsh began clerking at the State’s Attorney’s Office in DuPage County for then-State’s Attorney Anthony Peccarelli. In her third year of law school, she was selected as a judicial extern for the Honorable U.S. District Judge Ann C. Williams. In May 1999, Justice Joseph Birkett hired her as an Assistant State’s Attorney. She worked her way up through the State’s Attorney’s Office for almost 16 years starting in Traffic Court, Misdemeanor, Felony and ended her career as Supervisor in Felony, Sex Crimes/Domestic Violence and Child Abuse Unit. In October 2014, the Circuit Judges of the 18th Judicial Circuit selected Judge Walsh as an Associate Judge. Currently, she serves in Addison Field Court. She has come full circle from her first year as an Assistant State’s Attorney.

Judge Walsh enjoys spending time with her family and friends and has been married for the past 16 years. She and her husband are the proud and devoted parents of 3 boys. She says “it’s all about family.” In her free time, Judge Walsh enjoys pilates, running, sailing and snow skiing with her family.
Candidates Announced For DCBA Directors and Third Vice President

The deadline for nominating petitions closed just as this issue was going to press. These are the biographies candidates submitted with their nominating petitions, printed in the order in which they will appear on the ballot according to a random drawing conducted by DCBA. The Third Vice president’s race is uncontested. There are three Board of Director and one New Lawyer Director positions up for election, members may vote for up to three Directors and one New Lawyer Director candidate. Information to vote by electronic ballot was distributed on or around April 10, 2015. Voting members may request a paper ballot by contacting the Bar Center at (630) 653-7779. All paper and electronic ballots must be received by 5:00 pm on May 4, 2015. For more information, contact the Bar Center at (630) 653-7779 or visit dcba.org.

J. MATTHEW PFEIFFER
THIRD VICE PRESIDENT – UNCONTESTED


ASHLEY BUMP
NEW LAWYER DIRECTOR

Ashley Bump earned her undergraduate degree in International Studies from the University of Wisconsin in 2005 and graduated cum laude from DePaul University College of Law in December 2011. Ashley was admitted to practice in May 2012 and focuses on civil litigation and family law. While at DePaul, she was co-vice president of Phi Delta Phi legal honor society and awarded the Benjamin Hooks Distinguished Public Service Award for volunteer service. Ashley currently serves as a member of the El Valor Associate Board. She also recently participated in Judges’ Nite and enjoys volunteering in DuPage with Lawyers Lending a Hand.

SARMISTHA (BURI) BANERJEE
NEW LAWYER DIRECTOR

Sarmistha (Buri) Banerjee practices business and employment litigation at The Fish Law Firm in Naperville. She graduated magna cum laude from Northern Illinois University College of Law (NIU) in 2014. Buri was a mentor for the Women’s Law Caucus and a co-founder and President of the NIU chapter of the American Constitution Society (ACS). She is currently the Assistant Director of Programming for the ACS-Chicago Lawyer chapter. Before law school, she completed a paralegal certificate from College of DuPage when she co-founded the DCBA Paralegal Committee. She graduated from Smith College (Sociology) and has an M.A. from NIU in Sociology.
GREGORY ADAMO
DIRECTOR

Greg Adamo is a commercial litigation associate at Clingen, Callow & McLean. In recent years, Greg has served as General Counsel, Associate General Counsel, and the upcoming chair of the DCBA’s Intellectual Property Section. He has a B.A. from Illinois Wesleyan University, a JD from Chicago-Kent School of Law, and an MBA from the University of Chicago. Greg’s hobbies include camping, snowboarding, and rooting for the Chicago Bears. He and his wife, Kristen, are the proud parents of three young daughters.

PATRICK EDGERTON
DIRECTOR

Patrick Edgerton is a Partner with Edgerton & Edgerton. He received his B.S. in Business Management and J.D., magna cum laude, from NIU, serving as Managing Editor of Law Review and published in its law review journal. In addition to his extensive trial experience, he serves as an Arbitrator for DuPage, Kane and McHenry Counties. Patrick is a member of the ISBA, KCBA and DCBA. With DCBA, he previously served as a New Lawyer Director and currently serves as a Not-So-New Lawyer Director. Additionally, he chaired the Membership Committee, co-authored an article for its journal, lectured extensively, and participated regularly in Judges’ Nite.

ART RUMMLER
DIRECTOR

Greetings friends and colleagues. I am proud of the DCBA and its contributions to the bar. I have held various committee chair positions, including: Entertainment, Law Day and Bankruptcy. I am currently the Assistant Treasurer on the Executive Committee as well as member of the Planning Committee and the Budget Committee. In addition, I serve on the Editorial Board for the Brief and am a regular contributor on the subject of bankruptcy. As a board member, I will seek to keep our finances strong, provide excellent CLE programs and increase our social and networking opportunities. Thank you for your vote.

BRADLEY C. GIGLIO
DIRECTOR

As a stock boy at True Value Hardware, little league umpire, Honors Intern with the FBI, educator on the issues of domestic and sexual violence, and singer of the Olive Garden birthday song in the middle of a packed restaurant, I learned the value of earnest, hard work and in treating all of those you come across in life with dignity and respect. I have embodied this in my advocacy for women’s rights at the University of Illinois, as a prosecutor, and in private practice. I believe this fundamental approach is critical in the practice of law and life.

DAVID FRIEDLAND
DIRECTOR

David has been an Assistant State’s Attorney with the DuPage County State’s Attorney’s Office since 2008. He is currently assigned to the Felony Criminal Division. David has tried over one hundred cases involving misdemeanor and felony offenses. He previously clerked for the Honorable Paul P. Biebel, Jr., Presiding Judge of the Cook County Criminal Division. David graduated from the University of Wisconsin-Madison in 2001 and subsequently earned his J.D. from Tulane University Law School in 2005. He is a member of the ISBA, the Prosecutors Bar Association, and has served as a mentor through the DCBA Mentoring Program since 2013.
The Magna Carta – What Really Makes Great Law

BY SEAN MCCumber

On June 15, 1215, King John of England and several rebel barons met at Runnymede in a meadow near the River Thames to enter into a document that was known as the Magna Carta Liberatum (the Great Charter of Liberties). What may not be as well known is that this Great Charter actually sprang into existence over a dispute between King John and Pope Innocent III. Further relegated to the annals of history is the fact that this dispute arose over King John ignoring the Charter of Liberties (the Coronation Charter) by King Henry I in 1100. So to tell the story of the Magna Carta requires a return to the time of King Henry I.

Henry I claimed the throne under interesting circumstances, as his brother Robert was engaged in the First Crusade and his brother William was killed in a hunting accident on which Henry joined him. The nobles did not accept Henry. The Church opposed him, especially the Archbishop of Canterbury. The people of England did not like him because he was not of Anglo-Saxon birth. He married a Scottish princess and acquiesced to many of the Church’s demands. However, he still had little support from the nobles until he proclaimed the Charter of Liberties. This Charter, and the immediate setting aside of its provisions when it suited the king, would form the basis of the dispute that led to future disputes, culminating in the Magna Carta. This Charter secured the rights of the Church to retain its property, the rights of barons to pass inheritances to heirs without further purchases of the estate by the heirs, and the rights of barons to preserve their estates in marriage and remarriage. This Charter declared peace and protected those who served in the military from additional homages and required the king to maintain the forests. Henry did not keep these promises, and in fact, the King’s court was viewed with terror and fear. The other important issue from Henry’s time involved the selection of bishops. Henry believed, as William I before him, that the king could invest the bishops with his seal. Pope Gregory VII strongly disagreed and declared that the Church was independent of the country and the king. Eventually, both sides mediated their dispute with an ecclesiastical lawyer, Ivo of Chartres, and the king was allowed to observe, but not interfere with, the selection of bishops. Several times during Henry’s reign, and the reign of monarchs preceding John I’s reign, the Charter of Liberties was tossed aside and reaffirmed and tossed aside again.

King John ascended to the throne in 1199 after a dispute over how succession of the king should occur. The question was whether the child of the oldest heir to the throne should succeed as king, or the next sibling of the oldest heir to the throne. Ultimately, John succeeded the throne, but his reign continued to face conflict and controversy. In 1205, Hubert Walter, the Archbishop of Canterbury died and John sought to have John de Gray, one of his allies, appointed to the Archbishop chair. After the

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1 This dispute would play out today if Prince William, the son of Prince Charles, should succeed or Prince Andrew, the brother of Prince Charles, should succeed as monarch. The Act of Settlement of 1701 settled this issue. For the reader’s information, Prince William succeeds Prince Charles in the line of succession.
king, the cathedral, and the bishops in Canterbury all tried in vain to name John de Gray Archbishop; Pope Innocent III consecrated Stephen Langton as the Archbishop of Canterbury. King John refused Langton’s entry and seized church assets over Innocent’s action. Innocent excommunicated King John. The King tightened his grip by fining clerics for keeping mistresses and seizing the lands of bishops who went against him. Six years later, political pressures forced King John and Innocent to reconcile, resulting in Innocent supporting King John at home and abroad.

This dispute emulated a larger problem — the barons, especially in Northern England, despised John and sought to force him to reaffirm Henry’s Charter of Liberties. John, who had recently rebuilt his personal relationship with Innocent, and now had papal support and the presumptive protection of church law. Eventually, these rebel barons seized London. At this point, King John, realizing things had become truly serious, asked Archbishop Langton to draft terms of a proposed agreement that ended the dispute with the barons. Langton mediated this dispute for several days, and in actuality, on June 15, 1215, all that occurred was that John and the rebel barons agreed that they had reached terms of peace. Four days later, the rebel barons reaffirmed their loyalty to the king and John issued formal copies of the charter, under his seal. No signature occurred and no great fanfare played.

There are a few interesting things to note about the contents of the Magna Carta. While it offered a foundation for the concepts of liberty people hold dear today, it was first and foremost, a document for the nobility. These wealthy men were the only ones, besides the Church, truly protected by the charter; the words “free men” did not include everyone at that time. Despite this, the Magna Carta included what was then known as the Six Statutes, of which some principles survive in many countries today, including in our own Constitution. Those Six Statutes are:

1331: 5 Edward III 9: “Item, it is enacted, that no man from henceforth shall be attached by any accusation nor forejudged of life or limb, nor his lands, tenements, goods, nor chattels seized into the King’s hands, against the form of the Great Charter, and the law of the land.”

1351: 25 Edward III 4 (of Statute V): “Item, whereas it is contained in the Great Charter of the franchises of England, that none shall be imprisoned nor put out of his freehold, nor of his franchises nor free custom, unless it be by the law of the land; it is accorded, assented, and established, that from henceforth none shall be taken by petition or suggestion made to our lord the King, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law; nor that none be out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of the law; and if anything be done against the same, it shall be redressed and holden for none.”

1354: 28 Edward III 3: “Item, that no man of what Estate or Condition that he be, shall be put out of Land or Tenement, nor taken nor imprisoned, nor disinherit, nor put to Death, without being brought in Answer by due Process of the Law.”

1362: 36 Edward III, Roll of Parliament no. 9, 22: “First, that the Great Charter, and the Charter of the Forest, and other Statutes made in his time, and the time of his progenitors, for the profit of him, and his commonalty, be well and firmly kept; and put in due execution, without putting disturbance, or making arrest contrary to them by special command, or in other manner. / “Our lord the king, by the assent of the prelates, dukes, earls, barons, and the commonalty, hath ordained and established, that the said Charters and Statutes be held, and put in execution, according to the said petition.” … “Whereas it is contained in the Grand Charter and other Statutes, that no man be taken or imprisoned by special command without Indictment, or other due process to be made by the law, and oftentimes it hath been, and yet is, many are hindered, taken and imprisoned without Indictment, or other process made by the law upon them, as well as things done out of the Forest of the king, as for other things; that it would therefore please our said lord to command those to be delivered, which are so taken by special command against the form of the Charter and Statutes as aforesaid.” / “The king is pleased, that if any man find himself grieved, that he come and make his complaint, and right shall be done unto him.”

1363: 37 Edward III 18: “Although it be contained in the Great Charter, that no man be taken or imprisoned, or put out of his freehold, without due process of the law, nevertheless diverse persons make false suggestions to the King himself, as well for malice as otherwise, whereof the King is often grieved, and diverse of the realm put in great damages, contrary to

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the form of the same statute: Whereof it is ordained, that all they that make such suggestions be sent, with their suggestions, to the chancellor or treasurer, and they and ever of them find sureties to pursue their suggestions; and endure the same pain that the other should have had, in case that his suggestion be found untrue; and that then process of the law be made against them: without being taken or imprisoned, against the form of the same charter, and other statutes.”

1368: 42 Edward III 3: “Item, at the request of the commons by their petitions put forth in this Parliament, to eschew the mischiefs and damages done to divers of his commons by false accusers, which oftentimes have made their accusations more for revenge and singular benefit, than for the profit of the King, or of his people, which accused persons, some have been taken, and sometime caused to come before the King’s council by writ, and otherwise upon grievous pain against the law: It is assented and accorded, for the good governance of the commons, that no man be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land: And if anything from henceforth be done to the contrary, it shall be void in the law, and holden for error.”

The charter also included protections for the Church, punitive measures against Jewish bankers, protections and restoration of rights for certain Welshmen and Scotsmen, abolished certain forest laws, and protected fishing rights. Lastly, the charter provided for a council of 25 barons to oversee King John’s compliance with the Charter and provide mechanisms of castle seizure and other means to force the King’s compliance.

As expected, the barons did not trust King John and he did not trust...
the barons. In fact, even though it was part of the peace accords, the barons refused to return London to John by August 15, 1215, as they had agreed. While Langton mediated the peace agreement, Innocent had already excommunicated the rebel barons and removed Langton from his position as Archbishop. This letter had not arrived at the time of the issuance of the Charter. Upon learning of the charter, Innocent, who apparently grew rather fond of the power of excommunication, declared the charter null and void and threatened to excommunicate John if he observed the charter, and the remaining barons if they tried to enforce it. The papal letter arrived after the First Barons’ War began, pitting King John against Louis VIII. Though mired in a stalemate, the war took its toll on the King and John died of an illness on October 18, 1215.

The young Henry III became King. This led to a watered down version of the Great Charter – the Great Charter of 1216. The barons rejected it because it removed the council of barons and other clauses that Pope Honorius III had approved. Louis VIII and the rebel barons continued their war. However, popular opinion turned against Louis and thus, the Treaty of Lambeth ended the First Barons’ War. The Great Charter of 1215 underwent several modifications, and along with a complimentary Charter of the Forest (addressing forest rights, forest courts, and other forest protections), resulted in the Magna Carta Liberatum, or the Great Charter of 1217. Not surprisingly, all of these charters were occasionally ignored, reissued, and some were eventually codified in statute. The Popes of those times, supporting the monarchy, declared the charters null and void. By 1350, much of the Magna Carta was relegated to historical discussion in learned institutions.

However, from 1351 through 1369, during the reign of Edward III, the “Six Statutes” became law. The 1354 statute did two things: it redefined Article 39 of the Magna Carta, changing “free man” to “no man,” and protected said men from loss of life, liberty, or property without “due process of law.” It truly should not be overlooked that until these statutes were enacted, only nobility held the protections of the Great Charter. Some 120 years passed before the protections extended to include all men, as well as the beginnings of the legal concept of due process of law. This was not enshrined in the Great Charter, but arose from the debates and arguments of the times. Finally, little today remains from the original Magna Carta: 1) The Church of England shall be free, and shall have her whole Rights and Liberties inviolable; 2) The City of London shall have all the old Liberties and Customs which it used to have, as well as all other cities, towns, and boroughs; and 3) No freeman shall be imprisoned or punished without a trial by lawful judgment of his peers and there shall be no sale or denial of justice to any man.

So if all of the ideals and concepts of the Constitution of the United States of the America are not found in the Magna Carta, from where did they arise? Well, they arose from other events in English history. The Habeas Corpus Act of 1640 arose in response to the Star Chamber of the King’s court. The Act allowed for a prisoner to test the lawfulness of his conviction and/or imprisonment in the Court of Common Pleas. The Act was subsequently amended by the Habeas Corpus Act of 1679, which also provided for fines to jailers, payable to the prisoner, if the jailer attempted to evade the writ of habeas corpus. In 1688, England underwent the Glorious Revolution, bringing William and Mary to power and essentially bringing much of the absolute power of the British monarchy to a swift end. The English Bill of Rights of 1689 prohibited the suspension of laws without the consent of Parliament; prohibited taxation without representation; enshrined the right of the people to petition the monarchy to redress grievances without fear of penalty; provided for the free election of Members of Parliament; prohibited excessive fines or bail as well as cruel and unusual punishment; and certain rights to possess arms (for Protestants).

The confluence of these historical documents demonstrates much about the Great Charter. History clearly denotes the Magna Carta for what it was — an attempted resolution of a dispute between a group of wealthy landowners and their king by protecting their wealth and their right to hunt in the forests. The larger implication, which later reverberated through that English history, as well as the histories of the United States of America, France, and other revolutions that stemmed from “the shot heard ‘round the world,” is that absolute, unchecked power cannot stand in the face of those who know that freedom is fundamental. What essentially took 650 years of English history to develop and evolve formed the foundation for the American ideals of freedom, liberty, and justice. That is what makes great law, and the Magna Carta stands out as the first step on the path to recognizing those ideals.
Maybe I am a little biased being the Membership Director of DCBA, but I believe it is important to belong to a professional organization and make use of all it has to offer. Being a member of DCBA establishes that you are dedicated to advancing your career, staying informed and advancing the legal field. My own membership in a trade association is a testament to this belief.

Being the largest county bar association in Illinois does have its advantages. We hope everyone is aware of the 75+ hours of free MCLE opportunities and you’re reading the award winning DCBA Brief magazine. We also offer member discounts on services and products. Have you reviewed our Affinity Partnership Programs? They are primarily business focused, but we did add Fannie May (Wheaton & Yorktown locations) this past year. Find that information and other discounts on the website under Affinity Discount Program.

We all know networking is important. How do most people find new jobs or customers? Through someone they know. This is why creating professional relationships is important. DCBA is your local connection to help you establish relationships with another of our 2500 member attorneys with similar interests who will become your sounding board. The gathering of like-minded professionals can lead to new and expanded collaborations. Knowing who to turn to for guidance and input will help you make sound choices. Have a challenging issue you are not sure how to approach? Just give us a call for a referral or ask around the Attorney Resource Center and you’ll get many different views to help guide you or just talk through a problem, saving you time and money and making connections in the process.

DCBA offers you leadership opportunities among your peers. With the restructuring of the substantive law committees into sections, those opportunities are increasing. DCBA has over 20 substantive law groups and other board and special committees that need your help and input to maintain quality MCLE, articles for the DCBA Brief and other programs. Having peer respect and endorsement is invaluable regardless of where you are on your career path. Writing an article for the DCBA Brief gets you noticed and recognized as an expert on that topic, can lead to referrals and earn you significant MCLE credits as well. Get involved, get noticed and increase your business. We invite you to seek out leadership roles in DCBA. The return on investment in any professional organization is dependent on how much you invest.

For those of you already well established, I offer you this: It is time for you to share your experience and wisdom with the next generation. DCBA’s Mentoring Program is a great program pairing experienced attorneys with new attorneys, with each earning PRMCLE credit. Getting involved is more about the relationships you both will gain in addition to the CLE credit. You don’t have to sign up for a structured mentoring program, just sharing your experience at the ARC, at the New Lawyer Happy Hours or at the Law Student Pizza Parties can be rewarding.

With social media, Linked-In, and other ways to connect electronically, who needs a local professional organization? Do not dismiss the importance of face-to-face interaction as business still happens between people and most often with people you know, or through those who referred you. As a local bar association, DCBA offers you plenty of opportunities to meet other colleagues. The ARC is always buzzing, especially on Thursdays, but don’t forget the New Lawyer Happy Hours are also free, and are well attended by established attorneys and judges. We have social events occurring almost monthly where you can meet other attorneys, but you have to attend and...
LEGAL AID UPDATE

Judges’ Nite 2015

BY CECILIA NAJERA

With a title like, “Worst Show Ever”, Judges’ Nite 2015 had to have a certain kismet to be a great and memorable show, and that it was. This show was the directorial debut of Nick Nelson and the second run at Producer for Christina Morrison, and had a new type of set built by Pam Trojan and her crew. They provided a great show and evening for all. The show was wicked funny and full of very entertaining performances. Who will ever be able to forget Katie Haskins Becker’s portrayal of Wonder Wilson in her fabulous and kinky red boots; awesome parody of “Just Don’t Go” by Christina Morrison, Alycia Fitz, and Jennifer Burdette; and my personal favorite, the trio of Karen Delveaux, Kevin Millon, and Jennifer Burdette singing “Stuck in the Middle of Fools.” Of course no Judges’ Nite would be complete without the Judges’ Nite Band rocking out. Brent Christensen’s hilarious singing rant impersonation of Judge Miller as Rodney Dangerfield left the crowd cheering. Judges’ Nite 2015 was not only packed with wonderful performances from a very dedicated, talented, and hard-working cast, crew, and band, it provided a Judges’ Nite first…an onstage surprise proposal moving enough to be in a Fosse film. WOW and congratulations, Jennifer Burdette! Thank you to Brent Christensen who donated the sound equipment for the night and to be used in many shows to come.

Judges’ Nite 2015 was not only a night of song and dance, but a night full of Silent Auction fun thanks to Cindy Allston and Christina Morrison’s dedication and hard work. DuPage Bar Legal Aid Service would like to thank not just the entire crew, cast, and band that provided so much of their time and talent, but also the donors and bidders of the silent auction. This year’s silent auction nearly tripled the amount of...
ILLINOIS LAW UPDATE
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nothing in section 13.5 requires that the petition seeking to enjoin must be filed prior to the child’s actual removal and that forcing the father to do so “would lead to an absurd result” against the statutory intent of Section 13.5. The Court further noted that 13.5 is the only way a trial court is able to order the return of a minor child in situations where the parents were never married and no proceedings whatsoever existed prior to the custodial parent leaving the state with the minor child. Therefore, the Court reversed and remanded the trial court’s decision with directions. □

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.

DCBA UPDATE
CONTINUED FROM PAGE 48

talk with others. The more you attend, the more connections you’ll create.

My hope is that you are aware of all your benefits and utilize them. If you’re not sure, attend a Make the Most of Your Membership session. It is a one hour informative program that walks you through all of the benefits. We can help you make the most of them.

LEGAL AID UPDATE
CONTINUED FROM PAGE 49

money that was donated last year. In total, the amount of money that was raised for Legal Aid, solely from the silent auction, was over $9,800. We would like to thank all who donated items and services to the auction. We would especially like to thank Sarah Lange for donating multiple bottles of Napa Valley Reserve Wine; Pfeiffer Law Offices for donating tickets to the BMW and PGA Championships; Law Offices of Colleen McLaughlin for donating Cubs tickets and a one week stay in a condo in Siesta Key, Florida; Danielle and Don Provenzale for donating a one week stay in a condo in Ft. Meyers, Florida; Jim Reichardt for donating a Galena Midweek Stay; and Jeff York for donating tickets to Taylor Swift’s concert. Additionally, we would like to thank all of those who bid on the auctioned items. Most especially, we would like to thank Sharon Mulyk, Justin Smit, John Pcolinski (and his wife and daughter), Ted Donner and Melissa Piwowar, Frank Markov, Susan Alvarado, and Marc Brunell for their very generous bids. We are so appreciative of the DuPage County legal community’s generosity and keen eye for a value.

The 40th Annual Judges’ Nite had the sweet smell of success thanks to its writers and all involved. It was well done, well attended, and well able to withstand the rock of ages. Long live the “Cing” Austin, I mean, Judges’ Nite! See you at Mediation Times, that is, if we can COPE. □

The DCBA staff is here to help you. I’m always interested to hear your feedback on any event, your benefits or areas we can improve. We are your bar association, here for you, please feel free to call me at 630-653-7779, or email me, callston@dcba.org, with your ideas or questions. □

LRS Stats from 3/1/2015 to 3/31/2015:
The Lawyer Referral & Mediation Service received a total of 498 referrals, including 29 in Spanish (387 by telephone, 6 walk-in, and 105 online referrals) for the month of March. If you have questions regarding the service, attorneys please call Cynthia Garcia at (630) 653-7779 or email cgarcia@dcba.org. Please refer clients to call (630) 653-9109 or request a referral through the website at www.dcba.org.

Administrative ....................... 1
Appeals ............................... 0
Bankruptcy ........................... 13
Business Law .......................... 15
Civil Rights ............................ 4
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School Law ............................ 2
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Tax Law ............................... 3
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LITIGATION PARALEGAL
Matrimonial law firm looking for experienced litigation paralegal/legal assistant. Must be highly organized and detail oriented to assist with and manage: drafting of discovery documents and responses, preparation of subpoenas, analysis and collection of data, calendar management, client file maintenance and trial preparation. Candidate must have a working knowledge of Word, Excel and Outlook. 20 to 25 hours per week with potential for full-time employment. Please submit resume to Laura@davidkinglaw.com.

ENTRY LEVEL ATTORNEY
Small suburban boutique firm looking for entry level Attorney for Business Litigation Practice. Please send resume and references to benderds@sbcglobal.net.

FAMILY LAW PARALEGAL/LEGAL ASSISTANT
Naperville Law Firm is seeking an experienced Family Law Paralegal/Legal Assistant. Responsibilities include assisting with family law cases from start to finish, including but not limited to:
• screening prospective clients
• drafting initial pleadings
• working with clients in gathering and compiling financial information
• drafting discovery documents and responses to discovery requests
• drafting parenting plans, orders of child support/worksheets, asset/liability spreadsheets
• assisting with trial preparation
• drafting final pleadings and real property transfer documents.

Qualifications include attention to detail, organization and problem solving; proficiency in Microsoft Word, and knowledge of court procedure and local rules. The successful candidate will have superb verbal and written communication skills as well as strong interpersonal skills with the ability to prioritize and manage time, and work independently as well as in a team environment. Compensation will be based upon experience. To be considered for this position, please submit a cover letter addressing your experience and a resume to shild@gruynklaw.com.

SEEKING OF COUNSEL AND OFFICE SHARING RELATIONSHIP
Our Northern DuPage firm is searching for an experienced, well-qualified attorney with a book of business in criminal, business, or immigration law to expand our practice areas and promote mutually beneficial referrals. If interested, please send your resume to amartin@dcba.org and indicate box number 150316 in the subject line.

LEGAL SECRETARY
Established Naperville Law Firm seeks full time legal secretary for Litigation Department who is detail oriented, organized, and can multi-task. Must be proficient in Microsoft Office Suite. Salary is negotiable based on experience. Please submit cover letter and resume to cjcl@dbcw.com along with salary history and references.

WHEATON DANADA AREA
One, Two or Three offices in prestigious Danada area of Wheaton; Secretarial Space; conference room, kitchen, reception area, copier; Available July 1. Office - $650; Secretarial-$75 per month. Call (630) 260-9647.

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One to three offices available above Chicago Title at 1725 S. Naperville Road in Wheaton Danada area. Both furnished and unfurnished offices available, along with secretarial area,internet, phone and fax lines, copy machine, conference room and kitchen area. Great location close to expressways, restaurants, park district exercise facilities & 10 minutes to courthouse. Call John Kelly at 630-690-9900.

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Available for meetings, depositions, seminars, client interviews, etc. Can be used as a mail drop by prior arrangement.
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• Terms $25 per hour or $125 per day.

ADDITIONAL OFFICE SPACE ALSO AVAILABLE. (630) 960-0500 tman@irstax.com www.irstax.com
Welcome the new Spring season by joining DCBA President, Lynn Cavallo and the Board of Directors at the President’s Celebration on May 14, 5:30-10 pm. The President’s Celebration will replace the President’s Ball this year and will be at a brand new venue — Noah’s in Naperville.

What is the President’s Celebration? It’s a more relaxed way for members of the DCBA to get together and celebrate this year’s professional achievements by awarding those members who have truly provided their energy, ideas, and time in supporting the DCBA.

Along with the annual Directors’ Awards presented to members demonstrating leadership and commitment to excellence, Lynn will also be presenting the “Lawyer of the Year Award” to Christina Morrison.

Each year, the President of DCBA selects a member who has gone above and beyond in service to our legal community. This year, Lynn Cavallo has selected Christina Morrison as Lawyer of the Year. Christina’s role as Producer of Judges’ Nite the last two years has exemplified her willingness to go above and beyond. She has successfully managed the various aspect of the show (cast, crew, logistics, budget) all while never losing sight of the ultimate goal of the show – a fundraiser for the DuPage Legal Assistance Foundation. Christina was soliciting donations for the silent auction at the show more than nine months in advance and kept at it until the show. Her energy and consideration of everyone involved was a major factor in the success of the show. Christina has also served DCBA this year as the Chair of the Law Day Committee, overseeing the many aspects of that celebration of the rule of law.

Registration information:
Regular Tickets are $30, and will increase to $40 at midnight on Thursday May 7th, so you still have time to get those early bird prices!
New Attorneys (0-4 years) can attend this event free, yes that’s free! But you gotta register before midnight on Thursday May 7th to receive this one time complimentary admission. Otherwise, it’s $20.

Heavy hors d’oeuvres will be served and catered by MyChef and the celebration will include an open bar courtesy of our generous sponsors: OVC Online Marketing for Lawyers, Momkus McCluskey LLC, ADR Systems and Jensen Litigation Solutions.

On May 15th, DCBA will hold a series of four one-hour seminars especially for those whose last name begins with N-Z and need some last-minute credit for the MCLE reporting period ending June 30. You may attend all or individual seminars for a nominal fee, $15 per hour for members and $25 per hour for non-members. All are approved for PRMCLE credit.

The seminars are as follows:
Hour One: Michael McMorris: “Qualified Retirement Plan Design Basics For Lawyers”
Whether it’s time for you to review your own firm’s retirement plan or have a conversation with a client about theirs, this presentation will give you the low-down on the various types of employer-sponsored retirement plans, including SEP, SIMPLE, Profit Sharing, 401(k), Safe Harbor 401(k), Cross-Tested or New-Comparability, Defined Benefit Plans and Cash Balance DB Plans. The presentation will also cover the benefits of having an employer sponsored plan, the factors that must be considered when deciding whether to sponsor, amend or terminate a plan, and a comparison of the different types of service providers.

The second hour will have Kelly Kuhlman & Greg Wildman speaking about “Reputation Management”, an overview of Reputation Management and the practice of attempting to shape the public’s perception of an attorney or law firm with positive and negative reviews throughout local listings, legal directories and social media.

Hour Three: will be Chelsey Castro of the Lawyers Assistance Program presenting information about “Attorneys and Burnout”.

A Fourth Hour will be a presentation by Vickie Austin of Choices Worldwide. “From Hello to ChaChing, Converting Contacts to Clients”
In the midst of celebrating our 50th year, we issued our three millionth policy. Congratulations to homeowners William “Billy” and Jill Thompson of Oglesby, Illinois, and to the ATG attorney-member who issued the policy, Dick Fiocchi (far left) of Bernabei, Balestri & Fiocchi, Spring Valley, Illinois. Congratulating Billy and Jill are ATG President Peter Birnbaum (second from left) and ATG Senior Vice President, Jerry Gorman, far right.

These homeowners and this ATG member represent what we strive for every day: Protecting the investment of every homeowner, and preserving the lawyer’s role in the process.

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