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Each year, the National Association of Bar Executives reviews various bar association magazines from across the nation and selects the best one for a Luminary Award for Excellence. I am pleased to announce that your DCBA Brief won the 2016 Luminary Award for Excellence in the Best Small Bar Association Regular Publication category. For those of you who count such things, the 2016 award is the third Luminary Award that we have received in the last five years. Just like our Chicago Blackhawks hockey team, we have built a dynasty.

This issue highlights many of the reasons for our success. On the cover, we recognize our Editorial Board who volunteer their time writing the news features that you see in each issue, drafting and editing the articles and legal updates, and assembling each issue for publication. Sitting front and center in the photo are DCBA staff liaison, Jacki Hamler, and last year’s editor Christine McTigue. Both of them were instrumental in freshening up the look of the DCBA Brief magazine. Over the last few years, we have used a competitive application process for our Editorial Board. I think that this process has helped to shape our Editorial Board into a great team that continues to produce award winning content.

Another reason for our success has been the excellent collaboration that we have had with the various substantive law sections within the DCBA. This collaboration has allowed us to provide you with a diverse set of scholarly articles each issue. This month’s issue is yet another example of the diversity and the many talents within our membership. Edyta Salata and Mary Field from the Immigration Law Section bring us a summary of the various visa options available for those looking to hire foreign workers. Suzanne Fitch from the Local Government Section writes about citizens ballot initiatives in Illinois. Mark Schmidt brings us a professional responsibility piece and discusses the ethical issues that a transactional attorney may encounter when faced with the possibility of having to testify in court or in a deposition. This month’s case law updates come from Peter Evans of the Business Law Section and Brian Dougherty of the Labor and Employment Law Section.

The collaboration that we have within our bar association also extends to other organizations, individuals, and groups outside of our membership. Our association’s willingness to reach out to others provides the DCBA Brief with a constant stream of new events and new programs to write about and is another reason for our success. In the News and Events section of this issue, we recap the DCBA President’s Trip in Chicago in which we were able to reach out to over 200 attorneys and law students whose commitments may not have allowed them to attend local DCBA functions at the ARC or at the Bar Association building. We also preview our annual Mega Meeting with discussions from our two keynote speakers – Professor Hank Perritt of the IIT-Kent College of Law and James Grogan of the Illinois Attorney Registration and Disciplinary Commission.

While the Luminary Award was awarded to the DCBA Brief, the award is really a tribute to our dynamic organization and those who support us. If you would like to submit an article or law update for publication, please do not hesitate to contact me at (630)510-1800 or by e-mail at email@dcbabrief.org. □
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During the first Presidential Debate in the 2016 general election, Hillary Clinton mentioned implicit bias in answer to a question posed by moderator Lester Holt. Holt asked her, “Secretary Clinton, last week, you said we’ve got to do everything possible to improve policing, to go right at implicit bias. Do you believe that police are implicitly biased against black people?” Her response was immediate: “Lester, I think implicit bias is a problem for everyone, not just police. I think, unfortunately, too many of us in our great country jump to conclusions about each other. And therefore, I think we need all of us to be asking hard questions about, you know, why am I feeling this way?”

President-Elect Donald Trump criticized Clinton’s response as “a bad thing” when he appeared at a rally a few days later. “[I]n our debate this week, she accuses the entire country – including all of law enforcement – of implicit bias,” he said, “essentially suggesting that everyone, including our police, are basically racist and prejudiced. You heard that. And I’m standing there in front of this massive crowd of people...And I said to myself: ‘Did she really say that?’ She said it. It’s a bad thing she said...How can Hillary Clinton try to lead this country when she has such a low opinion of its citizens...? How can she lead this country when she thinks America is full of racists...?”

However tone deaf Secretary Clinton and President-Elect Trump both were in their choice of words at the time, their dialogue highlighted a struggle that most of us are having these days. Whether we lament our own prejudices or worry over those of others, the political climate these last few years has certainly compelled all of us to rethink what we think. President-Elect Trump may not have been wrong to express his surprise in Secretary Clinton’s choice of words but Secretary Clinton was, likewise, pointing out something important. When we are aware of our own biases, when we acknowledge or admit our own prejudices, we are dealing with what social scientists consider “explicit bias.” When we talk about biases that affect our judgment on a less conscious level, we are talking about “implicit bias,” the bias that Secretary Clinton was referencing during that first debate.

It may be a “bad thing” to point out, but it is indeed increasingly clear that all of us, regardless of how we see ourselves, harbor implicit biases. As Professor Mahzarin Banaji and Professor Anthony Greenwald explained in Blindspot: Hidden Biases of Good People, even the most ostensibly open-minded among of us can be quick to stereotype:

“A father and his son are in a car accident. The father dies at the scene and the son, badly injured, is rushed to the hospital. In the operating room, the surgeon looks at the boy and says, ‘I can’t operate on this boy, he is my son.’ If your immediate reaction is puzzlement, that’s because automatic mental associations caused you to think ‘male’ on reading ‘surgeon.’ The association surgeon = male is part of a stereotype.”

Banaji and Greenwald’s work started at Harvard University with Project Implicit, a program they developed in 1998 with Professor Brian Nosek which studied how people react to different images on screen over a period of 10-15 minutes. In the almost 20 years since, over five million people have taken the Implicit Association Test (“IAT”) online, and the results have been fairly clear. Most everyone appears to harbor at least some implicit bias – bias which we as attorneys – like judges, police officers and others involved in the law – would do well to study. As Jolls and Sunstein concluded in their article on “The Law of Implicit Bias”:

“[I]mplicit bias as measured by the IAT has proven to be extremely widespread.... It might not be so disturbing to find implicit bias in experimental settings if the results did not predict actual behavior, and in fact the relationship between IAT scores and behavior remains an active area of research. But we know enough to know that some of the time, those who demonstrate implicit bias also manifest this bias in various forms of actual behavior.... In the employment context in particular, even informal differences in treatment may have significant effects on employment outcomes, particularly in today’s fluid workplaces. If this is so, then the importance to legal policy is clear. If people are treated differently, and worse, because of their race or another protected trait, then the principle of anti-discrimination has been violated, even if the source of the differential treatment is implicit rather than conscious bias”

The subject thus deserves more study and so the DuPage County Bar Association has a number of interesting programs lined up in the coming months through which our members can do just that. Linda Rothnagel of Prairie State Legal Services is presenting “Cognitive Processes and the Law: Using and Addressing Biases” at this year’s Mega Meeting, for example. Our Diversity Program Chair, Erin Birt, has scheduled CLE programs on gender bias for February, our Professional Responsibility Section, chaired by Glenn Gaffney, will be looking at the new ABA Model Rules on Discrimination and Harassment (Amended Model Rule 8.4) in March, and our Law Day Chair, Melissa Piwowar, is planning programs for April and May around the Law Day theme for this year: “The Fourteenth Amendment, Transforming American Democracy.” (Continued on page 36)
8. Business-Based Immigration: 
Visa Options for Employing Foreign Talent 
- By Edyta Salata and Mary Field

14. Citizen Ballot Initiatives to Amend the Illinois Constitution 
- By Suzanne M. Fitch

20. “I Can’t Tell You” — Privilege, Confidentiality, 
And The Compulsion of Testimony From the Transactional Lawyer 
- By Mark T. Schmidt

26. Illinois Law Update 
- Editors Brian Dougherty and Peter Evans
Business-based immigration, also called employment-based immigration, refers to processes utilized by U.S. companies to legally employ foreign nationals. The foreign national, through employment with a U.S. company, obtains a visa status in the U.S. which allows him or her to legally work here. The company becomes the “sponsor” of the foreign national. In order for this arrangement to proceed, the company, the foreign national and the specifics of the employment must qualify for the visa sought, which can be difficult if not impossible for some. Visas and the requirements for them are set forth in our Immigration and Nationality Act and the Code of Federal Regulations.1

The focus of business-based immigration is to attract the best and brightest from overseas while at the same time protecting the U.S. work force. Most of these visas require at least a bachelor’s degree in a specific field and a strong commitment to the foreign worker on the part of the company as complying with the regulations to enable such employment can be costly and inconvenient.

Understanding business-based immigration starts with an understanding of our immigration system in general. Basically, from an immigration perspective, there are four types of people in the U.S.: U.S. Citizens, Lawful Permanent Residents, nonimmigrant visa holders, and undocumented. A Lawful Permanent Resident (“LPR”) is a citizen of another country who is allowed to live and work permanently in the U.S. LPR status is evidenced by the Alien Registration Card, also referred to as a “green card.”

A nonimmigrant visa holder is a person here for a specific purpose and holds a specific visa allowing him or her to accomplish that purpose. Examples include a student on a student visa, a visitor on a visit visa, or a foreign worker on a work visa. Nonimmigrant visas are designated by letters of the alphabet such as “F” which means student, and “B” which means visitor.

An undocumented person is in the U.S. without permission from the U.S. government to be here. Sometimes the person
entered the U.S. without being inspected by the Immigration Service, and sometimes the person entered legally, with a visa, but overstayed it or is no longer pursuing the purpose of the visa.

Knowing the current immigration status of a foreign national is necessary to determining whether that person can obtain a business-based visa. Business-based immigration includes options for both LPR status and nonimmigrant visas. However, in most cases, if the foreign national is in the U.S., he or she must be here with a visa and in compliance with that visa to move into a business based immigration status. Exceptions to this general rule exist, and whether a particular individual already in the U.S. can obtain a business based visa depends on which visa is sought and the particulars of that person’s current status in the U.S.

This article will detail the most common types of non-immigrant business-based visas.

**H-1b Nonimmigrant Visa**

The H-1b visa\(^2\) is one of the most popular nonimmigrant business based visas. It is a visa which allows a U.S. company to employ a foreign national for a period of up to six years as long as the foreign national is employed in a “Specialty Occupation,” and holds the appropriate credentials for the occupation. A “Specialty Occupation” means a position which requires a specific bachelor’s (or higher) degree.\(^3\) The foreign national must possess that required degree. For example, an engineer with a degree in engineering would qualify as being in a specialty occupation. The H-1b visa is commonly used to employ foreign students upon their graduation from a U.S. university.

H-1b visas are limited in number by a quota set in our Immigration and Nationality Act. The quota allows for 65,000 to be issued per year with an additional 20,000 available to individuals who hold a master’s degree or higher from a U.S. university. In recent years, more H-1b visas have been sought than the quota allows so a lottery system has been established. Companies which seek H-1b visas for potential employees must submit their applications to the Immigration Service on April 1 for inclusion in the lottery. If selected, the H-1b visa becomes effective on October 1 of that same year.

Once an individual is in the U.S. with an H-1b visa, he or she must be employed by the company which sponsored him or her in order to be in compliance with the H-1b visa status. If someone who holds an H-1b wants to change employers, the new employer must file an application for H-1b visa status on behalf of that person. As long as the foreign national already has an H-1b visa, that particular filing is not subject to the quota.

In order to file for an H-1b, the company must first obtain a document called a Labor Condition Application from the U.S. Department of Labor. In this document, the company must attest to the following: 1. There is no strike or lockout at the company; 2. The employment of the foreign national will not adversely affect the employment of any U.S. worker; 3. The foreign national is being paid a wage which is at least the prevailing wage for the occupation; and 4. Notice to the other workers of the intention to employ someone in H-1b status has been given.\(^4\) The prevailing wage means the appropriate wage for the position as supported by the Department of Labor’s salary survey or a private salary survey. The average wage for an H-1b worker is $67,000.\(^5\)

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2. INA Section 101(a)(15)(H)(i)(b)
3. Specialty occupation is defined at 8 C.F.R. Section 214.2(h)(4)(ii)
4. The attestation requirements can be found at INA Sec. 212(n)(1)

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**About the Authors**

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Mary Field was licensed to practice in 1997, devoting her legal career exclusively to immigration and naturalization law. She has a Bachelor’s degree in Business Administration and earned her JD both from Loyola University. She currently serves as co-chair of the Lake County Bar Association’s Immigration Law Committee. Her law firm has offices in Gurnee and Oak Brook.
ARTICLES

Other points which should be noted about H-1b visas are that the employer is required to pay the fees for the H-1b as such fees are considered the expenses of the employer. The company must maintain a genuine employer/employee relationship with the foreign national and must continuously pay the individual the wage as set forth in the application. The practice of “bench ing” employees, which means not paying the person because the person’s work is not currently needed, is prohibited with an H-1b visa.

**TN Nonimmigrant Visa**

TN nonimmigrant visas are similar to H-1b nonimmigrant visas but are exclusively for citizens of Canada or Mexico. The TN visa was created by NAFTA. The TN visa is not subject to any quota and has no restrictions on who can pay the fees associated with it. However, instead of requiring the position to be a specialty occupation like the H-1b, the TN visa requires the foreign worker to be employed in a position on a list which can be found in the NAFTA regulations. Most occupations on the list require at least a bachelor’s degree or higher.

Like the H-1b visa, the TN visa requires the foreign national to have a U.S. company sponsor him or her, and the foreign national must be employed by that company to maintain the TN status. TN visas are granted in three-year increments, and there is no limit to the amount of time someone can be in TN status.

**B-1 Visa for Business**

B-1 visas have been established with temporary business visitors in mind and provide them with authorized stay in the United States to conduct “legitimate business activities.” As the B-1 Visa application process is pretty straightforward and relatively inexpensive, several companies such as Infosys attempted to abuse the system and circumvent the need to pursue the H1B options for their employee which resulted in an allegation of visa fraud. Ultimately Infosys agreed to pay $34 million penalty to avoid charges of systematic fraud and abuse.

The B-1 applicant is required to have an intent to depart United States, must maintain foreign residence and be able to demonstrate adequate financial arrangements. It is imperative to understand the type of activities that are allowed under this category. The State Department provided more guidance on what constitutes legitimate business activity by clarifying that a business visitor cannot engage in commercial transaction which involves gainful employment. The key to analysis is focus on making the determination where the work will be principaly performed and differentiating between employment and business. The type of activities that are permissible under this category would involve negotiating contracts, consulting with business associates, litigation, participating in conferences or seminars, undertaking independent research.

**L Visa - Intracompany Transferees**

L visas constitute a desirable option for companies with a parent, affiliate or subsidiary abroad who wish to transfer an employee to work on an assignment in the United States. This category offers a number of benefits over other types of visas such as no annual cap on number of visas issued and relatively easy path for transition to permanent residency. Let’s take a closer look at the requirements for L-1 intracompany transfer visa. An applicant must have been continuously employed abroad for 1 of the past 3 years by parent, branch, affiliate or subsidiary of a U.S. employer. Hence this classification would not be a good option for new hires. Next, the foreign firm and US company must be able to demonstrate a “qualifying

6. 8 C.F.R. Section 214.6
7. Appendix 1603 D.1 to Annex 1603, 8 C.F.R. Section 214.6(c)
9. AILA Doc. No. 13103050
relationship.” The “qualifying relationship” is, generally speaking, a question for common majority ownership or common control by the same person or entity. L-1 category is suitable for managers and executives (L-1A) as well as operational employees with specialized knowledge (L-1B). The “specialized knowledge” refers to specialized knowledge of the company products and their application in world market or proprietary knowledge of the company’s processes or procedure. The L-1A can be renewed for up to 7 years while the L-1B has a limit of 5 years. An option also exists for employees who intend to travel to the U.S. to launch a new office; however, the CIS will only grant a one-year stay under this type of circumstances. Finally, companies working with a large number of applicants can take advantage of so called “blanket approval” for all their workers in place of individual application process. The company must, however, meet certain criteria that deal with years that company has been in business, number of branches, and scale of operation in terms of number of employees and/or U.S. sales.

**P-1 Visas for Athletes and Entertainers**

Internationally recognized athletes have an option of applying for P-1 visas. The athletes must document their “internationally recognized” level of achievements in more than one country. The USCIS has defined “international recognition” as “having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that originally encountered, to the extent that such achievement is renowned, leading or well-known in more than one country.” Athletes can obtain P-1A visas for maximum of 10 years.

P visas are also available for teams who are competing in a distinguished event. The teams must show that they have achieved significant international recognition in the sport. Visas are issued for a period of stay of one year.

Members of an Internationally Recognized Entertainment Group can apply for P-1 classification. Individuals not performing as part of a group are not eligible and must seek other options such as O classification. The group must have been performing together prior to their intended visit to the U.S.; at least 75 percent of the members of the group must have been in the group for at least one year. Group (not individuals) must be internationally recognized and demonstrate high level of achievement substantially above that ordinarily encountered. This may be accomplished by establishing the group’s nomination or receipt of significant international awards or prizes for outstanding achievement in its field or by satisfying three out of the following requirements:

- Group has performed and will perform as a starring or leading entertainment group in production or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
- Group has achieved international recognition and acclaim for outstanding achievement in its field as evidenced by reviews in major newspapers, trade journals, magazines or other published material;
- Group has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials;
- Group has a record of major commercial or critically acclaimed successes, as evidenced by indicators such as ratings, box office receipts, record, cassette or video sales, and other achievements as reported in trade journals, major newspapers or other publications;
- Group has received significant recognition for achievements from critics, organizations, government agencies or other recognized experts in the field; and
- Group has commanded and will command a high salary or other substantial remuneration for services comparable to others similarly situated in the field, as evidenced by contracts or other reliable evidence.

Foreign individuals with recognized achievements in the fields of science, education, business, or athletics can classify for O-1A Visas provided that they “sustained national or international acclaim.” O-1B applicants with career in arts need only

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11. Id.
14. 8 C.F.R. § 214.2(p).
15. 15 INA § 101(a)(15)(P).
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demonstrate “prominence” or “distinction” in the field.” Dual intent is recognized and no foreign residence is required, but the applicant must have temporary intent to remain. Both O and P petitions must contain written advisory opinion from the appropriate union.

For a prospective employer new to the immigration field immigration procedure, terminology and requirements can seem complex and confusing. Furthermore, the Citizenship and Immigration Services, CIS, exercises a high degree of scrutiny while adjudicating employment visa petitions resulting in frequent issuance of requests for further evidence causing further delays and increasing unpredictability of the process. With a guidance of seasoned immigration practitioner, however, U.S. companies can find ways to maneuver the web of the immigration system to hire foreign talent and remain competitive in a global economy. □

17. INA § 101(a)(15)(O).
When our state legislators act in their own self-interest instead of on behalf of their constituents, the people of the State should have an effective recourse when change cannot be accomplished at the ballot box. The power of the people to act as a check on our State Legislature is found in Article XIV, Section 3 of the 1970 Illinois Constitution, said section allowing for a citizen ballot initiative process to amend the legislative article of the Constitution. Recently, the Illinois Supreme Court struck down a ballot initiative known as the Fair Maps Amendment which would have changed the process for redrawing legislative districts following the federal decennial census. As a result, the power of the people to exercise their right to amend the Constitution has never been so uncertain.

Citizen ballot initiatives spring up when legislators refuse to enact reforms, such as term limits and redistricting, that would give more power to the citizens of Illinois. Illinois legislators rarely push for measures that would shorten their political careers or weaken their ability to win reelection. Ideally, the citizens of Illinois could demand these reforms by voting for reform-minded candidates. In reality, this has not worked because, once in power, legislators tend to cave to their own self-interests. That is why the citizen ballot initiative is such a critical right of the people, even if only to let the politicians know that if they fail to act, the citizens will step in.

Article XIV, Section 3 of the 1970 Illinois Constitution outlines the signature, filing and general election voting requirements for a successful citizen ballot initiative.7 In addition, Section 3 provides that “Amendments shall be limited to structural and procedural subjects contained in Article IV.”8 Article IV of the 1970 Illinois Constitution primarily concerns the Illinois Legislature and contains fifteen sections relating to the following subjects:9

1. General Assembly consisting of 59 Senate Districts and 118 Representative Districts
2. Length and staggering of terms; Eligibility to serve in General Assembly; Vacancy of office; Double compensation; Other public office
3. Legislative Redistricting
4. Elected at even-numbered year general election
5. Convening of session; Special session; Open and closed session

1. Ill. Const. 1970, art. XIV, § 1
2. Ill. Const. 1970, art. XIV, § 2
3. Ill. Const. 1970, art. XIV, § 3
7. Ill. Const. 1970, art. XIV, § 3
8. Ill. Const. 1970, art. XIV, § 3
6. Quorum; Election of speaker and president; Minority leader; Internal rules; Expulsion of members; Disorderly conduct
7. Committees and commissions; Record keeping; Subpoena power
8. Procedural requirements for passage of bills
9. Governor approval and veto of bills; Override of veto; Line item veto
10. Effective date of law
11. Legislators’ salary and allowances
12. Legislative Immunity
13. Special Legislation
14. Impeachment of executive and judicial officers
15. Adjournment of General Assembly

As you can see from the list above, an argument can be made that almost all of the sections pertain to structural and procedural subjects, with the exception of a few such as legislative immunity and special legislation. Since the people of Illinois can only use the citizen ballot initiative to amend structural and procedural subjects in the legislative article, one must understand how the courts have interpreted that language.

Court Cases Involving Citizen Ballot Initiatives

In Coalition for Political Honesty v. State Board of Elections (Coalition I), the Illinois Supreme Court considered a citizen ballot initiative containing three proposals. The first proposal broadened the existing prohibition on members of the General Assembly receiving compensation as public officers or employees of other governmental entities. The second proposal added language prohibiting members of the General Assembly from voting on matters in which they had a personal, family or financial conflict of interest. The third proposal provided that members of the General Assembly could not receive a salary in advance of the performance of duties. The Court found that the right of the people to amend the legislative article was included in the Illinois Constitution because the self-interest of the legislature would make it unlikely that the legislature would propose changes on its own. The Court looked at the meaning of the phrase “structural and procedural” in describing the types of amendments allowed by a citizen ballot initiative and concluded that the drafters of the Constitution did not want to include substantive law. Therefore, a citizen ballot initiative could not be used to enact policy changes that would normally be the subject of substantive legislation. The Court further found that an amendment must be both structural and procedural. Since the subject matter has to touch on both structure and procedure, it is not sufficient to argue that the proposal has one quality and not the other. Accordingly, the Court held that the defendants did not attempt to argue that the three proposals met both requirements, and therefore, the three proposals were unconstitutional.

In Coalition for Political Honesty v. State Board of Elections (Coalition II), the Illinois Supreme Court considered another citizen ballot initiative which proposed to amend the legislative article in the following three ways: (1) reduce the size of the House of Representatives, (2) provide for the election of one representative from each district (single-member districts), and (3) abolish cumulative voting. Also at issue was a law passed by the General Assembly amending the Election Code to provide that a citizen ballot initiative must conform to its requirements, otherwise, petition sheets not in conformity could not be received by the Secretary of State or be part of the petition. The Court found that this penalty provision, which disqualifies an entire sheet of signatures, is too harsh. In so finding, the Court recognized that the power of the people to amend the Constitution through ballot initiative is a right. Although the General Assembly has a legitimate interest in ensuring the integrity of the ballot initiative process, the penalty at issue was not the least restrictive means, and thus, was an impermissible limitation on the people’s right of initiative.

About the Author

Suzanne M. Fitch is a real estate attorney with a background in local government law. She graduated from the University of Illinois Urbana-Champaign and received her law degree from NIU. Suzanne served on the City of Wheaton’s Planning and Zoning Board for six years and is now an elected Councilwoman.
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The Court held that the proposed amendments qualified for submission to the voters at the general election, stating, that the proposals “relate directly to the ultimate purpose of structural and procedural change in the House of Representatives.”

The Illinois Appellate Court in *Lousin v. State Board of Elections* considered whether a citizen ballot initiative could affect legislative power. The constitutional amendment at issue would have given the electors the power to initiate “measures” which could be passed by the General Assembly in the same way that a bill is passed. The Court held that the citizen ballot initiative was unconstitutional because it gave the electors legislative power which is currently vested in the General Assembly. The Court relied on Justice Schaeffer’s dissent in Coalition I to conclude that a change in legislative power is not structural and procedural, but rather, an impermissible substantive change.

The case of *Chicago Bar Association v. State Board of Elections (CBA I)* also involved a citizen ballot initiative of a substantive nature. The ballot amendment (known as the Tax Accountability Amendment) proposed to create a new Tax Accountability Amendment Committee to consider bills that result in an increase or decrease of revenue to the State. The Committee could not vote on a bill until a public hearing was held, and any bill that increased revenue for the State could only be passed with a three-fifths vote of both chambers. Relying on the debates and proceedings of the 1970 Constitutional Convention, the Court concluded that the citizen ballot initiative could not be used for matters of substantive policy. The Court noted that “the delegates sought to avoid the use of the initiative to incorporate into the constitution what in effect was legislation.” Accordingly, the Court held that the proposed amendment was unconstitutional, and further reasoned that, if the proposed amendment were allowed to proceed, future amendments could set forth similar requirements for bills relating to abortion, the death penalty or criminal sentencing.

**Citizen Ballot Initiatives Proposing Term Limits**

Proponents of term limits for politicians face an uphill battle as a result of two court decisions striking down the initiative. The first case, *Chicago Bar Association v. Illinois State Board of Elections (CBA 2)*, involved a citizen ballot initiative to amend section 2 of article IV concerning the composition of the legislature. Section 2(c) already lists the qualifications for serving as a member of the General Assembly, and the proposed amendment added to this list by providing that no one could serve in the General Assembly for more than eight years. The amendment also consisted of other provisions for calculating the length of service to effectuate the tenure limitation. The Illinois Supreme Court held that the term limit amendment was unconstitutional because it was not limited to structural and procedural subjects. The Court stated that the “eligibility or qualifications of an individual legislator does not involve the structure of the legislature as an institution” and it “does not involve any of the General Assembly’s procedures.”

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23. *Id.* at 260.
25. *Id.* at 504.
26. *Id.* at 503-504.
28. *Id.* at 397.
29. *Id.* at 401-403.
30. *Id.* at 404.
31. *Id.* at 405-406.
33. *Id.* at 505.
34. *Id.*
35. *Id.* at 509.
Three of the justices in CBA 2 dissented and laid out a new framework for interpreting the phrase structural and procedural. Taking issue with the Court’s finding that the subject matter must relate to both structure and procedure, Justice Harrison found that citizen ballot initiatives “need not deal simultaneously with both procedural and structural subjects.” Since the term limit amendment does not involve a substantive change, but instead alters the composition of the legislature, the dissenting justices found it to be permissible. Justice Harrison stated: “Composition of the legislature was expressly mentioned by the drafters of our constitution as being among the matters subject to amendment by initiative under article XIV, section 3.”

In 2014, the Committee for Legislative Reform and Term Limits defended another challenge to a citizen ballot initiative proposing term limits in the case of Clark v. Illinois State Board of Elections. However, unlike the term limit proposal in CBA 2, the term limit initiative in Clark attempted to address both substance and procedure by changing numerous procedural sections of the legislative article. Nevertheless, the Illinois Appellate Court held that the initiative must be struck down in light of the Supreme Court’s holding in CBA 2 that term limits are neither structural nor procedural.

Redistricting Reform and the Recent Illinois Supreme Court Case of Hooker v. Illinois State Board of Elections

The latest citizen ballot initiative to sweep through Illinois and earn the signatures of more than 563,000 voters is the Fair Maps Amendment. A ballot initiative committee, known as Independent Maps, created the Fair Maps Amendment with the widespread support of numerous independent business and civic groups. Despite the fact that Legislative Redistricting is already a subject contained in Article IV of the Illinois Constitution, the Illinois Supreme Court struck down the Fair Maps Amendment in Hooker v. Illinois State Board of Elections.

Every ten years, the General Assembly is charged with redrawing the boundaries for Illinois’ House and Senate districts in the year following each federal decennial census. Under the current system for redistricting, if the General Assembly is not able to enact a new map, an eight-member Legislative Redistricting Commission is created. The Commission is comprised of appointments from the Speaker and Minority Leader of the House and the President and Minority Leader of the Senate (no more than four can be members of the same political party). If at least five members of the Commission cannot agree on a new map, the Supreme Court must submit the names of two people (not of the same political party) and the Secretary of State must draw by random selection the name of one of those two people to serve as the ninth member of the Commission. The ninth tie-breaking vote will be for either the Republican map or the Democratic map.

Since redistricting is controlled by the legislative leaders, there is no opportunity to create a bipartisan map. In 1991, the Republicans won the tie-breaker, and in 1981 and 2001, the Democrats won the tie-breaker. In the last redistricting following the 2010 census, the General Assembly was able to pass a map without the need for a commission because both the legislature and the governor’s office were controlled by Democrats. Since the maps that have been enacted heavily favor incumbents and keeping one party in control, the result has been fewer and fewer contested elections.

To take the politics out of redistricting, the Fair Maps Amendment creates an elaborate, criteria-based, nonpartisan process for selecting members of a new Independent Redistricting Commission. The Commission would consist of eleven commissioners who would draw a map that does not favor either political party, but instead, is based on criteria such as geographic integrity of units of local government and geographic integrity of communities sharing common social and economic interests. The commissioners would be chosen by a three-member Applicant Review Panel.
ARTICLES

The Auditor General is charged with accepting applications for a pool of 30 potential Reviewers (who are not affiliated with any political party) and selecting the three Reviewers for the Panel by random draw. The Auditor General is also tasked with accepting applications for Commissioners to serve on the Independent Redistricting Commission. The Applicant Review Panel must select a pool of 100 potential Commissioners who would represent the demographic and geographic diversity of the State. The Speaker and Minority Leader of the House and the President and Minority Leader of the Senate would each have the opportunity to remove up to five of the 100 potential Commissioners. The Panel would then select seven Commissioners by random draw from the pool of Commissioners; however, the seven Commissioners must reside among the Judicial Districts in the same proportion as the number of Judges elected, two Commissioners must be from one political party, two Commissioners must be from the other political party; and the remaining three Commissioners must not be affiliated with either political party. Another four Commissioners would be appointed by the four legislative leaders to create an 11-member board with seven votes needed to approve a new map.

In a 4-3 decision, the Illinois Supreme Court held that the Fair Maps Amendment was unconstitutional because it was not limited to a structural and procedural amendment to Article IV of the Illinois Constitution. The Court rejected the Amendment because it placed new duties on the State’s Auditor General, and the current duties of the Auditor General are outlined in another section of the Illinois Constitution. The decision in Hooker evoked three strong dissents. Chief Justice Garman, dissenting, stated that elected officials “have an incentive to draw maps that will help them remain in office” and that this type of self-interest of the legislature is the reason why article XIV, section 3 was included in the Constitution. Also dissenting, Justice Thomas stated:

In their wisdom, the drafters of the 1970 Constitution foresaw just this problem and fashioned a clear and specific mechanism to insure that the legislature could never have the upper hand on the people of Illinois, in whose hands the sovereign power of this State rests. That mechanism is article XIV, section 3...The majority’s decision to quash [the ballot initiative] is no less than the death knell of article XIV, section 3’s promise of direct democracy as a check on legislative self-interest.

In his dissent, Justice Karmeier analyzed the legislative history of citizen ballot initiatives and the redistricting provision of the legislative article (formerly known as apportionment) and concluded that redistricting is a proper subject for amendment. Regarding the additional duties imposed on the Auditor General by the Fair Maps Amendment, Justice Karmeier found that there is no constitutional prohibition in assigning the Auditor General responsibilities separate and apart from the provision where the Auditor General’s basic duties are defined. In fact, the Secretary of State, Supreme Court and Attorney General all have roles to play in the current redistricting process. Justice Karmeier stated that “Nothing in the 1970 Constitution requires that all of a constitutional officer’s responsibilities be set out in a single article, and such is certainly not the case with respect to the redistricting-related duties of this court and the Attorney General under the current redistricting mechanism.”

What’s Next for Redistricting Reform and Other Citizen Ballot Initiatives?

Because of the decision in Hooker, the Fair Maps Amendment did not appear on the November 8, 2016 election ballot. Since the next legislative redistricting will not take place until after the 2020 federal census, proponents of redistricting reform could write a new redistricting amendment for the 2018 general election. However, given the Supreme Court’s interpretation of the structural and procedural limitation, it will be difficult to draft an acceptable reform. The Court gave no guidance on what type of redistricting reform could survive constitutional challenge.

The court decisions on citizen ballot initiatives have weakened the power of the people to pass meaningful change and have emboldened the legislature to maintain the status quo.

49. Id. at 21-22.
50. Id. at 20; See also Ill. Const. 1970, art. VIII, § 3(b) (duties of Auditor General under Finance Article of Illinois Constitution).
52. Id. at 23-24.
53. Id. at 24.
54. Id. at 52.
55. Id. at 59.
There are many creative ways to amend the legislative article when the legislature refuses to act against its own self-interest, including amendments addressing the leadership of the House and Senate, the number of days that legislators work, the compensation of legislators, and the conflicts of interests that arise. Whether a particular citizen ballot initiative involves a permissible structural and procedural subject will remain a determination for the courts. Term limits, a subject that directly involves the makeup and composition of the legislature, was rejected by the courts as being an impermissible subject matter for amendment.

Conclusion
Citizen ballot initiatives are a vital component of our political system in Illinois because they give our citizens the power to reform a legislature that is unwilling to reform itself. When the General Assembly acts in its own self-interest by refusing to pass term limits and redistricting reform, it perpetuates a system that strengthens the power of incumbents and reduces the number of contested elections. The drafters of the 1970 Illinois Constitution understood the problem of self-interested legislators and fashioned a remedy through article XIV, section 3. However, the structural and procedural limitation has been interpreted so narrowly so as to effectively extinguish the right of the citizens to be a check on the legislative branch. Although amendments designed to enact substantive policy are clearly not permissible, other citizen ballot initiatives should be given more deference. After all, it is the voters at the general election who must ultimately decide whether a particular amendment is worthy of passage.

56. See Justice Schaefer’s dissent in Coalition wherein he states that the “basic grant of legislative power in section 1, and the grant of legislative immunity in section 12 of article IV, are neither ‘procedural’ nor ‘structural,’ and there are other provisions in article IV which would not fit comfortably in either of those categories.” Political Honesty v. State Board of Elections, 355 N.E.2d 138, 65 Ill.2d 453, 474 (Ill., 1976).
“I Can’t Tell You”
Privilege, Confidentiality, And The Compulsion of Testimony From the Transactional Lawyer

By Mark T. Schmidt

The transactional lawyer serves her or his client by presenting options through the creation of documents, by explaining what could go right – and wrong – if a certain path is followed, and by thoughtfully responding to client questions, concerns, and fears. Attorney-client discussions in such settings are most often confidential, and generally never see the light of day after a transaction has been consummated, or has fully and finally fallen apart. What if these discussions could be mined, as it were, by those who have involved the attorney’s client in litigation? What if these discussions were accessed years and even decades later in a litigation setting? This article explores the nature and number of tools that the law provides, to both client and to counsel, and which assist the practitioner in protecting himself and the information he possesses. The article will also make some gentle suggestions concerning what the transactional lawyer might do to prepare for the unusual possibility that she will be questioned or deposed about a transaction which occurred months or even years ago.

Applicable Privileges and Professional Obligations
Three privileges or protections play a prominent role in what the transactional lawyer may do, and what he must do, when it comes to protecting or disclosing the facts and the particulars of a matter or transaction involving the attorney and the client. Understanding how the attorney-client privilege, the work product doctrine, and the Rules of Professional Conduct operate will assist the practitioner in identifying what is to be protected, and in determining how it is to be protected.

Attorney-Client Privilege: The attorney-client privilege is classically defined in this fashion: (1) where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his instance permanently protected, (7) from disclosure by himself or by the legal advisor, (8) except the protections can be waived.1, 2

Note that the scope of the privilege concerns communications between attorney and client. The privilege is intended to promote full and frank disclosure by removing the fear that disclosure of information will be compelled.3 As the privilege is in derogation of a client’s general duty to disclose, it is narrowly construed. Further, the attorney-client privilege’s application is limited to those communications which the client expressly made confidential, or that she reasonably could expect to be viewed as confidential.4

The attorney-client privilege’s power comes from its permanency. Communications protected by the privilege, for example, do not become publicly available after a criminal prosecution, a civil suit, or a transaction has concluded.5 Such communications are protected by a privilege that is owned by the client, not by his counsel.6 Still, the burden of presenting facts which give rise to the privilege, though placed on the client,7 will most likely be the attorney’s burden, in the first instance, to bear.

While the attorney may be authorized to discuss matters protected by the privilege, the privilege must, in the first instance, be knowingly and voluntarily waived by the client.8

2. This discussion presumes that the attorney is representing a single party to a transaction. For a discussion of the doctrine of dual representation, and the hazards associated therewith, the reader is directed to Mueller Industries, Inc., v. Berkman, 399 Ill. App.3d 456 (2nd District 2010).
6. See, e.g., People v. Murry, 305 Ill. App.3d 311 (2d Dist. 1999), rehearing denied, appeal denied 185 Ill. 2d 653.
8. See Footnote 6.
**Work Product Privilege:** The work product privilege, often identified not as a privilege, but as a doctrine, is recognized by the Rules of the Supreme Court of Illinois and in the Federal Rules of Civil Procedure. Illinois provides, by Rule, that “materials prepared, by or for a party, in preparation for trial, are subject to discovery only if they do not contain or disclose the theories, mental impressions, or litigation plans of the party’s attorney.”9 The federal approach is broader in scope, but conditional in the protection it affords. Federal Rule of Civil Procedure 26(b)(3)(A) begins as follows: “Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial or for another party or its representative (including the other party’s attorney, consultant, surety, indemnity or, insurer or agent”). However, the Rule continues by noting that even these items might be discovered by an opposing party if they are otherwise discoverable (that is, if the information sought is reasonably calculated to lead to the discovery of admissible evidence) and if the party seeking the discovery shows both that the party has substantial need for the materials to prepare its case, and cannot, without undue hardship, obtain the substantial equivalent of the information sought by other means. FRCP 26(b)(3)(A). Unlike the attorney-client privilege, which belongs to the client, the work product doctrine is owned by the attorney, and is the attorney’s to invoke or waive.10

Indeed, when either an attorney or a client terminates the relationship, and the client requests its file, support exists for the principle that the attorney has no obligation to turn over her or his notes.11

The work product privilege (as described by the State and Federal Rules referenced above) affords protection to confidential matters because of the relationship such confidential matters have to litigation, either actual litigation (in the case of Illinois) or both actual and anticipated litigation (in the case of the federal system).12 Illinois protects the theories, mental impressions, and litigation plans of a party’s attorney, but if, and only if, they are prepared in preparation for trial. It may be argued that Illinois’ Rules of Evidence also touch upon the work product privilege and expand it in a slight fashion. In identifying it as “work product protection,” the Illinois Rules of Evidence define this concept to mean “the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.”13 By way of contrast, the federal approach protects materials prepared by or for a party, without regard to whether they were prepared by a party’s attorney, its insurer, its agent, or its consultant or surety.

The work product protection afforded in the federal system is not restricted to those items which disclose an attorney’s theories, mental impressions, or litigation plans; in Illinois, the materials must contain the attorney’s theories, mental impressions, or litigation plans. Illinois’ work product protection, as expressed in Supreme Court Rule 201(b), is generally viewed as absolute, though the Supreme Court has crafted an exception where attorney notes and memoranda constitute the only source of factual material (Consolidation Coal Company v. Bucyrus-Erie Company, 89 Ill. 2d 103 at 110, 111 (1982)). The protection afforded by the Federal Rules of Civil Procedure, by way of contrast, may be eliminated if the party seeking disclosure makes the necessary showings of substantial need and the unavailability of equivalent sources and materials (FRCP 26(b)(3)(A)).

Does the work product privilege/doctrine both predate the rule schemes discussed above and protect an attorney’s theories and mental impressions in a transactional setting?

12. Illinois does recognize the insurer-insured extension of the attorney-client privilege. See, e.g., Exline v. Exline, 277 Ill. App. 3d 10 (2d Dist. 1995). In actual practice, an insurer-insured extension of the attorney-client privilege does afford some protection to materials prepared in anticipation of litigation, but by an insurer or an insurer’s agent or adjuster. Further discussion of these concepts is beyond the scope of this article.
13. While Illinois Rule of Evidence 502(f) defines work product protection to mean protection that the law provides “for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial,” Illinois Rule of Evidence 501 seems to suggest that the work product doctrine both falls within the definition of a privileged area, and is to be governed “by the principles of the common law as they may be interpreted by Illinois courts in light of reason and experience.” Illinois Rule of Evidence 501.
Although often associated with the attorney-client privilege, only, Rule 1.6(a)’s coverage is broader, and its prohibitions more mandatory and all inclusive, than the attorney-client privilege.

The case of Hickman v. Taylor, and the opinions released in that case by both the United States Circuit Court of Appeals and the Supreme Court of the United States, suggest that the concept that an attorney has the right to protect her or his theories and mental impressions may be part of the common law that predates both the Rules of the Supreme Court of Illinois and the Federal Rules of Civil Procedure.

In Hickman, the trial court ordered that defendant’s counsel, inter alia, reduce oral statements he obtained during his investigation to writing, and ordered that these attorney-created documents be produced to opposing counsel. When defendant and its counsel refused, the trial court held defendant and its attorney in criminal contempt of court. An appeal followed.

The Third Circuit Court of Appeals did test the actions of the trial court against the then newly-created Federal Rules of Civil Procedure. However, the justices placed the discussion of the rights of an attorney to protect information in a larger context. Circuit Judge Goodrich expressed concern that the trial court’s interpretation of the Rules would adversely impact the attorney-client relationship. In reversing the trial court, and vacating the contempt finding, the circuit court noted that what was to be protected in such context were “the results of the lawyer’s use of his tongue, his pen and his hand, for his client.” This the court identified as “the work product of the lawyer.” The court held that the Federal Rules could not be interpreted to require discovery in violation of a doctrine which it identified as “sound policy,” and a policy that was “irrefutably established in the law.”

The Supreme Court of the United States affirmed the Circuit Court decision in which it, too, described the work product doctrine in expansive terms. In affirming, the Court acknowledged that allowing an attorney’s thoughts and work product to be discovered would be devastating: “An attorney’s thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing, and the interests of the client and the cause of justice would be poorly served.”

Rule of Professional Conduct 1.6: The Rules of Professional Conduct, and specifically, RPC 1.6, covers areas protected both by the attorney-client privilege and the work product doctrine, but operates outside the exclusive or predominant control of either the attorney or the client. This Rule provides, in pertinent part, as follows: “(a) a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).” Illinois Rule of Professional Conduct 1.6(a). For purposes of this article, it is to be noted that Rule of Professional Conduct 1.6 (b)(6) provides that a lawyer may reveal information relating to the representation of a client in order to comply with a court order.

Although often associated with the attorney-client privilege, only, Rule 1.6(a)’s coverage is broader, and its prohibitions more mandatory and all inclusive, than the attorney-client privilege. The Rule provides that a lawyer shall not take steps which violate the Rule. The use of the term “shall,” in this setting, represents an imperative. The practitioner thus enjoys neither discretion nor options – she must, in the first instance,
categorically refuse a request for the disclosure of information relating to the attorney-client relationship. It, thereafter, becomes the responsibility of the party soliciting such information to take such additional steps as he thinks necessary, such as the filing of a motion seeking an order compelling disclosure.

Rule 1.6 prohibits the disclosure of information which is identified as “relating to” the representation of a client. This establishes a category of data which is far broader than simply communications between attorney and client, or documents and electronically stored information which reflects the theories, mental impressions, or litigation plans of an attorney. As noted in the Comments to Rule 1.6: “The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.” “Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person.” Illinois Rule of Professional Conduct 1.6, Comments [3], [4]. Thus, the plain language of the Rules of Professional Conduct, as illuminated by the comments relating thereto, make clear that an attorney’s duty of confidentiality applies, without restriction or limitation, to all information relating to the representation. The Rules do not carve out an exception which would allow the attorney to discuss what she thought about a document, what others mentioned during a transaction, or what problems or challenges he might associate with one or more sets of circumstances.

While the attorney-client privilege and the work product doctrine may be said to be controlled by the client and the attorney, respectively, the same may not be said of the duty of confidentiality embodied in RPC 1.6. It is more appropriate to characterize the protections described in that Rule as being broadly controlled by the Supreme Court, and more particularly controlled, in any given instance, by a trial judge. Because of the mandatory nature of the obligations imposed upon the attorney by the Rules, an attorney must, in the first instance and in the absence of client consent, refuse to answer any questions posed by a third party and relating to the representation of a client. This will, in some instances, cause the third party to seek the assistance of a jurist. Such assistance will generally take the form of a motion to compel or, if the attorney has not filed an appearance and responded to a deposition or trial subpoena, of a motion for the issuance of a rule to show cause seeking a finding of criminal or civil contempt. This makes prudent an analysis of what the practitioner might do in advance to protect his thoughts and impressions, serve the client, and comply with the Rules of the Supreme Court.

What To Do? A Series of Gentle Suggestions.

It is prudent to consider what the practitioner may do, and must do, before, during, and after her or his representation of a client. There are steps a practitioner may take which will enhance his or her ability to protect the content and confidentiality of the work done for a client.

Describe the Representation: While more difficult in circumstances where an attorney represents a client on an ongoing basis, the use of a written engagement agreement allows the attorney to clearly set the scope of the representation, and to establish the representation’s temporal boundaries. Where possible, it is advisable to identify, in the engagement agreement, whether litigation is anticipated. The practitioner should remember that her or his theories and mental impressions might well be protected if and only if they relate to or are prepared in anticipation of litigation. At the end of the representation, a letter or communication directed to the client and noting that the representation has been concluded will assist any later analysis which attempts to establish the scope and the parameters of the services the attorney has provided.

Think in Broad Terms and Act in a Precise Fashion: It is highly recommended that the attorney hire counsel when she or he first becomes aware that a third party is seeking access to thoughts and data protected by the privileges, doctrines, and Rules discussed above. Thereafter, it is both sensible and appropriate to make contact with the client, the client’s attorney, and the attorney or agent seeking disclosure of the protected information. Such contacts will, by necessity, seek more information than they disclose, because the right to disclose the information sought may well be prohibited by

22. Ill. R.S.Ct. 201(b)(1).
In our prosecution and defense of class actions throughout the United States in Federal and State Courts, we are proud of our recent accomplishments, which include the following:

RECENT CLASS ACTIONS

Breath of Warranty Claims for Consumer Products
We have obtained class certification or are pursuing class actions in numerous state and national product defect cases involving products such as automobiles, facades, infant car seats, laptops, and windows. We achieved trial, appellate and state Supreme Court victories in some of these cases affirming class certification and have entered in settlements in a number of these cases that benefitted class members.

Data Breach and Privacy Violation Cases
We are currently representing consumers in class action claims involving data breach and privacy violation cases affecting tens of million if not hundreds of millions of consumers.

 Junk Text Messages, Autodial Voicemail Solicitations
Represented 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. Each class member who made a claim to receive $105 or their pro rata share of the fund if there were not sufficient funds to pay $105. The total settlement fund was $16,000,000.

Overcharges in Consumer Invoices Such as Phony Tax Charges
Court certified a class of all customers of a national hotel chain’s large hotel. Following successful interlocutory appeal, judgment in favor of the class for millions of dollars in damages, prejudgment interest and all attorneys’ fees. Affirmed on appeal. 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 numerous other national hotel chains.

Vocational School Failing to Follow Illinois law Requiring Accurate Disclosure of Employment Statistics for Obtaining Jobs Following Graduation
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.

Breach of Contract and Gift Card Cases
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 separate state court suit class certification approved by New Jersey appellate court.

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

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

Auto Repossessions
Class certification order affirmed by the Appellate Court. 365 Ill.App.3d 664. Represented class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,600 class members able to claim up to $2000. In addition to the damages payment, debt totaling $6.5 million was forgiven as to all class members as part of the settlement.

 Hidden Voice-Mail Charges in Telephone Bills
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, and a medical services finance company regarding alleged illegal loans for plastic surgery procedures. Also act as advisors and co-counsel with attorneys who have asked us to assist them in defending their clients in class claims.

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

We are also investigating the following Potential Claims:

Violations of Federal and state Wage claim laws by failing to pay overtime to salaried employees, forcing employees to work off the clock or failing to pay minimum wages.

Whistle Blower claims involving fraud on the government or securities purchasers.

Manufacturers, retailers and advertisers who materially misrepresent how a product works or performs or who knowingly sell a materially defective product.

Junk text messages received from national or well established companies.

Areas of Interest:

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

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virtue of the attorney-client privilege, the work product doctrine, or the Rules of Professional Conduct. The Attorney Registration and Disciplinary Commission will accept calls from attorneys who have questions about the rules of professional conduct and their application to a given set of circumstances.

**Evaluate What May Be Done and What Should Be Done:** The practitioner, at this stage, faces an interesting set of issues and challenges. He or she should pose and answer a number of questions before any disclosure occurs. Has the former client given informed consent relating to attorney-client privilege and its waiver? Is it possible to access all documents relating to the areas of inquiry, or have they been destroyed or placed in an off-site storage facility? Is it prudent, knowing that a reviewed document which refreshes his recollection may be producible, to review writings which relate to the targeted transaction? Is the client’s interest in the attorney’s testimony related to supporting the transaction which occurred, or to suggest that the attorney departed from an applicable standard of care? Does this, standing alone, trigger an obligation to report the inquiry to the attorney’s errors and omissions carrier? Will the attorney be paid for the time associated with his work, and if so, by whom?

**Gather Documents:** Thereafter, the attorney (and, hopefully, the counsel the targeted attorney has retained) should begin the process, if possible and appropriate, of gathering documents already produced in discovery so that any preparation for a deposition may be conducted with such items in hand. Remember that document that refreshes recollection might be fair game for production, and that you may be a target as well as a witness insofar as the inquiry in question is concerned. Recall, as well, that a deposition subpoena generally requires an attestation that the items produced are a response which is not only correct, but complete.

**Consider Involving the Court:** The writer has found it beneficial to appear before the court responsible for issuing a subpoena compelling an attorney to testify at the earliest possible point, and to remind the court that the attorney’s refusal to answer questions or to otherwise cooperate in the disclosure process is not a flight of fancy, but is a stance which the Supreme Court of Illinois, through its Rules, compels the attorney to take. It might be possible to obtain the trial judge’s assistance in defining the nature and scope of the inquiry, and in limiting its reach. For example, if a prior ruling has been made concerning the fact that the documents are unambiguous, it might be possible to request the court to restrict or prohibit inquiries on the issue of what the attorney thought about a clause, a phrase, or a document. Such an examination, it could be argued, would not be an inquiry concerning a “matter relevant to the subject matter involved in the pending action…”

22. IL R S Ct. 201(b)(1).

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Employment Law

Freedom to Work Act - P.A. 99-0860
On January 1, 2017, the Illinois Freedom to Work Act (P.A. 99-0860) (“Act”) takes effect. The Act prevents employers from entering into a non-compete agreement with employees who earn the greater of the minimum wage or $13.00 per hour. A non-compete agreement (or restrictive covenant) is an agreement whereby the employee agrees, for a certain period of time after the employment relationship has ended, from working for a company that is in a similar line of work with the former employer. An agreement entered into after January 1, 2017 is in violation of the Act and is void.

The Act does not apply to confidentiality agreements or agreements to prevent the disclosure of trade secrets. Additionally, the Act does not mention two other forms of restrictive covenants: non-solicitation of customers and non-solicitation of employees. Employers want to protect its customer base and do not want departing employees soliciting customers to a competing employer. Additionally, employers invest a great amount of resources into employee growth and development and similarly do not want a departing employee soliciting current employees and enticing them to join a different employer.

Employee Sick Leave Act - P.A. 99-0841
Illinois recently passed the Employee Sick Leave Act (“Act”) (P.A. 99-0841) which will take effect on January 1, 2017. The Act allows employees to use “personal sick leave benefits” (as defined under the Act) to care for (including taking family members to medical appointments) specified family members for reasonable periods of time. The Act is intended to allow employees to use sick leave to care for family members on the same terms upon which the employee is able to use sick leave for his own illness or injury. The employer may limit the employee’s use of sick leave benefits to an amount not less than the personal sick leave that would be accrued during 6 months at the employee’s current rate of entitlement. Employers with “paid time off” policies that would otherwise provide these same benefits are not required to modify their policies.

Business Law

Insurers may introduce extrinsic evidence in declaratory judgment action on its duty to defend.
Landmark American Insurance Co. v. Hilger, No. 15-2566 (7th Cir. Sept. 22, 2016)
Previously, under Illinois law, insurers were generally bound by the four corners of the Complaint in establishing no duty to defend was owed under the policy. However, the Envirodyne decision and subsequent rulings based thereon allowed for the use of extrinsic evidence in certain cases. In Hilger, the Seventh Circuit reversed the district court’s ruling in favor of the insured, holding that an insurer is only bound by the pleadings if it denies coverage without seeking a declaratory judgment or defending under a reservation of rights. But, if its files a declaratory judgment action or defends under a reservation of rights, the insurer may introduce evidence beyond the pleadings as long as it does not determine an ultimate issue in the underlying proceedings.

A person need not be a shareholder of a corporation to be held personally liable under a corporate veil-piercing theory.
In a Fair Debt Collections Practices Act case, the plaintiff attempted to hold the former owner and shareholder of the debt collection agency personally liable for violations of the FDCPA. The Northern District of Illinois (relying on foreign law) stated that any individual – regardless of shareholder status – may be held personally liable under a veil-piercing theory if she obtains sufficient control and dominance over the corporation. The court ruled in favor of the defendant because the plaintiff...
failed to present any evidence that the defendant continued to exercise sufficient control over the corporation after she sold it.

Dock workers were properly excluded from union formed by truck drivers because they did not have a “distinct community of interest.”

*FedEx Freight, Inc. v. National Labor Relations Board, Nos. 16-1360 & 16-1395 (7th Cir. Oct. 12, 2016)*

A Teamsters Local petitioned the NLRB for permission to organize drivers at one of FedEx's terminals. FedEx objected, arguing that the dock workers must also be included in any union, in part, because FedEx thought it provided it a better opportunity to prevent organization. However, the Seventh Circuit disagreed. In doing so, they examined the working conditions, the hours, the benefits, and other aspects of each group to determine that the dock workers and the truck drivers are not in the same class and including them in the same union would likely result in serious conflict between the groups.

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**About the Editors**

**Brian M. Dougherty** is a senior associate in the litigation group at Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd. His practice area includes representing employees and employers in employment disputes arising under state and federal law, commercial landlord-tenant matters and business torts. Brian is a member of the DCBA Editorial Board.

**Peter Evans** is an attorney with Skawski Law Offices, LLC focusing on commercial litigation and insurance coverage. He graduated from Vanderbilt Law School, earning the Law & Business Certificate, and Purdue University's Krannert School of Management.
We’ve changed our sign!! Law ElderLaw, LLP, Estate and Asset Protection

These days, our clients range from pre-retirees to centenarians. The majority of our clients are healthy and vigorous couples and singles with long and healthy life expectancies. Now, our clients include those of modest means and those with substantial assets and opportunities.

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Our new sign is designed to showcase that we are elder law estate planning and asset protection attorneys.
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Law ElderLaw LLP Partners, from left: Zachary Hesselbaum, J.D., L.L.M. Tax; Diana M. Law, J.D. and Kane County Public Guardian; Rick L. Law, J.D. and Kendall County Public Guardian

CLE session at 2016 Mega Meeting. We hope to see you January 27 and 28, 2017

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48 Where to Be in January
The holiday season has flown by. Everyone’s on a crash diet after holiday parties by the Justinians, DAWL, the Criminal Defense Lawyers Association, and, of course, the DCBA. President Ted Donner hosted the annual toy gathering event at Meson Sabika and the festive mood had all involved looking to their own holiday family get-togethers. Then we all enjoyed the Bar Foundation’s breakfast, helping to raise funds for that important organization, while having a nosh before court. *InBrief* will not be eating again until March!

The DCBA Veterans Day Lunch was quite a success, with Tim Whelan having Brian Claus, Director of the Veterans Project at John Marshall inform the crowd of the ways his organization assists veterans, and how DuPage attorney volunteers can get into that same helping mode. Donations were accepted once again for the Midwest Shelter for Homeless Veterans with more than $500 raised for that worthwhile organization.

In the Courts

Chief Judge Kathryn Creswell announced the appointments of the newest Associate Judges. Filling two of the vacancies resulting from retirements were Brian Jacobs and Joshua Dieden. Welcome to the 18th Circuit bench!

The DuPage Bar Foundation, the charitable arm of DCBA has awarded $6,000 in grants this year to CASA (Court Appointed Special Advocates), Family Services and NAMI DuPage (National Alliance on Mental Illness).

People, Places

Judges’ Nite producer Christina Morrison, and Director Nick Nelson will be assembling the cast and crew for the next performance of Judges’ Nite. Tryouts are January 7. The big show will take place on March 3, at the Mac at College of DuPage. Everyone is invited to try out for the cast, or take a shot at assisting as part of the crew with costumes, decorations, and stage work. Singing and acting talent are not prerequisites, and in fact might hamper! *InBrief* is still trying to get his lines down...from several years ago.

Adam Wirtz has joined Roscich & Martel, LLC, in Naperville, as an associate attorney.

Jeff Jacobson welcomed Miley Sparrow to his firm as an associate attorney. She swears she is not related to Captain Jack.

Colin Diamond has joined Mathys & Schneid as an associate attorney in that firm’s plaintiff personal injury practice.

Goldstine, Skrodzki has welcomed Alison Wetzel, Brian Dougherty, and Dan McCarthy to partnership in that firm.

And finally, Joe Fortunato has moved his practice back downtown, joining Baugh, Dalton, LLC. Joe will maintain a DuPage presence for his new firm, with its main office in the city, and a satellite office here in DuPage.
President’s Trip to Chicago Involves Over 200 Attendees in a Host of Programs

DCBA President Ted Donner broke from tradition this year, scheduling his President’s Trip for Chicago because it would allow for more participation and, he had hoped, less headache with logistics. “In hindsight,” Donner said, “this was certainly a more ambitious program than I had thought it would be. I’m happy with how things turned out, to be sure, but this would have been a lot easier to put together if we weren’t up against both a Bears-Packers game and Game Five of the NLCS.” Despite the competition, the DCBA in Chicago Conference brought together some 200 people for a host of programs over two days, including arguments at the Seventh Circuit Court of Appeals, three different receptions (including one for Judge William Bauer’s 90th Birthday), a series of CLE programs at the Chicago Bar Association, evening events at The Second City and Kingston Mines, and a Happy Hour celebration at ISBA Mutual.

“It was certainly interesting to be working with all these lawyers,” said Greg Werstler, of ComedySportz Chicago. After spending Thursday night at The Second City, a number of attorneys and other legal professionals attended Werstler’s Friday workshop on improvisation, a workshop in which he ran people through a series of interesting and often humorous exercises. The goal was to help attendees understand how improvisation can be useful in courtroom communication and in collaborative negotiations. The result was an energized room of legal professionals somehow achieving Werstler’s goals while also chasing each other around in a spirited game of rock, paper, scissors.
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Werstler was one of over 30 speakers and presenters during the DCBA in Chicago Conference. Thursday afternoon, DCBA Appellate Law Section Chair, Ron Menna, hosted a program at the Seventh Circuit which featured Counsel to the Seventh Circuit Executive, Don Wall, Judge John Daniel Tinder (ret.), Judge Richard Posner, Judge William J. Bauer, Judge Michael Stephen Kanne and attorneys Mark Wilson, Edward Clinton, Julia Floyd, Victoria Collado, and Tiffany Sorge-Smith. Other presenters on Thursday included Professor Rick Thomas, Kimberly Mills, Joanne Driscoll, Professor Steven Schwinn and Professor Brian Clauss.

On Friday, attendees heard from Werstler, Justice Ann Jorgensen, ISBA President Vincent Cornelius, ABA Executive Director Jack Rives, John Theis, Professor Ron Staudt, Anita Maddali, Shaye Loughlin, Michael Bergmann, Lisa Colpoys, Nicole Capretta, Alexander Rabanal, Nicholas Ventola, Jeremiah Shavers, and Michael Grieco. “I cannot begin to say how grateful we are for the work that all of these people put into this,” said Donner. “Their contribution, together with the help of our sponsors and the DCBA staff, made this an experience I’ll certainly never forget and which everyone who attended seemed to enjoy and learn from.” The event sponsors for DCBA in Chicago included Tomasik, Kotin & Kasserman, ISBA Mutual, the Chicago Bar Association, Momkus McCluskey Roberts LLC, LawPay, ADR Systems, and OVC Lawyer Marketing.
DCBA Appellate Law Section Hosts Unique Program at Seventh Circuit Court of Appeals

On October 20, 2016, as part of the bar associations’ DCBA in Chicago program, Appellate Law Section Chair, Ron Menna, moderated a program at the Seventh Circuit Court of Appeals which was a little different than most CLE programs in appellate law. It allowed attendees to hear the arguments in a live case before meeting with the attorneys and judges afterward to discuss what they’d just witnessed. The program began with an overview presented by Counsel to the Seventh Circuit Executive, Don Wall, who spoke for roughly an hour before attendees heard the arguments in *First American Bank v. Federal Reserve Bank of Atlanta*, et al., Appeal No. 16-1122.

The attorneys involved in the arguments in *First American*, who stayed afterward to talk with attendees, included Mark Wilson of Fisher Broyles LLP, Edward Clinton and Julia Floyd of The Clinton Law Firm, and Victoria Collado and Tiffany Sorge-Smith of Burke Warren MacKay & Serritella. The case was heard by Judge Richard Posner, Judge William J. Bauer, and Judge Michael Stephen Kanne. “It was hard not to think about the attorneys while they were arguing their positions,” said DCBA President Ted Donner. “None of them had known until we called them that this was even being considered. The case was randomly assigned, like every case that’s heard in the Seventh Circuit, so the attorneys didn’t hear from us until we learned what case had been assigned to that time slot, roughly a month before the arguments. All of them had been wondering why they were scheduled to be heard in an afternoon when the court was in recess. Finding out their case was going to be heard by a group of lawyers and law students that would all want to ask questions afterward – that sure seemed to come as a surprise.”

The attorneys and judges who participated in the oral arguments for *First American* all stayed afterward for a lively discussion (except Judge Posner, who had to run out for another meeting but whose seat was covered by Judge John Daniel Tinder (ret.)). “Everyone did a fantastic job,” said Menna. “The attorneys all did an outstanding job as advocates for their clients and then they stayed around, and along with the judges, were prepared to answer questions.” The program was co-sponsored by the Illinois Appellate Lawyers Association whose President, Joanne Driscoll, joined DCBA Executive Director Robert Rupp at a reception later in the evening to present Judge Bauer with a cake in honor of his 90th Birthday.

“Editor’s Note: The Seventh Circuit issued its decision on November 22, 2016, affirming the District Court. See *First American Bank v. Federal Reserve*, 2016 WL 6872056 (7th Cir. 2016).”
DCBA Focuses on Law Schools at Chicago Conference

The DCBA President’s Trip to Chicago this year involved a number of programs for lawyers and other professionals in DCBA and many which focused on the interests and concerns of the next generation of our membership, students now attending law school in the Chicago area. Students were invited to attend all of the DCBA events at a discounted price, our members were invited to join in at John Marshall’s Clinic Showcase, and our Friday Luncheon featured a panel of both professionals and students focused on how bar associations can help bridge the gap between law school and practice.

The DCBA in Chicago Conference highlighted the public interest and clinical programs at five area law schools. The speakers from each school included Life After Innocence Assistant Director Kimberly Mills (Loyola), Professor Steven Schwinn and Professor Brian Claus (John Marshall), Professor Ron Staudt (Chicago Kent), Professor Anita Maddali (NIU) and Shaye Loughlin, Executive Director of the Center for Public Interest Law (DePaul). Dean Michael Kaufman from Loyola also attended. “I was particularly grateful for the help we got from the law schools,” said DCBA President Ted Donner. “We learned a lot from them and, I have to think, our ability to work with the law school community going forward will be better informed because of their involvement.”

Some law student attendees who serve as ABA Delegates or as leaders in their student bar associations, also participated in a luncheon panel on the question of how associations can help bridge the gap from law school to practice. Those students included Alexander Rabanal (Chicago Kent), Nicholas Ventola (John Marshall), Jeremiah Shavers (Chicago Kent), and Michael Grieco (Loyola). Other members of the panel included Justice Ann Jorgensen, ISBA President Vincent Cornelius, Maddali, and ABA Executive Director Jack Rives. “A large part of our focus at ISBA this year is on these issues,” said Cornelius, “and I’m happy to say we’ve gotten a great response from the law school deans to these initiatives.”

Much of the current focus on law schools stems from a study conducted by an ISBA Committee chaired by Jorgensen and Dennis Orsey in 2012-13. “The current system of educating law students is unsustainable,” then President John E. Thies told ISBA’s membership when the report was released. “The debt burden of new attorneys, combined with the difficult job market, is having a detrimental effect on the public’s ability to access quality legal services.” Thies appeared for a separate presentation during the DCBA in Chicago Conference, with Professor Staudt, in which they discussed access to justice and the future of legal services.

On Demand CLE Now Offered

Watch for new programs at dcba.org
President’s Message
(Continued from page 6)
Don’t know whether you’d find these programs useful? Think about what Banaji and Greenwald went on to say about their car accident example:

“For those who are strong believers in women’s equal rights and abilities, being tripped up by this riddle is especially annoying. Feminists are not likely to suspect that they possess the automatic surgeon = male association – but most of them do. Consider that feminist just a bit further. Why should he base his thinking on a stereotype that clashes with his personal views?”

“Did you just discover,” Banaji and Greenwald then asked, “that you have a feminist = female association?”


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**DCBA Brief Recognized for Excellence**

Each year, the NABE Luminary Awards program recognizes excellence in bar association communications and marketing by honoring the outstanding communications projects of the past year. NABE is the National Association of Bar Executives, an affiliate of the American Bar Association which was founded in 1941 to serve the management staff of bar associations and law-related organizations.

This year, the award for Excellence in Regular Publications for Small Bars (under 5,000 members) went to our own *DCBA Brief* magazine. This category received the most entries this year. Three different issues for the year were submitted as part of the application process. Three judges reviewed all the entries submitted for each category and then voted and published their comments.

The judges’ comments included: “Beautiful design! This could be a textbook example for how to effectively use a color wrap for a black and white publication,” from one judge. Another declared, “Nice section introductions that helps navigation (i.e., an ARTICLES page and a NEWS & EVENTS page). Great inclusion of many member photos...” and the third commented, “Great redesign. Very clean and readable. I also like the paper stock, both cover and inside...”

This is the third Luminary awarded to the *DCBA Brief* in the last five years. The magazine was recognized for Excellence in Regular Publications in 2012 and its annual parody edition, the *DCBA Grief*, won a Luminary in the Special Projects category in 2013. The DCBA website won our first Luminary back in 1998.

The magazine is very much a collaborative effort between all the members of the Editorial Board, staff, graphic designer and printer involving many hours of dedicated hard work. Editorial Board members include: Christine McTigue, James L. Ryan, Tony Abear, Terry Benshoof, Erica Bertini, Brian Dougherty, Larry Gregory, Raleigh Kalbfleisch, Tim Klein, Christopher Maurer, Jim McCluskey, Sean McCumber, Ross Molho, Steve Mroczkowski, Jane Nagle, Azam Nizamuddin, John Pcolinski, Jay Reese, Art Rummler, Jordan Sartell, Dave Schaffer, Mike Sitrick, Eric Waltmire, Dexter Evans, Peter Evans, Annette Corrigan, Staff Liaison, Jacki Hamler, Graphic Designer, Catherine Ross, Event Photographer, Jeffrey Ross. □
Finding Your Inner Atticus
By Robert T. Rupp

I was 12 years old when I first read *To Kill a Mockingbird*. It is my first memory of thinking about a lawyer, what a lawyer does and what a lawyer means to their community. I am sure many of you had a similar experience with this landmark of American literature and, for some of you, may be the reason you pursued a career in the law.

The lawyer was, is and always will be a tremendously important character in our society. A big part of what we do individually and collectively as a bar association comes from the need to reinforce the positive image of lawyers and the legal profession. In her comments at an admission ceremony last fall, Judge Linda Davenport gave two pieces of advice for newly minted attorneys that are good for all of us to hear. "First, don’t tell lawyer jokes. Second, know that in everything you do, you are doing it as a lawyer. When working with your clients, paid or pro bono, serving on a community board or even coaching a neighborhood team, the lawyer means something special to his or her fellow citizens and they look to you as an embodiment of the rule of law in our society." That’s pretty heady stuff and I could not agree more.

The DCBA provides our members many opportunities to step up to this calling. Each month, 400-500 referrals are made through our lawyer referral service (LRS). Listening to these calls and working with our LRS staff, I have heard firsthand the legal issues that people in our community are facing and they are coming to our bar for help. While not pro bono, this is an important resource for the community. 28 attorneys participating in the LRS program have consented to accepting clients through a Modest Means Program, providing an affordable alternative to those not qualifying for pro bono representation. LRS and Modest Means participation is something that every lawyer in the DCBA can be a part of and is an important part of improving access to justice. I would urge those of you practicing in the areas of government benefits, school law, tax law or consumer protection to especially consider joining the LRS program as the requests for help in these areas are many, but we lack attorneys to whom we can refer. Any member of the DCBA staff can provide information on program participation.

Our Lawyers Lending a Hand Program is a great opportunity to go outside of the normal practice of law, and physically get into the community as a representative of our bar association and do some real good. Past programs include working in foodbanks, participating in clothing drives, and working with children mentoring or tutoring. There is a program each month and I would encourage every member to get involved in those programs. Dates are posted on the DCBA calendar.

Outside of the DCBA, every member has the opportunity to get involved in their About the Author

Robert Rupp is the Executive Director of the DuPage County Bar Association. He has worked in professional association management since 1994, serving a variety of national and international medical and legal associations, including the American Bar Association.
place of worship, in their community, in their homeowner’s association or any of the hundreds of ways people gather to do good work. The need for lawyers to participate in volunteer roles on community boards is huge. Wherever you have the opportunity to be “the lawyer in the group,” that is a big and very important role. When you fill that role, that is serving to improve the way lawyers and the legal profession are viewed in our community. At our Veterans Day Luncheon, Jane Tyschenko-Mysliwiec, Executive Director of the Midwest Shelter for Homeless Veterans made the clear ask for lawyers to join their board, as much for the health of the organization as for the services they provide. At that same event, Brian Clauss of the John Marshal Veterans Legal Assistance Clinic shared the huge needs of veterans and how members of DCBA can help them in their work.

The opportunities to serve are boundless, and lawyers are uniquely positioned to make contributions that others cannot. I would urge all of you reading this to think back to the calling that brought you into the profession and consider how you can reflect the highest and best aspects of that calling into our community.

DCBA Launches New Member Drive

By Art Rummler

Just in time for those frosty cold January days, DCBA is sponsoring a New Member Drive at the Attorney Resource Center (the “ARC”) of the DuPage County Courthouse. The goal is to introduce the DCBA to those attorneys who have never been members by showing them the value and benefits that come with being part of the association.

According to DCBA President, Ted Donner, the membership drive will coincide with the annual renewal of attorney court security passes and will be held Monday through Thursday mornings during the month of January. Annual renewal of the court passes is mandatory as the pass for the prior year will expire January 31. (Court ID renewals will continue at the ARC through February 10.)

All lawyers and judges are invited to attend these events. During the renewal of court passes, attendees can enjoy daily donuts, coffee and other snacks. DCBA sponsors will be on hand to provide promotional goodies and helpful information about services and opportunities open to members.

There will also be information on hand about DCBA’s Lawyer Referral Service and how your business can benefit from that membership. There are several areas of law in which we have little or no coverage and particularly seek LRS members in those areas. Please take this opportunity to learn more and consider joining.

Staying for lunch has its benefits, too. DCBA will also sponsor CLE programs during the noon hour that are free to attend. A schedule of CLE lunch programs will be available on the DCBA website and at the ARC.

During this member drive, the cost for new members to join the DCBA is only $100 for a standard membership, which includes membership through June 30, 2017, and a subscription to the award winning and nationally recognized DCBA Brief. But wait, there’s more…

New members will also receive complimentary admission to the Bench Bar Reception scheduled for January 27, 2017 in conjunction with the DCBA Mega Meeting. This annual event brings together the members of the DCBA and the DuPage Judiciary in a social atmosphere that helps foster civility and professionalism in the courthouse.

So, come one and come all to the ARC in January. And if you aren’t yet a member, DCBA is making it really easy for you to join. Call (630)653-7779 now!
Legal Aid Update

Legal Aid Volunteer Attorney Recognition

By Cecilia Najera

The DuPage Bar Legal Aid Service would like to recognize the members of the DuPage County Bar Association who continually volunteer their legal services. To the following attorneys, we extend our heartfelt thanks and appreciation for their hard work and dedication to our program:

Attorneys who accepted Legal Aid assignments in 2015-16 include:

Attorneys who closed Legal Aid assignments in 2015-16 include:

About the Author

A Wheaton native, Cecilia “Cee-Cee” Najera is a graduate of the University of Iowa and received her J.D. from Southern Illinois University. She served as the DCBA New Lawyer Director from 2004 to 2009 and is currently the Director of DuPage Bar Legal Aid Service.
About the Author

Brundage, Terrence R.
Goggin, Lyle B.
Haskin, Dennis W.
Hoornstra, Jesus
Negron (2), James
Reichardt (2), Amy
Riley, Natalie M.
Stec, Stephen R.
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Carder, Sean
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Vechiola, E.
Barry Greenberg, David
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Williams (3), Joshua
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Sean Sullivan,
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Conniff, Ted A.
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North, Timothy B.
Newitt.
The DuPage County Bar Association is fortunate to have many very active members who are instrumental in leadership. These include not just our Board of Directors and Officers, but all the committees and section chairs, vice chairs and sub-committee chairs who make our committees and sections so good. Being involved in bar association leadership is good for your career, good for your business and good for your professional knowledge and expertise. I encourage every one of you to consider becoming involved in the DCBA leadership.

Besides the DCBA however, there are other opportunities for bar leadership with the ISBA, also. You do not have to choose one group or the other. You can be involved with both associations and gain the benefits from the local connections of the DCBA as well as the broader scope offered by the ISBA.

ISBA members serve on section councils and committees at the pleasure of the ISBA President. This time every year, the incoming ISBA president (this year it’s Judge Russ Hartigan) solicits nominations for membership on the various section councils and committees of the ISBA. Self-nominations are highly encouraged so don’t be shy! Click on the “Looking For A Chance to Lead?” banner on the ISBA website homepage. There are 41 different Section Councils and 32 Committees looking for members. Click on the “Member Groups” button at the top of the ISBA home page for a full list. The incoming President then appoints members from those who have submitted a nomination to fill the membership of the various committees and councils. This is a one year appointment starting with the annual meeting held in June each year. Younger members and members of minority groups are encouraged to apply so that diversity can be achieved in all groups.

So – what do section councils do? Section councils review prospective legislation that affects their area of law and gives ISBA leadership input into whether the legislation should be supported, changed or opposed. Section councils can draft their own proposed legislation as well. Each council provides CLE programs to the ISBA as a whole and writes articles that are published in each council’s newsletter. These newsletters provide each council member with the opportunity to interact with others in their practice area throughout the state. Many of the section councils have their own blogs.

The committees help ISBA leadership create policy in the committee’s area of expertise. By way of example, recently the committee on Legal Education and Competence was tasked with review and rendering an opinion on whether Illinois should become a Uniform Bar Exam state. The Judicial Evaluations Committee recently proposed changes as to how judicial poll results are disseminated.

The time commitment is not onerous. Councils and committees meet several times throughout the year. This includes meetings at the Annual Meeting each June and the Mid-Year Meeting each December. Meetings are frequently held at the ISBA regional office in Chicago but occasionally meetings are held in other parts of the state. Partial reimbursement for lodging and transportation/mileage is paid by the ISBA. Many of the meetings

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**About the Author**

Kent is the Eighteenth Judicial Circuit’s representative on the ISBA Board of Governors. He is the principal of Kent A. Gaertner P.C. and “Of Counsel” to Springer Brown, LLC, where he concentrates his practice in bankruptcy and workouts. He was president of the DCBA in 2009/2010.
can also be attended by conference call from the comfort of your home or office. CLE credit is given for most meetings. If meetings are outside the Chicago area, many times there will be a social event the night before the meeting.

Another way to expand your horizon is to run for an ISBA Assembly seat from DuPage County. The Eighteenth Judicial Circuit currently has 18 seats on the Assembly. A term on the Assembly is three years. You are limited to two successive terms. Elections are held every three years. The next election will be in 2018.

The Assembly is the main governing body of the ISBA. It meets twice a year, at the Annual Meeting and the Mid-Year Meeting. Meetings take place on the Saturday morning of each annual and mid-year meeting. Meetings last about three hours. The Assembly votes on implementing policy for the ISBA as well as budgetary matters among other things. Again, you are reimbursed for lodging and travel for your attendance. Although you will need to wait until 2018 to run, keep it in mind. For the last several elections, there have been fewer candidates than open seats.

Since the ISBA is our state bar association, the scope of everything it does is necessarily much broader and larger in scale than our own DCBA. The ISBA has over 30,000 members. The DCBA has about 2,500. The DCBA offers a wonderful local intimacy, while the ISBA offers the state wide perspective. Both are extremely valuable. I encourage you to be involved with both associations on a leadership level. Jump on in, the water’s fine! □
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Mega Meeting Featured Speakers

The DCBA Mega Meeting is fast approaching and promises to be an informative and engaging event. Attendees of the Mega Meeting for the Friday afternoon session will have a chance to hear from James Grogan, the Deputy Administrator and Chief Counsel for the Illinois Attorney Registration and Disciplinary Commission (“ARDC”). James is one of the two plenary keynote speakers for the Mega Meeting.

In his 35-year tenure with the ARDC, James has been involved with the investigation and prosecution of lawyer misconduct and has argued cases of attorney discipline in the Supreme Court of Illinois. James has been instrumental in developing the Illinois rules of conduct that govern attorneys in Illinois, and he has a wealth of knowledge related to legal ethics, professional responsibility, and lawyer regulation. James is a past-president of the National Organization of Bar Counsel, which is the bar association of lawyer regulators. James has taught legal ethics at the DePaul University College of Law, as well as the Loyola University of Chicago School of Law, where he is currently an adjunct professor.

James is looking forward to, once again, having the opportunity to address the members of the DCBA. In his opinion, the DCBA does a great job in providing "quality educational programs for its members" and the turnout is "always impressive." James will discuss the "current state of delivery of legal services in a global environment" and how "the changing world is affecting the way attorneys are marketing themselves today." While attorneys have many opportunities for reaching the "global consumer", there are “limitations on the practice” of which attorneys must be mindful.

“Lawyers should become comfortable with new technologies.” So said Henry “Hank” Perritt, Jr., back in 1996. This prescient observation has become more true than ever. Nearly 20 years ago, Professor Hank Perritt, a commercial helicopter pilot, who now also pilots unmanned drones, duly observed the need for lawyers to acclimate their practices to the changing technologies of user-friendly computers and the internet. He will be one of the featured speakers at this year’s Mega Meeting 2017 sponsored by the DCBA. A former member of the Ford Administration, and an author of over twenty (20) books ranging from such topics as employment law, civil rights, drone technology, and even fiction, Professor Perritt, who teaches at Chicago Kent College of Law, will be discussing the importance of the changing dynamics in technology as it pertains to the legal profession. Please join us to hear a visionary presentation by a modern day polymath about the importance of technology in our lives.

Professor Perritt’s original DCBA Brief article was published in the January, 2000 issue and is available online at dcbabrief.org. We invite you to review his article, “Ready for Revolution?”
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This year's Mega Meeting is scheduled for Friday and Saturday, January 27-28, 2017. Chaired by Dave Clark, the 19th annual conference will involve two full days at the Sheraton in Lisle and will feature a guest appearance by Mega Meeting founder, Christine Ory, the annual State of the Courthouse address from Chief Judge Kathryn Creswell, the Legislative Luncheon, Practice Management Expo, and up to seven hours of continuing legal education credit. "We are very excited about the upcoming Mega Meeting," said Clark. "Members and non-members will enjoy top quality speakers presenting interesting and relevant topics. We also lowered the price point for both the one- and two-day registrations."

Featured speakers for this year's conference include James Grogan from the Attorney Registration and Disciplinary Commission, Linda Rothnagel from Prairie State Legal Services (who will be doing a presentation on implicit bias), and Professor Henry “Hank” Perritt of Chicago Kent College of Law. Perritt will be revisiting an article he wrote for the DCBA Brief in late 1999 on the technological revolution that was coming with the 21st Century.

The program for Friday also features Cary Collins discussing Police and Fire pensions in divorce proceedings, a discussion on the impact of President Trump's election on employment law with Labor & Employment Section Chair Mark McAndrew. Todd Flaming will be discussing how lawyers can effectively pursue e-discovery in small-scale cases. Richard Guerard will be presenting an hour on “Real Estate Tax Reduction: What Is It and How To Do It” and Audriana Anderson and Ruth Walstra will be speaking on how lawyers should respond when they get word that “My Kid Just Got Arrested.” New this year, Friday's sessions will end with “Judicial Roundtables” with judges from the Domestic Relations, Chancery, Law and Criminal Divisions.

On Saturday, Timothy Daw will be speaking on “The Unhealthy Relationship Between Parenting Time and Support,” Richard Kuhn will speak to the “Challenges of Estate Planning for the Second Marriage”, Clifford Holm and Karen Mills are presenting “Estate Planning Options for Your Clients’ Real Estate Holdings” and Joseph Fortunato and Steven Bashaw will be looking at some new issues in real estate law and presenting their annual Harold Levine Case Law Update. Don Ramsell will also be presenting a case study in DUI litigation, Markus May will speak on negotiating boiler plate for contracts, Colleen Healy will be speaking on “Prevention and Response for Data Security Breach,” and Dr. Dan Wolfe will be presenting on jury selection.

For more information, visit dcba.org or call (630) 653-7779. Those interested in staying at the Sheraton Lisle Hotel overnight on Friday should contact the hotel directly at sheratonlisle.com or (630) 505-1000. □
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