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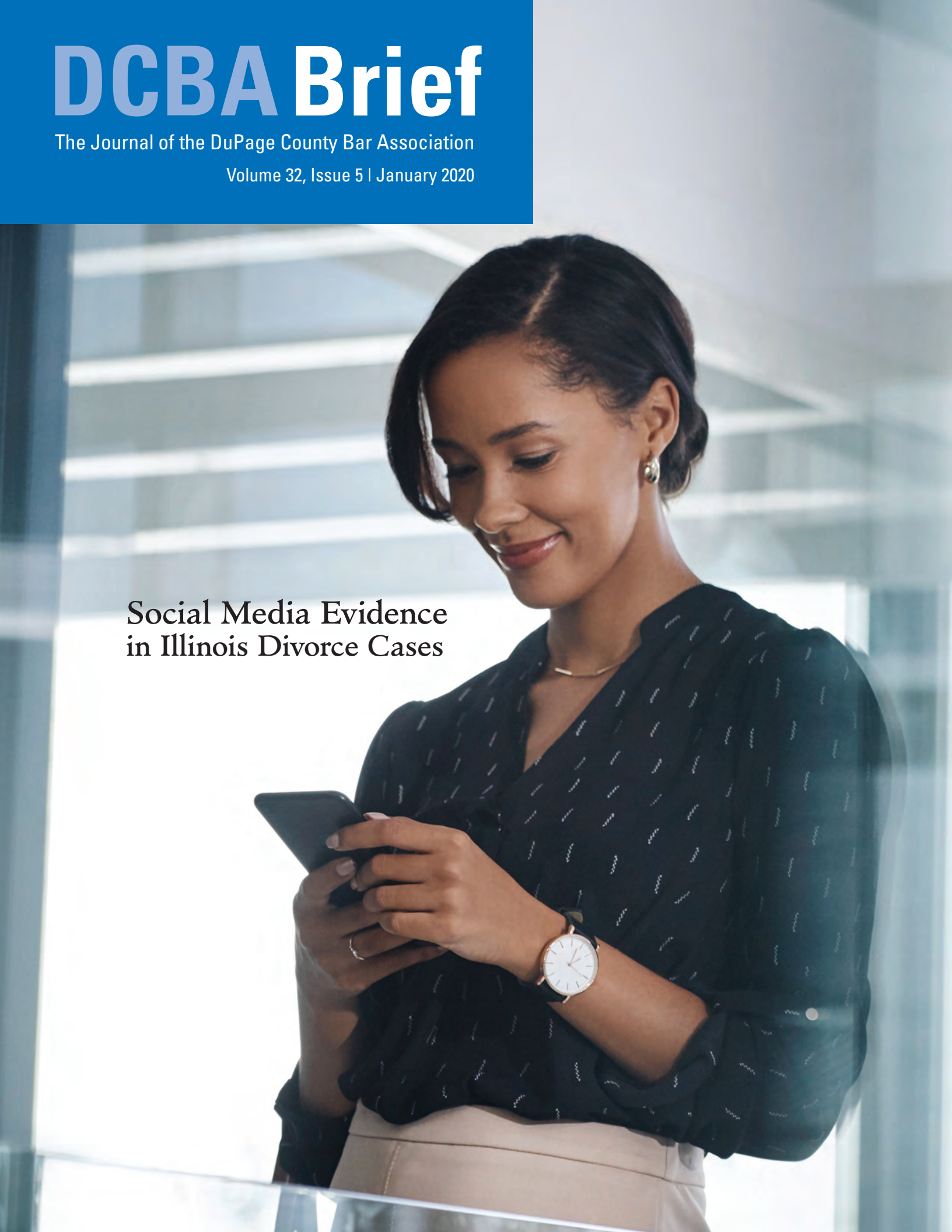

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DCBA Brief

The Journal of the DuPage County Bar Association

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Volume 32, Issue 5
January 2020

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Members of the Boards of the DuPage County Bar Association, DuPage Association of Women Lawyers and DuPage Justinians gathered for the Inaugural Grand Holiday Gala

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News & Events

STG DIVORCE LAW

We're not just a team of lawyers. We're lawyers on your team.

Our gold standard team of lawyers invite you to have a seat at our table to solve family law issues with passionate advocacy, efficiency and know-how. We are proud to announce our dream team of Emerging Lawyers℠ named by Leading Lawyers℠.

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Sharon has experience in divorce, parentage, special education law, and juvenile court matters. An advocate for children and families even while attending law school, she now also serves as a Guardian ad litem in DuPage County.

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From the Editor

It's a New Year. Put down the Pastry.

By Christopher Maurer

Christopher J. Maurer is a partner with the law firm of Anderson & Associates, P.C., and practices in the areas of divorce, domestic relations law, and probate litigation. Christopher is the Editor-in-Chief of the DCBA Brief, an active member of the DuPage County Bar Association, and a Director of the DuPage Bar Foundation. Christopher is Guardian *ad Litem* and certified Mediator for the 18th Judicial Circuit Court. He practices in DuPage, Cook, Kane, Will, Lake, McHenry, and Kendall County, and received his J.D. from Loyola University School of Law, Chicago, in 1997.

The New Year is upon us, and it is time to reflect on the good, the bad, and the ugly that happened to us in 2019. After we've tortured ourselves with that for ten minutes, we can move on to the more daunting and dreaded task of selecting our New Year's Resolutions.

I say "daunting and dreaded" because statistics suggest that only 8% of people who make New Year's resolutions actually succeed in accomplishing their chosen goals. I write this while brushing donut crumbs off my lapel, knowing that, in all likelihood, I will be comfortably ensconced in the camp of the other 92%.

Aside from the standard, "*stop eating donuts*", "*take the stairs*", and "*only post 4 inane memes on Facebook per day*", that are applicable to the general populace, we as attorneys have other resolutions that would help us in our practice, help us better serve our clients, and be less of a nuisance to our judges and our colleagues. Here are some to consider:

1. This year, I will not schedule myself to be in three counties at the same time.
2. This year, I will look up the word "emergency" in the dictionary before filing an emergency motion.
3. This year, I will send courtesy copies to the judge *before* the morning of the hearing.
4. This year, I will refrain from saying "with all due respect" immediately before impugning my opponent's intelligence and/or moral character.
5. This year, I will mindfully consider whether a request to produce a current paystub is "overly broad and unduly burdensome" before I object to discovery.

I'm sure you can all think of others yourself. Another more general resolution could be to get more involved in the many opportunities that participation in the DCBA has to offer, including writing an article for the DCBA *Brief* (hint, hint), helping with Lawyers Lending a Hand, joining one of the practice sections, signing up at the courthouse for the lawyer help desk, or helping the charitable efforts of the DuPage Bar Foundation.

I would like to thank **Tony Abear** for taking on the task of Articles Editor for this issue, as well as authors **James Naughton**, **Jolianne Alexander** and **Marie Sarantakis** for their insightful articles. I would also like to thank **John Pcolinski** for providing us with informative case law updates for this issue.

From the DCBA Brief's Editorial Board to all our readers, we hope you all have a wonderful, healthy and fruitful year ahead of you! ☐

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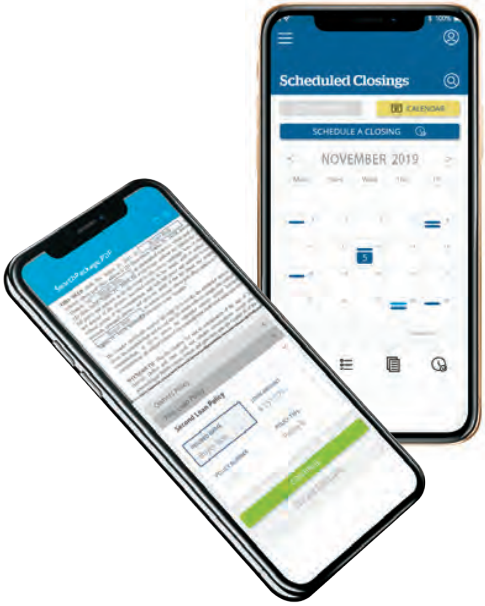

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DCBA Brief welcomes members' feedback.
Please send any Letters to the Editor to the attention of Christopher Maurer, at email@dcbabrief.org

Articles

Articles Editor

Tony Abear

Anthony Abear is a graduate of DePaul University College of Law, and he received his baccalaureate degree in Communications from the University of Illinois. He is a former editor-in-chief of the *DCBA Brief* and is the owner of Abear Law Offices in Wheaton.

Police Encountering People with Disabilities:

A Deadly Encounter

By James Naughton

Introduction

On a typical day, a law enforcement officer may interact with a diverse range of citizens. In particular, citizens with which a police officer may occasionally interact include disabled individuals. When police officers encounter a person with a disability, a variety of issues and concerns can arise, sometimes with deadly consequences. The aim of this article is to familiarize the reader, as well as individuals with disabilities and law enforcement officers, with recent cases, settlements, and some best practice guidelines for interacting with one another.

There are approximately 56.7 million Americans with disabilities, which amounts to nearly one-in-five Americans that have a disability.[1] Individuals with disabilities are protected by the Americans with Disabilities Act (ADA), a law passed in 1990 to prevent discrimination based on disabilities. The ADA affects law enforcement personnel in nearly every facet of their work, including receiving citizen complaints, interrogating witnesses, operating 911 centers and enforcing laws.[2] It is crucial that citizens with disabilities and law enforcement personnel understand their rights and responsibilities under the ADA.

Law enforcement agencies are "public entities" under Title II of the ADA and are prohibited from discriminating against individuals with disabilities.[3] As a result of being a public agency, law enforcement agencies must keep their ears to the ground for recent developments in the courts that will impact their policies and procedures. Individuals with disabilities will also benefit from being mindful of recent developments as it impacts the accommodations disabled persons may request. In any event, an improved understanding between the two groups works to benefit both and moves toward best practices for the interaction between law enforcement personnel and persons with disabilities.

Discussion

Case Law: Title II May Not Apply To An Arresting Officer But A Person With A Disability May Have Viable Claims Under § 1983

1. United States Census Bureau, Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports, Available at: https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html
2. United States Department of Justice, Commonly Asked Questions about the Americans with Disabilities Act and Law Enforcement, Available at: https://www.ada.gov/q&a_law.htm
3. 42 USCA § 12132(1)(B).

One potential legal issue for law enforcement officers arises during the arrest process, when an individual with a disability may require a reasonable accommodation. Title II of the ADA states that *"A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate, however, that modification would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification*."[4]

In *City and County of San Francisco v. Sheehan*,[5] the respondent alleged that petitioner San Francisco violated Title II of the ADA by arresting her without accommodating her disability. Respondent was a resident at a group home for individuals with disabilities and had reportedly threatened her social worker and responding law enforcement officers with a knife. The officers attempted to pepper spray the respondent, which proved ineffective at subduing her and they subsequently shot her as she approached them with the knife drawn.

The Supreme Court dismissed the respondent's ADA claim as improvidently granted, meaning that the lower federal court will decide whether San Francisco violated Title II's reasonable accommodation requirement during petitioner's arrest. The Court did decide, however, that qualified immunity applies to the responding officers because the officers had "no fair and clear warning of what the Constitution requires." Here, the Court decided that the officer's use of force was reasonable but it did not address the respondent's claim that the officers violated Title II of the ADA that required them to accommodate her disability during her arrest.

While *Sheehan* dismissed but did not decide whether the respondent stated a claim for an ADA violation, other courts have found that the ADA does not apply to an officer's interaction with persons with disabilities. In *Lynn v. City of Indianapolis*, the plaintiff was diagnosed with epilepsy and was having a seizure when officers arrived on the scene. The arresting officers believed that the plaintiff was high on cocaine and proceeded to arrest him. The officers, during the course of arrest, utilized pepper spray and an open-palmed blow to the head. The plaintiff-arrestee alleged that the City of Indianapolis violated Title II of the ADA by excluding him from the benefits of a public service or otherwise subjecting him to discrimination.[6]

The court followed the Fifth Circuit's ruling in *Hainze v. Richards* holding that, "*Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents… prior to the officer's securing the scene and ensuring that there is no threat to human life*."[7] The court noted that while it was following the holding in *Hainze* it was not foreclosing the possibility of relief to the plaintiff under a § 1983 or state law claim. Interestingly, the court denied the officer's claims of qualified immunity finding that a reasonable jury could conclude that the plaintiff was undergoing a medical emergency and was subject to force by law enforcement without any provocation whatsoever. Here, the court seemed to signal that an ADA claim may be difficult to establish. However, if established, officers may open themselves up to liability under § 1983 and various state laws such as false imprisonment, assault, and battery.

While it may be difficult for a plaintiff to state a claim for an ADA violation, one recent case has recognized the possibility. In *Williams v. City of New York*,[8] the plaintiff was an individual who was deaf and was arrested and detained overnight by the New York Police Department. Plaintiff and her husband were landlords and the relevant incident occurred when they notified their tenants that they were to be evicted for non-payment of rent. The plaintiff-arrestee attempted to secure police presence for the eviction process, but the police did not respond to her requests. Plaintiff's husband called the police again when he believed that a tenant's boyfriend had arrived with a firearm. However, the plaintiff was arrested after officers spoke with the tenant and tenant's boyfriend.

The plaintiff alleged a violation of Title II of the ADA and violations of other laws. The court denied the City of New York's

About the Author

James Naughton currently serves in the appellate division of the Office of the Cook County Public Guardian. He graduated *summa cum laude* from Loyola University Chicago with a B.A. in History, and *magna cum laude* with a J.D. from Loyola University Chicago School of Law.

4. The Americans with Disabilities Act, Title II Technical Assistance Manual, Available at: https://www.ada.gov/taman2.html#II-3.6000
5. *City and County of San Francisco v. Sheehan*, 135 S.Ct. 1765 (2015).
6. *Lynn v. City of Indianapolis*, WL3535554 (2014).
7. 207 F.3d 795 (5th Cir. 2000)
8. 121 F.Supp.3d (S.D.N.Y. 2015)

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motion for summary judgment on the plaintiff's ADA claim. The court found that Title II does generally apply to interactions between individuals with disabilities and arresting officers, but the reasonableness of accommodations under Title II must be assessed in the light of the totality of the circumstances of the case. The court also addressed the "on-the-street" exemption that *Lynn* and *Hainze* referenced, holding that on-the-street interactions are not categorically excluded from Title II coverage. The court seemed to disagree with the holdings in *Hainze* and *Lynn* and may signal a split between the circuits.

Recent verdicts seem to confirm that a plaintiff's claims of a violation of the ADA, during the course of arrest, are difficult to prove. In *Sanders v. The City of San Angelo*, the plaintiff was, like *Lynn*, experiencing an epileptic seizure when police arrived on the scene. When police arrived, the plaintiff claimed that he asked them for medical assistance, but the police insisted that the plaintiff stand up. The plaintiff claimed that he came out of the seizure but was disoriented and began to run. Police caught up to the plaintiff and tackled him, struck him in the stomach and choked him. The plaintiff alleged a violation of the ADA or, in the alternative, a violation of the Rehabilitation Act. The case settled for an undisclosed amount, but the judge granted summary judgment on the ADA and Rehabilitation Act claims holding that there was no violation of either law.

Other cases seem to confirm that a police officer's duty to provide reasonable accommodations to individuals with disabilities is satisfied at a relatively low threshold. In *Valanzuolo v. City of New Haven*,[9] the plaintiff was an individual with a hearing impairment and was arrested by New Haven police officers for failing to appear in court. During the plaintiff's arrest, booking, and processing at the detention center, the plaintiff was not supplied with an American Sign Language (ASL) interpreter. The plaintiff alleged a deprivation of constitutional rights under the ADA for failure to provide an ASL interpreter. The court held that the City of New Haven provided the plaintiff with effective communication through the use of pen and paper. The City of New Haven succeeded against all of the plaintiff's claims, in a pattern that is repeated in multiple verdicts and settlements.[10]

Individuals with Mental Illness

A common thread in law enforcement encounters with people who are mentally ill has been excessive force allegations. Early cases recognized the right of officers to use deadly force against an unarmed, mentally ill person, if the officer has reason to believe that the person poses a serious threat. Recent cases have recognized that the use of force spectrum is different for officers when encountering a person with mental illness than it is for individuals without a mental illness.

In *Clem v. Corbeau*,[11] a suspect with mental illness who was shot and pepper sprayed by police officers later brought action alleging excessive force, failure to provide adequate training and supervision, and other state law claims. The plaintiff was an individual with dementia, depression, and various physical disabilities. The plaintiff's wife contacted police after her husband stopped taking his medication, refused food for three days, would not see his doctor, move, or do anything. The facts surrounding the encounter between plaintiff and the officers is disputed but uncontroverted was that one officer did pepper spray and shoot the plaintiff three times after he allegedly made threats and moved in a threatening manner.

The court found that the officer's use of deadly force against the plaintiff with a mental illness was not justified under the Fourth Amendment, for purposes of officers' qualified immunity defense, and that the suspect had clearly established a right to be free from police officers' use of deadly force. The court also noted that there may be instances in which a reasonable officer may be authorized to use deadly force against an unarmed, mentally ill person, when the officer has a sound reason to believe that such a person poses a serious threat to the safety of the officer or the safety of others.

While *Clem* seems to narrowly open the door to claims of excessive force against people with a mental illness, other cases

9. 972 F.Supp.2d (D.Conn. 2013)

10. See also: *Hogan v. City of Easton*, WL 5023838 (2007); *Williams v. Officer Moceri*, WL 7671503 (2012); *Vinson v. McNesby* WL 7054347 (2011)

11. 284 F.3d 543 (4th Cir. 2002)

have declined to extend such claims. In *Barker v. City of Boston*,[12] the plaintiff, the administratrix of her husband's estate, brought § 1983 action against the city as well as allegations of Fourth Amendment violations and state law claims.

In *Barker*, the decedent/husband was an individual with mental illness and also had diabetes. The decedent's wife had contacted police after her husband walked into the middle of the street with a pellet gun and threatened to commit suicide. The plaintiff-administratrix informed police that her husband had a pellet gun, not a firearm, and was having a "mental breakdown." The decedent husband unlawfully took a responding officer's car, drove away from the scene, and was eventually shot through the windshield by officers in pursuit.

In this case the court held that the allegations were insufficient to prove: 1) deliberate indifference to constitutional rights of mentally ill individuals; 2) causation between inadequate police training dealing with mental illness and plaintiff's husband's death, and 3) that the city had a policy of condoning use of excessive force. The court found that the City of Boston did not ignore a "*known or obvious risk of a highly predictable severe harm*," and, as a result, did not "deliberately" show indifference to individuals with mental illness. The court also held that in order to show that Boston had a policy condoning excessive force the plaintiff must show a persistent failure to discipline officers for use of force that demonstrates the existence of a custom or policy of Boston. In this case, the court follows the dicta of *Clem*, allowing officers to use force on individuals who are mentally ill and not armed, but are deemed a threat to their own safety or the safety of others.

More recently the pendulum has seemingly swung back to a more lenient standard and has allowed claims of excessive force to proceed. In *Armstrong v. Village of Pinehurst*,[13] a decedent husband was diagnosed with bipolar disorder and paranoid schizophrenia. The decedent had been off his medication for five days and his sister, concerned over his behavior, brought the decedent to the hospital. The decedent went to the hospital willingly but later fled. The examining doctor issued an order for involuntary commitment and the police arrived to execute the commitment.

When the police arrived, the decedent wrapped himself around the base of a stop sign post. The police ordered the decedent to get up, he refused, and they eventually deployed their tasers, five separate times, over a period of two minutes. When decedent was eventually subdued and pulled from the pole he was unconscious and not breathing. The decedent was pronounced dead. His spouse brought charges alleging excessive force during the execution of the involuntary commitment order.

The court held that the use of the taser was excessive force but that the officers were entitled to qualified immunity. The court noted that the decedent was an "*out-numbered mentally ill individual who [was] only a danger to himself*" and that the choice of police officers to use a taser in the face of stationary and non-violent resistance was excessive force. The court also found that the "*government's interest in seizing a mentally ill person differs in both degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.*" Finally, the court noted that police must "*de-escalate the situation and adjust the application of force downward.*"

Settlements with law enforcement agencies also confirm the trend that courts and municipalities are recognizing claims for excessive force. A recent case involved a decedent who had a

12. 795 F.Supp.2d 117 (D.Mass 2011)

13. 810 F.3d 892 (4th Cir. 2016)

history of mental illness, including depressive and psychotic disorders. The decedent was found by the police running in circles around a parking lot, holding a screwdriver and yelling out loud. When the officers arrived, the decedent failed to respond to their orders and they tased, kicked, and punched the decedent in the head and torso, resulting in his death. The decedent's estate claimed excessive force and reached a settlement with the county. The plaintiff-estate and county reached a settlement for $750,000 and the county agreed to thereafter partner with MultiCare Mental Health to provide training for its sheriff's deputies.

Requirement to Provide Effective Communication

Law enforcement officials are often the first responders in any number of circumstances. Ensuring effective communication between an officer and a person with a disability can defuse a situation or allow officers to meaningfully inform an individual of their rights, avoiding liability. The majority of cases involving effective communication revolve around police interactions with members of the deaf community. Recent cases and settlements are illustrative of police encounters with members of the deaf community.

In *Bircoll v. Miami-Dade County*,[14] an individual who was deaf was pulled over by police for failing to yield at a right turn at an intersection with a flashing red light. The plaintiff informed the police officer that he was deaf, had a speech impediment, and communicated through lip reading. The officer asked plaintiff how much he had to drink that night and the plaintiff stated that he had not been drinking. The officer performed a field sobriety test, which the plaintiff failed, and the officer took him to the police station to perform an intoxilyzer test.

The plaintiff alleged that the arresting officer violated Title II of the ADA and the Rehabilitation Act by not modifying the police department's procedures to effectively communicate with him. The court held that providing an oral interpreter at a field sobriety test was not a reasonable modification and that the arresting officer took steps to ensure effective communication. The court first noted that the U.S. Department of Justice regulations pertaining to communication require that "*a public entity shall take appropriate steps to ensure that communications… with members of the public with disabilities are as effective as communications with others*."

After the court made their precursory statement regarding communication, it held that an oral interpreter's presence at a field sobriety test is not a reasonable modification of police procedures due to the "exigent circumstances of a DUI stop on the side of the highway, the on-the-spot judgment required of police, and the serious public safety concerns in DUI criminal activity."[15] The court also found that the arresting officer's communication with plaintiff about the field sobriety test and the plaintiff's arrest were not so ineffective that the plaintiff "*was [not] on equal footing with hearing individuals*."

Other cases have followed the guidance that what constitutes "effective communication" is a highly fact-specific inquiry. In *Seremeth v. Board of County Com'rs Frederick County*,[16] the case involved a deaf person as plaintiff. The plaintiff was at his home with his daughter and did not allow his daughter to contact her mother over videophone. The plaintiff's daughter ran away and made a call to her mother on videophone and during the call the mother claimed to have seen the plaintiff hit their daughter.

When the police arrived, they handcuffed the plaintiff behind his back, which prevented him from writing notes to the police

14. 410 F.Supp.2d 1280 (S.D.Fl. 2006)

15. The Court follows the logic of *Hainze v. Richards*, 207 F.3d 795 (2000), which holds that "Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents… prior to the officer's securing the scene and ensuring that there is no threat to human life."

16. 673 F.3d 333 (4th Cir. 2012)

officers. The plaintiff was handcuffed for 30-45 minutes and he was not told why the officers were at his house. The officers present called for another officer who was learning American Sign Language (ASL) and proceeded to interview the plaintiff's children, who were also deaf, without a qualified sign language interpreter. The plaintiff alleged that the officers violated the Rehabilitation Act and Title II of the Americans with Disabilities Act by not effectively communicating him.

The court held that police investigations are subject to Title II of the ADA, but "*exigent circumstances involved in a domestic violence situation render the accommodations provided reasonable under the ADA*." The court did recognize that plaintiff/Seremeth had suffered an injury, stating that "*the injury is failure to make communication as effective as it would have been among deputies and persons without disabilities*." However, the court engaged in a balancing test to determine whether, in light of the circumstances, the communication was effective. The court found that while attempts at communication failed, that it was "*reluctant to question the snap judgments of law enforcement officials*," especially in situations such as domestic violence where there is a high potential for violence. The court again seemed to signal that the provision of effective communications is a fact-specific inquiry and that it will balance the effectiveness of communication against the perceived danger of the situation.

Courts have also found that there are situations in which exigent circumstances do *not* outweigh the obligation to provide effective communication. In *Schultz v. Utah County*,[17] the plaintiff was an individual who was deaf and was questioned by police regarding a murder. The police arrived at plaintiff's residence after finding a body and began questioning other tenants, eventually making their way to the plaintiff's home. The police asked the plaintiff if his wife was present and if they could see her to confirm her well-being, however the plaintiff refused their entry. The plaintiff and police communicated through use of a

17. 966 F.Supp.2d 1246 (D.Utah 2013).

notepad and pen. After the plaintiff refused the police entry, the plaintiff turned to wake up his wife and bring her to the police. The police allegedly followed the plaintiff into the apartment, without the plaintiff's permission, whereupon they saw his wife alive and well. The plaintiff brought suit under various actions including the Fourth Amendment and the ADA.

The court found that the sheriffs provided effective communication through the notepad and did not violate the ADA. However, the court found that the officer's entry into the home, absent exigent circumstances, precluded him from qualified immunity and denied the officer's motion for summary judgment on his Fourth Amendment claim. The court did not find persuasive the officer's testimony that his reason for entry was the inability to give verbal commands to the plaintiff.

The court draws a line here for exigent circumstances exceptions that apply equally to individuals with hearing impairment as with individuals without hearing impairment. Law enforcement personnel should be aware that their attempts at communication with individuals who are deaf or otherwise disabled will be judged on a fact-specific inquiry and the court measures the effectiveness of the communication against the exigent circumstances. This case represents a line which the court refused to cross, finding these circumstances did not justify qualified immunity for the officer.

The case law surrounding effective communication between police and hearing impaired individuals continues to develop. The most recent case was filed on June 13, 2016 regarding a woman who is deaf calling 9-1-1 for police services and ending up getting arrested due to miscommunication. The case, *Stein v. City of Jamestown, ND, et al.*, is a cautionary tale for law enforcement agencies interacting with individuals with hearing impairment.

The plaintiff, a woman who is deaf, called 9-1-1 when a male friend, another individual who is deaf, threatened to commit suicide. When the police arrived on the scene they questioned the plaintiff, the man who threatened to commit suicide, and others who were present. The officer arrested the plaintiff when the officer came to the conclusion that the plaintiff had scratched the suicidal man causing deep gashes in his arm. Other officers on the scene advised the first officer that the nails could not have made gashes as deep as the man presented. The officer, his police department, and his city are now facing suit by the plaintiff for two counts of violating 42 USC 1983. If anything, this case stands for the proposition that it is easier to err on the side of caution by providing interpreters where appropriate, training officers to interact with members of the deaf community, and developing partnerships with key stakeholders in the deaf community.

The United States Department of Justice (DOJ) and Columbia, South Carolina Police Department reached a settlement agreement on May 3, 2016 concerning effective communication between the hearing impaired community and with the police department. The settlement came as a result of a DOJ investigation into the Columbia Police Department for failing to provide a sign language interpreter for a hearing impaired individual. Some of the highlights of the settlement include Columbia Police Department's agreement to designate at least one employee as ADA coordinator, to provide qualified interpreters to all members of the public who are deaf when feasible, to create "communication cards" to aid in communication with persons who are deaf or hard of hearing during routine interactions, and to submit to ongoing review of their communication capabilities. The agreement provides helpful guidance on how to implement training, change signage, modify handcuffing policies, and a variety of other topics that could prove helpful as law enforcement agencies look at their own best practices.

Individuals with Developmental Disabilities That Cannot Understand Direction

Individuals with developmental disabilities and other disabilities may have a difficult time understanding police instruction. However, police may mistake the actions as a sign of resistance or non-compliance. Recent case law confirms the dangers of miscommunication and tragedies that may result.

An example includes when a 32 year old man encountered police, and the man completely lacked the ability to care for himself and was unable to speak and respond to police commands. That man, Calvin D. Champion, lost his life as a result of miscommunication. Champion (a person with autism), Champion's caretaker, and the caretaker's son were visiting a local "Babies R' Us" retail store when Champion became agitated and began biting his own hand, hitting his face, and slapping the top of the caretaker's son. The caretaker felt as though she had lost control of Champion and called the police for help. The caretaker informed them that Champion had autism but she did not tell officers that he was nonverbal and nonresponsive to verbal communication.

Officers attempted to speak with Champion but those attempts failed and ultimately the officers forcibly took Champion to the ground. The officers handcuffed and hobbled Champion (tied his ankles together) to prevent him from kicking. While Champion lay on the ground the officers applied asphyxiating pressure to Champion and pepper sprayed him. Champion went into cardiac arrest while he was on the ground. He was later pronounced dead at the hospital.

In the trial that followed, *Champion v. Outlook Nashville, Inc.*,[18] the trial court found that the arresting officers had violated Champion's Fourth Amendment rights, had used excessive force, and were not entitled to qualified immunity. The court awarded Champion's estate $900,000 for his wrongful death. On appeal, the appellate court upheld the trial court's decision and found that "*the diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted*." The court held that the handcuffing, hobbling, and the continued pepper-spraying of a developmentally disabled adult violated his clearly established constitutional right to be free from excessive force and that no reasonable officer would have proceeded in the manner of the arresting officers.

In a more recent case, a man who was perceived as having a disability was "tased" because the officer feared that the man would not comply or would resist. In *Bryan v. MacPherson*,[19] the plaintiff was stopped at an intersection by a law enforcement officer because Bryan was not wearing his seatbelt. The plaintiff was upset because this was the second time he had been pulled over in the same day. Once the plaintiff pulled his car over and put it in park, he exited the vehicle and began to yell expletives at himself and began to hit himself. The officer testified that he had told plaintiff to stay in the car but Bryan stated that he never heard that command.

The officer eventually deployed his taser when he believed that plaintiff had taken a step toward him. The officer argued that the use of his taser was justified because he believed that the plaintiff was "mentally ill and subject to detention." The court found that if the officer did believe the plaintiff to be mentally ill, that he should have "*made greater efforts to take control of the situation through less intrusive means*." The court also found that the officer's use of his stun gun was excessive force noting that, "*the governmental interest in using force is diminished by the fact that the officers are confronted with a mentally ill individual*." Moreover, the court found that a "*mentally ill individual is in need of a doctor, not a jail cell*."

In this case, the court identified that officers should utilize a different continuum of force on individuals who either have, or are perceived to have, a disability. The court also found that there was ample time to warn the plaintiff to not move, but that the officer did not make his instructions clear. This case highlights the importance of communication between officer and arrestee and makes clear that the courts will consider a suspect's real or perceived disability, and that law enforcement officers must do so as well.

In a case that made headlines, 26 year old Ethan Saylor died when he suffered a fractured larynx after being handcuffed and forced to the ground by local sheriff's deputies. Ethan had an I.Q. of 40 and was diagnosed with Down Syndrome. The incident occurred when Ethan was attempting to see a movie for a second time without paying for a second ticket. The movie theatre contacted three off-duty sheriff's deputies to remove Ethan from the theatre. Ethan's caretaker spoke with the deputies and the theatre manager and requested that no one touch or attempt to talk to Ethan because it may cause him to become frustrated. Despite that request, the three officers handcuffed Ethan and he ended up on the floor where the pressure applied by the arresting officers fractured his larynx.

In the court's determination of whether the defendant officers were entitled to qualified immunity, it noted that "*Mr. [Ethan]*

18. 380 F.3d 893 (6th Cir. 2004)
19. 630 F.3d 805 (9th Cir. 2010)

Saylor responded in precisely the way [his caretaker] informed the Deputies he would respond, because of his disability, if touched by strangers." The failure to communicate is clear and the court found that the "*most significant unsettled question is the reason for the escalation in the Deputies' use of force*." The court ultimately found that the deputies were not entitled to qualified immunity and that Ethan's estate can proceed with a failure to train claim, various liability under Title II of the ADA, and damages under Title II against the state.

In terms of settlements, a relatively recent case is illustrative of the potential damages that plaintiffs may receive for a law enforcement officer's miscommunication and the harms that result. In *Chaudhry v. City of Los Angeles*,[20] the decedent, Mohammad Chaudhry was shot by police after miscommunication between them. Chaudhry was diagnosed with autism and had wandered away from home. When officers found him he was laying on the grass outside of a residence. The officers proceeded to handcuff him, shoot him, and Chaudhry died.

Chaudhry's parents brought a wrongful death and civil rights action against the City of Los Angeles, the chief of police, and the individual officers. Chaudhry's parents alleged, among other things, that the officers failed to provide reasonable accommodations during the arrest and failed to provide effective communication to the disabled decedent. Chaudhry's parents and the city settled the case with the city paying the decedent's family $2.25 million. This is a clear example of a situation that could have been avoided by having police better communicate with an arrestee. This settlement further demonstrates that it is a much better policy to provide police training that better informs officers regarding encountering individuals with disabilities. Such a policy would likely have prevented the death of a detainee, and which in this case would have saved the city and its tax payers from having to incur such a costly injury settlement.

Best Practices

Law enforcement agencies tasked with ADA compliance may be looking for places to begin. The purpose of this article has been to give examples of police encounters that have gone wrong, and yet by doing so to also provide ideas for some best practices to avoid such tragic encounters. The U.S. Department of Justice noted that one of the best ways to avoid common problems between people with disabilities and law enforcement is through "training, sensitivity, and awareness."[21]

It may help to contextualize what "training, sensitivity and awareness" may mean for police departments. One example is provided by the Philadelphia Police Department. Philadelphia implemented crisis intervention training for its officers and created a Crisis Intervention Team (CIT) which partners with Philadelphia Department of Behavioral Health to "bridge between the two worlds" of policing and mental health care.[22] This partnership allows officers in the field to access a mental health professional for advice. The mental health officer can then activate health services to get a person in need, for example, back on needed medication, or to contact a homeless shelter for the individual, or to address issues, for example, for homeless veterans. Other departments have implemented different versions of crisis intervention training and intervention teams, which have made an impact on police-citizen relations.

When police come upon persons with disabilities it can often be the disability itself that complicates the encounter. This resulting complication may cause confusion, poor communication, misunderstanding, and at worst, the prospect of a risk of harm to the disabled person. Improved understanding and communication between the police and persons with disabilities can be improved through training, access to community resources, and an awareness of those instances and cases that resulted in tragic results. □

20. 2011 U.S.Dist. LEXIS 160910 (C.D.C.A.)

21. U.S. Department of Justice, Commonly Asked Questions, Q.5.

22. Police Executive Research Forum, An Integrated Approach to De-Escalation and Minimizing Use of Force, Available at: http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf

Changing the Way We Do Business:
Wave of New Labor & Employment Laws Crashing Down Soon

By Jolianne S. Alexander

At the risk of being overly dramatic, I dare venture to say that there has never been a more exciting time to be a practicing labor and employment attorney. On both the state and federal levels, the coming months will bring a wave of new changes to the way both employee and employer attorneys do business. Those changes include: new legislation affecting the enforceability of confidentiality and arbitration clauses in employment contracts and settlement agreements; strict requirements for employers to provide annual sexual harassment training to their employees; and increased salary requirements to maintain the exempt status of employees. So as to best navigate these changes and to properly advise your clients, here is what you need to know:

Brand New Legislation

On August 9, 2019, the Illinois Legislature approved Senate Bill 75,[1] which enacted the Illinois Workplace Transparency Act,[2] the Illinois Sexual Harassment Victim Representation Act,[3] and the Illinois Hotel and Casino Employee Safety Act.[4]

The Illinois Workplace Transparency Act

The purpose behind the Illinois Workplace Transparency Act, ("IWTA"), which goes into effect on January 1, 2020, is to ensure that employment contracts do not undermine the State's interest in ensuring that all workplaces are free of unlawful discrimination and harassment.[5] To carry out this purpose, the IWTA provides that no contract between an employer and employee can prohibit an employee from reporting any allegations of unlawful conduct to federal, state, or local officials.[6] The Act further provides that a unilateral condition of employment which prevents an employee from making truthful statements about unlawful employment practices is against public policy.[7]

1. Pub. Act 101-221, 2019 Ill. Legis. Serv. (West).
2. Illinois Workplace Transparency Act, Pub. Act. 101-221, 2019 Ill. Legis. Serv. (West), citing 820 ILCS 96/1-1, *et. seq.*
3. Illinois Sexual Harassment Victim Representation Act, Pub. Act. 101-221, 2019 Ill. Legis. Serv. (West), citing 820 ILCS 61/3-1, *et. seq.*
4. Illinois Hotel and Casino Employee Safety Act, Pub. Act. 101-221, 2019 Ill. Legis. Serv. (West), citing 820 ILCS 325/5-1, *et. seq.*
5. *See supra* note 2, citing 820 ILCS 61/1-5.
6. *See supra* note 2, citing 820 ILCS 96/1-20.
7. *See supra* note 2, citing 820 ILCS 96/1-25(a).

Notably, and most significantly for employers, the Act also generally prohibits unilateral conditions which require an employee to arbitrate a claim.[8] In order to overcome this general prohibition, an employer who wishes to require employees to arbitrate their claims as a condition of their employment, must demonstrate actual, knowing, and bargained-for consideration from the employee and must further acknowledge an employee's right to: (1) report good faith allegations to the government; (2) report criminal conduct to the government; (3) make truthful statements; and (4) request or receive confidential legal advice.[9] An employer's failure to establish these conditions renders the arbitration agreement unenforceable and against public policy.[10]

The IWTA also provides for a slew of requirements relating to the enforceability of confidentiality provisions within settlement and termination agreements between an employer and employee.[11] The Act requires that for a confidentiality provision to be enforceable, it must be: (1) the documented preference of the employee and mutually beneficial to both parties; (2) the employer must notify the employee of the right to have an attorney review the agreement before execution; (3) there must be a valid and bargained-for exchange for the confidentiality; (4) the agreement does not waive claims concerning unlawful employment practices accruing after the date of execution; (5) the employee is given 21 days to consider the agreement; and (6) the employee is given 7 days to revoke the agreement.[12] The failure to adhere to these requirements would render a confidentiality clause unenforceable and against public policy under the Act.[13]

Not only are these contracting requirements something that employer attorneys need to be mindful of when drafting employment-related agreements, but labor and employment attorneys on both sides need to be aware of the fact that the IWTA authorizes an employee to bring a civil action challenging a contract which violates the Act.[14] In such a civil action, an employee is entitled to recover their attorneys' fees if it is found that the contract violates the Act.[15] Thus, caution should be exercised when drafting employment contracts, settlement agreements, and severance agreements to ensure compliance.

The Illinois Sexual Harassment Victim Representation Act

The Illinois Sexual Harassment Victim Representation Act, ("ISHVRA"), which goes into effect on January 1, 2020, was enacted to prohibit the dual representation by the same union representative of a union employee who has been the victim of sexual harassment and the alleged perpetrator.[16] The Act requires unions to designate separate union representatives to represent the parties in any such grievance proceedings.[17]

The Illinois Hotel and Casino Employee Safety Act

The Illinois Hotel and Casino Employee Safety Act, ("HCESA"), which goes into effect on July 1, 2020, carves out very specific protections to hotel and casino employees. In addition to the slew of other labor and employment laws which apply to such employees, the HCESA further requires hotel and casino employers to equip their employees with a safety device to be able to summon for help if the employee reasonably believes that an ongoing crime, sexual harassment, sexual assault, or other emergency is occurring in the employee's presence.[18] The

8. *See supra* note 2, citing 820 ILCS 96/1-25(b).
9. *See supra* note 2, citing 820 ILCS 96/1-25(c). *See also*, Illinois Uniform Arbitration Act, Pub. Act. 101-221, 2019 Ill. Legis. Serv. (West), citing 710 ILCS 5/1 (providing that a written agreement to arbitrate is not enforceable unless it complies with the Workplace Transparency Act).
10. *Id.*
11. *See supra* note 2, citing 820 ILCS 96/1-30(a).
12. *Id.*
13. *See supra* note 2, citing 820 ILCS 96/1-30(c).
14. *See supra* note 2, citing 820 ILCS 96/1-35.
15. *Id.*
16. *See supra* note 3, citing 820 ILCS 61/3-10.
17. *Id.*
18. *See supra* note 4, citing 820 ILCS 325/5-10(a).

About the Author

Jolianne S. Alexander, as a practicing labor and employment attorney, has represented clients in a wide variety of labor and employment-related matters. She has worked in an in-house setting, and as both a plaintiff's and defense attorney. She also has experience litigating employment claims at the administrative, trial, and appellate levels, and has argued before the Illinois Supreme Court.

Act further requires these employers to develop, maintain, and comply with a written anti-sexual harassment policy to protect employees against sexual assault and sexual harassment by guests.[19]

Pursuant to statute, the policy shall include provisions which: (1) encourage an employee to immediately report to the employer any instance of sexual assault or sexual harassment by a guest; (2) describes the procedures to report a complaint; (3) instructs the complaining employee to cease work and leave the immediate area until security personnel or police arrive; (4) offers temporary work assignments to the complaining employee for the duration of the hotel guest's stay; (5) provides the complaining employee with necessary paid time off to file a police report or testify in legal proceedings; (6) informs the complaining employee of their additional rights under the Illinois Human Rights Act and analogous federal law; and (7) informs the employee that they will not be retaliated against.[20] Notably, this policy must be provided to employees in both English and Spanish.[21]

Should an employer violate this Act, an employee is entitled to bring a civil action in circuit court, *without having to first exhaust administrative remedies with any governmental agency*, and recover all remedies available at law or in equity, including injunctive relief, reinstatement, and compensatory damages.[22] In order to bring a claim under this Act, the employee is only required to notify their employer in writing of the alleged violation of the Act and allow the employer 15 calendar days to remedy the alleged violation.[23] An employee who is successful on their claim is entitled to recover their reasonable attorneys' fees and costs.[24]

19. *See supra* note 4, citing 820 ILCS 325/5-10(b).

20. *Id.*
21. *Id.*
22. *See supra* note 4, citing 820 ILCS 325/5-20.
23. *Id.*
24. *Id.*

> **Under Illinois Human Rights Act: definition of "employer" will change from any person employing 15 or more employees to any person employing one or more employees**

Changes to the Illinois Human Rights Act

The 2019 legislative sessions have brought about numerous and ground-breaking changes to the Illinois Human Rights Act, ("IHRA"), 775 ILCS 5/1-101, *et. seq*. Effective January 1, 2020, the following changes will go into effect:

Section 1-103(Q) of the IHRA has been amended to include within the definition of "unlawful discrimination," "actual or perceived discrimination;"[25]

Section 1-103 has been amended to define and clarify the meaning of "arrest record" as used in Section 2-103 of the Act. "Arrest Records" are defined to include an arrest not leading to conviction, a juvenile record, or a criminal history record ordered expunged, sealed, or impounded;[26]

Section 2-101(E)'s definition of "sexual harassment" has been broadened to expand actionable working environments to physical locations beyond where the employee is assigned to perform his/her duties;[27]

Article 2 of the IHRA has been broadened to make "harassment" based on any protected category unlawful.[28] Notably, the Act's prohibition on "harassment" mirrors the "sexual harassment" language of Section 2-102(D), which has previously been construed by the Illinois Supreme Court as providing for strict liability for managerial instances of sexual harassment.[29] Whether or not strict liability will be the gold standard in other instances of harassment remains to be seen;

Section 2-102(A) has been amended to protect non-employees from unlawful discrimination, which includes contractors and consultants;[30]

Section 2-102(D) has been amended to protect non-employees from unlawful sexual harassment;[31]

Section 2-108 has been added to the IHRA. This section requires employers with adverse judgments against them to disclose to the Illinois Department of Human Rights, ("IDHR"), every July 1, the total number of adverse judgments against them from the previous year; whether equitable relief was ordered; and the applicable protected category relating to the adverse judgment.[32] The Section also authorizes the IDHR to request an employer to submit the total number of settlements entered into for the past five years relating to unlawful discrimination or sexual harassment.[33] Notably, an employer's failure to report may subject it to civil penalties under newly enacted Section 8-109.1.[34] This section will remain in effect until January 1, 2030;[35]

Section 2-109 has been added to the IHRA. This section requires employers with any number of employees to utilize the IDHR's model sexual harassment training program or to

25. Illinois Human Rights Act, Pub. Act. 101-221, 2019 Ill. Legis. Serv. (West), citing 775 ILCS 5/1-103(Q).
26. Illinois Human Rights Act, Pub. Act. 101-565, 2019 Ill. Legis. Serv. (West), citing 775 ILCS 5/1-103(B-5), 775 ILCS 5/2-103.
27. *See supra* note 25, citing 775 ILCS 5/2-101(E).
28. *See supra* note 25, citing 775 ILCS 5/2-101(E-1); 775 ILCS 5/2-102(A).
29. *Sangamon Cty Sheriff's Dep't v. Ill. Human Rights Com'n*, 233 Ill.2d 125 (2009).
30. *See supra* note 25, citing 775 ILCS 5/2-102(A-10).
31. *See supra* note 25, citing 775 ILCS 5/2-102(D-5).
32. *See supra* note 25, citing 775 ILCS 5/2-108(B).
33. *See supra* note 25, citing 775 ILCS 5/2-108(C).
34. *See supra* note 25, citing 775 ILCS 5/2-108(F), 775 ILCS 5/8-109.1.
35. *See supra* note 25, citing 775 ILCS 5/2-108(H).

establish its own sexual harassment training program on a yearly basis.[36] Failure to provide training after receiving notice from the IDHR to show good cause, shall subject an employer to civil penalties, as authorized by Section 8-109.1;[37]

Section 2-110 has been added to the IHRA. This section requires restaurants and bars to have in place a written sexual harassment policy, which is provided to all employees within the first calendar week of their employment.[38] The policy must be made available in both English and Spanish.[39] Restaurants and bars are also required to provide sexual harassment training to their employees on an annual basis.[40] Failure to comply, after receiving notice from the IDHR to show good cause, shall subject the employer to civil penalties as authorized by Section 8-109.1;[41]

Section 7-109.1 has been added to the IHRA. This section provides that if the employee has initiated litigation in federal or state court for the purpose of seeking final relief on some or all of the issues that form a basis of a charge filed under Section 7A of the IHRA, either party may request the IDHR to administratively dismiss the charge;[42]

Section 7A-102(B) has been amended to allow the IDHR to issue its notice to commence civil action by electronic mail;[43]

Effective July 1, 2020, section 2-101(B)'s definition of "employer" will change from any person employing 15 or more employees to any person employing one or more employees, regardless of the protected category.[44]

Changes to the Illinois Equal Pay Act

Now in effect as of September 29, 2019, the Illinois Equal Pay Act, ("IEPA"), 820 ILCS 112/1, *et. seq.*, was amended to prohibit employers from requesting job applicants to disclose their salary history as a condition of being considered for an offer of employment.[45] A violation of this section would subject an employer to special damages not to exceed $10,000, as well as injunctive relief and reasonable attorneys' fees and costs.[46] The Act was further amended to broaden the types of recovery for claims under the Act, to include compensatory and punitive damages, as well as injunctive relief, in addition to other penalties, where appropriate.[47]

Changes to the Fair Labor Standards Act's Code of Federal Regulations

On September 27, 2019, the U.S. Department of Labor issued a Final Rule amending the Section 541 series of the Code of Federal Regulations.[48] Effective January 1, 2020, the Final Rule provides that salary requirements for exempt executive, administrative, and professional employees under Section 13(a)(1) of the Fair Labor Standards Act, ("FLSA"), will generally increase from $455.00 per week to $684.00 per week, or $35,568.00 per year.[49] The Rule further provides that up to ten percent of an exempt employee's non-discretionary bonuses or incentive payments, ($68 per week), may be used to satisfy the new salary threshold. For a more detailed guide, the Department of Labor provides a Small Business Compliance Guide[50] outlining the new salary thresholds for various types of exempt categories, which are as follows on the following page.

Conclusion

Due to the extensive overhauls of numerous labor and employment-related laws, both employee and employer attorneys will need to be diligent in maintaining compliance in the changing landscape. Such diligence will likely include revising employment contracts and employee handbooks, increasing salaries or changing job duties, eliminating or revising formerly standard confidentiality clauses in settlement and termination agreements, planning and administering sexual harassment training programs, and generally, changing the way we do business. □

36. *See supra* note 25, citing 775 ILCS 5/2-109.
37. *See supra* note 25, citing 775 ILCS 5/2-109(D).
38. *See supra* note 25, citing 775 ILCS 5/2-110(B).
39. *Id.*
40. *See supra* note 25, citing 775 ILCS 5/2-110(C).
41. *See supra* note 25, citing 775 ILCS 5/2-110(E).
42. *See supra* note 25, citing 775 ILCS 5/7-109.1(1).
43. *See supra* note 25, citing 775 ILCS 5/7A-102(B).
44. Illinois Human Rights Act, Pub. Act. 101-430, 2019 Ill. Legis. Serv. (West), citing 775 ILCS 5/2-101(B).
45. Illinois Equal Pay Act, Pub. Act. 101-177, 2019 Ill. Legis. Serv. (West), citing 820 ILCS 112/10(b-5), eff. Sep. 29, 2019.
46. 820 ILCS 112/30(a-5).
47. 820 ILCS 112/30(a).
48. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 84 Fed. Reg. 51,230 (Sept. 27, 2019) (to be codified at 29 C.F.R. pt. 541).
49. 29 U.S.C. § 213(a)(1); 29 C.F.R. pt. 541.
50. Dep't of Labor, *Small Entity Compliance Guide to the Fair Labor Standards Act's Exemptions*, https://www.dol.gov/whd/overtime2019/overtime_complianceguide.pdf.

Exemption	Salary Level Test	Salary Basis Test	Duties Test
Executive	At least $684/week ($35,568 / year)	• At least 90% of the salary level ($616/ week) must be paid on a "salary" basis • Up to 10% ($68/week) may be satisfied with nondiscretionary bonuses or incentive payments	The Employee's "primary duty" must be that of an exempt executive employee, as described in the "Duties Tests" section of this guide
Administrative	• At least $684/week ($35,568 / year) • "Academic administrative personnel" may qualify with a salary at least equal to the entry salary for teachers at their educational establishment	• At least 90% of the salary level ($616/ week) must be paid on a "salary" basis or "fee" basis. • Up to 10% ($68/week) may be satisfied with nondiscretionary bonuses or incentive payments	The Employee's "primary duty" must be that of an exempt administrative employee, as described in the "Duties Tests" section of this guide
Professional	• At least $684/week ($35,568 / year) • Salary level test does not apply to doctors, lawyers, or teachers.	• At least 90% of the salary level ($616/ week) must be paid on a "salary" basis or "fee" basis. • Up to 10% ($68/week) may be satisfied with nondiscretionary bonuses or incentive payments • These requirements do not apply to doctors, lawyers, and teachers.	The Employee's "primary duty" must be that of an exempt professional employee, as described in the "Duties Tests" section of this guide
Outside Sales	Does not apply	Does not apply	The Employee's "primary duty" must be that of an exempt outside sales employee, as described in the "Duties Tests" section of this guide
Computer	At least $684/week ($35,568 / year) or at least $27.63/hr	• At least 90% of the salary level ($616/ week) must be paid on a "salary" or "fee" basis unless the employee is paid on an hourly basis and receives at least $27.63/ hour • Up to 10% ($68/week) may be satisfied with nondiscretionary bonuses or incentive payments	The Employee's "primary duty" must be that of an exempt computer employee, as described in the "Duties Tests" section of this guide
Highly compensated employees	$107,432 per year in total compensation, including payment of at least $684/week	• 100% of the standard salary level ($684/ week) must be paid on a "salary" or "fee" basis • The remainder of the total annual compensation requirement may be paid in nondiscretionary bonuses or incentive payments (including commissions)	• The Employee's "primary duty" must be office or non-manual work • Must "customarily and regularly" perform any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee, as described in the "Duties Tests" section of this guide

Introducing Social Media Evidence in Illinois Divorce Cases

By Marie Sarantakis, Esq.

As lawyers, in preparing for every hearing, the premise is somewhat the same: we obtain information from our client, make sense of the information within our legal framework, gather evidence, and then determine how we can properly introduce that evidence before the trier of fact in a manner that supports our client's case.

Social media has become an inextricable and common part of our everyday lives. People today often get married and/or get divorced because of their interactions on Facebook, Twitter, and Instagram. Social media is no longer alternate reality, rather it plays a critical role in how individuals communicate, form social and familial bonds, and experience emotions. Therefore, it's no surprise that evidence from social media pages is becoming an integral part of evidence in domestic relations courtrooms.

According to Merriam Webster, social media is defined as a form "electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos)." This broad definition typically includes, but is not limited to, common platforms such Facebook, Twitter, Instagram, YouTube, LinkedIn, SnapChat, Quora, Reddit, Pinterest, Yelp, Flikr, WordPress, Tumblr, Etsy, Goodreads, and Whisper to name a few.

Even attorneys who elect not to engage in social media themselves must have a certain degree of competency in these platforms in order to adequately represent their clients in the modern world. As of January 1, 2016, the Illinois Supreme Court amended the Model Rules to specifically clarify that attorneys "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology".[1]

All too often, despite a stern warning from their divorce attorneys, clients going through a divorce or separation feel compelled to share their journey of newfound single life in excruciating detail. This action, however, often causes an intentional or unintentional emotional impact upon the clients' past partners.

In such a case, a jilted ex-partner will often immediately save, print, and then share the damning evidence with his or her attorney and then seek to expose and exploit the "slimy ex for the rotten, no-good human being that s/he really is." It is then up to the attorney to decide (1) whether the evidence is relevant and if it is, then (2) identify the process for authenticating the evidence and laying a proper foundation for its admission during a hearing or trial.

Determining Relevance

Relevance generally has a pretty low threshold. Relevant evidence is that which makes any "fact that is of consequence

1. Illinois Rules of Professional Conduct Rule 1.1 Comment [8]

to the determination of the action more probable or less probable than it would be without the evidence."[2] Relevant evidence is generally always admissible with a few exceptions.[3] Relevant evidence can be excluded if it is particularly inflammatory, prejudicial, confusing, burdensome, misleading, would cause too much delay, or is cumulative.[4] Another way of commonly saying this is that relevant evidence may be excluded if its probative value is substantially outweighed by a likelihood of prejudice.

Evidence can be relevant to show a party's actions, state of mind, geographic location, identity, etc. The most common challenge you will likely face when dealing with the relevance of social media evidence is the scope of the evidence you are requesting and/or seeking to admit. While there may be a party's social media post in particular that is directly on point with the issue(s) presented in your case, seeking unfettered access to all of an opposing party's social media records will likely be too broad in scope and will also likely be denied as a fishing expedition. Similarly, a Judge may only allow a narrow subset of evidence on the record which specifically coincides to the issue(s) at hand.

In 2017 a civil court in Wyoming very appropriately cautioned litigants on the interplay between scope of records and the risk of prejudice, by stating in its opinion:

"Social media presents some unique challenges to courts in their efforts to determine the proper scope of discovery or relevant information and maintaining proportionality. While it is conceivable that almost any post to social media will provide some relevant information concerning a person's physical and/or emotional health, it also has the potential to disclose more information than has historically occurred in civil litigation."[5]

Accordingly, the request for the production of all records may not be unduly burdensome by way of cost or production effort, rather the emotional costs to the litigant may be proportionally too high when revealing unnecessary personal information beyond the scope of the case. The evidence should not be intended to harass or embarrass the other party. It is critical for counsel to be precise in their requests and limit the use of evidence to that which is directly targeted to their case.

What Type of Social Media Evidence is Relevant in Divorce Cases

Before enlisting the Court's assistance in determining relevance, you, as a family law practitioner, will need to make a

2. Illinois Rule of Evidence 401
3. Illinois Rule of Evidence 402
4. Illinois Rule of Evidence 403
5. *Gordon v. T.G.R. Logistics, Inc.*, 321 F.R.D. 401, 403 (D. Wyo. 2017)

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preliminary assessment as to whether this information would be beneficial to your legal argument. Often times what a client may believe to be relevant, usually exposing a spouse in a less than flattering light, may not be relevant legally nor help them achieve a desired outcome in their case. As a lawyer, you need to dissect the information and you are responsible for helping your client understand that what may be of critical importance to their family and friends, may not be a smoking gun in a court of law.

For example, to many clients, it may be shocking to realize that evidence of an affair, in and of itself, may not always be relevant. As of January 1, 2016, Illinois became a no-fault state and couples seeking divorce do so under the umbrella reason of "irreconcilable differences."[6] The previous notions of grounds, such as impotence, adultery, abandonment, mental cruelty, and a host of other reasons which went to show one spouse was at fault, have gone by the wayside. That means that even if a spouse engaged in an extramarital affair, the affair itself is not a relevant issue that comes before the court. Rather what can still be of issue is introducing evidence of the affair in order to make a showing of dissipation of marital assets.[7]

Dissipation is the "use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irretrievable breakdown."[8] Classic examples of dissipation include spending money on a paramour[9], gambling[10], and the destruction of marital assets.[11] So if your client's spouse posts a photo with their new love interest showing off their new matching jewelry at

6. 750 ILCS 5/401

7. 750 ILCS 5/503
8. *Marriage of O'Neill,* 138 Ill.2d 487, 150 Ill.Dec. 607, 563 N.E.2d 494, (1990)
9. *In re Marriage of Dunseth*, 260 Ill. App. 816 (4th Dist. 1994); In re Marriage of Meadow, 256 Ill. App. 3d 115 (1st Dist. 1993); In re Marriage of Frey, 258 Ill. App. 3d 442 (5th Dist. 1994); In re Marriage of Vehlein, 265 Ill. App. 3d 1080 (1st Dist. 1994)
10. *In re Marriage of Sobo*, 205 Ill. App. 3d 357, 562 N.E.2d 1083 (1st Dist. 1990); *In re Marriage of Morrical*, 216 Ill. App. 3d 643, 576 N.E.2d 465 (3d Dist. 1991); In re Marriage of Hagshenas, 243 Ill. App. 3d 178 (2nd Dist. 1992)
11. *In re Marriage of Ferkel*, 260 Ill. App. 3d 33, 632 N.E.2d 1133 (5th Dist. 1994)

> **“(E)vidence from social media pages is becoming an integral part of evidence in domestic relations courtrooms.**

a casino in St. Bartz to celebrate their one-year anniversary, your client is the one who hit the proverbial legal jackpot. (No pun intended.) Hiding behind the veil of social media makes it so much easier to engage in, or sometimes even show off, the darker sides of human behavior.

Evidence of an affair is not relevant but dissipation of marital assets is. In a similar manner, while we don't typically introduce evidence regarding a spouse's character and judgment, such evidence may be introduced if it pertains to the safety and wellbeing of the parties' children. For example, if a parent is engaging in behavior which may seriously endanger the children or if they are acting in a way that may show parenting time with them would not be in the best interest of the children, that evidence may be pertinent and introduced in a hearing before the court.

Another possibility is that there may be court orders in effect stating what a party may or may not do. If one of the litigants clearly violates the court's order or the parties' judgment, and then subsequently posts proof of same on Facebook, this may be perfect supporting fodder for your client's Petition for Rule to Show Cause.

It's your job as the attorney to take the information that you have and determine whether it fits into the framework of the case. Then you have to decide whether the judge can make a threshold determination as to whether the evidence could reasonably be what it purports to be.[12] If the nature of the post has some bearing on an issue in the case, and a litigant authored the post, it will generally be relevant. However, the most common issue that arises is a dispute over who actually authored the post. This is where authentication comes in.

Authentication of Evidence

The greatest challenge attorneys face when trying to admit social media evidence is authentication and establishing the foundational proof necessary for admission.[13] The concept of authentication is pretty straightforward. That is, "*is the evidence really what the proponent claims it to be?*"[14]

The simplest way to authenticate social media evidence is through witness testimony. Illinois Rule of Evidence 901(b)(1) indicates that a witness with knowledge can authenticate evidence and provide a foundational basis for same. Ideally, a witness with knowledge would be the person who created the post admitting that they created the post. If the author admits s/he created the post and you go through the details of it on the record, things such as the platform which it was posted on, the time and date of the post, and its content, you would be all set.[15] However, as attorneys we have become painfully aware that things in the courtroom are not always that easy. All too often, witnesses, no matter how obvious it is they created a post, will be obstructionists and fail to admit it.

Following a witness denial you can continue to question this witness as to the circumstantial evidence which would lead the trier of fact to believe that this is the author. For example, if the witness acknowledges that a piece of paper appears to be a printout from his Facebook page, further acknowledges that it is his name and picture, but then denies that it is his post. By doing so, he is seemingly asserting that someone must have created a fake profile pretending to be them or someone hacked their account. In response, you may now need to get creative in your questioning and ask things about the contextual clues and distinctive indicators on the post, the account holder's access to the account, and/or whether the author acted in accordance with the post's message. For example, did the post contain specialized knowledge that only the witness would have? If so, specialized knowledge would satisfy a *prima facie* showing.[16]

12. Illinois Rule of Evidence 104

13. Paul W. Grimm, Lisa Yurwit Bergstrom & Melissa M. O'Toole-Loureiro, Authentication of Social Media Evidence, 36 AM. J. TRIAL ADVOC. 433, 439 (2013)
14. Illinois Rule of Evidence 901(a)
15. *In re Marriage of Miller*, 2015 IL App (2d) 140530, 40 N.E.3d 206 appeal denied, 39 N.E.3d 1002 (Ill. 2015)
16. *People v. Downin*, 357 Ill.App.3d 193, 203 (3rd Dist. 2005)

If the authorship of the post is relevant, then you can also question other potential witnesses who interacted with the post so as to confirm the identity of the author. Did other witnesses receive any feedback from the author which would corroborate or confirm the identity of the author? However, generally speaking, if the author denies the post, and the other party seeks to introduce the post as being authored by the opposing party, if the only evidence of authorship is the sole testimony of the person who downloaded and/or viewed the social media, in and of itself, without any additional corroboration then it is likely going to be found to be insufficient.[17] That is because testimony about what another individual has said could readily be dismissed as hearsay. That would not be the case, however, if a witness saw the author writing the post, and that witness could then testify as to what s/he observed.

Another potential witness is perhaps a forensic expert who could testify as to what he discovered on a particular individual's device; however, there are privacy issues to contend with here, so the instances where this type of testimony would be appropriate are extremely rare.

If the author denies the post and there are no other sufficient witnesses, there are alternative methods to proceed with authentication. You can compare specimens of evidence with other evidence which has been admitted.[18] Perhaps you can have the supposed author witness admit to their other social media posts, have those introduced into evidence, and then compare the post you are attempting to admit to those other posts showing that they are consistent in style, nature, placement, form, and any other nuances, which may allow the trier of fact to conclude the author could be the same, thereby allowing admission.

Our Illinois Rules of Evidence were specifically amended on September 17, 2019 to include the assessment of distinctive characteristics in electronic communications.[19] You can and should also point out any distinguishing characteristics which are consistent with the purported author. You want to look at a person's grammar, salutations, punctuations, and all of those types of details to show consistency, much as you would handwriting. You can also look at circumstantial evidence such as the e-mail address which is connected with the social media account at issue and compare it to the internet protocol address (commonly referred to as an "IP address") of the supposed author's computer. You can compare the two and the relationship may be sufficiently indicative of the author's identity.[20] While the Illinois Rules of Evidence clarify that witness testimony and distinctive characteristics are by no means the only ways of satisfying authentication, these are routinely accepted methods.[21]

Self-Authentication

You may be wondering if there is an easier way. What if you know that the author is going to deny the post? Can you try to argue that the records should be self-authenticating? Generally speaking, self-authenticating records, such as certified records that come in are a result of regularly conducted business ac-

17. *Moroccanoil, Inc. v. Marc Anthony Cosmetics, Inc.*, 57 F. Supp. 3d 1203 n.5 (C.D. Cal. Sept. 16, 2014); *Linscheid v. Natus Med. Inc.*, No. 3:12-cv-76-TCB, 2015 WL 1470122, at *5–6 (N.D. Ga. Mar. 30, 2015); and *Monet v. Bank of America*, N.A., No. H039832, 2015 WL 1775219, at *8 (Cal. Ct. App. Apr. 16, 2015).
18. Illinois Rule of Evidence 901(b)(3)
19. Illinois Rule of Evidence 901(b)(4)
20. *People v. Kent*, 2017 IL App (2d) 140917, ¶ 58
21. Illinois Rule of Evidence 901(b)

tivity,[22] generated by an electronic process or system,[23] or data copied from an electronic device, file, or storage medium,[24] so long as accompanied by a written certification from a qualified custodian of the records are presumed to be authentic and may not require corroborating testimony or distinctive characteristics.

On September 28, 2018, the Illinois Supreme Court effectuated an update to Rule 902 of the Illinois Rules of Evidence, in order to take into account the increasing use of digital evidence and how it can be self-authenticated.[25] Illinois Rule of Evidence 902(13) specifically states as follows:

"(13) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11)."

Thus, the rule requires someone with specialized digital knowledge of the record to certify that the record is a precise duplication of the original content, but their testimony is not required. An affidavit responsive to a subpoena would therefore be sufficient.

Under this premise, you would think that if you subpoena Instagram and receive a photograph you wish to admit into evidence, it would be authenticated so long as Instagram's record-keeper certified that it was "(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters; (B) was kept in the course of the regularly conducted activity; and (C) was made by the regularly conducted activity as a regular practice."[26] While it may seem more efficient to just obtain the records directly from the source, and not worry about an adverse witness denying a post, there are some challenges and consequences that you may face.

First, the federal Stored Communications Act (hereinafter referred to as the "SCA") generally prohibits civil attorneys from obtaining social media content. By issuing a subpoena to a provider, you may be able to confirm that an account belongs to someone and some corresponding metadata, but you will not likely be able to obtain the content that is posted on the page. The update to Rule 902 states essentially that limited information that the social media platform does tender may be self-authenticating without any testimony from an agent of the service provider themselves.[27]

Keep in mind that, even when making a request that is in compliance with the SCA, you may deal with resistance from social media platforms to tender any information whatsoever. For example, many social media entities are based in California, so they may give you the added run-around of demanding a local subpoena.

Even assuming an attorney is able to comply with any necessary logistical barriers, attorneys should be extremely careful if subpoenaing social media records and familiarize himself with the SCA prior to doing so. Improperly obtaining information, in violation of the SCA, could expose an attorney to the possibility of sanctions and liability.[28] An exception is that the user could provide you with written consent to obtain the records directly from the provider.[29] However, consider that Facebook has explicitly cautioned that it will not comply with subpoenas even if accompanied by a written consent of the page owner.[30]

Moreover, when intending to use this evidence, you still need to provide the opposing party with proper notice under Illinois Rule of Evidence 902(11). If you intend on introducing such records, you need to provide the other side with ample written notice and a reasonable opportunity to inspect the records.[31] Even after having done this, you could still risk the other side's objection, and now you spent valuable time and resources obtaining information that may not be introduced and will likely still be denied by the authoring witness.

22. Illinois Rule of Evidence 902(11)
23. Illinois Rule of Evidence 902(12)
24. Illinois Rule of Evidence 902(13)
25. Bellas, George. Self-authentication of Digital Records: New Illinois Rule of Evidence 902(13). ISBA Section on Civil Practice & Procedure Trial Briefs. December 2018. Vol. 65. No. 5.
26. Illinois Rule of Evidence 902(11)(A-C)
27. *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)
28. 18 U.S.C. § 2701(a); 18 U.S.C. § 2701(b); and 18 U.S.C. § 2707(a).
29. 18 U.S.C. § 2702(b)(3).
30. Facebook.com. (2019). May I obtain any account information or account contents using a subpoena? | Facebook Help Centre | Facebook. [online] Available at: https://www.facebook.com/help/133221086752707?helpref=uf_permalink [Accessed 17 Nov. 2019].
31. Illinois Rule of Evidence 902(11)

Obtaining the Evidence

If you are the one trying to obtain digital evidence, you need to familiarize yourself with SCA's limitations. The SCA forbids the disclosure of the substance of the message.[32] Facebook specifically cautions that, *"Federal law does not allow private parties to obtain the content of communications (example: messages, timeline posts, photos) using subpoenas."*[33] What attorneys can still obtain directly from the provider is information such as the date/time of the posting, the originating device, and basic account information. Another exception to the SCA is certain information which is public, rather than that which is hidden from a segment of the population by privacy settings.[34] Either way, you need to be extremely cautious if issuing a civil subpoena to a social media provider.[35]

A wiser alternative is seeking the information directly from the litigants themselves through the tried and true discovery mechanisms. You can send a traditional "Request to Produce Documents" under Illinois Supreme Court Rule 214. Alternatively, you can also send a "Request for Admission of Genuineness of a Document"[36] and attach the printout of the post to your request. Regardless of your method, the best way to obtain social media evidence is directly from the owner of the social media profile themselves. Companies such as Facebook, LinkedIn, and Twitter, have developed simple ways for the users themselves to download their own account history and data in order to avoid being in the midst of litigation as third parties. The users themselves can then tender the records

32. 18 U.S.C. § 2702(c)(6)
33. Facebook.com. (2019). May I obtain any account information or account contents using a subpoena? | Facebook Help Centre | Facebook. [online] Available at: https://www.facebook.com/help/133221086752707?helpref=uf_permalink [Accessed 17 Nov. 2019].
34. *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965, 991 (C.D. Cal. 2010)
35. It is worth noting that the SCA operates very differently in criminal cases. There is an exception which allows government entities to obtain information from social media websites when a warrant is issued. 18 U.S.C. § 2703(a).
36. Illinois Supreme Court Rule 216(b)

to opposing counsel in response to a discovery request. The onus therefore turns to the user to turn over discovery to the other side.

The problem with simply printing out and trying to use a post from the person's page is that the printout lacks any metadata. The critical issue with a basic screenshot is that the person objecting could claim that someone created a fake profile of them, photoshopped the image, or logged into their account. If the only thing you have to work with is a printout, ideally at minimum it should have the full website URL and include date with timestamp of print and capture. While static images of posts are not ideal, they often are sufficient to be introduced as evidence when accompanied by a witness' testimony. Absent corroborating testimony or factors, a mere printout is generally going to be insufficient.[37]

As a lawyer, whatever you do, don't go on social media pretending to be someone else to obtain data through unauthorized means. Inappropriately accessing someone's online data could be a violation of the SCA[38] or the Illinois' Rules of Professional Conduct. For example, you cannot make contact with the opposing party in a matter if they are represented by counsel.[39] Sending them a Facebook friend request could be a form of direct contact. If you create a fake profile, you are still violating this rule, but now have the added concern of the contact being based in fraud and misrepresentation, another potential violation of the Illinois Rules of Professional Conduct.[40]

Preserving the Evidence

If you know that the other side has posted something particularly useful to your case online, and they have the ability to hide, edit, or remove the post altogether, you should send a preservation letter to opposing counsel. Conversely, if it is your client who created the post, or it is posted on a page they have access to, it is imperative that you instruct your client not to tamper with the post at issue as this can be discovered through electronically stored information, often referred to as "ESI." ESI can include geographical data, lists of followers/fans, time and date of a posting, modifications to a posting, etc. The duty to preserve evidence begins once a litigant knows or has reason to believe certain evidence may be relevant to actual or reasonably anticipated litigation.[41] If your client deletes pertinent evidence at issue in the case, they may have caused the spoliation of evidence which can bear some serious sanctions and consequences. Remember the old adage: *it's never the scandal; it's always the cover up*.

Conclusion

Ideally, once you know that social media evidence is going to be a part of your case, try to get the opposing party to stipulate to its admission. If they refuse to do so, you will need to coordinate your responsive strategy. What types of questions will you ask the opposing party? Are there corroborating witnesses? Do you need to obtain additional records and certification of same? Familiarize yourself with the Illinois Rules of Evidence and begin to anticipate the challenges you will face when the witness in on the stand.

Irrespective of what type of law you practice, the prevalence of social media evidence should not be underestimated. It is important to keep in mind that social media evidence is usually treated much like any other type of evidence, especially in Illinois domestic relations courtrooms. All of the other rules of evidence still apply, including those relating to relevance, authentication, hearsay, etc. However, social media evidence comes with its own set of challenges, especially due to its nature to be dynamic, fluid, controlled by the third party, and has a heightened risk of being manipulated. Counsel need to affirmatively remain abreast of developments in the law and technology in the ever-evolving landscape of social media evidence. □

37. *Campbell v. State*, 382 S.W.3d 545, 550 (Tex. App. 2012) and *Commonwealth v. Purdy*, 459 Mass. 442, 945 N.E.2d 372, 381 (2011)
38. Electronic Communications Privacy Act ("ECPA") Title II-Stored Communications Act 18 USC 2701-2712
39. Rule 4.2 of the Illinois Rules of Professional Conduct
40. Rule 8.4(c) of the Illinois Rules of Professional Conduct
41. *Dardeen v. Kuehling*, 213 Ill.2d 329, 335-36 (2004)

Illinois Law Update

Editor John Pcolinski

College Expenses

Yakich v. Aulds, 2019 WL 5445597 (Ill.) October 24, 2019**

The parties were never married. They had one child. In 1997, the parties entered into an agreed order that addressed child-related issues but failed to address college expenses. In 2015, the mother filed a contribution petition under section 513 of the Illinois Marriage and Dissolution of Marriage Act. The circuit court entered an order in 2016 requiring each party to pay 40% of the child's prospective college expenses, with the child paying the remainder.

In September 2016, the Father challenged section 513 of the IMDMA on equal protection grounds. The trial court found that section 513 of the Act, as applied, violated the equal protection clause of the U.S. Constitution because "it does not permit divorced or never married parents the same input and ability to educate their children as is afforded to married or [*sic*] parents." The trial court recognized that the Illinois Supreme Court already addressed this issue directly in *Kujawinski v. Kujawinski*, 71 Ill.2d 563, 17 Ill.Dec. 801, 376 N.E.2d 1382 (1978), finding section 513 did not violate the equal protection clause. It nonetheless went on to point out that recent social changes made the basis used in *Kujawinski* no longer relevant, citing to the more recent Pennsylvania case, *Curtis v. Kline,* 542 Pa.249, 666 A.2d 265 (1995). The mother appealed.

The Illinois Supreme Court held on appeal that the trial court committed a serious error by not following the decision in *Kujawinski*, which "remains directly on point." The appeal was dismissed and remanded to the circuit court.

In re Marriage of Wilhelmsen, WL 5445905 (Ill. App. 2 Dist.), October 24, 2019**

The parties had three children during the marriage. Judgment was entered in 2014. The marital settlement agreement provided the parties share the payment of the children's higher education expenses under section 513 of the Illinois Marriage and Dissolution of Marriage Act. It also provided that husband owed a support arrearage of $79,201.44, which would be paid by husband to the children's 529 saving plans. Husband filed two motions to reconsider the judgment, which were denied. He then filed for Chapter 13 bankruptcy. Mother intervened, and the bankruptcy court entered an agreed order classifying the arrearage debt to mother as a non-dischargeable "domestic support obligation." Husband filed another petition to reconsider judgment. In May 2018, the trial court reduced husband's support obligation, ordered husband to pay 40% of the non-minor child's college expenses (based on in-state tuition), while the wife was ordered to pay 60% of the same, and stated that there would be no modification of husband's obligation toward the children's 529 plans. Husband appealed.

The appellate court affirmed, holding that the husband's contributions to the children's 529 plans could not be credited against his future contributions to non-minor children's higher education expenses under Section 513(h). The court denied husband's argument that his contributions to the children's 529 plans were "involuntary," as they were clearly agreed upon in the MSA. The court also refused to interpret Section 513(h) as "requiring a court to deduct contributions to a minor's college savings plan from a non-minor's college expenses," as in being in contravention of the "legislature's intent that former spouses ought to equitably provide for the educational expenses of their non-minor children." Additionally, the court stated that labeling a debt non-dischargeable in bankruptcy does not make it modifiable.

Contempt

Stephanie G. v. Kenneth T., 2019 WL 4747184 (Ill.App.1 Dist.), September 27, 2019*

In March 1991, the circuit court found that Kenneth was the natural father of K.N.T. and ordered him to pay child support in the amount of $250 a month to the mother. Subsequently, the circuit court stayed the child support obligation. The stay was vacated in August 1991 and the support order was reinstated. The assistant state's attorney representing the mother withdrew from the case in December 1991. Mother filed a petition for rule to show cause against the father in July 1999 for failure to pay child support. In December 1999, the court entered two orders finding that the father was the legal father of the minor child, obligating him to provide support and health insurance on behalf the child and finding him in contempt for failing to pay child support. The court also en-

tered a Judgment in favor of the mother for the child support arrearage. In May 2017, the mother filed a petition for adjudication of indirect civil contempt against the father for failing to abide by the December 1999 orders. The trial court found the father in contempt, and he appealed but the Court stayed commitment to allow him to purge himself of the contempt.

The appellate court found that it had jurisdiction pursuant to Supreme Court Rule 304(b) as the contempt order imposed a penalty even though the penalty was stayed.

Father's challenges to the orders entered in 1991 and 1999 were not considered because they fell outside the appellate court's scope of review pursuant to Supreme Court Rule 303.

Father's argument that the mother should be barred by *laches* also failed because he failed to show that he suffered an injury or prejudice as a result of the delay in enforcing the court orders. The Illinois Supreme Court has held that a party is not injured by the mere fact that he/she is ordered to pay one lump sum payment. In this case, the father was not even ordered to pay a lump sum but was rather ordered to make weekly payments.

Furthermore, the father failed to provide any evidence that the circuit court abused its discretion in finding him in contempt. The appellate court, quoting *In re Marriage of Sharp*, found that a party's failure to pay child support payments as ordered by a court is *prima facie* evidence of contempt, and Father failed to meet his burden to show that his noncompliance was not willful or contumacious and that he had a valid reason for not paying the support.

In re Marriage of Koepke, 2019 WL 4915475 (Ill.App.1 Dist.), September 30, 2019*

After the court found that the father was neither truthful nor credible and the supervisor to be impartial, not biased, and truthful, the trial court found the father in indirect civil contempt for failing to abide by the parties' Allocation Judgment and failing to allow the mother to exercise all of her parenting time with the parties' children. Father appealed.

The appellate court found that the contempt finding was not against the manifest weight of the evidence. Father was not allowed to shift the burden of ensuring Mother exercised the required parenting time to the children and the trial court found that Father had dictated the schedule and was responsible for the children cutting the visitation short. The appellate court deferred to the trial court's credibility findings and found that the evidence supported a finding that Father willfully violated the Allocation Judgment by cutting Mother's parenting time short. Father failed to provide evidence to support that his violation was not willful and contumacious after Mother proved by a preponderance of the evidence that Father had violated the Allocation Judgment.

The trial court did not err in allowing testimony that Father argued was hearsay. The trial court admitted statements made by a child because it found the testimony to be reliable. The appellate court held that although that was not a legal basis for admitting the testimony, the appellate court could uphold an evidentiary ruling on any ground in the record. The appellate court found that the statement (the child telling the supervisor that "they have to leave") was properly admitted under Rule of Evidence 803(3) as a state-of-mind exception to the hearsay prohibition. Furthermore, if no out-of-court statement and no oral or written assertion is elicited, there is no hearsay; therefore, it was not hearsay when the supervisor testified regarding the children that "They've received a text from their father." The purge provision of the contempt order was proper. The

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trial court ordered that Father should provide make-up parenting time to Mother.

HOLDING: The Appellate Court affirmed the underlying summary judgment granted in favor of the defendant, a tenant under a commercial lease, in an eviction proceeding, but slightly modified the grant of attorneys' fees to the defendant, reducing the $125,832 in attorneys' fees awarded by $9.904.17.

The defendant was occupying a commercial retail space under a long-term lease with a 5-year option and intended to exercise the option to remain in the space for another 5 years. An attorney from the legal department for Gap, the defendant's corporate parent, timely wrote a letter to the original landlord's successor-in-interest, the plaintiff, seeking to extend the lease. Unfortunately, the signature block in the letter exercising the option referenced a sister-company, Old Navy, and not the tenant's name. The Plaintiff filed suit seeking an eviction and the recovery of holdover rent, contending that the option to renew was not properly exercised by the party to the lease. The defendant filed an affirmative defense that the lease option had been exercised, extending the term of the lease. The defendant also filed a motion for summary judgment. The trial court granted the motion for summary judgment, finding that the lease did not specify who had to give the notice of the exercise of the option for the tenant. Once the trial court granted the defendant's motion for summary judgment, the defendant filed a fee petition and was awarded $125,832 in attorneys' fees as well.

The appellate court noted that a commercial tenant wishing to extend or cancel a lease pursuant to an option must strictly comply with the terms of the option. However, the appellate court noted that, when read as a whole, the attempt to exercise the option by the member of the Gap's legal department was properly construed as an exercise of the option by the defendant (despite the Old Navy signature block) as it was in writing, was timely, referenced the lease in question and the actual parties to that lease and was written by someone who had authority to act for the tenant. Significantly, the Old Navy signature block was found to be immaterial to the exercise of the option as the plaintiff admitted that he knew that the defendant was trying to exercise its option, but simply made a mistake in the signature block.

With respect to the petition for attorneys' fees and costs, over the plaintiff's argument that the fees and costs were unreasonably large, the appellate court generally approved the award of attorneys' fees and costs to the defendant, including fees incurred for both Illinois and California counsel. The appellate court did modify the amount awarded slightly by: a) eliminating the grant of fees that were not sufficiently described in the supporting bills, and b) reducing the costs awarded as airfare and hotel charges are not recoverable costs. □

News & Events

3rd Vice President, Angel Traub, President, Stacey McCullough, President-Elect, Wendy Musielak and 2nd Vice President, Kiley Whitty welcoming holiday party attendants.

ISBA Update

Discussions Regarding Changes to the ISBA Assembly Structure Dominate ISBA Mid-Year Meeting

By Kent Gaertner

The ISBA held its Mid-Year Meeting December 5th through 7th, 2019 at the Westin Rosemont. The event featured the usual Mid-Year Meeting festivities highlighted by the annual dinner honoring the Justices of the Illinois Supreme Court on Friday night the 6th. The keynote speaker was the newest Justice, **P. Scott Neville, Jr**. Justice Neville spoke of "Minding the Gap". He was referring to the gap between self-represented litigants and programs that promote access to justice and encouraged the ISBA to continue its efforts to close that gap by promoting programs that make meaningful access to justice possible. New Chief Justice **Anne Burke** also addressed the Assembly at its Saturday meeting. In addition, of course, all Section Councils and ISBA Committees held their own meetings to discuss each entity's own particular projects. Numerous CLE programs were also available.

At the Assembly Meeting, the report of the Assembly Finance Committee was presented regarding the 2018/2019 Fiscal Year Audit and Year-end Financial Statements. The Association's financial position is solid. By-law Section 7.1 was amended so that the incoming ISBA officers take office when they are sworn in on Friday night before the meeting of the Assembly at the Annual Meeting in June each year. Previously Board of Governor and Assembly people took office prior to the Assembly meeting, but the officers took office at the close of the Assembly meeting. This by-law brings all office holders in at the same time.

The Animal Law Section council asked the Assembly to support two resolutions that will be presented to the ABA House of Delegates in February 2020. The first concerns treatment of Military Working Dogs (MWD) as to their care during and after their service to our military or to our first responders. This resolution covered items such as their ongoing health care, their right to be returned to this country when their overseas tour is over and giving priority rights to their handlers in adopting their dogs. The second resolution pertained to providing law enforcement personnel with comprehensive, non-lethal animal encounter training so that the instances of dogs and animals being shot by police, when not absolutely necessary, can be reduced. The Assembly passed both resolutions.

The Assembly received reports from President **David Sosin**, **Jim McCluskey**, as Legislative Chair, **Deane Brown**, President of the Illinois Bar Foundation and **Jeffrey Strand**, President of ISBA Mutual Insurance Company.

The highlight of the meeting was a lively discussion about the future of the Assembly itself, led by DCBA's **Matt Pfeiffer** who is serving as Chair of the ISBA Special Committee on Assembly Governance. This discussion had been announced quite a while before the meeting, so the Committee had an opportunity to gain feedback from numerous Assembly members in advance of the meeting. The Committee emphasized that there have been no decisions made as to any particular recommendations and the discussion was for the solicitation of ideas and to get a feeling for how the members of the Assembly felt. Further discussions *(Continued on page 46)*

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 Pfeiffer Law Offices, PC where he concentrates his practice in bankruptcy and workouts. He was president of the DCBA in 2009/2010

DCBA Memorial Service and DBF Memorial Plaque

Larry Oldfield

Hon. Lew Morgan

On Friday, January 24, 2020, from 11:30 a.m. – 12:30 p.m., the DuPage County Bar Association will sponsor a Memorial Service at the Attorney Resource Center on the third floor of the DuPage Judicial Center, 505 N. County Farm Road, Wheaton, Illinois. The purpose of the event is to remember and honor DuPage attorneys who passed away since 2016, and to reflect on their legal careers and contributions to the community.

As of this writing, the following will be honored at the Memorial Service:
Louis E. Bellande; Henry J. Burt; Clifford M. Carney; Victor J. Cassato; Michael W. Clancy; Hon. John W. Darrah; Theodore E. Desch; John W. Flynn; Richard A. Heidecke; David H. Hopkins; Thomas L. Johnson; Kathryn L. Kelly; John B. Kincaid; Mark E. Kowalczyk; Thomas R. Krone; John J. Lapinski; George P. Lynch; Anthony F. Mannina; Jeffrey E. Marek; Hon Lewis V. Morgan; John C. North; Arthur E. Pape; Stanley A. Perry; Gerald A. Rebeck; Mary Joan Sakach; Ferdinand P. Serpe; Pamela K. Terry; Michael C. Wiedel.

The DuPage Bar Foundation has created a Memorial Plaque which hangs at the courthouse on the third floor across from the entrance to the Attorney Resource Center, honoring those members of the DCBA who have passed. If you are interested in having a memorial plate created to be added to the Plaque for a deceased loved one who was part of the legal community, please contact the Chair of the Memorial Committee, **Jay Laraia** (james@laraiawhitty.com), or the President of DuPage Bar Foundation, **Robert McDonough** (rmcdonough330@gmail.com). Individual plates may be purchased through the dcba.org/donations page of the DCBA website. Each memorial plate costs $250 and constitutes a tax deductible donation to DBF, a 501(c)(3) charity. Proceeds will be donated to the DuPage Bar Foundation, which supports justice in the DuPage community by maintaining the integrity of the legal profession, contributing to the education of future lawyers through scholarships, and improving the facilitation of justice through charitable acts.

If you plan to attend the Memorial service, please RSVP the number attending and the name of your loved one to **Robert Rupp** at rrupp@dcba.org or call (630) 653-7779. ☐

John Lapinski

John Kincaid

Hon. Jack Darrah

Scott Cleal

January Bar Notes

Recruit, Connect and Unite

By Robert Rupp

Last month I had the opportunity to attend the Midyear Meeting of the Illinois State Bar Association (ISBA) and observe the meeting of the ISBA Assembly. First, I would be remiss if I did not extend thanks to our members who sit as Members of the Assembly from the 18th Judicial Circuit:

Robert Bahr Anderson, Wheaton
Hon. Robert J. Anderson, Wheaton
Joseph M. Beck, Wheaton
Lee Ann Conti, Glen Ellyn
J. Amber Drew, Lisle
Kent A. Gaertner, Wheaton
Raleigh D. Kalbfleisch, Wheaton
Kenneth K. Kugelberg, Jr., Elmhurst
Hon. James F. McCluskey, Naperville
Stacey A. McCullough, Wheaton
Hon. Brian R. McKillip, Wheaton
J. Matthew Pfeiffer, Wheaton
Donald J. Ramsell, Wheaton
Marie K. Sarantakis, Hinsdale
Marissa N. Spencer, Glen Ellyn
Angel M. Traub, Lombard
Richard Joseph Veenstra, Wood Dale
Marc D. Wolfe, Woodridge

Kent Gaertner also serves on the ISBA Board of Governors and is the official liaison from that body to DCBA's Board. I apologize to all those DCBA members and friends in other circuits whose names I have not listed. Our association's representation and participation in the Assembly is tremendous and I thank you all for your service. Our relationship with ISBA, as one of Illinois' most respected county bars, is important and I am pleased to report quite strong.

In the course of the Assembly's proceedings, a hard, yet productive dialog was had regarding the future of that body and its role in representing the lawyers of Illinois. I will leave it to others to report on the substance of that conversation which is ongoing. There were, however, several important themes raised by the many speakers that resonated with what I share with all reading this as things to consider regarding our own association.

Recruiting is Critical

Hearkening back to his days as a football coach, **Hon. Russell Hartigan** observed that recruiting is always key. Generating new interest and participation in bar activities, be it from new lawyers or long time members whose skills and passion have yet to be tapped, has to be intentional and consistent. Last year, we launched the "Who Can I Bring" campaign to modest success. I would encourage all of you to make the resolution in 2020 to bring someone new to a meeting or event with you. With over a dozen CLE meetings every month, along with the monthly DCBA Unwind, the opportunity is there for you to be the host of a guest at no cost to you or them other than the commitment of time.

Keeping informed is everyone's job

With so many activities going on each and every month, the deluge of information from the association can seem overwhelming. We do our best to keep communications timely, relevant and efficient yet the challenge is always there to do better to keep you informed as a DCBA member. Recently, due to changes in the protocols of various email providers, a number of DCBA members have found themselves cut off from DCBA electronic communications by no action of theirs or ours. We are working with the vendor who provides our e-mail delivery service to correct this. At a minimum, every DCBA member should be receiving our e-mail newsletter *DCBA Docket* at 9 am on Thursday morning. *(Continued on page 46)*

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.

March 31, 2020 Deadline to File Petitions for Election of Officers and Directors

Any DCBA member who is interested in running for election for the office of Third Vice President in 2020 or for the office of Director of the Association, should file his or her nominating petition along with other requirements, with the Executive Director of the DCBA **no earlier than March 1 nor later than 5:00 p.m. March 31,** for the upcoming 2020 elections.

Petitions must include signatures from at least **20 Voting Members** of DCBA. The "Board of Directors Duties and Expectations" statement must also be signed and returned with the petitions along with **a high-resolution photo and short (100 words or less) biographic paragraph**.

Petition forms will be available from the DCBA Executive Director on Monday, February 3rd. Members are also referred to DCBA Bylaws, particularly Section 8 pertaining to the form of the petition and the method of voting. In particular, Section 8 provides:

Any active Member in good standing and otherwise eligible to run for a position on the Board of Directors may file his or her Nominating Petition for the office of Third Vice President or Director. The Nominating Petition shall be in writing in the form approved by the Executive Director and contain the signatures of twenty (20) or more Members eligible to vote for a candidate for the office of Third Vice President or Director. The Nominating Petition shall be made available to candidates on the first Monday in February. Completed petitions shall be filed in the office of the Association not earlier than March 1, nor later than 5:00 p.m. on the last business day of March preceding the commencement of the term of office.

There will be one (1) Third Vice President and three (3) Board of Directors members elected in the upcoming 2020 election. Directors are elected for a 3-year term. ☐

Welcome

Welcome to the new DCBA members.

New Attorney Members:
Olivia Voleta, Aldrich & Siedlarz Law, P.C.; Lisa Damico, Damico Law Offices; Ava George Stewart, Law Office of Ava George Stewart; Brandy Wisher, Grunyk Family Law; Jaye Jedrychowski, Mevorah Law Offices LLC; Carol M. Mitchell, The Law Offices of Martin A. Delaney, III, Ltd.; Kimberly Thielbar, Prairie State Legal Services, Inc.; Kimberly M. Fields, Landtrust National Title; Bryan Bagdady, Corporate and Estate Legal Services, Ltd.; Edward R Theobald, Law Offices of Edward R. Theobald; Flora R. Lynch, Lynch Law Ltd.; Elliott C. Borchardt, Kane County Public Defender Office; Patrise Johnson; Rachael A. Clark-McCarthy; Jeanette Jean Braun, Braun IP Law; Lauren M. Harris, Roth Melei Petsche Spencer; Sara M. Oh; Melissa S. Marin, Kollias & Giese, P.C.; Nora McGuire, Broida and Nichele, Ltd.; Alyana Haggerty Abellar, Mevorah Law Offices LLC; Cheryl Kamide; Kelly A. Wieczorek, Manassa Bojczuk; Craig A. Bott; Phillip J Short, Christensen & Ehret; Jerome Kyle Crabtree, Keay & Costello, P.C.; Jacob Stone; Heena A. Arora; McKenzie Kuhn, Kuhn, Heap & Monson; Jennifer L. Lazarus, Lake Forest College; Jennifer Hughes Nunez, DuPage Legal Aid.

Affiliate Members:
Deborah Temkin,The BERO Group.

Student Member:
Paul Lazari; Maricela Vazquez; Kristin Grigsby.

Annette Corrigan, Matthew Grob, Andrew Cores, Wendy Musielak and Robin Slattery of Esp Kreuzer Cores LLP enjoying the festivities.

Inaugural Grand Holiday Gala Kicks Off the Season with Style and Good Times…

By Art Rummler

When the days are short, dark and cold, we all need some fun and frivolity to keep us going. And who could ask for more than a winter holiday party to warm your Grinchy side and bring out the spirit of celebration, camaraderie and generous giving. Enter the first ever Grand Holiday Gala co-sponsored by the DuPage County Bar Association, DuPage Association of Women Lawyers ("DAWL") and the DuPage Chapter of the Justinian Society, which soared to great success on December 12, 2019 at Harry Caray's in Lombard, Illinois.

They say necessity is the mother of invention. In the case of the Grand Holiday Gala, the concept grew from the ever more complicated logistics of all three associations, which are quite active in their own rights, typically throwing their own Christmas Season and Holiday soirees. Combine those with law firm parties and other professional association gatherings and the season was simply too crowded. So, this year the three associations combined their efforts

into one and in doing so created a synergy that was unmistakable.

The new format also allowed the volunteer leadership of all three groups to better enjoy the event as DCBA staff managed the planning, registration, on-site logistics and production for the event. DCBA Executive Director **Robert Rupp** noted, "It was actually quite an honor to have DAWL and Justinians trust us with their holiday traditions. The spirit of cooperation from start to finish was unmistakable and was key to the event's success."

The event drew a crowd of more than 275 people. The Presidents of each association were in attendance as were many of the officers and board members. DCBA was represented by President **Stacey McCullough**, DAWL by its President **Rebecca Krawczykowski** and the Justinians by President **Chris Lunardini**. Chris led the pledge of allegiance followed by an Invocation from **Mario Palermo**. Good food, drink and camaraderie ensued.

DAWL raffled off 37 baskets of donated items.

Philanthropy is a big part of the mission for all three associations. This year, the DCBA shifted its annual Lawyers Lending a Hand Toy Drive - historically held at its Holiday Party - to coincide with the upcoming Bar Foundation Holiday Breakfast. This freed needed time and space to allow the DAWL and Justinians to continue their efforts at the Gala.

DAWL sponsored a gift basket raffle as is their tradition for the holiday party. The amazing array of 37 plus gift baskets was a huge attraction. The funds raised go to assist with their ongoing philanthropic missions which include the Helen C. Kinney Scholarship Fund and the Ashley M. Haws Memorial Scholarship.

Chris Lunardini of the Justinians presented a $5,000 check to **Jack Gilhooly** of the Chicagoland Ronald McDonald House Charities. Mr. Gilhooly, who practiced law in Chicago for many years before joining the charity, welcomed the donation and noted the generous ongoing support that DuPage Justinians has provided over the years to Ronald McDonald House. Justinians also engage in other philanthropic endeavors, including awarding law student scholarships each year.

Past DCBA Presidents Jay and Joe Laraia make the gala a family celebration.

The event also enjoyed the generous support of many excellent sponsors, including:

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Lyons Law Group, LLC; Mirabella, Kincaid, Frederick & Mirabella; Esp Kreuzer Cores, LLP

Bar Sponsors
Thomson Reuters; IICLE; Judicial Election Campaigns for Judge Richard Felice and Judge James McCluskey

DAWL raffle sponsors
A. Traub & Associates; Ana M. Mencini & Associates; P.C., Anselmo, Lindberg & Associates; Arboretum Wealth and Trust Management; Citizens to Elect Judge Ann Celine Walsh; Citizens to Elect Judge Monique O'Toole; Cooper's Hawk Winery & Restaurant; Deborah A. Carder; Fay, Farrow & Associates, P.C.; Fox Bowl in Wheaton; Gloria Siolidis / County Court Reporters; Laraia & Whitty, P.C.; Law Offices of Colleen McLaughlin; Morton's Steakhouse; Mulyk Laho Law; Peggy O'Connell; Perry's Steakhouse & Grille; SpyratosDavis LLC; Sullivan Taylor Gumina & Palmer; Velocity Law / Nancy Fallon Houle; Raleigh D. Kalbfleisch; and Wendy Musielak

Now that the inaugural Grand Holiday Gala is but a memory, we look forward to more events from all three associations in 2020 to continue the spirit of professionalism, charitable giving and cooperation that makes practicing law in DuPage unique. ☐

Jack Gilhooly is presented with a check for Ronald McDonald House Charities by DuPage Justinian members Mario Palermo, Chris Lunardini and Lindsay Stella.

Sally and Bill Fairbank enjoying the party.

LLH volunteers sorting coats for another productive coat drive.

Annual Coat Drive Another Success for Lawyers Lending a Hand

Through the organizational efforts and donation of time and energy of Lawyers Lending a Hand volunteers, DuPage County Bar Association members and DuPage County employees joined to make this year's annual coat drive another great success, with nearly 1,400 coats collected for distribution to several local non-profit organizations. The annual coat drive began in 2001, with a modest collection of 273 coats collected. Since then, the coat drive has grown exponentially, with over a 1,000 coats collected annually since 2005.

During collection efforts, several DuPage County departments participated in a friendly internal competition to see which group could collect the most coats to win the coveted "Pukey Coat" prize. For the fifth year in a row, the Pukey Coat prize went to the DuPage Care Center employees who collected 247 coats this year. The DuPage Care Center's coat collection more than doubled the runner-up, Housekeeping, who collected an impressive 105 coats. In addition to the coats that were collected, many hats, gloves and scarves were also donated for distribution. The coats, hats, gloves, and scarves were recently distributed to Our Children's Homestead, Community Closet, District 200, Humanitarian Service Project, DuPage PADS, St. John's Shelter (St. Vincent DePaul), Family Shelter Service and Wayne Township. Thank you to all who participated in the annual coat drive. □

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This is equal to $2,075,600 in legal services

Guardian ad Litem (GAL)

In 2018, DLA advocated for the best interest of 12 children in divorce, parentage, and adoption cases AND 9 adults with disabilities in probate cases.

574

# of pending cases in 2018

We help with divorce, parentage, order of protection, bankruptcy, expungement, and guardianship cases.

Bankruptcy Cases

We help people that have major medical expenses, or disabilities, with discharging their debt in bankruptcy cases. In 2018, we provided legal assistance with 29 bankruptcy cases.

2,084

# of actual court appearances made by DLA attorneys alongside their clients in 2018.

16

# of Adult Protective Services cases we assisted with in 2018. We help APS petition for guardianship in cases where an adult with disabilities is being abused, or neglected, or can no longer act on their behalf.

DID YOU KNOW?

Attorneys assisting DLA clients have an average of 17 years of experience.

187

# of domestic violence clients served in 2018

89

# of Legal Clinics with Our Collaborative Partners

Number of cases resulting from Community Outreach Clinics with Collaborative Partners:

Family Shelter Services—18
Loaves & Fishes—2

When asked how satisfied clients were with the advice they were given by DLA, 100% were satisfied!

"I like my attorney a lot. I would tell clients about her."

"She was very pleasant and informative!"

"The information I received was very informative and reassuring. The lawyer was very understanding and professional."

64 # of seniors served

13 # of veterans served

80 # of disabled citizens served

DuPAGE LEGAL AID IMPACT STATEMENT 2018

126 S. County Farm Road | Wheaton IL 60187 630.653.6212

ISBA Update

(Continued from page 36)

will continue with the hope of getting a report to the Board of Governors a month or so prior to the Annual Meeting in June.

It appeared that most members who commented wanted to retain the Assembly, but perhaps in a smaller version. They also wanted to see the Assembly more involved in developing policy rather than relying on the Officers and Board of Governors to do that, and then just rubber-stamping that policy. More to come on this important issue.

On other matters, ISBA continues to work with ISBA Mutual to develop a health insurance program for the ISBA. Please take the survey regarding health insurance on the ISBA website. The ISBA continues to work with the ARDC to draft acceptable rule changes regarding use of nonlawyer marketing referrals. When a draft proposal is created it will be published and there will be time for public comment and comment by bar associations throughout the state.

As always, if I can be of assistance in any matter relating to the ISBA, please contact me. ☐

January Bar Notes

(Continued from page 38)

If you do not, there is a problem, and you should let us know by calling the DCBA office or speaking with any member of the staff so we can work to get you reconnected. The DCBA website is also your portal to information on all upcoming activities and important announcements. When you scroll to the bottom of the home page at www.dcba.org you will find the News Section where a weekly copy of *DCBA Docket* and any important announcements are posted. Next to the News section is the Calendar where all CLE and Social events can be found. Regularly visiting these two pages will let you know everything that is occurring in your association.

We are stronger together

The members of the DCBA and the ISBA all share a deep pride in what they have accomplished for lawyers, the practice of law and the public in our state. The discussion in the Assembly recounted many of those successes with the common theme that they would not have happened were we not banded together in a group. While the role of associations continues to be challenged by various societal, economic and technologic forces, I believe firmly that the role an association plays as a convener and unifier of individuals to a common cause cannot be replaced or overcome. I believe this even more firmly in the context of bar associations and the power of lawyers banding together. My resolution in 2020 is to ensure that I and the staff here at the DCBA are doing all we can to give you, the leaders and members of the DCBA, what you need to do that great work together. Happy New Year! ☐

LRS Stats

10/1/2019 to 10/31/2019

The Lawyer Referral & Mediation Service received a total of **1274 referrals, including 33 in Spanish** (1120 by telephone, 115 online referrals and 39 walk-ins) for the month of October.

We receive calls in the following areas but currently have no attorneys in these areas: Civil Rights, Health Care Law and Mental Health. If you practice in these areas and would like to join LRS or add them to your existing LRS profile, please call Tim Doyle at (630) 653-7779 or email tdoyle@dcba.org.

If you have questions regarding the service, attorneys please call or email Tim. Please refer clients to call (630) 653-9109 or request a referral through the website at www.dcba.org.

Administrative Law	4
Animal Law	0
Appeals	1
Bankruptcy/Credit Law	20
Business	22
Collection	89
Consumer Protection	12
Contract Law	0
Criminal Law	389
Elder Care	23
Employment Law	62
Estate, Trusts and Wills	67
Family Law	219
Government Benefits	5
Immigration Law	13
Insurance Law	19
Intellectual Property Law	2
Mediation	0
Military Law	0
Modest Means	0
Personal Injury	121
Real Estate Law	201
School Law	0
Tax Law	4

Classifieds

For Sale Wheaton

2,200 sq ft, 1st floor office condo. Ideal for small firm or multiple solos. 4 private offices, conference room, large staff area, reception area, private kitchen and basement storage. Close to courthouse. $220,000. **Call Tom at (630) 667-6020 for more info.**

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Where to Be
with DCBA

Judges' Nite Extravaganza, "Flying Too Close to the Sun" Is Coming Soon. Are You Ready??

The DuPage County Bar Association production of Judges' Nite is coming soon. This year the show, entitled, "Flying Too Close to the Sun", will take place February 28, 2020. As with recent years, the show will be at the McAninch Arts Center at the College of DuPage. The theater is an amazing facility allowing for plenty of pre-show food, drinks and socializing as well as wonderful seating and sight lines for the show.

This year marks the 45th year of the musical comedy show which features lawyers and members of the legal community singing, acting, dancing and basically making fools of themselves for a very good cause. Once again, **Nick Nelson** and **Christina Morrison** will lend their talents as Director and Producer, respectively, along with the incredible Judges' Nite band and troupe of volunteer performers and backstage crew.

Judges' Nite has been many things over the years, a parody of the county courthouse doings and goings on, a fantastical fantasy tale of mystery and intrigue and a frolicking menagerie of skits and bits designed to make the audience laugh… or cry. It's a great opportunity for food, drinks and socializing with members, guests, judges and dignitaries, all while enjoying a great show, and supporting a great cause.

Recent shows have had banner years raising money for DuPage Legal Aid Foundation which provides need-based *Pro Bono* work to members of the DuPage community. Through the generous donations from show sponsors and donors, the show has been instrumental in raising money for the foundation and last year raised over $35,000.

Some of the Show Sponsorships available are as follows: pre-show cocktails, pre-show hors d'oeuvres, intermission cocktails, beer and wine bar, intermission snacks and post-show dessert. Sponsorship is a great way to support the show and the Legal Aid Foundation. Sponsors receive recognition and accolades in all show marketing, during the show, in the playbill and in the *DCBA Brief* magazine.

In addition to sponsorships, there is the very popular silent auction as well as live auction bidding. Donations for the auctions are welcome and appreciated. Popular items are sports tickets, gift baskets, travel and get-aways, theater tickets, food, wine, artwork, museum passes, contractor or professional services, experiences and activities.

To purchase tickets and for more information about sponsorship opportunities, please contact **Robert Rupp** at rrupp@dcba.org or the dcba.org website. Donations for the auctions may be made by contacting **Cecilia Najera** at clnajera@sbcglobal.net.□

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Attorney Resource Center in the DuPage County Courthouse

Thursday, January 9, 2020
9:30am - 2pm

Thursday, January 16, 2020
9:30am - 2pm

Tuesday, January 21, 2020
9:30am - 2pm

Wednesday, January 22, 2020
9:30am - 2pm

Monday, January 27, 2020
9:30am - 2pm

Or Visit OVC on the date of your choice!

Call the **DCBA at 630-653-7779** or **OVC at 630-635-8000** to schedule a time slot of your choice or schedule a photo shoot at OVC's Downers Grove location if these dates don't work.

Conveniently located off I-88 and 355 and Maple Ave.

Offer good until February 28, 2020.