DCBA BRIEF

The Journal of the DuPage County Bar Association

Growing Your Business: Mega Meeting 2016

Volume 28, Issue 5
January 2016

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Gardening in January, or Getting Prepared for the Year Ahead

By Christine McTigue

Christine McTigue has her office in Wheaton. She concentrates her practice in civil appellate law and insurance coverage matters. Christine is on the panel of neutral commercial arbitrators for the American Arbitration Association, and is a court-certified mediator for the law divisions of DuPage and Cook counties. She received her Bachelor of Arts, magna cum laude, from the University of Minnesota and her J.D. from Loyola University of Chicago.

Even though this is the January issue, and there is probably snow on the ground, I wrote this column in early November. That is the time of year when I clean up the garden and get it ready for spring. I can see what plants are doing well, what plants may not return in the spring, and what brilliant gardening ideas I had in April that did not turn out to be so brilliant come November.

Preparation is ninety percent of the job, whether in the garden or in the practice of law. At the start of this new year, take a moment to assess what you would like (or need) to accomplish in 2016 and how to prepare to meet your goals. One area in which you must get prepared is technology. As of January 1, 2016, Rule of Professional Conduct 1.1 requires us to keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. One benefit of technology is electronic filing. There are new developments in the civil division regarding electronic filing, which are discussed in an article found in the *News & Events* section of this issue.

Perhaps you would like to extend your professional horizons? You have plenty of options. It is never too late to join a DCBA section. Think of what you do know (you know more than you think) and write a case summary or an article for this magazine. People do read them and it is good marketing to get your name and photo in front of your fellow DCBA members.

Do you need to finish your CLE requirements for this year's reporting period, or would you just like to learn something new? Then start the year off right and attend DCBA's Mega Meeting. This year Mega Meeting will be held over two days, January 29th and 30th, at the Sheraton Lisle Hotel. There will be a Judicial Reception on Friday evening following CLE sessions. Please refer to *Where to Be in January* at the end of this magazine for details.

In addition to improving your own skills, maybe you would like to give back to others? Our Lawyers Lending a Hand program is always looking for volunteers for its worthwhile projects. You really can make a difference.

Azam Nizamuddin got the new year off right by serving as our lead articles editor for a varied and interesting collection of articles. Thanks Az. **Emily Carrara** penned "The Illinois Probate Act: Updates and Changes," a comprehensive discussion of recent changes to that Act. **Emily Miller** and **Jeremy Glenn** wrote a piece on a recent decision from the National Labor Relations Board entitled "Life After Browning-Ferris: What Employers Need to Know Under the New Joint Employer Regime." **Rocio Becerril** authored a piece on U visas called "Current Trends and Issues with the U Visa." **Matthew Cole**, a second year student at Northern Illinois University School of Law, submitted a piece about restricted driving permits, "One Last Chance – Four Time DUI Offenders Given Opportunity For Restricted Driving Permit With New Illinois Law."

Finally, in the *News & Events* section, we have two informative pieces. **Dan Cronin** submitted an article entitled "Transform Illinois" about a new collaborative supporting local government efficiency. **Sheila Murphy-Russell** authored an article about the DuPage County Family Center titled "Services for Divorcing and Never-Married Families–The DuPage County Family Center."

I wish everyone a happy and healthy 2016. ☐

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Governmental Tinkering: Taxes, Social Security, and More

Everybody always assumes that estate planning is boring and unchanging. Amazingly, the world that we work in is in constant flux. Here's some news you can use in 2016.

- The federal estate tax exemption for a single individual 2016 is $5,450,000—up from the 2015 amount of $5,430,000.
- For a married couple who make the right moves, they will be able to exempt a total of $10,900,000 from federal estate taxation in 2016.
- The annual gift tax return filing exemption remains at $14,000. This is one of the most misunderstood tax facts. It is most often misquoted as "the annual federal gift tax exemption." In truth, you may give far more than $14,000 in one year and pay no gift tax—but you are required to file a gift tax return. The overall gift tax exemption is unified with the federal estate tax exemption.
- The estate tax exemption for non-US-citizen spouses is $148,000.
- Trusts and estates are taxed at 39.6% on retained income in excess of $12,400.
- There will be no Social Security inflation adjustment payment increase for 2016.
- Social Security enhancement strategies have been curtailed under the new bipartisan budget deal. Only those who are 62 or older as of December 31, 2015 will be eligible to both claim spousal benefits at 66 while deferring and maximizing their own work record benefits until age 70. There is a substantial incentive for such deferment, in that an individual can increase his/her annual Social Security income by approximately 8% growth factor per year.

If you have questions about any of these things, feel free to contact me at ricklaw@lawelderlaw.com.

Rick L. Law, Esq.

Diana Law, Rick Law & Zach Hesselbaum

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Prepare for the Growth of Your Business

By James J. Laraia

James J. Laraia ("Jay") is a partner with the law firm of Laraia & Laraia, P.C. of Wheaton, Illinois. He concentrates his practice in the areas of family law, general civil litigation and chancery matters. Licensed by the Supreme Court of the State of Illinois in 2001 after having received his Juris Doctorate from Northern Illinois University College of Law in the same year. Jay received his undergraduate degree from Benedictine University. Prior to joining his current law firm in 2003, Jay was an assistant state's attorney in DuPage County.

As I write to you this January, I can't believe that one half of my year as your President has already been concluded. I would like to think that up to this point we are on track as a Bar Association to continue with our theme of "Preparing for Growth." Among the many tasks that our sections and committees have been working on, our Planning Committee is in the midst of reviewing the implementation of a "Senior Lawyer's Division" for our more experienced bar members and our Law Practice Management and Technology Committee has taken on the task of completing the Succession Plan Handbook. Our substantive law sections are working vigorously implementing their new section leadership counsel structure and scheduling and presenting to you, our members, new continuing legal education programs. The newly formed Public Interest and Education Commission has been hard at work addressing the requests and needs of the Courthouse *Pro Se* Committee as well as the re-introduction of a speaker's bureau for our membership.

The Bar Association, through our sections and committees, continues to focus on the benefits that we can provide to our members and to encourage the membership's involvement in the leadership and growth of the Association.

I am very excited for the changes that you will see this month with Mega Meeting. Mega Meeting will be held over two days on Friday January 29th and Saturday January 30th at the Sheraton Lisle. The theme for Mega Meeting is *Growing Your Business*, and I am pleased to announce that **Steve Fretzin** will be our plenary speaker presenting on both Friday afternoon and Saturday morning. Mr. Fretzin is highly regarded as a business coach who is focused and passionate about helping attorneys reach their full potential in their practice.

The changes to Mega Meeting were born out of a lot of time and effort from our Planning Committee and Executive Committee over the past few years as well as the work of our brilliant DCBA staff. We have analyzed the trends in attendance and participation at Mega Meeting and are hopeful with a new change, we will be able to appeal to and reach more members in a greater demographic. We have expanded Mega Meeting to offer even more education, and to provide the attendees with different types of educational experiences.

As provided in more detail in **Sean McCumber's** *Where to Be* column, Mega Meeting is implementing multiple sessions on Friday afternoon concluding with a Judicial Reception in the evening. Saturday will include DCBA Talks or our "TED talks," three separate sessions of nine choices of CLE, and as mentioned above, a second plenary session with Steve Fretzin. Included in our programming this year are more than 3 hours of PRMCLE as well as our Law Expo.

I hope that you will find the new changes to Mega Meeting to be beneficial to your continued legal education and provide to you new information that you can implement to see a growth in your practice. I look forward to seeing everyone at Mega Meeting this year as we focus on Growing Your Business!!! ☐

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

Articles

Articles Editor

Azam Nizamuddin is general counsel of the American Trust Corporation and chief compliance officer of Allied Asset Advisors. Previously, Mr. Nizamuddin worked as a lawyer in private practice advising individuals and businesses in the areas of general liability, real estate, employment, and family law. Mr. Nizamuddin also serves as President of the Muslim Bar Association and is a board member of the Illinois State Bar Association Committee on Attorney Registration and Discipline.

Azam Nizamuddin

The Illinois Probate Act:
Updates and Changes

By Emily Carrara

To quote Bob Dylan, "oh the times, they are a changing." The Illinois Probate Act of 1975 has undergone many considerable changes which will affect our everyday practice of law as to probate and guardianships.

Presumptively Void Transfers

The most substantial of these changes is reflected in the entirely new section of the Illinois Probate Act entitled "Presumptively Void Transfers."[1] The statute, applicable to documents executed on or after January 1, 2015, aims to thwart caregivers who take advantage of their positions to convince an elderly or incapacitated person to change their estate plan or transfer assets to the caregiver. The broad reach of this new statute could directly impact legitimate testamentary gifts.

The statute sets forth certain definitions that by their very terms are subject to wide interpretation. The first term defined in the statute is the most crucial to the implementation of this law, who can be considered a caregiver. A caregiver is defined as "a person who voluntarily, or in exchange for compensation, has assumed responsibility for all or a portion of the care of another person who needs assistance with activities of daily living."[2] The law applies equally to both paid and unpaid caregivers. It is important to note that there is no specific requirement that the person receiving assistance be disabled or elderly, but merely that the individual need assistance with activities of daily living. Neither the specific "activities of daily living" nor the extent of the "need" is further defined within this statute.[3] There is no requirement that the person giving assistance ever considers or labels himself or herself as a "caregiver." Does this now mean the dog walker or cleaning lady is a caregiver? How about the helpful neighbor who takes out the garbage each week? Under the plain meaning of the statute, they most definitely can. What confuses the matter even further is that the definition of caregiver extends to include a spouse, cohabitant, child, or employee of a covered caregiver.[4]

The statute does not apply to "family members." The limited definition includes only a spouse, child, grandchild,

1. 755 ILCS 5/4a-5.
2. 755 ILCS 5/4a-5(1).
3. 755 ILCS 5/4a-5(1).
4. *Id.*

sibling, aunt, uncle, niece, nephew, first cousin or parent of the person receiving assistance.[5] This definition does not include individuals who are considered family in most circumstances, such as unmarried partners and stepchildren, and as such could fall within the definition of a caregiver under the statute. While the statute does not apply to all family members, nothing in it changes or limits existing common law rules or principles that can still apply to both family and non-family members, but merely is addition.[6]

Now that the players have been identified, what is a "transfer instrument"? A transfer instrument is any legal document intended to effectuate a transfer effective on or after the transferor's death, and includes, without limitation, a will, trust, deed, form designated as payable on death, contract, or other beneficiary designation form.[7] This definition extends beyond the Probate Act, to include assets that are not required to be probated.

The statute is implemented in any civil action where a transfer instrument is challenged.[8] There is a rebuttable presumption that the transfer instrument is void if the transferee is a caregiver and the transferred property exceeds $20,000[9]. Once this presumption applies, it can then only be rebutted if the caregiver proves to the court either:

(1) Proving by a preponderance of the evidence that the beneficiary's share under the transfer instrument is not greater than the beneficiary's share already in effect prior to becoming a caregiver.[10]
(2) The caregiver-beneficiary proves by clear and convincing evidence that the transfer was not the product of fraud, duress, or undue influence.[11]

If the total transferred property is $20,000 or less, the transfer is considered acceptable. On the other hand, if the threshold is exceeded, then all of the transfer instruments in favor of the caregiver-beneficiary are presumptively void. That is to say, if there is a transfer of $20,001, the entire transfer is void. The issue then arises as to when the value of the transfer is obtained? Is it when the transfer instrument was created or when it is implemented? This is left to be determined by the courts.

The rebuttable presumption is not automatic, but only arises if a transfer instrument is actually challenged in a civil action.[12] The statute only applies in situations where the transfer instrument is "being challenged." However, the statute does not define who can be a challenger. Most likely than not, the challenger could be an interested person. An interested person is defined as one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse's or child's award and the representative.[13]

The law further provides if the caregiver attempts and fails to overcome the presumption, the caregiver shall bear the costs of the proceeding, including reasonable attorney's fees.[14] In defending against a possible challenge, the caregiver has much to consider. First the burden of proof is an enormous hurdle to overcome, as he or she is will have to prove a negative, especially after the death of the person whose intent is in question. Second, the caregiver must carefully consider that if he or she loses, not only would the caregiver be responsible for his or her attorney's fees to fight this uphill battle, but they also could have to pay the challenger's fees as well. This added to the fact that in the end, the caregiver could end up receiving no beneficial interest.

5. 755 ILCS 5/4a-5(2).
6. 755 ILCS 5/4a-20.
7. 755 ILCS 5/4a-5(3).
8. 755 ILCS 5/4a-10.
9. *Id.*
10. 755 ILCS 5/4a-15(1).
11. 755 ILCS 5/4a-15(2).
12. 755 ILCS 5/4a-10.
13. 755 ILCS 5/1-2.11.
14. 755 ILCS 5/4a-25.

About the Author

Emily R. Carrara is a partner of the Naperville law firm of Sullivan Taylor & Gumina. P.C. She focuses her practice in the area of family law including guardianship, child support, adoption, appellate practice, and child custody. She earned her B.A. degree in political science at Boston University and her J.D. degree with honors at The John Marshall Law School.

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> **"The most substantial of these changes is reflected in the entirely new section of the Illinois Probate Act entitled Presumptively Void Transfers**

A challenger must bring a civil action within two years after the date of death, or sooner if required by the Act.[15] If the transfer instrument is a will, the time period is shortened to six months.[16]

A real life example: What if a "family member" as defined in the statute has strong feeling that an unmarried partner to the transferor should not receive any portion of the decedent's estate? Under the terms and provisions of this statute, any gift in excess of $20,000 could be considered void. This would apply to transfer of property pursuant to a deed, such as a residence in which both the transferor and the unmarried partner resided, or if the transferor listed the unmarried partner as beneficiary of his or her life insurance policy. The implementation of the new statute can have some very unintended consequences and as such, great care must be given to estate planning.

With that being said, other sections of the Probate Act have received tune-ups as well. They are as follows:

Recovery of Property and Discovery Information
Public Act 99-0093: When addressing the recovery of property and discovery information, Section 16-1 has been modified to include in the persons required to appear, anyone who had in his possession or control any assets which belong to a person whose estate is being administered. A third category of individuals has been added to include anyone who may be liable to the estate of a ward pursuant to any civil cause of action.[17] Effective January 1, 2016.

Guardianship of a Minor
Public Act 98-1082: In a petition for appointment of a guardian, if a short-term guardian has been appointed for the minor prior to the filing of the petition, and the petitioner is not the short-term guardian, there is now a rebuttable presumption that it is in the best interests of the minor to remain in the care of the short-term guardian during the proceedings.[18] Effective January 1, 2015.

The new provisions go on to provide that the short-term guardian appointment does not constitute consent for the court appointment of a guardian.[19] This is important, as it does not affect the rights of the other parent of the minor. If there is a short-term guardian for the minor when a petition for guardianship of a minor is filed, the short-term guardian must be named in the petition.[20] Additionally, the statute now requires the petition to state the facts concerning the appointment of the short-term guardian.[21] A new duty has been added to the guardian of the minor in that he or she is required to give the court notice via certified mail of his or change of address within 30 days.[22]

The most important new provision address when a guardian of a minor may move out of state with the minor. The guardian may not move out of state without leave of court and the court may grant leave to remove the minor child if the court determines that it is in the minor child's best interest.[23] The burden of proof is on the guardian. If leave is granted, the court may require the guardian to give reasonable security guaranteeing the return of the child.[24] The new provision further addresses temporary removals, such as for vacation time.[25] The guardian is required to give notice to the parent or parents of the address and telephone number where the child may be reached during temporary removal and the date on which the child will return.[26]

15. 755 ILCS 5/4a-10(b).
16. 755 ILCS 5/8-1.
17. 755 ILCS5/16-1(a).
18. 755 ILCS 5/11-5(b).
19. 755 ILCS 5/11-5.4(e).
20. 755 ILCS 5/11-8(a)(ii).
21. 755 ILCS 5/11-8(a); 755 ILCS 5/11-8.1.
22. 755 ILCS 5/11-13(a).
23. 755 ILCS 5/11-13 (f).
24. *Id.*

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These new provisions regarding removal are problematic. In a majority of the matters in which the court appoints a guardian of the minor, the parent or parents have severe impediments for caring for their children. This might make giving notice next to impossible. The statute does provide that these provisions regarding removal may be incorporated into the guardianship order. As counsel for the guardian, in preparing the guardianship order, care must be given to include such language as this will avoid unnecessary problems for the guardian.

Public Act 99-207: Requires the petitioner to give notice of the hearing on the petition for appointment of a standby guardian or a guardian of a minor not less than seven (instead of three) days before the hearing.[27] Any order for removal must include the date of the removal, the reason for removal, and the proposed residential and mailing addresses of the minor after removal.[28] Effective July 30, 2015.

This new act resolves some of the foreseen problems of the previous act in that a copy of the order for removal must be provided to any parent whose location is known, within 3 days of entry, either by personal delivery or certified mail.

Trusts and Trustees Act

Public Act 99-337: Authorizes trustees to use a "certification of trust" form that may be relied upon by third parties without obtaining a copy of the trust instrument.[29] Effective August 10, 2015.

Health Care Power of Attorney

Public Act 99-328: Provides the following modifications and additions: (1) a "psychologist" is no longer an authorized witness the signing of a health care agency but removes the current prohibition for "mental health providers;"[30] (2) the statutory short form health care power of attorney now permits a person to appoint his agent as guardian if necessary; (3) modifies the naming of a successor health care agents; (4) provides an alternative that a physician may determine that the individual is unable to make decisions; (5) adds an option for a principal to select whether the agent can have access to the principal's medical records and information; (6) expands the definition of individual who can witness a signature; (7) and allows the agent to apply for government benefits.[31] Effective January 1, 2016.

Disabled Adults

Public Act 99-302: Forms a rebuttable presumption that a will or codicil is void if it was executed or modified after the testator is adjudicated disabled and either: (1) a plenary guardian has been appointed or (2) a limited guardian has been appointed and the court has found that the testator lacks testamentary capacity.[32] This rebuttable presumption is overcome by clear and convincing evidence that the testator had the capacity to execute the will or codicil.[33] This subsection only applies to wills or codicils executed or modified after the effective date of this act. Effective January 1, 2016.

Elder Abuse

PA 99-272: Eliminates the need for an individual to be charged or indicted with the offense of financial exploitation for the civil cause of action of financial exploitation of the elderly or disabled to be maintained. Effective January 1, 2016.

Temporary Guardians

Public Act 99-70: Amends the Probate Act of 1975 providing that the temporary guardian shall have the limited powers and duties of a guardian of the person or of the estate which are specifically enumerated in the court order (instead of "all of the powers and duties").[34] Effective January 1, 2016.

Visitation Rights

Public Act 99-90: Modifies the statute to include the new statutory references to the new Illinois Marriage and Dissolution of Marriage Act.[35] Effective January 1, 2016.

When January 1, 2016 arrives, family law and probate practitioners will face these myriad of changes, as each statute will in some way be effected by the overhaul of the Illinois Marriage and Dissolution of Marriage Act. The coming year will bring a flurry of new litigation as practitioners work to implement the new statutes and learn the nuances of these major changes. □

25. *Id.*
26. *Id.*
27. 755 ILCS 5/11-13(f).
28. *Id.*
29. 755 ILCS 5/8.5
30. 755 ILCS 45/4-5.1
31. 755 ILCS 5/45-10(b).
32. 755 ILCS 5/4-1(b).
33. *Id.*
34. 755 ILCS 5/11a-4.
35. 755 ILCS 5/11-7.1

Life After *Browning-Ferris:*

What Employers Need to Know Under the New Joint Employer Regime

By Emily S. Miller and Jeremy J. Glenn

Many employers have rested long and easy in the knowledge that the National Labor Relations Board would not consider them to be joint employers with entities such as franchisees, staffing agencies, and contractors unless they exercised control over those entities' employees. That peace of mind was snatched away when the NLRB turned more than 30 years of precedent on its head in *Browning-Ferris Industries of California, Inc.,* 362 NLRB No. 186 (August 27, 2015), effectively announcing open season on thousands of previously protected employers. This article will explain the importance of this decision and what it could mean for your business, and what you can expect in the future.

What the NLRB did

The saga began in August 2013, when a representation election was directed among the employees of a Browning-Ferris Industries ("BFI") subcontractor doing business as Leadpoint Business Services ("Leadpoint"), which provided approximately 240 workers to a BFI subsidiary. The International Brotherhood of Teamsters Local 350 argued that BFI and Leadpoint were joint employers of those employees. In keeping with longstanding precedent, under which joint employer status was marked by both entities in question exercising "immediate and direct" control over the terms and conditions of workers' employment, the acting regional director determined that BFI was not a joint employer.

The NLRB granted review of the regional director's determination, and solicited amicus briefs on the issue of whether to adopt a new joint employer test. The Board cited a burgeoning contingent and temporary workforce as justification for reconsidering its longstanding joint employer test, arguing that the existing test did not jibe with changing economic tides and caused a "disconnect [that] potentially undermines the core protections of the [National Labor Relations Act] for the employees impacted by these economic changes." Employer groups argued in amicus briefs that up-ending the well-established test would detrimentally affect employers' ability to adjust to changing market conditions.

As anticipated, the Board came down on the side of a new test. In reaching its decision in *Browning-Ferris*, the Board did not accept its General Counsel's contention that an entity should be considered a joint employer if "industrial realities" made the entity "essential to meaningful bargaining," but nevertheless dramatically lowered the historical joint employer bar. Under the new joint-employer test, which the Board majority heralded as a return to its "traditional test":

The Board may find that two or more entities are joint employers of a single work force if they are both employers within the meaning of the common law, and if they share or codetermine those matters governing the essential terms and conditions of employment. In evaluating the allocation and exercise of control in the workplace, we will consider the various ways in which joint employers may "share" control over terms and conditions of employment or "codetermine" them.

The decision notes that a joint-employer relationship will not be found based on a company's "bare rights to dictate the results of a contracted service or to control or protect its own property." This statement offers small comfort, however. In the same figurative breath, the NLRB stated: "Instead, we will evaluate the evidence to determine whether a user employer affects the means or manner of employees' work and terms of employment, rather directly or through an intermediary." In other words, the Board "will no longer require that a joint employer not only *possess* the authority to control employees' terms and conditions of employment, but also *exercise* that authority. Reserved authority to control terms and conditions of employment, even if not exercised, is clearly relevant to the joint-employment inquiry."

Applying the new test to the facts before it, the Board determined that BFI was a joint employer of the workers Leadpoint provided to the facility at issue. The key facts driving the Board's determination were that BFI gave Leadpoint supervisors detailed directives concerning employee performance; set conditions on hiring which Leadpoint was contractually bound to follow; had the authority to discontinue the use of any given Leadpoint employee; controlled the speed of the sorting lines (which dictated the speed at which employees were required to work) and other productivity standards; and the contract between the entities gave BFI the right to control other terms and conditions of the workers' employment (*e.g.*, BFI had the right to enforce its safety policies against Leadpoint employees).

The Board deemed BFI and Leadpoint joint employers, despite facts such as the following: Leadpoint employed an "Acting On-Site Manager," three shift supervisors, and seven "line leads" to manage and supervise Leadpoint employees working at the BFI facility; Leadpoint set its employees' schedules; Leadpoint engaged its own human resources manager to work at the BFI facility; and Leadpoint had the sole responsibility to counsel, discipline, review, evaluate, and terminate employees assigned to BFI.

What the decision means for employers

The new test leaves employers guessing as to how much indirect control they must have over another entity's employees to be deemed a joint employer. It is unclear what one must do to "affect the means and manner of employees' work and terms of employment." And what it means to "share or codetermine those matters governing the essential terms and conditions of employment" is anybody's guess.

What is clear is that entities wishing to avoid joint employer status under the new test must take a more hands-off approach than ever before to employees of other entities. This places franchisers in a particularly difficult position, as they are likely to hold franchisees — and by extension, their employees — to uniform standards which affect employees' terms and conditions of employment. (Notably, the NLRB General Counsel issued complaints last year against McDonald's and its franchisees as joint employers.)

While by no means offering a road map, the *Browning-Ferris* decision does provide a few insights into actions employers can take which might minimize the joint employer risk:

Talk the talk, and walk the walk

Review all contracts with staffing agencies and other contractors to ensure that they do not waive a joint-employment red flag. Significantly, the new test takes into consideration whether the *potential* to control employees' terms and conditions of employment exists, so all contracts should include language making clear that all such control rests with the contractor. However, remember that while a bulletproof contract can be helpful evidence, what ultimately matters is whether the parties conducted themselves in accordance with that language.

About the Authors

Emily S. Miller is member of Cozen O'Conner. She concentrates her practice in the representation of management in labor and employment matters. She received her J.D. from Temple University in 2008, a M.A. degree from North Carolina State University in 2003, and a B.A. degree from North Carolina State University in 1999.

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LAW OFFICES

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CLASS ACTION LITIGATION

In our prosecution and defense of class actions throughout the United States in Federal and State Courts, we are proud of our recent accomplishments, which include the following:

RECENT CLASS ACTIONS

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

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

Junk Text Messages, Autodial Voicemail Solicitations
Represented a national settlement class of consumers who received alleged junk text messages from various national chains or corporations such as Domino's Pizza, Cox Media, Burger King and Mattel. Each class member who made a claim to receive $105 or their pro rata share of the fund if there were not sufficient funds to pay $105. The total settlement fund was $16,000,000.

Overcharges in Consumer Invoices Such as Phony Tax Charges
Court certified a class of all customers of a national hotel chain's large hotel. Following successful interlocutory appeal, judgment in favor of the class for millions of dollars in damages, prejudgment interest and all attorneys' fees. Affirmed on appeal. Class received in excess of 90% of overcharges with monies being mailed to each class member following win on appeal. Settled identical cases on a class-wide basis against numerous other national hotel chains.

Vocational School Failing to Follow Illinois law Requiring Accurate Disclosure of Employment Statistics for Obtaining Jobs Following Graduation
Court certified class seeking millions of dollars in refunds and other damages for all students who took a medical sonography course but did not obtain jobs in the field. The class claimed that Defendant violated the Consumer Fraud Act's provision for vocational schools by failing to disclose that very few graduates obtained jobs. Appellate and Supreme Case refused to hear an appeal of class certification order.

Breach of Contract and Gift Card Cases
Representing national class of consumers that received a $25 purchase reward card that allegedly did not contain an expiration date but which defendant claims should have contained an expiration date and will no longer honor. Class action certified by District Court and 7th Circuit denied request for interlocutory appeal of class certification. In seperate state court suit class certification approved by New Jersey appellate court.

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

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

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

Hidden Voice-Mail Charges in Telephone Bills
Court certified consumer fraud claims for failure to disclose hidden voicemail charges. In 2005, Crain's Chicago Business listed the settlement as the third highest settlement/verdict in Illinois.

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

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

We are also investigating the following Potential Claims:

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

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

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

Junk text messages received from national or well established companies.

Areas of Interest:

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

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Focus on the forest, not the trees
When communicating expectations to a contractor, focus on ensuring that the entity is clear on your ultimate goal, and then leave it up to that entity to instruct its employees on how to achieve that goal. As seen in *Browning-Ferris*, the more detail a "user employer" provides in its directives, the more likely it will be found to have indirect control over the affected employees.

Stay out of hiring and firing decisions — completely
The contract between BFI and Leadpoint set conditions on Leadpoint's hiring practices, which worked to BFI's detriment under the new test. Likewise, BFI's ability to discontinue the use of a given contracted worker, regardless of the extent to which it had exercised that right, weighed in favor of a joint-employer finding. While many employers are hesitant to relinquish the reins entirely when it comes to determining who will work within their walls, doing so appears to be a must under the new test.

Do not place parameters on wage rates
Among the provisions in the BFI-Leadpoint contract that the Board found to indicate a joint-employer relationship was one prohibiting Leadpoint from paying its employees more than BFI employees if comparable positions were paid. To avoid joint-employer status, wage decisions should be left to the unfettered discretion of the contractor.

Avoid mandating contracted workers' conditions of employment
This poses particular practical difficulty for employers, such as BFI, that engage contracted workers in assembly line-type environments. BFI controlled the speed of the sorting lines on which the workers were engaged, and therefore was found to have control over their working conditions. While this kind of control will be hard to avoid, there are some mandates that employers can avoid lying down. For example, do not mandate when contracted workers will take breaks or require them to work particular hours. Leave those decisions to their own employer.

What comes next
Reaction to the *Browning-Ferris* decision has been swift and divisive, beginning within the Board itself. In a lengthy dissent, Members Miscimarra and Johnson blasted the majority's decision as spurning a "longstanding test that provided certainty and predictability" in favor of "an ambiguous standard that will impose unprecedented bargaining obligations on multiple entities in a wide variety of business relationships."

> **"The Board may find that two or more entities are joint employers of a single work force if they are both employers within the meaning of the common law**

Unions are lauding the decision as a watershed victory for the American worker, while employers view the decision as dealing a harmful blow to job-creators. Many view the decision as yet another example of the NLRB seeking to expand its reach in the face of a declining union presence.

Some employers might choose to take a wait-and-see approach to the new test, as it will undoubtedly be challenged in the courts (either by BFI should the employees at issue vote for union representation and BFI draws an unfair labor practice charge for refusal to bargain, or by another company caught in the new test's crosshairs). Further, a legislative reaction is not out of the question. Sen. Lamar Alexander (R-Tenn.) announced August 27 that he will introduce a bill to negate the decision. Even if *Browning-Ferris* withstands any proposed legislation and/or judicial review, the contours of the new test will continue to emerge for years to come as parties litigate the many issues it raises. In the meantime, unwitting employers could find themselves hauled to the bargaining table, and drawn into unfair labor practice charges, as joint employers. □

Current Trends And Issues With The U Visa

By Rocio S. Becerril

Each year there are more applicants who continue to apply for the U visa. However, with the limited annual allocation of U visas, it is currently creating a few issues that had not been anticipated by Congress.

What is the U Visa?

Congress created the U visa through the Victims of Trafficking and Violence Protection Act of 2000 to encourage victims of violence to assist in the investigation or prosecution of certain crimes.[1] A U visa certification on Form I-918, Supplement B is requested from a law enforcement agency that has responsibility for the investigation or prosecution of the qualifying crime or criminal activity.[2] The U visa certification is one of the many required documents that must be submitted along with the application to show that the applicant was helpful in the prosecution of the crime they were a victim of, and that they have suffered substantially as a result of the crime.[3] Only the United States Citizenship and Immigration Services (USCIS), the federal agency that oversees the program, has the jurisdiction to grant the U visa; law enforcement officials cannot confer legal status by signing Form I-918, Supplement B.[4] Once the U visa application is approved the recipient is given U non-immigrant status. After three years of continuous presence in the United States, U visa recipients can apply for lawful permanent resident status as long as they have not unreasonably refused to cooperate with the authorities once they are granted their U non-immigrant status.[5]

There is currently an annual cap of 10,000 U visas that can be granted to principal victims of violence each fiscal year.[6] There were 26,039 U visa petitions that were submitted for the fiscal year of 2014.[7] USCIS has indicated they are currently adjudicating U visa petitions for visas available in fiscal year 2018.[8] If a U visa applicant is not granted a U visa solely because of the 10,000 cap, then he or she is placed on a waiting list and will be granted status when new U visas become available at the start of the following fiscal year.[9] U visa applicants who are placed on the waiting list are granted deferred action and are eligible to apply for employment authorization while they wait for a U visa.[10] These individuals are usually considered "conditionally approved" U visa holders as they must remain on this waiting list until a U visa is available for them. Immigration practitioners have to routinely deal with the special problems and issues arising from these several year delays for these conditionally approved U visa holders.

Updates on Conditional U visa Employment Authorization Documents (EADs)

USCIS automatically issues an initial Employment Authorization Document (EAD), which is valid for the duration of status upon approval of the U visa for the principal U visa applicant living in the United States.[11] Derivative and principal applicants living abroad have to file Form I-765 "Application for Employment Authorization" (Form I-765), in order to obtain an EAD upon grant of U visa status.[12] However, due to the annual U visa cap, U visa applicants now need to request EADs based on deferred action as conditional U visa grantees.[13] As of March 17, 2015, the Vermont Service Center ("VSC"), the agency that adjudicates U visa petitions, started issuing two-year work permits under 8 C.F.R. §274a.12(c)

1. Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000) [VTVPA].
2. 8 C.F.R. §214.14(b)(3).
3. *Id.*
4. Form, I-918, Supplement B, Instructions (01/15/2013), at 3.
5. 8 C.F.R. §245.24(a)(1).
6. 8 C.F.R. §214.14(d)(1).
7. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Performance Analysis System* (PAS), January 2015, http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2014qtr2.pdf.
8. Information from the Vermont Service Center staff at the Freedom Network Conference on April 21, 2015 in Alexandria, VA.
9. 8 C.F.R. §214.14(d)(2).
10. *Id*; Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion.
11. 8 C.F.R. §214(a)(12).
12. 8 C.F.R. §214(a)(12); a U visa applicant under 21 years old can apply for derivative status for a spouse, children, parents and siblings under 18 years old; a U visa applicant 21 years or older can apply for derivative status for a spouse and unmarried children under 21 years of age. The principal applicant must complete a Form I-918 Supplement A for each qualifying family member.
13. 8 C.F.R. §214.14(d)(2).

(14) to U visa applicants who were granted deferred action under the conditional program.[14] Principal U visa applicants are still automatically issued an EAD upon approval of their U visa petition and therefore, only need to submit one Form I-765, based on deferred action.[15] However, derivative applicants need to submit two separate Form I-765: one based on deferred action and one based upon approval of their U visa petition.[16] This new approach helps the U visa applicant save time by not having to submit these EAD forms once they are placed on the waiting list and once their U visa is approved.

Although USCIS is granting deferred action and employment authorization to those who are receiving a conditional U visa, the delay in receiving secure status is especially problematic for those with derivative family members residing abroad. That is because derivative applicants who are outside of the United States may only request employment authorization after admission to the United States in U non-immigrant status.[17]

Parole for Conditional U visa Grantees

A U visa principal petitioner is able to obtain derivative U visa status for his or her qualifying spouse, child, parent or sibling, whether in the United States or abroad.[18] USCIS is under a regulatory directive under **8 C.F.R. §214.14(d)(2) to provide parole for conditional grantees.[19] In t**he immigration context, "parole" is a discretionary decision to allow an individual to enter the United States for a temporary period of time.[20] However, there is currently no established parole policy so that U visa conditional applicants or derivatives abroad may utilize parole to enter the United States.

Currently, the only way to seek such parole is through the regular humanitarian parole process under the Immigration and Nationality Act (INA) § 212(d)(5). Humanitarian parole may be granted "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[21] Some of the requirements to request humanitarian parole include the submission of Form I-134 "Affidavit of Support," a DNA test to confirm the parent/child relationship and the sponsor's income which must be 125% of the poverty guidelines.[22] However, requesting a DNA test and proof of a certain income level undermines the nature of the U visa program. Section 804 of the Violence against Women Act (VAWA) 2013 specifically exempts approved U visa applicants from the public charge grounds of inadmissibility.[23] In other words, U visa applicants are not required to submit any type of proof of income or affidavit of support.[24] Nonetheless, if U visa applicants want to bring their children while they are on the wait list through humanitarian parole, they must overcome additional hurdles that are normally not applicable to them. U visa applicants requesting humanitarian parole must submit additional proof and documentation which in many cases is not available, causing a huge burden for these families who are survivors of a crime and have very limited resources.

USCIS has to work on implementing a mechanism or policy that would allow conditional U visa grantees to travel into the United States through a process that is less rigorous than the current humanitarian parole process.

Conclusion

With more than 22,000 conditional grantees on the U visa waiting list, there are certainly more issues that will need to be addressed in the future. Until then, learning how to address these issues will determine whether a case is successful, with family unification, or unsuccessful, by breaking up families. ☐

14. *Id.*
15. 8 C.F.R. §214.14(c)(7); 8 C.F.R. §274a.12(c)(14); 8 C.F.R. §274a.12(a)(19).
16. 8 C.F.R. § 214.14(f)(7).
17. *Id.*
18. INA § 101(a)(15)(U)(i); 8 U.S.C. §1101(a)(15(U)(ii).
19. 8 C.F.R. §214.14(d)(2).
20. 8 C.F.R. §212(d)(5)(A).
21. INA §212(d)(5).
22. *Id.*
23. INA § 212(a)(4)(E)(ii).
24. USCIS defines "public charge" as an individual who is likely to become "primarily dependent on the government for subsistence . . ." 64 FR 28689 (May 26, 1999).

About the Author

Rocio S. Becerril, JD/MBA, practices in the area of immigration law. In 2009 she received her J.D. from Northern Illinois University. She is a member of the American Immigration Lawyers Association. Ms. Becerril founded the Law Office of RSB in 2012 with offices in Chicago and the western suburbs.

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One Last Chance –

Four Time DUI Offenders Given Opportunity For Restricted Driving Permit With New Illinois Law

By Matthew Cole

Now enacted and effective January 1, 2016, House Bill 1446 amends various elements of the Illinois Vehicle Code pertaining to restricted driving permits and revocations of driver's licenses.[1] The new law strikes the portion of 625 ILCS 5/6-205 (c)(1) which made multiple offenders, those with four or more DUI related offenses, ineligible to receive restricted driving permits. Within the newly added sub-section (c)(1.5), the law now allows a person with four or more DUI related offenses the opportunity to apply with the Secretary of State for a restricted driving permit.

The requirements to qualify for a restricted driving permit are as follows: (1) a person may apply only after five years from the most recent license revocation, or after five years from being released from imprisonment, whichever is later; (2) the person must prove a minimum of three years of uninterrupted abstinence from alcohol, cannabis, methamphetamine, and intoxicating compounds; and, (3) the person must successfully complete any rehabilitative treatment, and be involved in any ongoing rehabilitative activity, recommended by a properly licensed service provider.[2] Each requirement must be shown by clear and convincing evidence. The Secretary of State is also allowed to consider any relevant evidence to determine whether or not an applicant should be granted a restricted driving permit. This includes any relevant testimony, affidavits, records, and results from periodic alcohol and drug testing.

There are some conditions to acquiring a restricted driving permit. First, any person who obtains a restricted driving permit will have to install, pay for, and maintain an ignition interlock device on any vehicle that he or she plans on driving. If a person who has a restricted driving permit operates an unequipped vehicle, it is a Class 4 felony and the Secretary of State may revoke the permit. Also, any person who is subsequently convicted of another DUI related offense will have the permit revoked and will be permanently barred from applying for another restricted driving permit. Finally, a person will not be eligible to apply for a restricted driving permit if there are four prior DUI related offenses and a conviction of more than one violation of driving under the influence of drugs or an intoxicating compound.

There are several lingering questions about the new statute. One is whether an applicant, who demonstrates that over the past three years the person has passed all required drug tests at work, fulfills the requirement of clear and convincing evidence of "uninterrupted" abstinence from drugs. How might abstinence be proven outside of a work-related context; will an affidavit from the applicant be enough to demonstrate compliance with the requirement, or might additional sources of evidence be required? Further, how frequently must an applicant have been tested to demonstrate compliance with the abstinence provision? Another may center on the kinds of evidence used to show uninterrupted abstinence from alcohol. Will the requirement of successful completion and ongoing participation in a rehabilitative program alone be enough to satisfy "uninterrupted" abstinence from alcohol?

With all of these unanswered questions, it seems that only time will tell what awaits the application of this new law. The new law will allow the roughly 5,000 people in Illinois with four or more DUI related offenses the opportunity to legally drive again.[3] However, the requirements to obtain a restricted driving permit under the new law are strict, and it remains to be seen how many people will apply for, let alone receive, a permit under the new law. □

1. *P.A. 99-290.*
2. *Id. (See amended changes at 625 ILCS § 5/6-205 (c)(1.5)).*
3. Tim Novak, *The Watchdogs: Despite 4 DUI convictions, 5,085 Illinois drivers could be back on road – legally,* Chicago Sun-Times (Sept. 20, 2015, 8:00pm), http://chicago.suntimes.com/news/7/71/944964/dui-convictions-5085-back-illinois-roads-legally.

About the Author

Matthew Cole is a second year law student at Northern Illinois University College of Law. He attended undergraduate school at the University of Wisconsin – La Crosse and graduated in 2014 with a bachelor's degree in political science.

Illinois Law Update

Editor Jordan M. Sartell

New Statutes Effective January 1, 2016

Amendment to Illinois Mechanics Lien Act Allows Substitution of Bond for Property as Security for Payment of Claims

By Elizabeth Boddy

Illinois is about to join the ranks of at least 35 other states and territories that permit substitution of a surety bond in lieu of real estate as security for payments due contractors who assert mechanics liens on private projects. Illinois House Bill 2635, which added Section 38.1 to the Illinois Mechanics Lien Act, 770 ILCS 60/38.1, was passed by both houses of the legislature and signed by the governor. The new law takes effect January 1, 2016.

Owners contracting for improvements to private property have always had the option to require performance and payment bonds as a condition of the contract, but, because of the expense involved, a bonding requirement is often dispensed with, except on large projects. Under the new Section 38.1 of the Mechanics Lien Act, a bond may be obtained if necessary after a lien claim is asserted and posted as security for payment. The owner of the subject property, or any other person having an interest in the property, will have the right to initiate or intervene in court proceedings and petition for leave to post the bond. Parties in interest can include, but are not limited to, the owner of record, a former owner having liability for payment of the claim, a secured lender, lessee, homeowners association, or another lien claimant.

If the substitution petition is properly noticed and the bond meets eligibility requirements, the court must enter an order substituting the bond for the property securing the lien claim, and discharging the property, moneys, and other consideration due or to become due from the owner to the contractor under the original contract. The lien claimant's right to recover on the bond is substituted for other remedies available under the Act, namely recovery of money directly from the owner, and foreclosure and sale of the property if necessary to satisfy the claim. Persons other than the claimant, principal and surety, who may otherwise be considered necessary parties to the proceedings under law, may be dismissed from the litigation.

To be eligible, a surety bond must be issued by an A-rated surety company in an amount equal to 175 percent of the claim. In addition, the bond must on its face submit the principal and surety to the jurisdiction of the court; provide that a final judgment or decree in favor of the lien claimant is a judgment against the principal and surety in the amount found to be due (including statutory interest and attorneys' fees, if awarded) to the full limit of the bond; and be payable within fourteen days after entry of a final, non-appealable judgment.

Unlike bonding provisions in some jurisdictions, the posting of a surety bond under the amended Mechanics Lien Act will not operate as a release or discharge of the lien. The option to post a surety bond can nevertheless benefit parties to a lien dispute by providing the successful claimant a ready source of recovery in the form of cash proceeds; preserving the owner's right to possess the property by removing the threat of foreclosure and sale; and allowing parties other than the claimant, principal, and surety, to avoid unnecessary legal expense by excusing their participation in litigation.

The New Student Optional Disclosure of Private Mental Health Act

By Scott R. Hall (Student, NIU School of Law)

Governor Bruce Rauner signed Public Act 99-0278, the Student Optional Disclosure of Private Mental Health Act, 110 ILCS 74/1, *et seq*. The law will take effect January 1, 2016, and requires institutions of higher learning to provide an incoming enrolled student with the opportunity to authorize a "designated person" in writing. A designated person must be a parent, guardian, or other person over the age of 18 who will be authorized to receive disclosure of certain private mental health information. The student's physician, clinical psychologist, or qualified examiner in the employ of the institution of higher learning is able to disclose mental health information to the designated person when a determination is made that the student poses a clear danger to him/herself or a third party, in order to protect the student or third party from "a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the person or by the student on

himself, herself, or another." The physician, clinical psychologist, or qualified examiner has 24 hours after making the determination to contact and notify the designated person of the danger. The law also requires the institution of higher learning to develop an authorization form for the solicitation of such information, and to make sure that every new student is given a chance to fill out the form. The form should have "a space for the student to affirmatively authorize, or decline to authorize, the disclosure of the information." It also needs to have "a space for the student to enter the name, address, telephone number, and other contact information for the designated person."

The optional nature of the program is likely to placate those Illinoisans who demand their right to privacy as well as those who value highly the privileged communication between a health care provider and patient. But the optional nature of the Act serves as a double-edged sword. It allows students to protect their privacy, but by the same token it fails to address the procedures to be followed if a doctor or therapist encounters a patient that they believe poses a threat of self-harm or harm to others but has not approved the revealing of information or has not designated a person to whom vital information must be revealed. It is also silent on what is to take place when the health professional tries during the 24-hour period to contact the designated person, but is unable to reach them. The statute does not tell what duty the provider then has to continue trying to contact the person. It is unclear what will constitute, to quote the statute, an "attempt to contact the designated person." The law also describes the information that must appear on the form, but it does not describe what would constitute informed consent by the student signing the release. It could be difficult to determine when the student is aware of what he or she is signing. This could potentially raise issues for students who claim that they were unaware that they had authorized the release of their health information.

Changes to the Cannabis Control Act

By Erica Bertini

The law regarding possession of marijuana will change January 1, 2016. The law held that possession of cannabis amounts and punishments were as follows under 720 ILCS 550/4(a)-(g): class C misdemeanor- less than 2.5 grams; class B misdemeanor- more than 2.5 and less than 10 grams; class A misdemeanor- more than 10 and less than 30 grams; class 4 felony- more than 30 and less than 500 grams; class 3 felony- more than 500 and less than 2,000 grams; class 2 felony -more than 2,000 and less than 5,000 grams; and class 1 felony- more than 5,000 grams.

The changes going into effect January 1, 2016, are as follows under 720 ILCS 550/4(a)-(g): civil law violation- less than 15 grams of cannabis; class B misdemeanor- more than 15 and less than 30 grams; class A misdemeanor-more than 30 and less than 100 grams; class 4 felony- more than 100 and less than 500 grams; class 3 felony- more than 500 and less than 2,000 grams; class 2 felony- more than 2,000 and less than 5,000 grams; and class 1 felony- more than 5,000 grams.

Class Action Litigation

Illinois Supreme Court Revisits Class Action Litigation

Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc., 2015 IL 118644, 2015 WL 6387653

By Jordan M. Sartell

Reaffirming and clarifying its holding in *Barber v.*

About the Editor

Jordan M. Sartell is a graduate of DePaul University College of Law and began his legal career at Prairie State Legal Services in Wheaton, protecting vulnerable senior citizens from financial exploitation. His current practice with the Zamparo Law Group, P.C. consists of federal consumer rights litigation including prosecuting claims under the Fair Debt Collection Practices Act, Fair Credit Reporting Act, and Illinois Consumer Fraud Act. Jordan volunteers regularly with the Willow Creek Community Church Legal Aid Ministry and is a member of the National Association of Consumer Advocates and the DuPage County Volunteer Money Management Program Advisory Board.

American Airlines, Inc., 241 Ill. 2d 450 (2011), the Illinois SupremeCourt addressed two significant questions that arise inclass action litigation. First, does *Barber* create any special factual thresholds for motions for class certification? (No.) Second, may a class action be dismissed as moot when the defendant tenders relief to the named plaintiff prior to the filing of a motion for class certification? (Yes.)

By way of background, the named plaintiff in *Barber* sued on behalf of herself and others over a $40 baggage fee that the defendant airline refused to refund her after her flight was canceled. After filing suit, but before a motion to certify a class of similarly aggrieved air travelers was filed, the airline refunded the plaintiff's fee to her credit card. The supreme court upheld the lower court's dismissal of the putative class action, reasoning that the interests of the putative class are only before the court after a motion to certify has been filed.

The plaintiff in *Ballard* filed a three-count complaint alleging that the defendant sent junk faxes that violated the Telephone Consumer Protection Act ("TCPA"), the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), and constituted common-law conversion of plaintiff's ink or toner and paper. Concurrently with its complaint, the plaintiff filed a motion for class certification that described three putative classes. After the parties had conducted discovery, but before the circuit court ruled on plaintiff's motion for class certification, the defendant moved for summary judgment, arguing that previous tenders of relief regarding plaintiff's TCPA count, all rejected by plaintiff, rendered that count moot. Defendant also argued that the ICFA and conversion classes should not be certified because of the limited facts alleged in the motion to certify. The circuit court rejected defendant's arguments, holding that *Barber* only required that a motion for class certification be pending to save a putative class action from mooting by offer of relief to the named plaintiff. The court, pursuant to an amended motion for class certification, certified all classes relating to all three counts.

On defendant's interlocutory appeal of the certification decisions, the appellate court upheld the circuit court's certification of classes under plaintiff's ICFA and conversion counts, but reversed the certification of the plaintiff's TCPA count on the basis that the defendant's offer of relief had mooted it. Disagreeing with the circuit court on the factual adequacy of plaintiff's motion for class certification, the appellate court determined that the motion had not fallen within the meaning of *Barber* because the motion was a mere "shell" and did not contain factual allegations and evidentiary materials sufficient to avoid a finding of mootness. Thus, the tenders of relief operated to moot the TCPA count.

Upon appeal to the Illinois Supreme Court, the plaintiff argued that *Barber* did not impose additional burdens upon a movant for class certification and urged the court to follow practice in federal class action litigation. In its application of *Barber* to the facts on appeal, the supreme court affirmed that *Barber* contained no special evidentiary threshold requirements for motions to certify a class, rejecting the appellate court's characterization of the initially filed motion for class certification. Reaffirming *Barber* and following *Damasco v. Clearwire Corp.*, 662 F.3d 891 (7th Cir. 2011), the supreme court reaffirmed the necessity of having a motion for class certification on file to avoid mooting of the named plaintiff's claim by tender of relief. The dismissal of plaintiff's TCPA count, the court held, was in error because the motion required by Barber was already on file at the time defendant made its offers of relief and was sufficiently detailed. □

News & Events

Chief Judge Creswell speaks at Mega Meeting 2015

InBrief

By Terrence Benshoof

The autumn season activities have come and gone. Winter started in upon the DCBA once again, with Christmas, Hannukah and Kwanza slipping by as quickly as a snow squall. Welcome to 2016, as we enter that darkest part of the year: the primary election season!

The DCBA Veterans Day breakfast had a new MC this year, as veteran **Larry Oldfield** took the reins when a certain unnamed Board of Review required the presence of the guy who usually dusts off the old uniforms to help raise some funds for veterans' causes. The event this year featured informative talks by **Steve Fixler**, from the DuPage County Veterans Assistance Commission, and **Wayne Macejak**, benefits guru from the American Legion. Donations were accepted for the Gifts to Yanks Who Gave program.

In the Courts

Increased security of the field courts, especially in Downers Grove, has recently been a focal point for our Chief Judge. Watch for increased check point and metal detector security in the future.

Effective January 4, 2016, matters assigned to the Wheaton Field Court located in the 421 N. County Farm Road Building will be reassigned to be heard in Courtroom 1001 in the Judicial Office Facility at 505 N. County Farm Road.

People, Places

Judges' Nite producer **Christina Morrison** was named a partner in her firm, which has been renamed as Day, Robert & Morrison. She was also named an Emerging Lawyer by the Leading Lawyer program this past summer. In her spare time, Christina has started working on the 2016 Judges' Nite show, scheduled for March 4 at the Mac.

Bill Opal and **Joe O'Brien** have formed the firm of Opal O'Brien LLC located in Wheaton.

Brad Pollock was a featured speaker, on the topic of premises liability, at the October meeting of the Illinois Trial Lawyers Association.

Thomas Oddo has joined Lillig & Thorsness in Oak Brook.

James F. Volpe has been named Police Chief of Wheaton. ☐

Welcome

Welcome to our new DCBA Members.

Attorneys: Benedict Schwarz, Law Offices of Benedict Schwart, II; Daniel R. Flaherty, Flaherty Law; Gloria C. Tsotsos, Codilis & Associates, P.C.; Joseph Renato Marconi, Johnson & Bell, Ltd.; Mark F. Sigunick, Law Office of Ronald J. Hennings; Martin B. Michalski, Michalski & Gubernat P.C.; Nick Kulagin, Law Offices of Nick Kulagin; Ninnette Gregory; Rashmi Raj; Raymond J. Sanguinetti, Rathje & Woodward, LLC; Stephen Douglas Brown, Douglas B. Warlick & Associates; Steven G. Evans; Laura Giorgolo Jennings, Illinois Appellate Court, First District; Brittany Schuyler, ExteNet Systems, Inc.; Joseph L. Rourke; Keith L. Dent, Bryant Gomez and Associates, LLC; Zain Sayed

Students: Alina Alexandra Risser, Peggy A. Pratscher, Ltd.; Kevin T. Brejcha, Sullivan Hincks & Conway; Elizabeth A. Medina; Heather Anne Coleman, Jesus Pineda, Mateusz Rybka-Zabawski

Mandatory E-Filing In Civil Cases Begins January 1, 2016:
Questions & Answers

Where do I go to e-File?
e-File in DuPage County is online at www.i2File.net.

How much does it cost to e-File?
There is no additional fee to e-File in DuPage County. The filing party must still pay any statutory filing fees.

What date will my e-filing be recorded as being filed?
e-Filed documents are recorded as being filed on the date that the filer submits the document. (Example: A filing submitted at 11:59 PM on Friday will be recorded as being filed on that same day, however, if you file one minute later at midnight, this would result in a file date of the next business day, Monday.)

Documents filed on weekends or holidays will be recorded as being filed on the next business day.

Where can I check the status of my filing?
The best way to check the status of your filing is to login to your i2File account to review the specific transaction status. Attorneys and pro se litigants may register to use the DuPage Circuit Clerk restricted information site to view their case at: https://eaccess.18thjudicial.org.

What happens if my filing is rejected?
After filing, be sure to check your i2File account for filing status. If a filing gets rejected, review the comments why the filing was rejected. Once you have corrected the filing, you may re-submit the filing for review.

If a filing is rejected, it will receive a file date of the re-submitted filing. Do not wait until the last minute to file to ensure you have adequate time to address potential filing issues and get your document filed on the date you require.

How do I pay for my filing?
Once your filing has been accepted, i2File will allow you to pay for statutory filing fees using a credit card. A charge of $5, or 2% of the transaction, will be assessed. Multiple pleadings on the same case may be filed as part of the same transaction.

Law firms can optionally sign up with the Circuit Clerk's office to pay using Automated Clearing House (ACH). This system will automatically charge filing fees to your designated bank account. After an ACH account is established, filed documents will immediately become available for download on i2File once accepted by the Circuit Clerk.

Where can I get additional help for e-Filing?
i2File User Manual:
https://www.i2file.net/I2F/I2file_UserManual.pdf.
Email: support@i2File.net
Circuit Clerk Staff is available during business hours to assist with the e-File process.

Check with the DCBA for a list of dates and times of e-filing demonstrations. ☐

LRS Stats
10/1/2015 - 10/31/2015

The Lawyer Referral & Mediation Service received a total of 519 referrals, including 23 in Spanish (402 by telephone, 3 walk-in, and 114 online referrals) for the month of October.

If you have questions regarding the service, attorneys please call Cynthia Garcia at (630) 653-7779 or email cgarcia@dcba.org. Please refer clients to call (630) 653-9109 or request a referral through the website at www.dcba.org.

Administrative	1
Appeals	1
Bankruptcy	121
Business Law	6
Civil Rights	0
Collection	25
Consumer Protection	13
Contract Law	1
Criminal	128
Elder Law	6
Employment Law	34
Estate Law	17
Family Law	112
Federal Court	0
Government Benefits	3
Health Care Law	0
Immigration	1
Insurance	2
Intellectual Property	1
Mediation	0
Mental Health	0
Military Law	0
Personal Injury	41
Real Estate	87
School Law	5
Social Security	5
Tax Law	1
Workers' Compensation	8

Transform Illinois

By Dan Cronin

One of the goals of the DuPage County Chairman is to reduce the size, scope and cost of local government. This undertaking is challenging, as Illinois has almost 7,000 units of local government; more than any other state in the union. A newly-formed statewide coalition will offer some valuable assistance to help make government more efficient.

"Transform Illinois" is a collaborative of local elected officials, civic organizations and research institutions dedicated to promoting and supporting local government efficiency efforts in Illinois, to improve the delivery of public services and infrastructure. Members of Transform Illinois are concerned the excessive number of units of local government contribute to the ineffective use of tax dollars and could discourage residents from engaging in the democratic process. This coalition was assembled to study how local governments are operating, find ways to streamline services and provide information and resources to citizens who want to eliminate redundant or ineffective units of government. Members include the Metropolitan Planning Council, Better Government Association, Taxpayers Federation, Metropolitan Mayor's Caucus, Illinois Campaign for Political Reform, Chicago Metropolitan Planning Agency and Northern Illinois University Center for Governmental Studies and the Illinois Chamber of Commerce.

To gather data about the costs of government in Illinois, the Chamber of Commerce polled its members from across the state. The idea was to find out if an excess of government units puts a strain on business. Forty chambers in Illinois were surveyed, including the Naperville Area Chamber of Commerce. The questions were simple and included:

1. What's the greatest impediment you find when doing business locally?

2. Could greater local government efficiency improve your business operations?

3. What's the number one concern of your business regarding the number and layers of local government and how they operate?

The results are striking.

The first question asked, "What are the biggest impediments to local business?" Chamber members answered with property taxes, duplication, length of time for processing, waste and inefficiency ...bureaucracy.

Next question: Could greater local government efficiency improve your operation? Most, some three-quarters of respondents said "yes."

And finally: What is the number one concern of your business regarding local government? The answers:

- Too many layers and units
- Procurement process too complicated
- Duplicative services that are confusing
- Unsustainability of layers, too many taxing bodies

About the Author

Dan Cronin is the DuPage County Board Chairman. He is a partner in the law firm of Power and Cronin. Mr. Cronin received his B.A. from Northwestern University and his J.D. from Loyola University of Chicago School of Law.

Here are some of the comments made on the survey: "Collapsing and consolidating local governments would be a great step forward. LaSalle County has 26 school superintendents, which is too much overhead," "The entrenched bureaucracy is cumbersome and often adversarial to the business community."

And there's just one more..."If there were a way for some sort of statewide initiative to be put in place to teach municipalities how to operate efficiently ... "

In 2013, DuPage County passed a bill that allowed the county to pursue local government consolidation among a few appointed smaller government bodies in our county. The idea was that DuPage would serve as a laboratory of sorts. We'd see if, and how, consolidation would work toward reducing the size, scope and cost of local government. The results? Here in DuPage County our ACT Scorecard totals up to more than $100 million in projected savings that local taxpayers will realize.

We believe a streamlined, smarter government system in Illinois serves everyone. The new coalition, Transform Illinois, will hopefully replicate this success in the other 101 counties, and create the government system our citizens deserve.

To learn more about Transform Illinois, visit transformillinois.org.

Services for Divorcing and Never-Married Families– The DuPage County Family Center

By Sheila Murphy-Russell

The DuPage County Family Center located at 422 North County Farm Road in Wheaton provides valuable services for DuPage County families experiencing a new family structure as a result of divorce or separation. Services provided include mediation, supervised parenting time, neutral exchange, parent education [Caring, Coping, and Children (CCC) and PAK Educational Seminar] and the PEACE conflict management group.

The Family Center is a "child-friendly" environment with whimsical mural painted walls, toys and books in the waiting rooms, and is even the home of a pet tortoise and guinea pigs for children to enjoy. Each parent has their own lobby area which is separated by a secured hallway prohibiting accidental parental contact within the facility. In addition to separate entrances and parking areas, security is enhanced by closed circuit cameras, locking doors between the two lobbies and a DuPage County security officer on the premises during operational hours.

Parent Education

The DuPage County Family Center provides two parent education seminars: CCC for divorcing parents and the PAK Educational Seminar for parents who never married one another. CCC is also offered online. The court-mandated seminars are one-time, four-hour classes that encourage parents to develop communication skills that will keep their children out of parental conflict. The seminars acquaint parents with the trauma that their children may experience as a result of their separation. The cost of the CCC seminar is $50.00. The PAK Educational Seminar fee is $10.00. Parents may register for the classroom seminars by contacting the Family Center at (630) 407-2450 or they may register online at www.dupageco.org/familycenter. The same website may be accessed to complete the CCC seminar online. All participants receive certificates upon completion of the workshop. The Family Center provides a copy of the certificate of completion to the DuPage County Circuit Court Clerk for filing. The seminars may be taken voluntarily as well as by parents with pending cases in another county.

Mediation

Mediation services at the Family Center are provided for never married parents and indigent divorcing parents. At this time, there is no cost for mediation services. Mediation provides a forum in which parents can work together to structure a parenting time schedule that will provide their children with the most stable family environment possible. Mediation is a confidential process that encourages and assists parents in identifying and prioritizing the concerns and needs of their children. Mediators strive to help parents negotiate and establish a parenting plan that meets the needs of all family members. The confidential nature of mediation means the court is informed only of the outcome of mediation (if it was successful or not) and in the event mediation does not produce an agreement, the court is not informed of the reasons why. If clients have reached an agreement, the mediator provides the clients, as well as their attorneys, with a written copy of the mediated agreement.

Trained mediators are present for the court call Monday through Thursday mornings in courtrooms 2011 (parentage courtroom) and 4016 (administrative hearing officer's courtroom). Mediations may be referred on-the-spot and can be conducted at the courthouse (on a first come, first served basis). If the parents wish, or the mediators are not available, mediations may be scheduled for a later date at the Family Center. Mediation issues are generally limited to parenting time, the allocation of parental responsibilities and other non-financial parenting issues. Preprinted orders for mediation services can be obtained from the mediators in courtroom 2011 and 4016. Orders are also available in the Domestic Relations office on the third floor of the courthouse.

Supervised Parenting Time

The Family Center provides short-term supervised parenting time services. Supervised Parenting Time may be agreed upon by the parents or ordered by the court. The supervised sessions are scheduled weekly, are one hour in length and are scheduled as (up to) six consecutive sessions. The supervised contact is facilitated by Family Consultants with training in child development, family dynamics and the effects of parental absence and/or separation on children. Upon completion of the supervised parenting sessions, the Family Consultant completes a detailed observational report of the interactions between family members. The report is then submitted to the court and the parents' attorneys for the next status date. Family Consultants are not available to testify in court proceedings. Historically, the courts have accepted the supervised parenting time reports in lieu of testimony by the Family Consultants. Supervised sessions are scheduled on weekday evenings, Saturday mornings and Sunday evenings. At this time, supervised parenting time is free of charge. Preprinted orders for supervised parenting time can be obtained from the mediators in courtrooms 2011 and 4016 or from the Domestic Relations office.

Neutral Exchange Program

The Neutral Exchange Program provides a safe, conflict free, child-friendly environment in which a child's movement between parents at an exchange of parenting time is monitored and facilitated by Family Consultants. The program allows for staggered arrival and departure times and separate entrances and parking lots so that no contact between the parents occurs. Often, parents engaged in high-conflict divorces or separations exchange their children in public places such as the local police department or a fast food restaurant. Exchanges at the Family Center provide families with a more suitable alternative to police stations or restaurants. A report detailing the exchanges is provided to the court upon attorney or parent request. Appropriate referrals for neutral exchange may include cases with Orders of Protection, cases with high conflict between the parents, cases with a history of tardiness and failed exchanges, and/or cases involving parenting time interference. Neutral Exchange services are provided free of charge on Wednesday through Friday evenings from 4:00 p.m. until 9:00 p.m., Saturdays 8:00 a.m. until 12:30 p.m. and Sundays from 3:00 p.m. until 8:00 p.m. All families must be court-ordered to neutral exchange services. Preprinted court orders may be obtained from the Domestic Relations office or from courtroom 2011.

PEACE Program

The PEACE Program is a psycho-educational group designed to teach conflict management and communication skills. The program goals are: to educate parents about the importance of each parent's role in their children's lives, assist parents in creating healthy restructured homes, offer concrete practical assistance about raising children in two households and to teach conflict resolution skills and hands on practice in applying conflict resolution skills to parenting decisions. The PEACE Program consists of one two hour group session per week for eight consecutive weeks. Throughout the course, parents learn new skills that will lessen conflict within the family and lead to fewer returns to court to resolve disputes. Parents must attend each session and cannot file new motions or pleadings during the eight weeks they are participating in the program. Preprinted court orders may be obtained from the Domestic Relations office.

Conclusion

The Family Center embraces the philosophy that children thrive when they are allowed to share a relationship with both of their parents. The Family Center strives to reach out to families who are experiencing dramatic change in their structure as a result of divorce or separation and help them achieve cooperative parenting that focuses on the needs of their children.

(Continued on page 33)

About the Author

Sheila Murphy-Russell is the Director of the DuPage County Family Center in Wheaton, Illinois. She holds a Master's Degree in Community Psychology, is a Licensed Clinical Professional Counselor and a Certified Alcohol and Drug Counselor. Sheila serves on the Board of Directors of the newly formed Illinois Chapter of the Association of Family and Conciliation Courts (AFCC) and has been active in the DuPage County Family Violence Coordinating Council (FVCC).

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The DuPage County Family Center
(Continued from page 31)
Additionally, our services are helpful in providing a more comfortable atmosphere for children in high conflict families. Neutral Exchange allows the children to move from one parent to the other without witnessing parental conflict and tension. Supervised Parenting Time allows for introduction or re-acquaintance of an absent parent and if necessary a safe environment for a child to spend time with a parent. Through our parent education programs, parents are provided an opportunity to view their family situation through the eyes of their children and given skills to help insulate their children from parental conflict. Mediation allows parents an opportunity to develop a parenting plan specific to the needs of their family and maintain control over decisions involving their family. All Family Center services are designed to help parents focus on their children at a most difficult time in their lives.

It is our desire to partner with the Family Law Community to better serve families in DuPage County. Please contact the Family Center at (630) 407-2450 for further information about our programs and services or with ideas on how we can better serve our community. If you have further questions, feel free to contact the Director, Sheila Murphy-Russell, at (630) 407-2460. □

Come One, Come All, for DCBA Judges' Nite Auditions!

By Christine McTigue

It's that time of year again! Auditions for the Judges' Nite cast and crew will be held on Saturday, January 9th at noon in the basement of the Bar Center, located at 126 South County Farm Road in Wheaton. This is a "meet and greet" event to determine who will be involved in the show and then everyone goes out for a late lunch.

Don't be shy about attending the auditions; you do not need to have anything prepared. The Judges' Nite committee, consisting of **Christina Morrison**, **Nick Nelson** and **Brent Christensen**, is looking for fun people interested in helping out a good legal charity and making new attorney friends along the way. There will be both singing and non-singing parts cast. Do you want to get involved but don't want to get on stage? No problem, as help is also needed for the crew, costuming and even assisting with stage make-up.

Christina Morrison, the producer, says: "I know I'm a broken record on this, but participation in Judges' Nite is really the best way for an attorney to make friends and get attention within the DuPage legal community. The rehearsals aren't nearly as onerous as rumored. They are Saturday afternoons and, starting in late January, also one night during the week. The only intense week will be the week of the show. Also, those who do crew and costume work are mostly just needed on Saturdays. Last year's cast and crew included 10 first time members so anyone considering attending our auditions on January 9th won't be the only 'newbie' there. If you want more information about what it's like to be in Judges' Nite, please feel free to call me at 630-637-9811 or send me an email at cmm@dayrobert.com. I strongly believe in the benefits of participation in Judges' Nite and am happy to talk to anyone about it."

This year the Judges' Nite show will be on March 4th and as always, proceeds will benefit Legal Aid. Last year, $9000 was donated and the committee would like to exceed that amount this year. There will be a silent auction and plans are afoot for a fun, high-energy live auction. Also new this year will be a 50/50 raffle—half of the raffle ticket sales go to Legal Aid and half go to the lucky holder of one winning raffle ticket.

Further details about the show will be in the February issue of this magazine. ☐

ISBA Update

What Can The ISBA Do For You?

By Kent A. Gaertner

Since being elected to the 18th Judicial Circuit's seat on the ISBA Board of Governors, I have reached out to a number of our ISBA members to ask them what the ISBA is doing well and what needs to be improved. I have met with a sampling of our membership including young and old members, partners from large and medium size firms as well solo practitioners. Not unexpectedly, many had similar suggestions. These include:

A seamless, easy to use smart phone/ IPad app for ISBA. This would provide access to section committee materials, MCLE, Illinois Bar Journal articles, webcasts, FastCase. There were complaints that it is difficult to log in to current MCLE applications.

Several members brought up the need for a senior lawyers committee or section counsel to oversee programming for that part of the ISBA membership. This would include information about sale of practices, transitions into less than full time positions, marketing/ technology for seniors. (Note- this is also on track to implementation at the DCBA.)

The ISBA should explore the possibility of setting up a group health plan since the health insurance landscape has changed over the last few years with the passing of the Affordable Health Care Act. ISBA used to have a group health plan but it was discontinued when it became prohibitively expensive.

Most of the members I meet with expressed disappointment that all ISBA events seem to be downtown. They would be much more likely to attend ISBA events if they were occasionally held in the collar counties so that they don't have to waste most of a day driving downtown and then spending $35.00 to park.

Several of our newer members and our younger solo practitioners would like to have programs that allowed them to learn trial techniques without actually having to learn on the fly at trial. This could include mock trials, attending trials and shadowing trial counsel for the day (different from long term mentoring).

Younger members were also interested in attending marketing forums to learn from more experienced attorneys what works for them and what does not. They also would like to see round table discussions on issues in various practice areas with experienced practitioners and judges. Lastly they would like to have a longer period of "Young Lawyer" status.

There was interest from all levels of experience in having more law office management and technology seminars. A large gap exists in our membership in technical ability. Many would like to take advantage of the latest technologies but just don't know how to implement these without disrupting their practices.

I will make sure these suggestions make their way to the ISBA Executive Committee. However since I suspect that the officers of the ISBA will probably be reading this column, that may already be accomplished. If you have your own suggestions for what should be instituted at the ISBA, I would love to hear from you! □

About the Author

Kent is the Eighteenth Judicial Circuit's representative on the ISBA Board of Governors. He is the principal of Kent A. Gaertner P.C. and "Of Counsel" to Springer Brown, LLC. where he concentrates his practice in bankruptcy and workouts. He was president of the DCBA in 2009/2010.

Legal Aid Update

New Developments at Legal Aid

By Cecilia Najera

With every new year comes assessments of the past, new beginnings, resolutions, and new hopes. It's also a time to remember where you came from. At the November meeting of the DuPage Legal Assistance Foundation Board I was reminded of the reasons why I'm so fortunate and appreciative of the opportunity to serve as the current Director of DuPage Bar Legal Aid Service ("Legal Aid"). I am thankful for all of those who serve on our Board, and for President of the Board, **Jeff York**, who rallies the troops every quarter and has helped Legal Aid transition into a new era.

After the DCBA restructured its committees to sections with leadership councils (to allocate responsibilities to a council rather than one chairperson), our organization also had to undergo some restructuring as well. Under Jeff's leadership, the DuPage Legal Assistance Foundation Board has clarified its role, and reorganized to better meet the goals of the Foundation. The LAF Board will continue to be the organization of elected individuals who will vote on and implement Legal Aid's policies and budget. Only Foundation members, the Director of Legal Aid, and invited guests will attend the quarterly Foundation meetings.

What was traditionally the Legal Aid Committee is now called the Legal Assistance Foundation Operations and Oversight Committee ("Committee"). The Committee will still serve as a function of the Foundation to allow the Director to update and ask for advice on day to day operations, but will meet separately from our Foundation. The Chairperson of the Committee is currently longstanding Legal Aid supporter, **Michael Scalzo**. DCBA will continue to have a member from the Executive Committee act as liaison between DCBA and the Committee. Committee meetings are open to all. If you would like to be a part of the Committee, please feel free to come join us on the third Wednesday of every month at 8 a.m. in the DCBA Conference Room.

Although the Committee is no longer a DCBA committee, we will continue to enjoy a close relationship with DCBA. Legal Aid will continue to screen and review applications for DCBA's Modest Means Program and refer those that do not qualify for Legal Aid's services to the Lawyer Referral Service. Our office will also continue to be a means for DCBA members to document their *pro bono* service hours in bankruptcy, divorce, parentage, orders of protection, adoption or guardianship cases. If you have a case you were appointed to serve as a *pro bono* guardian ad litem or in another role, or if you would like to take on a case *pro bono* in any of these areas of law, please contact our office. We are so grateful to the DCBA membership and its Board for continuing to support us as the *pro bono* organization that was created by its membership 40 years ago. Thanks especially to DCBA President-Elect, **Ted Donner**, for purchasing the dupagelegalaid.org domain name. We hope to have our website up and running very soon. Without the involvement of the private bar and donations that come from the DCBA membership, our program would cease to exist as it does today. Thank you for giving a voice to the indigent of DuPage County.

Another person I have had the pleasure to meet and work with on the DuPage Legal Assistance Foundation is **Bernie Kleina**.

Bernie has been on our Board since before our former Director, **Brenda Carroll's** time (more than 27 years), and he served as the Director of Hope Fair Housing for 41 years before he retired. (*Continued on page 38)*

About the Author

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

Growing Your Business
Mega Meeting 2016

NEW **2** Days

January	
Friday	Saturday
29	30
MEGA Meeting	

6.5 Hours MCLE
3+ Hrs PRMCLE

15+ Vendor Law Expo

200 Colleagues

State of the Courthouse Address

A la Carte Pricing

KEYNOTE SPEAKER

Steve Fretzin

Driven, focused and undeniably passionate in his pursuit to help attorneys reach their full potential, Steve Fretzin is the Chicago area's premiere lawyer coach and business development trainer. He has redefined the business development experience, transforming hundreds of attorneys into top performers.

Fretzin's expertise in business development, time management and marketing has landed him features in the Attorney at Law Magazine, ABA, ISBA, Chicago Tribune, Daily Herald and Crains, as well as guest appearances on NBC News and WGN Radio.

Friday Judges Reception

5:00—7:00 PM
Lisle Sheraton Atrium

Lisle Sheraton

3000 Warrenville Rd, Lisle

Friday, January 29
MCLE - 2:30 - 5:00 pm
Reception - 5:00 - 7:00 pm

Saturday, January 30
AM MCLE - 7:30 am - 12:45 pm
PM MCLE - 12:30 - 3:15 pm

For more information and to register visit dcba.org
or call 630-653-7779

Judges' Nite auction samples
U.S. Supreme Court, photo by Benie Kleina and Martin Luther King, Jr., photo by Bernie Kleina

Legal Aid Update

(Continued from page 36)

Bernie was front and center in the 1965 and 1966 Chicago Freedom Movement for open housing or what we know today as fair housing. He was a Catholic priest back then answering Dr. Martin Luther King, Jr.'s call for the clergy to march against racial inequality. He was also arrested as a civil rights demonstrator in Selma, Alabama, two days before the march across Pettus Bridge took place in 1965. He is the only photographer to capture full color snapshots of Dr. King and the march in Marquette Park, and several of Bernie's photographs are with the Smithsonian. He also captured images of Dr. King's speech in Soldier Field in 1966 where Dr. King stated,

"Our power is not in violence. Our power is in our unity, the force of our souls, and the determination of our bodies. This is a force that no army can overcome, for there is nothing more powerful in the world than the surge of unarmed truth. Non-violence does not mean passively accepting evil. It means standing up so strongly with your body and soul that you cannot stoop to the low places of violence and hatred."

Bernie's photography evokes many of the emotions of the times when they were taken and is still relatable today. Bernie's huge heart for hope and justice is evident in each of his images. He has very graciously donated a few of his images to be auctioned off at the Judges' Nite silent auction that will take place on March 4, 2016, at the MAC of College of DuPage. The proceeds of the auction go to Legal Aid. I hope you can join us for a night of great entertainment for a good cause. ☐

Classifieds

Professional Offices For Rent on 22nd in Oakbrook Terrace

1-3 furnished or unfurnished offices & 1-2 support staff cubicles are now available in newly remodeled and expanded 4th floor suite in The Oakbrook Terrace Atrium office building at 17W220 22nd Street in Oakbrook Terrace. The Atrium is near Oakbrook Shopping Center, I-88, I-294 and about 2 miles from I-355. Lower garage (covered) and upper parking is provided at no expense. Tenant and guest access to 2 conference rooms, reception area, kitchen/cafe, outdoor balcony/patio and wired phone/data jacks are all provided at no expense. Internet connection and 3 copy machines are available. **Inquiries: email Laura Koran at lkoran@ditommasolaw.com or call (331) 225-2121.**

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Legal Secretary

This opening is for a mature experienced legal secretary that wishes to work approximately 12 hours per week in a small law office setting. Compensation is hourly with no extra benefits. Solid working knowledge of word processing on computers is required. Hours can be flexible as needs arise. **Resume with References to be sent to both: jjtedrowe@gmail.com & tedrowelaw@att.net.**

Paralegal

Mulyk, Laho & Mack, a Glen Ellyn law firm seeks a paralegal with at least 3 years' experience. Family law experience a must; real estate, estate planning/probate and/or collection experience a plus. Responsibilities include general office duties, such as answering phones, transcribing dictation, drafting pleadings & organizing/responding to discovery. Applicant should be familiar with legal research techniques. Strong personality and ability to work with emotionally charged family law clients a must. If interested **please forward a resume and cover letter with salary expectations included to Maria T. Mack at mtmack@mlmlawoffice.com or mail to 45 S. Park, Ste. 230, Glen Ellyn, IL 60137.**

Legal Secretary/ Assistant

East DuPage County Law Firm has an immediate opening for Legal Secretary/Assistant in a fast paced environment who possesses strong word processing, organizational and customer service skills. Spanish speaking experience a plus.
E-mail PDF document to lkrishnan@kclattorneys.com.

Paralegal

Paralegal needed for full-time position in expanding law firm in the Naperville area. Must have at least 3 years' experience in corporate law, estate planning and real estate. **Forward resume to: napervillelegal@yahoo.com.**

Where to Be
In January

The Mega Meeting

By Sean McCumber

Plenary Speaker, Steve Fretzin

On January 29, 2016, the DCBA embarks on a new twist to the venerated "Mega Meeting." This year the meeting will be a two-day affair. On Friday, January 29th at 3:00 p.m., the doors will open at the Sheraton Lisle, 3000 Warrenville Road, Lisle, Illinois, with the option of a session of Family law CLE entitled "Divorcing Your Mortgage" by **Jody Bruns** or a Civil Law CLE presentation on "Contested Issues in Business and Trust Disputes" from speakers **Larry Stein** and **James McCluskey**. At 4:00 p.m. our plenary speaker, **Steve Fretzin**, will present an hour-long PRMCLE session entitled, "Effective Networking." Fretzin is regarded as the premier business coach, speaker, and author on the topic of business development for attorneys. Fretzin's first book "Sales-Free Selling: The Death of Sales and the Rise of a New Methodology," was specifically designed to help attorneys grow their practices, and his second book, "The Attorney's Networking Handbook" will be out in early 2016. The evening will conclude with a Judicial Reception with cocktails, food and networking.

Saturday, January 30th begins with a breakfast and a few DCBA Talks (similar to TED talks), followed by the morning CLE sessions with three options from which to choose: Family Law, "IMDMA Revisions Part 2"; Criminal Law Case Law Updates from **Audriana Anderson** and **Ruth Walstra** or a PRMCLE session by **Melissa Smart** from the ARDC, followed by another plenary session with Steve Fretzin entitled "Sales Free Selling – the Art of Selling Without Selling."

At lunch, Chief Judge **Kathryn Creswell** will deliver her State-of-the-Courthouse Address, highlighting the upcoming changes to the courthouse and the practice of law therein.

Afternoon sessions will include a choice between seminars covering Real Estate Case Law Updates by **Steven Bashaw** and **Joseph Fortunato**; Business Law, "Navigating the Dual Representation Minefield: A Road Map for Corporate & Individual Counsel in Derivative Litigation" from **Richard Lofgren** and **Charles Wentworth**; or the PRMCLE topic on Law Practice Management from Smokeball. The second afternoon slot will have choices in Civil Law, "After the Closing Argument: The Case is Not Over" from **Brad Pollock** and **Mike Cetina**; Estate Planning & Probate, "Guardian and Elder Law Issues" from **Jennifer Martyn** and **Karen Mills**; or a Bankruptcy 101 presentation from **Kent Gaertner** and **Josh Greene**.

Early bird paid registration is available at a significant cost savings through December 23, 2015 and will be using an a la carte menu this year. Member pricing will be $300 for both days, $100 for Friday only and $200 for Saturday only. Special pricing will also be available for DCBA member government and retired attorneys, as well as new lawyer members (0-5 years in practice). Detailed pricing options can be found on the website. Printed handouts will be available for an additional fee only to those who register for them prior to January 22, otherwise handouts will be downloadable.

Included in session pricing, Friday's Judicial Reception alone is priced at $50, the State-of-the-Courthouse lunch on Saturday alone will be $40. Beginning December 24, session prices increase by $25, and will increase again after January 22, so make sure to register early for this new and improved Mega Meeting event! ☐

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