

DCBA BRIEF

The Journal of the DuPage County Bar Association

IN CELEBRATION OF

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DIRECTING DUPAGE COUNTY'S LEGAL AID PROGRAM



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Volume 25 Issue 6
March 2013

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Beware The Ides of March: Not So Much

BY TERRENCE J. BENSHOOF



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As Caesar entered the Forum on that fateful day (according to the Bard), he came upon the soothsayer who had warned him to beware the Ides of March, and Caesar said to him, "The Ides of March have come"! The soothsayer responded, "Aye, Caesar; but not gone." As we all know, Caesar ultimately got the point.

And so once again, we roll into March. At this time of the year, there are, perhaps, some things to beware of: corporate tax returns are due (on the 15th, or Ides under the old Roman calendar). It's an unpredictable time of year, weather-wise, with Spring officially starting, but Chicago snow still a distinct possibility. Basketball and the ten-game hockey seasons are winding down. The Sox are finishing Spring training and looking forward to a revitalized season. The Cubs are... all right; so maybe there are some things to still beware of!

But we have much to look forward to (in addition to the Celtic Lawyers Lunch event that President **Sharon Mulyk** highlights on her page), as we feature a recognition and tribute to our own **Brenda Carroll**, who has done so much for the DCBA, and continues to do so.

Articles editor **Raleigh Kalbfleisch** takes our readers through a

series of instructive pieces to help the practitioner get ready for another year's legal challenges. The edition begins with a guide to the selection and use of the proper and most effective documents for healthcare issues in estate planning. **Derek Johnson** analyzes the many types of documents available, and the precedence each takes in light of the issues presented.

Since March is the beginning of the tax filing season, and, after just a tad of discussion and concern at the national level brought about some last-minute changes, yours truly attempts to hit the highlights of the changes, and what they mean to the attorney advising his or her clients on the effects of those changes. Many estate planners have been holding off on finalizing their planning documents as estate tax changes were in the balance, and the article hopes to assist in the discussion.

For any of those attorneys who are consulted by clients involved in personal injury auto accidents, a bit of knowledge of how to deal with the less-than-sound defendant, or his carrier, when it comes to insurance coverage, is essential. **Jim McCluskey**, who has extensive background in insurance coverage issues, provides us with a point-by-point guide to the pitfalls of this

area of law facing the unfamiliar.

And, in keeping with our March feature, a personal "hat's off" to Brenda Carroll, who on a monthly basis provides the *Brief* with the latest on how the bar deals with the ongoing needs of the community at large.

And so it's March! Spring! Baseball! Maybe even a few warmer days! The world, and DuPage County, come back to life after another cold, dreary winter. As always, there are concerns, troubles and worries; plenty of legal matters that need our attention on behalf of our clients; CLE to be completed; but also it's a time to watch the renewal of nature, and another summer on the horizon!

Beware the Ides of March? Not so much. □

Terrence J. Benshoof practices from Glen Ellyn, Illinois. He graduated from the University of Illinois at Chicago in 1968, with a B.A. with Honors and Distinction in Political Science. He earned his J.D. from De Paul University College of Law in 1971, where he was an Associate Editor of the De Paul Law Review. He also earned an LLM (Taxation) from De Paul in 1980, and has practiced extensively in property tax litigation and other Federal, State and Local, and Multi-State tax matters.



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Sláinte!

BY SHARON R. MULYK



The “luck of the Irish”¹ was definitely with the University of Notre Dame as they took on Alabama in the BCS Championship this past January, but hopefully it will stay away from the DCBA as we host the St. Patrick’s Day Luncheon for the first time on March 15th. You may think this is beyond the pale, but it is true. Last April, after much consideration, **Brigid Duffield** and **John Howlett** approached the DCBA and requested that the DCBA consider continuing to host the Celtic Legal Society’s Annual St. Patrick’s Day Luncheon. On May 15, 2012, the continuation of the luncheon by the DCBA, at the discretion of the President, was unanimously approved by the Board of Directors. So, call me Sharon O’Mulyk and let the shenanigans begin!

Although St. Patrick’s Day is celebrated on March 17th, St. Patrick’s religious feast day and the anniversary of his death in the fifth century, the DCBA will be hosting the 22nd Annual St. Patrick’s Day Luncheon on Friday, March 15th at Klein Creek Golf

Club beginning at 11:45 am and continuing until we are all out of green beer and Guinness. On St. Patrick’s Day, which falls during the Christian season of Lent, Irish families would traditionally attend church in the morning and celebrate in the afternoon. Lenten prohibitions against the consumption of meat were waived and people would dance, drink and feast on the traditional meal of Irish bacon and cabbage. The DCBA plans to continue those traditions with plenty of corned beef and cabbage and the McNulty Irish Dancers. The DCBA is also planning its own little twist on the day, which will hopefully become a favored tradition as well.

Irish ranks among the top five ancestries in every state except Hawaii and New Mexico and there are approximately 144,588 current U.S. residents who were born in Ireland.² In the early 1900’s, the American Irish began to realize that their large and growing numbers endowed them with a political power that had yet to be exploited. They started to organize, and their voting block, known as the “green machine,” became an

important swing vote for political hopefuls. Annual St. Patrick’s Day parades became a must attend event for political candidates. Un-

PRESIDENT’S MESSAGE
CONTINUED ON PAGE 6 »

Sharon is a partner with the law offices of Mulyk, Laho & Mack, LLC, in Glen Ellyn, Illinois, where her practice is concentrated in family law and collection litigation. Sharon is a graduate of Illinois State University and she received her Juris Doctor from The John Marshall Law School. Sharon has been an active member of the DuPage County Bar Association where she has served, by appointment, as the DCBA Associate General Counsel, Chairman of the Family Law Committee, Chairman for the Membership Committee, Judiciary Committee, Planning Committee, Rules Revision Committee, Pro-Se Litigant Committee, CLE Committee and has volunteered her time to act as a Judicial Intervention Leader. Sharon is also an Adjunct Professor at the College of DuPage in the Paralegal Studies Program. Sharon, having also served as the President of the DuPage Chapter of the Justinian Society of Lawyers and as President of the DuPage Association of Women Lawyers, is the first lawyer to serve as President of all three DuPage Associations. In her free time, Sharon enjoys spending time with her Husband, Jim and their four children; Vanessa, Emily, Cameron and Camryn.

¹ The “luck of the Irish” is actually BAD luck, as any reading of Irish history will document.

² Population data courtesy of the U.S. Census Bureau.



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» PRESIDENT'S MESSAGE CONTINUED FROM PAGE 5

fortunately, the DCBA will not be dying the court complex retaining pond green, nor having a St. Patrick's Day parade down County Farm Road and through the court complex any time soon. However, the DCBA is looking to exploit the candidates running for 3rd Vice President and Board of Directors of the DCBA in the upcoming April election, by way of a Candidate Forum. Oh, this won't be your typical Candidate Forum, but rather an opportunity for members to grill the candidates until everyone is laughing their cacks off. If these candidates are truly seeking the pot of gold at the end of the rainbow come Election Day, they will respond as it relates to their ability to serve the DCBA, for example...

If a leprechaun granted you three wishes what would they be?

Tell us about a situation that would put your knickers in a bunch?

As a child did you ever go knickknacking?

Tell us about a situation where you were "stung"?

Now mind you we are not going for the serious here, nor are we looking to vex our candidates. We are merely provoking a little malarkey, so come prepared to grill our candidates. Remember, it's all about poking a little fun. So, please join the DCBA and the Officer and Director candidates on March 15th as we raise our glasses and toast:

As you slide down the banisters of life may the splinters never point the wrong way.

While those glasses are in the air, please also join me in congratulating our very own **Brenda Carroll** on her twenty-fifth year anniversary as the director of DuPage Bar Legal Aid Service. Brenda, who also serves on the countywide Criminal Justice/Mental Health Committee, Mental Health Services Development Committee, County Elder Abuse Multidisciplinary Team and County Human Services Advisory Committee, has served as a Director of the DCBA, past president of the DuPage Association of Women Lawyers, an officer of the Child Friendly Courts Foundation, a member of the Illinois State Bar Association Assembly, and Fellow of the Illinois Bar Foundation. In 2004, Brenda was named DCBA Lawyer of the Year by past president **Kevin Millon**, and in 2010 the DuPage Association of Women Lawyers named Brenda as the Inspirational Woman. Brenda's career and many achievements are highlighted in **Sean McCumber's** special feature article, which includes wonderful stories and anecdotes shared by Brenda's colleagues and friends about this truly remarkable lawyer and person. So once again, please raise your glasses:

Brenda, may your blessings outnumber the shamrocks that grow, and may trouble avoid you wherever you go. □

NEWS & EVENTS



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- Negotiating provisions of QDROs with plan administrators
- Reviewing QDROs prepared by other professionals
- Advising individuals with respect to retirement plan allocations

President's Ball to Feature a "Mad Hatter" Theme

In 2011, then-President **Steve Ruffalo** decided it was time to give the President's Ball something of a makeover. An annual black tie event which has long served as the closing party for each President's tenure in office, the 2011 President's Ball was a little different than past soirees in that it had a "casino night" theme which took people to an array of roulette wheels and blackjack tables after dinner. The success of that event led Ruffalo's successor, **Colleen McLaughlin**, to add a roaring 20s theme to her President's Ball. Now, bringing the idea of a President's Ball theme into the realm of tradition, our current President, Sharon Mulyk, is transforming this year's President's Ball into a trip through the Looking Glass.

The 2012 President's Ball is scheduled for Friday, April 26, 2013 (starting at 6:30pm) at the Danada House in Wheaton, Illinois. "We're doing it at Danada House this year

because it's an ideal location for the kinds of things we're doing with the decor," said DCBA Executive Director, Leslie Monahan. "We've heard great things from our membership about past events we've had in the space and the people there are great to work with. It's also more cost-effective than Medinah, where this event has been held in the past, which gives us more flexibility in the budget for other things, like the decor and music."

"The way it's all coming together," said Mulyk, "the President's Ball will have the same elegance as in past years, it's still a black tie optional event and the setting is perfect for that. But we'll also have some creative decor and things going on that should make it a bit more of a unique occasion. I've wanted to do a Mad Hatters Ball since I was first elected. I've been to the one that Lookingglass Theater does every year in Chicago and I've always thought it's a great theme to use for an event like this. We want people

to go to these events and know that they're going to have a good time. We're not looking for people to come in costume, that's not at all what this is about. What we're doing is giving a theme to the environment. We're peering through the looking glass about including settings from the Alice in Wonderland books, such as a chessboard, or croquet."

Thanks to the budget savings that came from moving the event to Danada House, Mulyk was able to add these elements and bring live music back to the itinerary in the process. "We've booked an awesome band called Final Say," said Mulyk. "It's a sub group of Maggie Speaks. They're phenomenal and energetic, people are just not going to want to leave after dinner. They're going to want to stay and they're going to have a good time. We're all going to have a good time. After all, what other event could I go where I can say 'off with their heads' to everybody?" □



Pictured (scenes from the 2011 and 2012 Presidents Balls): Top Left: Steve Ruffalo, Dave Monahan, Leslie Monahan, Hon. Robert Anderson; Top Right: Back Row: Kevin Millon, Hon. Stephen Culliton (Ret.), Joe Laraia, Jack Donahue, Kent Gaertner, Hon. Patrick Leston, Hon. William Ferguson, Glenn Gaffney, Hon. Neal Cerne, Front Row: Joseph Mirabella, Hon. William Bauer, Colleen McLaughlin, Steve Ruffalo; Bottom Right: Jay Laraia, Lori Laraia, Jim Mulyk, Sharon Mulyk.

Celtic Luncheon Set for March 15

A popular tradition among DuPage County lawyers will continue on a year to year basis under a recent agreement between the DCBA and the Celtic Legal Society of DuPage County Ltd. Under the agreement, which was spear-headed by last year's DCBA President Colleen McLaughlin and **John Howlett** and **Brigid Duffield** on behalf of the Celtic Society, the DCBA Board of Directors agreed to assume responsibility for the assets of the Society and to hold Saint Patrick's Day Luncheons in the discretion of the current President of the DCBA. President **Sharon Mulyk** has determined to arrange a luncheon this year with a slightly different format than in years past. This year's Saint Patrick's Day Luncheon will be held on

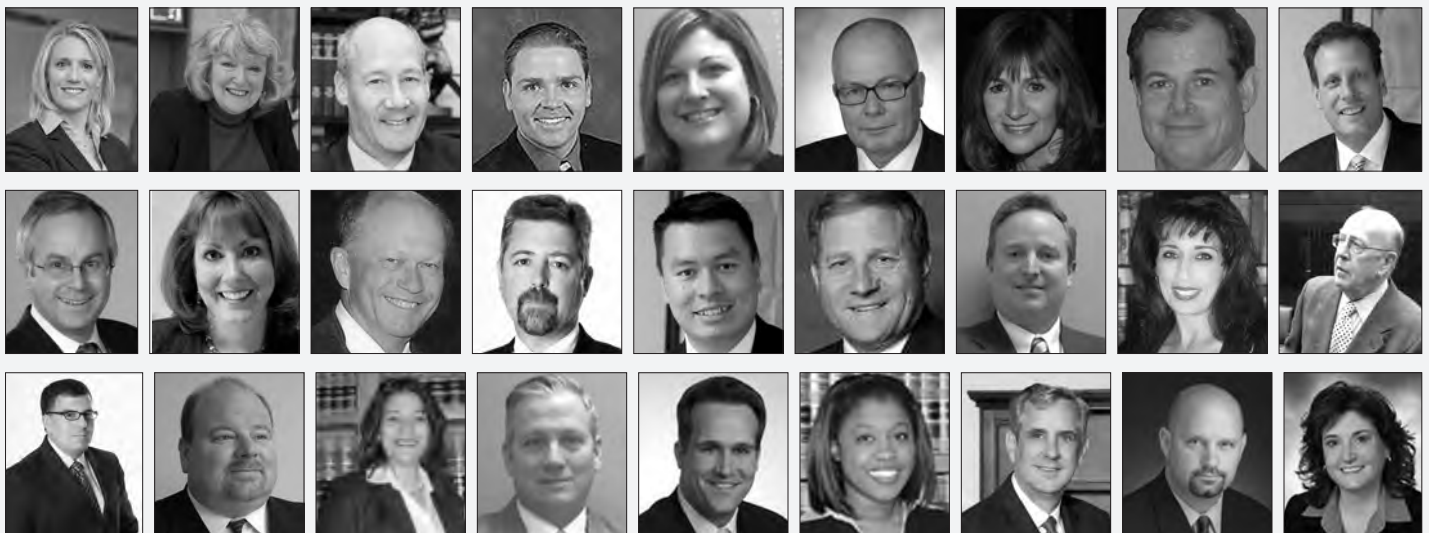
March 15, 2013 at Klein Creek starting at 11:45 AM. Traditional corned beef and cabbage fare will be served. As in years past, the McNulty Irish Dancers will make an appearance. In lieu of a keynote speaker, however, candidates for DCBA offices (including Board of Directors) will be invited to address the assemblage and take questions from the audience.

"The Celtic Luncheon is a wonderful and longstanding tradition in DuPage County," said Mulyk, "and we were more than happy to take on the responsibility for coordinating this event. Many of our members really enjoy the day and we hated to leave the entire load on a small number of people. I hope the candidates will attend and that attendees will take

the opportunity to give them a little good natured ribbing or ask serious questions about how the candidates hope to improve or serve the DCBA."

In a letter to the Celtic Society's membership, current officers, Howlett and Duffield, expressed their enthusiasm for the luncheon being expanded so that more can attend, adding that "It is our hope that the tradition of fun and fellowship will continue and we extend to all the blessings of our Heritage and our best wishes that... 'May the road rise up to meet you, May the wind be always at your back, may the sunshine warm upon your face, and rains fall soft upon your fields and until we meet again, May God hold you in the small of his hand. Slainte!'" □

Aside from being exceptionally talented, good looking, charming and discerning in their judgment,* these leading members of the DuPage County legal community have one very important thing in common:



They're all endorsing Ted A. Donner for
Third Vice President of the DuPage County Bar Association.

* And he's really, really grateful for that -- as he would be for your vote!

Pictured (from top left): Sharon Mulyk, Brenda Carroll, Glenn Gaffney, Pat Hurley, Angela Aliota, Jim McCluskey, Lynn Cavallo, Tim Whelan, Steve Rufalo, Jim Reichardt, Colleen McLaughlin, Terry Benshoof, John Pcolinski, Matt Pfeiffer, Gerald Cassioppi, Pat Edgerton, Elizabeth Pope, William J. Bauer, Sean McCumber, Art Rummler, Angel Traub, Terence Mullen, Brad Pollock, Chantelle Porter, Don Ramsell, Shawn Kasserman and Kimberly A. Davis.

This is a partial list. For Ted's bio and a complete list of his endorsements, please visit donnerco.com/dcba.html.

INBRIEF

The Deadline Looms for Lawyers Feeding Illinois, Judge O'Shea is Sworn In, DAWL Hosts its 2013 Judges Reception, DCBF Says "Thank You" and DCBA Welcomes Some New Members.

Lawyers Feeding Illinois. March 1, 2013 marks the deadline to make a contribution to Lawyers Feeding Illinois and have that donation count toward the DuPage County bar's push to finish first. A program developed by the ISBA (and spear-headed by ISBA President, **John Thies**), the program's goal is to provide one million meals to the hungry and needy in this state.

"Teams of lawyers from around the state have been formed in a friendly competition to strive together to meet this need," said **Jim Reichardt** in an email he sent out to his colleagues, asking them to join him in support of the program. DCBA President,

Sharon Mulyk, is likewise actively pushing to ensure that the DCBA makes its mark in this campaign. Matching programs were being developed at press time. In the end, with such an important cause involved, and two of the next ISBA Presidents, **Richard Felice** and **Umberto Davi**, coming out of DuPage, we mean to do them proud and hope you'll join in! Visit lawyersfeedingil.org and look for the DCBA team (which is working with the Northern Illinois Food Bank). Every \$20 you donate will provide 100 meals!

Judge O'Shea is Sworn In. Our congratulations to Judge **Patrick J.**



O'Shea who was recently sworn in as DuPage County's newest Circuit Court Judge. O'Shea was sworn in by Chief Judge **John T. Elsner** at a ceremony on December 3, 2012.

DAWL Hosting Judge's Reception. On April 18, 2013, CONTINUED ON PAGE 12

LRS Posts Totals for December, 2012

The Lawyer Referral and Mediation Service provides referrals to participating attorneys and serves the community by putting people in contact with a local attorney. For more information

or to join LRS, contact the DCBA Bar Center at (630) 653-7779 or visit www.dcba.org. Please refer prospective clients to (630) 653-9109 where the DCBA maintains someone to answer the phones from 9:00

a.m. to 4:30 p.m. Monday through Friday (excluding holidays). The Lawyer Referral & Mediation Service received a total of 763 referrals (336 by telephone, 0 walk-in & 427 by Internet) for the month of December:

Administrative	1	Employment Law	33	Mental Health	0
Appeals	2	Estate Law	15	Military Law	0
Bankruptcy	8	Family Law	71	Personal Injury	15
Business Law	7	Federal Court	0	Real Estate	47
Civil Rights	0	Government Benefits	6	School Law	2
Collection	23	Health Care Law	0	Social Security	0
Consumer Protection	6	Immigration	2	Tax Law	2
Contract Law	1	Insurance	4	Workers'	
Criminal	81	Intellectual Property	0	Compensation	3
Elder Law	3	Mediation	3		

INBRIEF

CONTINUED FROM PAGE 11

from 5:30 to 7:30pm at the Ivy (120 North Hale Street, Wheaton, Illinois), the DuPage Association of Women Lawyers is hosting its annual Judge's Reception. The reception honors the judges of the Eighteenth Judicial Circuit as well as those of the Second District Appellate Court and features hors d'oeuvres and an open bar. "We get a good turnout for this event every year," said DAWL President-Elect Chantelle Porter who is hosting the event. "It's one of our best attended events and an evening worth attending for anyone practicing in DuPage." Event sponsors to date include A. Traub & Associates, Andy Cores and Wendy Musielak of Esp Kreuzer Cores LLP, and Brent Christensen (Gold Sponsors), Mulyk, Laho & Mack, LLC, and Dion Davi and the Davi Law Group (Silver); and Sullivan Taylor and Gumina PC, Bennett Law Firm, LLC, Donner and Company Law Offices, LLC, and Law Offices of Susan O'Neill Alvarado & Associates (Bronze).

Election Petitions Available. If you're anxious to make your mark and

have always dreamed of either a seat on the Board of Directors or as the Third Vice President of the DCBA, it's time to get over to the Bar Center or take a trip to dcba.org and get a hold of the form petition. Petitions may be submitted between March 1-29, 2013. Once those are in, ballots will be sent out to the membership who will be voting from April 10 to May 6, 2013.

DCBF Holiday Breakfast Sponsors. The DuPage County Bar Foundation once again held its Holiday Breakfast at the ARC this last December and had, when the dust settled, a great many sponsors to thank. On behalf of DCBF President **Colleen McLaughlin** and the DCBF Board, our thanks to Mulyk, Laho & Mack, Guerard, Kalina & Butkus, Edgerton & Edgerton, Sullivan Taylor & Gumina, Marquardt & Belmonte, Mullen Winthers & Kollias, Haskin & Corrigan, Botti Marinaccio, Kenny & Kenny, Ramsell & Associates, Stewart Title Company, A. Traub & Associates, Kordik Law Firm, Rosenfeld Hafron Shapiro & Farmer, Tameling & Associates, PC, **James Reichardt**, **Joseph Mirabella**, **Lynne Cavallo**, **John Kincaid**, **Hon. Ann**

Jorgensen, **Hon. Rodney Equi**, **Joseph Fortunato** and **Raleigh Kalbfleisch**.

And For That, We Apologize. Last Month's DCBA Brief sported a cover story on **Harry Smith**, the DuPage County Attorney who found himself in the spotlight in the **Drew Peterson** criminal trial. We heard from quite a few people who were disappointed by the inadvertent exclusion of the last line from that story and we apologize to all concerned for the oversight. You'll find the story in its entirety on our website (dcbabrief.org) and here (just in case) are those last two missing sentences: "As he closes the books on this chapter, he ruminates on who would play him in Lifetime's follow-up movie, "Well me – I know all my lines because I said them. But, how about **Ed Harris**?"

New Members. Finally a tip of the hat to the newest members of the DCBA, including **William Cherny**, **Christine S Marshall**, **Aaron E. Ruswick**, **Salvatore J. Tornatore**, **Angela Butkovich**, **Phillip D. Lee**, **Brian T. Lesiewicz**, **Ashley K. Rasmussen**, **Bradley M. Hamblock**, **Lori M. Pocius**, **Lisa A. Vogrig** and **Brandon S. Zelasko**. □



Photos from the 2012 DAWL Judge's Reception (clockwise from top left): Lisa Giese, Kiley Whitty, Judge Ron Sutter, Matt Grob, Kim Digiovanni, Andy Cores, Todd Scalzo, Christa Winthers, Judge Brian McKillip, Chantelle Porter, Angel Traub, Jennifer Seaholm, Judge Liam Brennan, Judge Paul Fullerton, Mike Drabant.



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<input type="checkbox"/> Injury With Disability	<input type="checkbox"/> Injury With Hospitalization	<input type="checkbox"/> Deceased - Date Deceased
Hospital Indemnity Policy Number	Hospital Intensive Care Policy Number	Life Policy Number

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Pertinent Information: Practice Guides

BY RALEIGH D. KALBFLEISCH



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As you can see from the cover, we are dedicating this issue of the Brief to honoring **Brenda Carroll** for her 25 years of service to our community and the public at DuPage County Legal Aid. I met Brenda when I began my practice in DuPage County and have had the pleasure and challenge of practicing against this very skilled and professional attorney. Please make sure to thank her the next time you see her for continued efforts to promote and provide legal services to those who need them most.

For our articles this month, we're covering the basics in three areas of law: estate planning, tax and uninsured motorist claims. Our lead-off article is from **Derek Johnson** of Rathje & Woodward. The article is a guide to types and priorities of health care documents. It gives practical information to estate planning attorneys concerning the health care documents needed to round out a plan.

Next we have an article for those of us who dare not slog through the new tax code changes. Our Editor, attorney **Terrence J. Benshoof**, has written an article enti-

tled "An Average Attorney's Guide to the New Tax Act". Not designed as an all-inclusive piece, it attempts to give the ordinary practitioner information on changes which will affect the more typical taxpayer client.

And finally, attorney **James F. McCluskey**, a Partner at Momkus McCluskey, LLC, gives us an article discussing the basic issues, including arbitration, related uninsured and underinsured motorist coverage, titled "A primer on Uninsured and Underinsured Motorist Claims in the State of Illinois." Many of us, over our legal careers, will be approached by clients attempting to determine their rights to recovery for auto accident injuries. When one is not dealing with a defendant with adequate insurance coverage, or perhaps none at all, this guide will help the attorney find his or her way.

Good Reading. □

Raleigh Kalbfleisch is an attorney in Wheaton who concentrates in domestic relations law. She received her undergraduate degree from Purdue University and her J.D. from Quinnipiac University School of Law.

ARTICLES FROM LAWYERS & PARALEGALS

The articles published in this magazine are generally contributed by lawyers and paralegals who are members of the DCBA. If you are interested in submitting an article to be considered for publication in the DCBA Brief, please contact the magazine's Editor, Terry Benshoof, at email@dcbabrief.org. Our publication guidelines for author submissions appear at dcbabrief.org/submissions.html. Practicing attorneys whose articles are selected for publication in the DCBA Brief are qualified to receive CLE credit under the applicable Illinois rules.

STUDENT ARTICLES

The DCBA Brief has a long standing commitment to providing a forum for law students in the Chicago metropolitan area. If you are a law student who attends one of these schools or otherwise has an interest in the practice of law in DuPage County, you can join the DCBA for no charge and are then eligible to contribute articles to be considered for publication. If you have interest in submitting a student article, please contact our Student Articles Editor, Mark Carroll at markcarroll@dcbabrief.org.

Illinois' Health Care Agency Laws: A Hierarchical Game of Who's On First

BY DEREK M. JOHNSON

In preparing estate plans, attorneys often include only health care and property powers of attorney, without considering whether those instruments are the only and most effective health care agency documents their clients need. Other less well-known health care agency documents are available, but often not considered during the estate planning process, due to the broad and overlapping scope of powers of attorney. Admittedly, powers of attorney will often suffice for clients' potential health care agency issues that may arise after the estate planning process is complete.

However, powers of attorney will not always be the sole or most effective health care agency documents clients need or desire. In light of this, consideration should be given to the use of all available health care agency documents during the estate planning process, to create estate plans that best meet the needs and desires of the clients. Accordingly, the purpose of this article is to explain the scope of, and interaction among, Illinois' statutes relating to health care directives and agencies, and to discuss the necessity (or lack thereof) for each type of directive or agency. The statutes in the field of play are: (1) the Living Will Act¹, (2) the Health Care Surrogate Act², (3) the Mental Health Treatment Preference Declaration Act³ (the "Mental Health

Treatment Act"), and (4) Articles II (Durable Powers of Attorney) and IV (Powers of Attorney for Health Care) of the Illinois Power of Attorney Act⁴.

The purpose of the Health Care Surrogate Act is to establish a process for private decision-making concerning life-sustaining treatment for patients lacking decisional capacity, and who do not have a valid written health care directive.⁵ The Health Care Surrogate Act applies when:

- (1) the patient lacks decisional capacity or has a "qualifying condition," *and*
- (2)(a) the patient does not have an effective living will, declaration for mental health treatment, or a power of attorney for health care, *or*

1 755 ILCS 30/1 *et seq.*

2 755 ILCS 40/1 *et seq.*

3 755 ILCS 43/1 *et seq.*

4 755 ILCS 45/2 and 45/4.

5 755 ILCS 40/5.

- (b) if the patient has a valid living will, declaration for mental health treatment, or power of attorney for health care, the patient's condition does not fall within the scope of any of those instruments.⁶

If both of those elements are satisfied, then a hierarchy of priority is created for those persons who have decision-making authority on behalf of the patient.⁷

Under this law, a person may also execute a written do-not-resuscitate directive.⁸ That document may also be executed by an attending physician.⁹ Consent for this directive may be obtained from the individual, from another person at the individual's direction, or from the individual's legal guardian, agent under a power of attorney for health care, or surrogate decision maker.¹⁰ Additionally, a witness 18 years or older must attest that the person executing the directive has had an opportunity to read and sign the form.¹¹

Under the Living Will Act, individuals can memorialize their wishes concerning life-sustaining treatment before they develop a terminal condition and lack the capacity to make such a decision.¹² The Living Will Act governs the withholding or withdrawal of "death delaying procedures in the event of a terminable condition."¹³ A "terminable condition" is defined as an incurable and irreversible condition, which is such that death is imminent and the application of death delaying procedures serves only to prolong the dying process.¹⁴ Importantly, in order for a living will to be effective, it must be signed by the declarant and witnessed by 2 people who are eighteen or older.¹⁵ The Living Will Act prescribes a form for use, though use of the form is discretionary.¹⁶

As a general principle, competent adults have the right to refuse any type of medical care, including self-sustaining treatment.¹⁷ This right has been recognized under con-

stitutional right-to-privacy principles, Illinois common law, and the Illinois Probate Act, and is deeply ingrained in common law principles of individual autonomy, self-determination, and informed consent.¹⁸

The Mental Health Treatment Preference Declaration Act governs written declarations of preferences or instructions regarding "mental health treatment."¹⁹ "Mental health treatment" is defined as "electroconvulsive treat-

ment, treatment of mental illness with psychotropic medication, and admission to and retention in a mental health facility for 17 days or less for care or treatment of mental illness."²⁰

Importantly, a valid mental health treatment declaration is effective for only three years.²¹ The declaration must be signed by the principal and 2 adult witnesses who must attest that the principal signed the declaration in their presence and appears to be of sound mind and not under duress, fraud or undue influence.²² However, certain people are prohibited from witnessing the execution of the declaration:

1. The attending physician or mental health service provider, or a relative of the physician or provider;
2. An owner, operator, or relative of an owner or operator, of a health care facility in which the principal is a patient or resident; and
3. Any person related to the principal by blood, marriage, or adoption.²³

The declaration may be invoked, and the attorney-in-fact has authority to make decisions on behalf of the principal, only when the principal is found "incapable."²⁴ "Incapable" means that, in the opinion of 2 physicians or the court, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such extent that the person currently lacks the capacity to make mental health treatment decisions.²⁵ (The Illinois General Assembly has, unfortunately, not been consistent with regard to requirements for these types of determinations. Although two physicians are required for an "inca-



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6 755 ILCS 40/15.

7 See 755 ILCS 40/25(a).

8 755 ILCS 40/65(a).

9 *Id.*

10 755 ILCS 40/65(b).

11 755 ILCS 40/65(b).

12 *Ficke v. Evangelical Health Sys.*, 285 Ill. App. 3d 886, 889-90, 674 N.E.2d 888, 890 (1st Dist. 1996) (citing 755 ILCS 35/3).

13 755 ILCS 35/1.

14 755 ILCS 35/2.

15 755 ILCS 35/3(b).

16 755 ILCS 35/3(e).

17 *Ficke*, 285 Ill. App. 3d at 889, 674 N.E.2d at 889.

18 *Id.* at 889-90, 674 N.E.2d at 890-91.

19 755 ILCS 43/10(1).

20 755 ILCS 43/5(7).

21 See 755 ILCS 43/10(2).

22 755 ILCS 43/20.

23 755 ILCS 43/65.

24 755 ILCS 43/25, 43/30(1).

25 755 ILCS 43/5(5).

pable” determination under the Mental Health Treatment Act, only one physician is required to make an “incapacity” determination under the Illinois Power of Attorney Act.²⁶ The attorney-in-fact must accept the appointment in writing to make decisions on behalf of the principal.²⁷ The statute prescribes a form for the declaration, and any such declaration must be substantially in the form prescribed.²⁸

Finally, the subject matter of the Power of Attorney for Health Care Law, 755 ILCS 45/4 *et seq.*, is broad. Under this law, health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and consent to, or refuse or withdraw, any type of health care for the individual, and all powers a parent may have to control or consent to health care for a minor child.²⁹ Health care agency powers may also extend beyond the life of the principal to include

26 Compare 755 ILCS 43/5(5) with 755 ILCS 45/2-3(c-5).

27 See 755 ILCS 43/15, 43/75.

28 755 ILCS 43/75.

29 755 ILCS 45/4-3; 755 ILCS 45/4-10(c).

anatomical gifts, autopsies or the disposition of remains.³⁰

There are important limitations on who can witness the signing of a health care agency. The following persons are not permitted to serve as witnesses:

1. The attending physician or mental health service provider of the principal, or any relative of the physician or provider;
2. Any owner, operator, or relative or an owner or operator, of a health care facility in which the principal is a patient or resident (including directors and officers of a corporate entity that is an operator, but not the entity’s employees);
3. A parent, sibling, or descendant, or the spouse of a parent, sibling, or descendant, of either the principal or any agent or successor agent, regardless of whether the relationship is by blood, marriage, or adoption; and
4. An agent or successor agent for health care.³¹

Importantly, the scope of a durable power of attorney for health care may encompass the subject matter of the Living Will Act³² and the Mental Health Treatment Act. If the patient has a valid Durable Power of Attorney for Health Care (“DPHC”), that instrument will govern *all* health care decisions made on behalf of the principal, assuming an agent named in the instrument is available and able to exercise the agent’s duties.³³ However, if no agent in the DPHC is available, or the DPHC either does not authorize the agent to deal with the subject of life-sustaining or death-delaying procedures or expressly prohibits the agent from dealing with those subjects, then the valid living will controls.³⁴

With regard to mental health treatment, although not expressly stated under the DPHC Act, a DPHC will govern all decisions concerning the principal’s mental health treatment unless no agent under the DPHC is available, or the DPHC does not authorize the agent to deal with the subject of mental health treatment, or expressly prohibits the agent from dealing with that subject. Indeed, under the DPHC Act, “health care” is broadly defined to include “any care, treatment, service or procedure to maintain, diagnose, treat or provide for the patient’s physical or *mental health* or personal care.”³⁵ Moreover, the statutory form for a DPHC is “intended to be as broad as possible” and authorizes the agent (1) to make health care decisions,

30 755 ILCS 45/4-3.

31 755 ILCS 45/4-5.1.

32 *In re Estate of Greenspan*, 137 Ill. 2d 1, 19, 558 N.E.2d 1194, 1202-03 (1990); *In re Longeway*, 133 Ill. 2d 33, 41, 549 N.E.2d 292, 296 (1989).

33 755 ILCS 45/4-11; *Greenspan*, 137 Ill. 2d at 19-20, 558 N.E.2d at 1202-03.

34 755 ILCS 45/4-11.

35 755 ILCS 45/4-4 (emphasis added).

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including the power to require, consent to, or withdraw treatment for any “*mental condition*, and to admit [or] discharge [the principal] from any hospital, home, or other institution”; (2) to make “any and all decisions [concerning the principal’s] personal care, medical treatment, hospitalization and health care”; and (3) to limit the agent’s power, including directions concerning “electro-convulsive therapy” and “voluntary admission to a mental institution.”³⁶

Further, the statutory health care power includes the power to consent, authorize, or refuse “all types of medical

care, treatment or procedures relating to the physical or *mental health* of the principal, including any medication program, to admit or discharge the principal from any and all types of hospitals, institutions, homes, residential or nursing facilities, treatment centers and other health care institutions providing personal care or treatment for any type of physical or mental condition, and to contract for any and all types of health care services and facilities in the name of and on behalf of the principal.”³⁷ Thus, if a valid DPHC covers the subjects of life-sustaining treatment and mental health treatment, and the agent under the DPHC is available, then the DPHC will trump any living will or mental health declaration.

If, however, a person does not have any valid written health care directive (*i.e.*, the principal does not have a valid DPHC, living will, or mental health treatment declaration), the Health Care Surrogate Act will govern.³⁸ In other words, the Health Care Surrogate Act sets the “default” rules for who is able to make health care decisions on behalf of the principal in the event no valid health care directive exists or the agent under a DPHC is not available (much like the default rules for distribution of property for intestate estates under 755 ILCS 5/2-1).

Given that a DPHC may encompass the subject of the Living Will Act and Mental Health Treatment Act, is a living will or mental health declaration even necessary? With regard to mental health declarations, the general public is presumably less familiar with the narrow subject matter of the Mental Health Treatment Act, and the need or desire for such a declaration on such narrow subjects is likely much less than a DPHC or living will. At first blush, the

average person may very well only have vague notions of what electroconvulsive therapy and psychotropic medication are.

However, as of the late 1990s, the U.S. government estimated that about 1 out of every 5 persons is affected by mental illness each year.³⁹ Other studies suggest that one-half of the adult population will at some point suffer from

a mental illness during their lifetime.⁴⁰ Whether those mental illnesses fall within the scope of a mental health declaration or not, the relative increase in mental illnesses in the

The Mental Health Treatment Preference Declaration Act governs written declarations of preferences or instructions regarding “mental health treatment.”¹⁹

general population warrants attorneys advising their clients to at least consider executing a mental health declaration.

Moreover, even if the client’s DPHC governs life-sustaining and mental health treatment, the possibility exists that the named agents may not be “available” when a decision concerning the client’s health care needs to be made. To further complicate the issue, there is no case law discussing when a health care agent is not “available” under 755 ILCS 45/4-11. Is the agent not available if he or she cannot be reached in person? Is the agent not available if he or she cannot be reached by phone? Must the agent be incapacitated to not be available? This determination will in all likelihood turn on the facts of each case; but, in some instances, there will not be any time to engage in this analysis because a decision on behalf of the client will be required immediately. Thus, in the case of the unavailable DPHC agent, a living will and/or mental health declaration will fill in the gap and provide direction regarding the client’s desires for his or her health care treatment.

In light of these potential scenarios, prudent estate planning calls for attorneys to advise their clients of the interaction and hierarchy among Illinois’ health care agency laws. Advising clients of this information will allow them to make an informed decision as to whether they should execute some or all of the available types of health care directives. Most importantly, these discussions will provide certainty and clarity regarding the clients’ intent if they later lack decision-making capacity and their loved ones and/or medical personnel ultimately need to rely upon the health care agency documents that have been drafted. □

36 755 ILCS 45/4-10(b) (emphasis added).

37 755 ILCS 45/4-10(c)(1)-(3).

38 755 ILCS 40/15.

39 http://www.surgeongeneral.gov/library/mentalhealth/chapter2/sec2_1.html.

40 <http://www.myhealthnewsdaily.com/mental-illness-strikes-half-us-adults-1857/>

The Average Lawyer's Guide to The American Taxpayer Relief Act

BY TERRENCE J. BENSHOOF

On January 1, 2013, the President signed into law P.L. 112-240, known officially as the American Taxpayer Relief Act (ATRA¹). It was also known under the names H.R. 8 (the designation when first introduced several months ago), and more popularly as the “fiscal cliff” tax law. After many months of press releases, speeches, news articles, threats, and even name-calling, Congress and the White House enacted legislation dealing with the tax rates, deductions, credits and tax incentives which were essentially created in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), which, under Title IX of that Act, were due to “sunset,” or automatically expire, on December 31, 2012. This article will deal with the practical effects of ATRA for the average lawyer’s knowledge in dealing with the average American taxpayer’s problems, and will not discuss any political or budgetary aspects of the Act.

The Act affected a great number of things in taxation, as well as numerous topics generally unrelated to tax.² Those sections dealing with tax issues covered income tax and related exemptions, deductions, rates and credits³ for individuals, and included estate tax provisions, and the

alternative minimum tax. With respect to businesses, the Act dealt with a few general depreciation matters,⁴ three Subchapter S gain issues,⁵ and extensions of some employment credits.⁶ By its silence on the topic, the Act allowed the “holiday” on collection of 2% of the FICA tax due

1 Not to be confused with the Gillette Razor of that same name.

2 The Act itself is 157 pages long, and only about a third of it covers tax topics.

3 Sections 101-104, 201 to 209, 401, 408-409.

4 Sections 311, 315, and 331.

5 Sections 324-326.

6 Sections 301, 308-309.

from the employee to expire. There was no change in the percentage due from employer or employee which had existed prior to the collection "holiday."

For the practitioner dealing with clients who are wage earners, and who have relatively few investments, ATRA will generally leave matters of taxation as they were under EGTRRA. Only those taxpayers who fall into the income range of \$400,000 per year (married, \$450,000) will feel the change in the new tax rates, which place these taxpayers into a 39.6% bracket.⁷ That bracket actually applies to the income exceeding the maximum income in the next lowest (35%) bracket. Similarly, the tax rate on capital gains for the high income bracket taxpayer is increased from 15% to 20%.⁸

The greater tax bite under ATRA comes to the high-income taxpayer in the form of the reduction and phase out of both personal exemptions and itemized deductions. While the tax brackets for the high-income group begin at the level of \$400,000 taxable income, the phase-outs help the taxpayer get to that level faster. For the single filer, the phase-out begins when adjusted gross income reaches \$250,000. The personal exemption is reduced by 2% for each \$2,500 (or portion) in excess of the AGI.⁹ The itemized deductions are reduced by 3% of the excess of AGI over the threshold amount, up to 80% of otherwise allowable itemized deductions.¹⁰ Essentially, your client with a high income from salary and investment will be subject to a "triple whammy" if the thresholds are exceeded. And, lest it be forgotten, investment income will now be subject to Medicare tax under the Patient Protection and Affordable Care Act.¹¹ For two-income, higher end married taxpayers, the result could be severe, because the combined income (salaries and investments) can easily increase tax by triggering the threshold amounts for reduced exemptions and deductions, and could also push the couple into a 4.6% bracket increase. The outcome of this new "marriage penalty" is yet to be determined.

Typically, the client more likely to seek advice on the effects of the new tax act will be the small business owner. Often a shareholder in a Subchapter S corporation, careful

balancing will be necessary to avoid the high brackets. The Service looks for a reasonable salary to be drawn by the shareholders in the Subchapter S corporation, or it may be viewed as simply a device to avoid FICA and Medicare taxes (since distributions are not subject to these taxes).¹² The combined salary and distribution, however, are income to the shareholder, which, in good business years,

push the shareholder into the top bracket under ATRA, and cause a rapid phase out of exemptions and deductions. Worse still, under the pre-ATRA law, the taxpayer was likely to fall under the ambit of the Alternative Minimum Tax.¹³

The Alternative Minimum Tax (AMT) was enacted in 1978 to prevent the high-income taxpayers of that time (about 169 families) from escaping income tax entirely by use of large deductions. But the AMT, as enacted, was not indexed for inflation with respect to the threshold amount.¹⁴ Had another "patch" not been enacted, and the tax laws reverted to pre-EGTRRA times, it is believed that, even with



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the poor economy, around 30,000,000 taxpayers would have been subject to AMT in 2013. Under ATRA, a permanent "fix" was enacted. The threshold exemption for AMT was placed at \$50,600 for single filers, and \$78,750 for joint filers, beginning with 2012. Furthermore, there was a new provision inserted which indexes the threshold for inflation, avoiding what has been a constant Congressional sore point for over 40 years.¹⁵

The individual filer client will, under ATRA, still be able to take credits, deductions, or exclusions which would have expired. Among these are the credit for qualified tuition and expenses,¹⁶ the earned income credit and the child tax credit.¹⁷ With respect to deductions, those for teacher expenses,¹⁸ state and local sales tax,¹⁹ and mortgage insurance premiums as part of residence interest²⁰ were extended, but only for one year.

On the business side, ATRA did not make any significant changes. It did, however, extend several deprecia-

7 Section 101(3)

8 Section 102(b)

9 Section 101(b)(2)

10 Id.

11 26 U.S.C. §3101, as amended by P.L. 111-148 and P.L. 111-152

12 26 U.S.C. §§1368, 3121

13 IRC §55.

14 26 U.S.C. §55; P.L. 95-600 (1978); see also P.L. 94-455

15 Section 104

16 Sections 103, 207

17 Section 103.

18 Section 201

19 Section 205

20 Section 204

tion related provisions which would apply to many of the typical clients that a practitioner would be working with. Most notably, the Act extended the 15 year straight-line depreciation for qualified leasehold improvements, such as restaurants and retail.²¹ It also extended 50% bonus depreciation,²² energy credits,²³ and \$179 expensing, including the \$500,000 cap on expensing.²⁴ Unfortunately, these extensions were only for one year, giving only limited planning opportunities.

Whether the practitioner was dealing with salaried employees, business owners or retirees, an area of major concern had been the estate and gift tax question. Prior to EGTRRA, the exemption under IRC§2001 for the lifetime unified gift and estate tax was to increase, by 2007, to the equivalent of a \$1 million estate. Under EGTRRA, the exemption increased gradually to \$3 million in 2009, and the tax disappeared entirely in 2010. Congress then, under the Tax Relief Act of 2010, restored the tax, but with a \$5 million threshold. Estate planners gritted their teeth

throughout 2012, with no clear indication as to what, if anything would be extended, or modified. Finally, under ATRA, the threshold provision of \$5 million was restored, but with the graduated unified rate raised to 40% for taxable estates over \$1 million above the exemption. The exemption will be adjusted for inflation. In addition, the concept of portability was retained and made permanent. Under that concept, the unused portion of the exclusion available to one spouse may be used by the second to die. Since the first spouse can transfer an unlimited amount to the other (marital deduction), this in effect doubles the excluded amount for the second to die.²⁵

Our tax laws continue to be complex, and ever-changing. The beginning of this year saw another set of major changes, many in the form of simply keeping what had been enacted over the past ten years. While the Code, Regulations, rulings and decisions of numerous courts make the tax laws cumbersome to the point of near-insanity, the typical practitioner need only be aware of the types of matters that typically confront his or her clients. It is with this in mind that we present this summary over-view. □

21 Section 311

22 Section 315

23 Sections 401-412

24 Section 315

25 Section 101(c)

JAMS FAMILY LAW RESOLUTION EXPERTS



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importance of resolving custody and visitation issues through mediation instead of lengthy, expensive litigation. He is particularly skilled at getting to the heart of financial disputes and dealing with emotional factors that create obstacles to settlement.



HON. KAREN G. SHIELDS (RET.)

has more than 20 years of litigation, judicial and settlement experience in all aspects of family law. Formerly an attorney in private practice, she served as a Judge in the Domestic Relations Division

of the Cook County Circuit Court, where she was a member of the Special Supreme Court Committee on Child Custody Issues and the Illinois Judicial Conference Study Committee on Juvenile Justice. She has been a full-time JAMS neutral since 2008.

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RECENT CLASS ACTIONS

Walczak v. Onyx Acceptance Corporation

Class certification order affirmed by the Appellate Court. 365 Ill.App.3d 664. Represented class with co-counsel in claims involving alleged violations of Illinois automobile repossession laws. Case settled with each of the over 7,600 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.

S37 Management, Inc. v. Advance Refrigeration, Inc.

Court certified claims involving allegedly deceptively labeled, non-tax charges called government processing fee in the tax line of customer bills. Class certification order affirmed by Appellate Court and Supreme Court declined review appellate court decision. 961 N.E.2d 6.

Terrill v. Hilton

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

Morales v. Sonography Trade School

Court certified class seeking millions of dollars in refunds and other damages for all students who took a medical sonography course but did not obtain jobs in the field. The class claimed that Defendant violated the Consumer Fraud Act's provision for vocational schools by failing to disclose that very few graduates obtained jobs. Appellate and Supreme Case refused to hear an appeal of class certification order.

Municipal Booking Fee Class Actions

Representing class members against a number of cities and towns for return of booking fees charged to persons who are arrested. Class certified by federal court against a town in one case and motion to dismiss denied against a different town in another case.

Boundas v. Abercrombie & Fitch; Daniels v. Hollister

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

Unpaid Overtime Class Actions

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

Erickson v. Ameritech

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

Class Action Defense

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

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

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

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

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Vocational School Deception
Excessive Late Charges
Infomercials & Deceptive Advertising



A Primer on Uninsured and Underinsured Motorist Claims in the State of Illinois

BY JAMES F. MCCLUSKEY¹

A new client meets with an attorney to discuss an automobile accident he was involved in. The accident appears to clearly be the fault of the other driver, but as the attorney reads through the accident reports, one thing stands out: it does not appear that the other driver had insurance, or that, if he did, whether the insurance was adequate to cover the damages the client suffered. If the attorney is not familiar with the aspects of claims against a lack of coverage, a malpractice issue could be looming. This article will inform counsel as to the practical aspects of such coverage questions.

An uninsured (“UM”) or underinsured (“UIM”) motorist claim is a claim made by an insured against his or her own insurance company. The purpose of uninsured motorist statute is to provide coverage which would compensate the insured to at least the same extent as the insured would have been, if he had been injured by a motorist who possessed minimum insurance required by law.² Similarly, the legislature’s intent in enacting the provision for underinsured motorist coverage was to place the insured in same position he would have occupied if tortfeasor had carried

adequate insurance.³ These uninsured and underinsured motorist claims are sometimes referred to as “first-party claims.”

Uninsured motorist claims arise most often when an insured has an accident with an individual who either has no insurance, or whose insurance company becomes insolvent. An uninsured motorist claim may also be brought when the insured is struck by an unidentified “hit and run” driver. Also, the law presumes a party to be uninsured if the appropriate forms are not filed with the Department of Transportation within 120 days of the accident. When coverage for a tortfeasor is denied based on the terms of

¹ This article is an updated, condensed version of a presentation prepared by James F. McCluskey and Mark W. Monroe.

² *Luechtefeld v. Allstate Insurance Company*, 167 Ill.2d 148, 656 N.E.2d 1058 (1995).

³ *Sulser v. Country Mutual Insurance Company*, 147 Ill.2d 548, 591 N.E.2d 427 (1992).

his or her policy, it leaves the insured in the same place as an uninsured motorist. In the case of *Zurich v. Country Mutual Insurance Company*⁴, the Second District held that an insured could seek to recover under the UM provision of his or her policy where the other driver was purportedly insured but that driver's carrier denied coverage for the loss. In that event, the burden was on the insurer to establish the invalidity of coverage to avoid liability.

Underinsured motorist claims, however, arise when an insured has an accident with a motorist who is not adequately insured. These claims also occur if multiple claimants exhaust liability limits of the vehicle. The vehicle may be "underinsured" even though bodily injury policy limits are equal to or greater than the underinsured motorist limits.

Uninsured and underinsured motorist cases are arbitrated in accordance with the insurance policy language. Typically the insurance contract made with the insured requires such cases to be arbitrated between the insurance company and the insured.

There are many similarities to UM arbitration cases and civil litigation cases. First, there is a statute of limitations. Arbitration must be demanded within a specified time period set forth in the policy, but it cannot be less than 2 years after the occurrence of loss or casualty. The exception to this rule is that an action is barred 2 years after the injured party has reached the age of majority, as is the case with a typical personal injury lawsuit. Another similarity is that the burden of proof is on the insured to prove issues of liability and damages. The same rules that apply in civil court governing procedure and admission of evidence also apply in arbitration.

On the other hand, UIM cases have different rules, since arbitration cannot take place until there is a resolution with the tortfeasor. Therefore, the same statute of limitations rule applies if the policy language uses clear and unambiguous language when it requires legal action against the insurer to commence within 2 years of the accident. If the word "loss" is used instead of "accident," then the definition of loss can be interpreted as the resolution of the tort action. In *Silverman v. Economy Fire and Casualty Company*⁵, the policy's language was examined. The court found that when the word "loss," was typed in boldface, it was defined as "direct and accidental damage or loss" but when this word was used in the limitation clause, it was

not typed in boldface and therefore could be considered to mean after the civil litigation case was resolved. An insurer can avoid a lawsuit by agreeing with the insured to delay the UM/UIM issue until the resolution of the action against the tortfeasor. This is considered the insurer's probable and most reasonable course of action.⁶ It makes sense that the insured cannot demand the insurer to arbitrate a claim for UIM benefits until available liability limits are exhausted.

Notice must be given to the UIM carrier of a proposed settlement with the tortfeasor and allow the insurer 30 days to advance payment in an amount equal to the tentative settlement. Unlike binding UM arbitration, the insurance policy declares the method of dispute resolution for UIM cases. The choices for resolution include non-binding arbitration, binding arbitration or trial. In the case of *Mayflower Insurance Company, Ltd., v. Mahan*⁷, the First District found that non-binding arbitration does not violate state public policy



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and the law did not prohibit non-binding arbitration of UIM claim.

Regarding UIM cases, the Supreme Court, in 2011, held that even if an insurance contract was a contract of adhesion, a trial *de novo* provision in underinsured motorist (UIM) coverage, which allowed either party to reject an arbitration award over the statutory minimum for liability coverage, was not unconscionable.⁸ Since the arbitration agreement was designed to result in an award that was the product of the informed and reasoned judgments of an impartial panel of arbitrators (although there was an imbalance in the rights imposed under the trial *de novo* provision), the terms were not so inordinately one-sided in favor of the insurance company that they could not be enforced.

Illinois law requires UM coverage to be at least \$20,000 per person and \$40,000 per occurrence.⁹ In the case of *Stryker v. State Farm Mutual Automobile Insurance Company*¹⁰, the Supreme Court held that where a policyholder received compensation under workers' compensation law in excess of policy limits, but less than the amount of damages allegedly sustained, the set-off provision in the policy reducing the insurer's liability by the amount already received by the policyholder under workers' compensation

4 65 Ill.App.3d 608, 382 N.E.2d 131 (2nd Dist. 1978).

5 272 Ill.App.3d 490, 650 N.E.2d 603 (1st Dist. 1995)

6 *Vansickle v. Country Mutual Insurance Company*, 272 Ill.App.3d 841, 651 N.E.2d 706 (4th Dist. 1995).

7 180 Ill.App.3d 213, 535 N.E.2d 924 (1st Dist. 1988).

8 *Phoenix Ins. Co. v. Rosen*, 242 Ill.2d 48 (2011).

9 625 ILCS 5/7-203.

10 74 Ill.2d 507, 386 N.E.2d 36 (1978).

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law was not contrary to public policy and precluded the policyholder from recovery. Also, the amount recovered from the insured tortfeasor may be set-off only to the extent necessary to prevent double recovery when an insured is injured in part by an uninsured motorist and in part by an insured motorist.¹¹ *Roberts v. Country Mutual Insurance Company*¹² illustrated that the insurer was not entitled to set-off medical payments made against payments for UM coverage if plaintiff's damages, as determined in arbitration, exceeded a total of limits for medical payments and UM coverage. Coverage for any vehicle named in a policy may not be stacked with similar coverage applying to other motor vehicles.

"Stacking" UIM (as well as UM) coverages only arises in two basic and distinct scenarios: (1) where an insured attempts to "stack" or aggregate the limits of liability for UIM coverage for several insured vehicles, where multiple vehicles are covered under one policy of the insured¹³; or (2) where an insured attempts to "stack" or aggregate the UIM coverage limits of several separate policies.¹⁴ The limits of UIM coverage must equal limits of UM coverage where UM coverage exceeds minimum statutory limits. As with UM coverage, workers' compensation benefits may be set-off.¹⁵ In the situation of a single tortfeasor/single claimant case, the existence and amount of UIM coverage is calculated by subtracting the tortfeasor's liability limits from the UIM limits. Multiple claimants are able to recover from their UIM carriers the difference between UIM limits on their own policies and what they received from the carriers for the other vehicles involved in the accident.¹⁶

Under the Illinois Vehicle Code ("the Code"), determining whether and to what extent UIM coverage is available to an insured involves a two-part inquiry.¹⁷ First, it must be determined whether the tortfeasor's vehicle is "underinsured." Under the Code, a vehicle is "underinsured" if the total of the liability limits for the vehicle is less than the limits of the underinsured motorist coverage provided to the UIM claimant under his/her policy. The second inquiry involves the amount of the UIM limits. UIM set-off provisions, reducing the UIM exposure by the amounts received from the tortfeasor, operate only if the tortfeasor's vehicle is first classified as underinsured.¹⁸ Once the vehicle qualifies as an underin-

sured vehicle, the second inquiry is to determine how much coverage, if any, is available to the insured from his or her underinsurance carrier.¹⁹

Investigation and discovery in an arbitration case are similar to that in a standard third-party bodily injury lawsuit. UM arbitration claims are handled essentially the same as a third-party claim. UIM claims require all records and documentation from the underlying claim/lawsuit. The following should be assembled in preparation for arbitration:

1. all pleadings from the underlying case;
2. written discovery responses by all parties;
3. photographs of vehicles with property damage estimates;
4. original and supplemental police report(s);
5. disposition of traffic citations from traffic court;
6. copies of deposition transcripts from all parties and occurrence witnesses;
7. insured's medical records preceding and following the underlying motor vehicle accident and current medical records;
8. copies of all pertinent x-rays or other films;
9. mental health and school records prior and post accident (if applicable);
10. employment records before and after the motor vehicle accident; and
11. income tax records for 2 years prior to, the year of, and all subsequent years, if claimant is self-employed or records of employer are unavailable.

In addition to obtaining the above documentation, the following discovery actions are recommended for UM and UIM claims:

1. written discovery to clarify nature and extent of damages claimed;
2. obtain sworn statements/examinations under oath;
3. depose "key" witnesses, if warranted;
4. depose experts, if named;
5. obtain video surveillance, if appropriate;
6. disclose expert's opinions and present expert for his/her deposition; and
7. draft and execute stipulation regarding applicability of any setoff(s).

The American Arbitration Association rules provide:

The arbitrator(s) shall render a decision determining whether the injured person has a right to receive any damages under the policy and the amounts thereof, not in excess of the applicable

11 *Hoglund v. State Farm Automobile, et al.*, 148 Ill.2d 272, 592 N.E.2d 1031 (1992).

12 231 Ill.App.3d 713, 596 N.E.2d 185 (3rd Dist. 1992).

13 e.g., *Hobbs v. Hartford Ins. Co. of Midwest v. Prudential Prop. & Casualty Ins.*, 214 Ill.2d 11 (2005).

14 e.g., *Bruder v. Country Mut. Ins. Co.*, 156 Ill.2d 179 (1993).

15 *Sulser v. Country Mutual Insurance Company*, 147 Ill.2d 548, 591 N.E.2d 427 (1992).

16 *Hathaway v. Standard Mut. Ins. Co.*, 285 Ill.App.3d 67, 673 N.E.2d 725 (5th Dist. 1996).

17 e.g., *Illinois Farmers Ins. Co. v. Tabor*, 267 Ill.App.3d 245, 248-50 (2nd Dist. 1994).

18 *Tabor*, 267 Ill.App.3d at 250; *Moriconi v. Sentry Ins. of Illinois, Inc.*, 193 Ill.App.3d 904, 908 (4th Dist. 1990).

19 *Cummins v. Country Mut. Ins. Co.*, 178 Ill.2d 474, 488 (1997) (Freeman, J., specially concurring); see, also, *Moriconi*, 193 Ill.App.3d at 908 (the second clause of the statute, dealing with setoffs, only comes into play when there has been an initial determination that the tortfeasor's vehicle is underinsured, as defined by the statute's first clause).

policy limits. The award shall not contain a determination as to the issues of coverage.

In Illinois, the parties' agreement (i.e., the insurance contract) is honored and the scope of the arbitration is limited to issues of liability, such as whether the tortfeasor was negligent and whether the insured contributed to the accident, and damages. Insurance coverage is not an issue in an UM/UIM arbitration.

A declaratory judgment action makes binding declarations of the rights of the parties. It results from a statutory procedure which permits an adjudication before it would ordinarily be available to the litigant. The decision of the court in such a case is binding and final between the parties as to the matters in controversy.

The Illinois Declaratory Judgment Statute, Illinois Code of Civil Procedure Section 2-701 was adopted in 1945. Illinois was the 43rd state to adopt such an act.

The act specifically entails the adjudication of the construction of a statute, municipal ordinance, governmental regulation, deed, will, contract and other written instruments within its purview.

The party seeking relief must possess a personal claim, status, or right which is in dispute with one standing in an adverse position.²⁰ Facts must be alleged in a complaint that entitles the petitioner to relief. Absent such interest, the complaint will be dismissed.²¹

An uninsured motorist insured with a coverage dispute under an insurance policy meets the requirements of the subject matter and the parties that are afforded relief under Declaratory Judgment Act. The essential requirements of a declaratory judgment are:

1. a Plaintiff with a legal tangible interest;
2. a Defendant having an opposing interest; and
3. an actual controversy between the parties concerning their interest.

The insurer or insured may bring a declaratory judgment action against the other. The rules for declaratory judgment require a complaint and a service of process on the insured. The pleading identifies the parties, sets out the chronological narrative with all exhibits and all matters in the controversy, such as an attached copy of the insurance policy, and concludes with a request for the relief desired. The narrative complaint must be specific as to the facts.

In a declaratory judgment action that is filed to declare an insurance contract null and void, the arbitration proceedings will be stayed. Courts have held that a common law action or arbitration should be stayed pending the court's preliminary determination as to whether the contract between the parties

made arbitration of the matter mandatory.²²

A significant issue with regard to UM/UIM declaratory actions is ensuring preservation of rights against a non-performing insurer. In situations where one insurance company potentially holds a right of subrogation against another, the insurer with the subrogation claim may waive that claim if it has not reserved its right against the other.²³ This situation would most often arise in a UM/UIM scenario where a tortfeasor's carrier denies coverage based upon some policy defense, and the injured party seeks UM/UIM coverage under his or her own policy. In such situations it is imperative that the performing insurer reserve its right against the non-performing insurer. An insurer desiring to reserve its right against a second insurer must make its position clear in its correspondence with the second insurer; it is also good practice to include such reservation language in any settlement agreement or order, then provide a copy of it to the nonsettling insurer.²⁴

The "Target Tender Doctrine" is a doctrine by which an insured, who is covered by more than one policy of insurance, may select the insurer of his or her choice to defend and indemnify a claim and deselect the insurer(s) whom he or she wishes to remain uninvolved in the claim.²⁵

The Fourth District held that the Target Tender Doctrine is inapplicable to automobile insurance cases.²⁶ The *Pekin* Court held that the target tender doctrine, under the seminal case of *John Burns Construction Co. v. Indiana Ins. Co.*²⁷ had been primarily applied in the context of construction contracts involving a named additional insured.²⁸ That fact, in addition to the mandatory automobile liability insurance law²⁹, lead the *Pekin* Court to conclude that the Target Tender Doctrine had no application in the area of automobile coverage law.

In UM and UIM cases, an aggressive approach to arbitration is absolutely necessary. Otherwise, if claimant's attorney does not actively pursue the claim by moving through discovery and scheduling the arbitration, the process could be delayed for years. Remember, not only must the insurance attorney agree on the date for a hearing, but all three arbitrators must be available. Diligent attention to detail and treating an UM/UIM claim like any other lawsuit will win the day for your client. □

20 *Underground Contractors Association v. The City of Chicago*, 66 Ill.2d 371, 362 N.E.2d 298, 301, 5 Ill.Dec. 827 (1977).

21 *McDonald v. County Board of Kendall County*, 146 Ill.App.3d 1051, 497 N.E.2d 509, 100 Ill.Dec. 531 (2nd Dist. 1986).

22 *School District No. 46 v. Del Bianco*, 68 Ill.App.2d 145, 215 N.E.2d 25 (2nd Dist. 1966); and *County of Stephenson v. Bradley and Bradley, Inc.*, 2 Ill.App.3d 421, 275 N.E.2d 675 (2nd Dist. 1971).

23 *Home Ins. Co. v. Cincinnati, Ins. Co.*, 213 Ill.2d 307, 327-28 (2004).

24 *Home Ins.*, 213 Ill.2d at 327.

25 *American Nat. Fire Ins. Co. v. Nat. Union Fire Ins. Co.*, 343 Ill.App.3d 93, 97-101 (1st Dist. 2003).

26 *Pekin Ins. Co. v. Fidelity & Guar. Ins. Co.*, 357 Ill. App. 3d 891 (4th Dist. 2005).

27 189 Ill.2d 570 (2000).

28 *Pekin*, 357 Ill.App.3d at 903.

29 625 ILCS 5/12-606(d).



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New Illinois Decisions in Family Law

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Family Law

International Child Abduction Remedies Act

**By Danya A. Grunyk, Hilary A. Sefton, Leah D. Setzen
and Victoria C. Kelly¹**

In *Walker v. Walker*, No. 11-3602, --- F.3d ---, 2012 WL 5668330 (7th Cir. November 16, 2012) the husband, a citizen of Australia, filed suit under the International Child Abduction Remedies Act (ICARA) 42 U.S.C. § 11601 *et seq.*, to compel his estranged wife, a citizen of the United States, to return the couple's three children to Australia. The parties were married in Chicago in 1993, and then moved to Seattle and lived there until 1998, when they moved to Australia. The parties' eldest child was born in the United States but only lived here for one year before the parties' moved. The two younger children were born in Australia. In June 2010, the family traveled to the United States. Both parties expected the wife and children to remain in the United States for six months. According to the husband, the children and wife were to live with his wife's parents while the family home in Australia was being remodeled. According to the wife, the trip was intended as "an extended prelude to a permanent move to the United States." The husband returned to Australia in late July 2010.

In November 2010, the wife filed for divorce in Cook County. Upon receiving notice, the husband's attorney in Australia sent a letter, dated January 21, 2011, to the wife's divorce attorney offering to settle the divorce out of court. In the letter he made, "on a without prejudice basis," certain proposals conditioned upon the wife's acceptance of the offer. For example, in exchange for granting the wife primary custody and allowing the children to remain in the United States, the husband asked for the full nine weeks of the children's summer break and two weeks over

winter break. He further requested that he be allowed to visit with the children in the United States at least twice per year. The letter also referred to the Hague Convention and noted that the parties' habitual residence was Australia. After several exchanges, it was clear that the parties would not reach an agreement. The husband then filed a request for the return of the children with the Australian Central Authority in mid-February 2011. In May 2011, he filed a petition for return in the Northern District of Illinois. Following a two-day evidentiary hearing, the trial court denied the petition.

On the husband's appeal, the wife first argued that the husband's case was moot in light of an Illinois state court judgment awarding her sole custody of the children. However, the Court of Appeals disagreed upon recognizing that Article 17 of the Hague Convention expressly states that "[t]he sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention." The entire purpose of the convention is to deter parents from absconding with their children and crossing international borders in the hopes of obtaining a favorable custody determination in a favorable jurisdiction.

Michael Sitrick practices in Best, Vanderlaan & Harrington's DuPage County office where he concentrates in civil litigation. He received his B.S. in Business Management and a minor in Music from Millikin University in Decatur, Illinois, where he graduated magna cum laude. He received his J.D. from Loyola University Chicago School of Law, where he also earned a certificate in Trial Advocacy, received two CALI Awards, was recognized on the Dean's List multiple semesters, and was President of Loyola's chapter of the International Legal Fraternity Phi Delta Phi.

¹ Grunyk & Associates, P.C., Naperville, Illinois

The next issue on appeal was the trial court's decision to admit the January 21, 2011 letter written by the Australian attorney. The Court of Appeals found that the letter was an offer of settlement and should have been inadmissible. Despite this, it further noted that letter provided no basis for denying the petition for return.

On appeal, the husband further challenged the trial court's findings that he: "1) failed to establish that his children were habitually resident in Australia; 2) failed to establish that he was exercising his custody rights; and 3) consented to the children remaining permanently in the United States." In reviewing the trial court's analysis, the Court found that the trial court identified May 4, 2011, the day the husband filed his petition for return, as the date that the retention began. According to the trial court, that was the first time the husband "unequivocally signaled h[is] opposition to [the children's] presence in the United States." However, the Appellate Court disagreed with that assessment upon considering the husband's petition, which noted that in mid-February 2011, he filed a request for return with the Central Authority in Australia. As such, the Court found that for the trial court to have concluded that the husband's opposition was not apparent until May 4, 2011 was clear error. Therefore, for the purpose of its analysis, it recognized a retention date of January 21, 2011, or a date shortly thereafter.

The Court next stated that for the husband to succeed on his petition, he would need to show that Australia was the children's habitual residence at the time of their retention in the United States. Upon relying on established case law, the Court noted that a child's habitual residence is determined by asking "whether a prior place of residence was effectively abandoned and a new residence established by the shared actions and intent of the parents coupled with the passage of time." Here, the Court determined it could not find enough in the record to support the conclusion that the parents arrived in the United States with the shared intention of abandoning Australia and establishing a new habitual residence in the United States.

Although the trial court had found that the husband abandoned the children upon noting that he did not return to the United States after he left in July of 2010, the Appellate Court held that this did not equate to unequivocal abandonment. This is so because both parties testified that they always intended for the husband to return to Australia for work and to oversee the construction on the house. Further, the record showed that the husband had plans to spend Christmas in the United States, but cancelled them because of the divorce proceedings and that his January 21 letter did not give consent for the children to stay in the United States, as it was for settlement purposes and it was rejected. Moreover, the Court found that the husband

and demonstrated an interest in custody issues through his letters and that his lack of financial support was irrelevant to whether he was exercising his custody rights.

Lastly, the husband argued on appeal that the trial court had improperly held that his January 2011 letter was consent for the children to remain in the United States. The Appellate Court agreed, ruling that the letter was an opening offer and nothing more. Moreover, the Court found that the proposed terms of the letter were rendered null by the parties' failure to come to an agreement. Accordingly, the Court reversed and remanded the case for a determination on which court system should resolve the underlying issue of child custody.

Parentage Act

By Danya A. Grunyk, Hilary A. Sefton, Leah D. Setzen and Victoria C. Kelly²

In *Wittendorf v. Worthington*, 2012 IL App (4th) 120525, 2012 WL 6055783 (November 6, 2012), the mother was in an abusive relationship with the father for several years before their child was born. The couple lived together for the child's first few months in Georgia, and then the mother returned with the child to Illinois. The mother obtained a plenary order of protection against the father while she also pursued a parentage action against the father in Illinois. The mother sought supervised visitation between the father and the child, who was 16 months old at the time of the trial. The trial court awarded the mother residential custody of the child but did not require supervised visitation between the child and the father. Further, the court's order did not even require visitation to take place in Illinois. The trial court also modified the terms of the plenary order of protection to allow the father contact with the child and personal contact with the mother concerning the child.

On appeal, the Court reversed and remanded the trial court's decision as to visitation but affirmed its modification of the order of protection. With regard to visitation, the Court held that the trial court had improperly determined that section 14(a)(1) of the Parentage Act incorporated section 607(a) of the Marriage Act rather than section 602. 750 ILCS 45/14(a)(1), 750 ILCS 5/602, 607. In so holding, the Court relied upon past precedent stating that section 14(a)(1)'s "reference to 'relevant standards' makes it clear that not every rule that a court would apply to a parent in a dissolution of marriage proceeding would apply to a parent in a parentage case. Here, the Court

² Grunyk & Associates, P.C., Naperville, Illinois

CONTINUED ON NEXT PAGE

found that the trial court had abused its discretion in setting the visitation schedule because it failed to account for the child's tender age and lack of familiarity with the father (the child had not seen the father for one year of his 16-month life). Accordingly, the Court provided that on remand the visitation schedule should be limited to supervised visitation to take place in the child's home town in Illinois, with no overnight visits. With regard to modification of the plenary order of protection, the Court further found that the modification allowing for personal contact between the mother and father was an abuse of discretion.

Judgment for Dissolution of Marriage

By Danya A. Grunyk, Hilary A. Sefton, Leah D. Setzen and Victoria C. Kelly³

In *In re the Marriage of Baecker*, 2012 IL App (3d) 110660, 2012 WL 6743536 (Dec. 31, 2012), the husband filed a petition for dissolution of marriage in February

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2010. In June 2010, the husband had been convicted and sentenced to prison for attempting to kill his wife. In March of 2011, the parties indicated that they had reached an agreement. At all relevant times, the husband was represented by an attorney, and was not present in court. Further, the trial court specifically asked the attorney if he had the authority to enter this settlement and whether he had explained the settlement to his client. The attorney said that he had explained everything to his client and that he had the authority to enter into the agreement. The trial court read the terms of the oral agreement into the record and instructed counsel to prepare the final judgment. The husband refused to sign the judgment. The wife then filed a motion to enforce the judgment and the husband filed a motion to vacate the oral settlement. The trial court heard the arguments of both parties and entered a final judgment that incorporated the oral settlement agreement.

On appeal, the husband argued that the trial court erred in denying his motion to vacate, that the oral settlement agreement was not an enforceable contract for which there was a requisite "meeting of the minds," and that he was under duress and the victim of coercion at the time the settlement was reached. The Court affirmed the trial court's decision. In doing so, the Court found that the record contained many statements by the husband's attorney that demonstrated that the agreement was acceptable to the husband, that the husband wished to proceed, and that he knew he had the right to a trial. Moreover, the husband did not provide the trial court with any affidavit or evidence to refute the apparent authority that his attorney had to settle on his behalf.

In response to the husband's argument that there was no meeting of the minds as to the payment of his attorney fees, the Court found that, at all times, the parties had clearly agreed that the husband's attorney would receive \$25,000 from the net proceeds of the sale of his vehicle and any remaining funds would go to his wife. The appellate court found that the record was clear of these intentions.

Lastly, with respect to the husband's argument that he was under duress when he agreed to the terms of the divorce as he only had 20 minutes to talk to his attorney, and that the agreement was unconscionable, the record clearly showed that his attorney believed that his client would receive 48% of the estate and that his client agreed to the terms of the settlement. As such, the Court found that nothing in the record indicated that the husband was coerced or under duress at the time the agreement was entered. Further, the husband did not point to a single instance of wrongdoing by his wife or her attorney that would rise to the level of coercion or duress. □

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Asset Clawback Shocker: State of Illinois Behaving Badly

We were just notified of a nursing home resident who had been properly qualified and was receiving nursing home Medicaid benefits who had suddenly had his benefits terminated retroactive to March of this year and extending through a date in mid 2014. The state's reason for the termination was that the nursing home spouse's wife had died with all of her assets in a revocable living trust. In the revocable living trust she had named their children as the beneficiaries of the trust corpus. The state now claims that since a revocable trust becomes an irrevocable trust at the moment of a trustmaker's death, and since the husband was not the beneficiary of all assets, that this constituted an improper transfer of assets which is non-allowable—and thus the basis of a penalty to be imposed upon the innocent spouse in the nursing home. Amazingly, the spouse in the nursing home loses nursing home Medicaid benefits up to the equivalent of how many months those assets would have purchased nursing home care.

This is a stunning stealth move on the part of the state of Illinois. We are reviewing this case with prominent national counsel who have advised us that in no state in the country has a position such as this been effectuated. Not only is this a threat to ordinary citizens, it is also a threat to all estate planners. The state of Illinois owes its citizens and their advocates a duty of notice and due process before imposing such horrendous penalties—especially when it involves the frail and the elderly.

Please feel free to contact us at Law ElderLaw when you are dealing with families facing long term care situations. We can be reached at rick@lawelderlaw.com or 630-585-5200.

Rick L. Law, Esq.



Rick Law



Diana Law

Serving Seniors

Brenda Carroll Celebrates Her Silver Anniversary as Director of DuPage Legal Assistance

BY SEAN MCCUMBER

In late 1988, **Brenda Carroll** took the helm of a new law firm in DuPage County, responsible for clients that could never pay them, handling cases that almost no one wanted, and facing opponents who sometimes showed a lack of respect or compassion. The formation of the DuPage Bar Legal Aid Service, commonly known as Legal Aid, had almost silently stood in the shadows, almost lost to history. Though she prefer I not mention this, Brenda accepted her position as Director of Legal Aid as I began my sophomore year at Glenbard South High School, and it would not be for another eighteen years that I would first meet Brenda, after whom I would happily model my legal career, and only hope to achieve her level of grace and aplomb.

How to honor someone so interesting and unique for handling a job that many view as thankless, few would ever understand, and no one could begin to fill at this point, turned out to be no small task. In looking at my collegial relationship

with Brenda, I knew that I barely knew her at all. I learned many facets of Brenda in digging through the usual research that journalists and authors undertake. Brenda was born in London, England on a British army base, where her father was stationed. She returned to the States, living in Oak Park, Illinois. She attended Loyola University Chicago, where she earned her bachelor's degree in English. Brenda moved to Dublin, Ireland after that, where she wrote for the national broadsheet newspaper, the Irish Times. When she returned to the States the second time, she was a teacher, then went on to study law at Chicago-Kent Law School.

I could write of her service as director on the board of the DuPage County Bar Association, or as president of the DuPage Association of Women Lawyers, or as a member of the assembly of the Illinois State Bar Association. I could list the countless awards she has received – the D.A.W.L. Inspirational Woman Award, the Lawyers Trust Fund Outstanding Service Award, the Family Shelter Service Justice Partner Award, the Ralph Gabric Award, or



Photo of Brenda Carroll by Jeffrey Ross

the DCBA Lawyer of the Year Award, to name just a few. I could tell you about how she writes profusely, from grant applications to DCBA Brief articles to kind letters. However, for 25 years of service, no better way to speak of Brenda exists than to share the words of her friends and colleagues.

The Honorable Robert J. Anderson, Circuit Judge

I first met Brenda when she applied for the job as attorney for our

¹ Though I have written and compiled this article, the assistance of the Honorable Robert Anderson, the Honorable Bonnie Wheaton, Robin Roe, Cecilia Najera, James Reichardt, Laura Kern, Dorothy Mintz, Lynne Kristufek, Robin Miller, Nancy Griffin, Connie Gessner, and Liz Krueger helped make this article a reality.

CONTINUED ON NEXT PAGE

Legal Aid Program. I was on the Board of Directors and on the hiring committee formed by the DCBA at that time. Brenda was head and shoulders above all the other candidates and was an easy choice by the Committee. She has clearly proven to be one of the best decisions ever made by the DCBA Board. Brenda has done a marvelous job as Director of our Legal Aid Program. Our program, under her leadership, has been recognized as one of the best in the State by the ISBA and by the Lawyer's Trust Fund. I can no longer remember the year; but we received an award as the best program for the year from the ISBA about 6 - 8 years ago. Our program could win every year; but the ISBA only gives it once to any program.

The DuPage County Courthouse has a great children's waiting room – Safe Harbor – which

keeps children out of the courtroom. Brenda had the brilliant idea for this project. The DuPage Association of Women Lawyers, under the visionary leadership of Irene Bahr and Angela Imbierowicz, with plenty of help from Brenda, went forward with

Sean McCumber is a partner at Sullivan Taylor & Gumina, P.C. in Wheaton, Illinois. He received his J.D. from The University of Illinois College of Law, and as a result is an avid Illini fan. He concentrates his practice in family law, adoptions, and juvenile law. He is the Chair of the DCBA Professional Responsibility Committee and is a Fellow in the American Academy of Adoption Attorneys.



turning yesterday's idea into today's reality. Brenda is still on the governing board for the waiting room.

Children's issues are not just a side project for Brenda. On

several occasions, while sitting in the Domestic Relations Division, I had horrific cases where children from indigent families needed a Guardian ad Litem who would vigorously protect them as their parents went through a divorce. I have personally called Brenda and asked for her help on a number of these cases. I know at least one case where she raced over to the Courthouse that day to jump into a case where a child needed help immediately. As always, she did a great job on that case and on every case where I needed her help. Brenda is a role model and mentor to many people, including me. I rely on her for help in many situations, be they indigent person issues or domestic violence issues. She has been an active participant in our Family Violence Coordinating Council. She has been a leader in the State of Illinois on the issue of violence against the elderly. I have asked, and she has agreed, to speak at many programs I organized. She is a team player and always does a great job. I like, respect and admire her. She has been a fierce, but civil, advocate for the underprivileged in DuPage County for these 25 years. I am proud to know her and be her friend, and Brenda's hand has touched many lives, all for the better.

**Elizabeth Krueger,
Private Attorney**

In 1987, I served as a member of the Board of Directors of the DCBA – our meetings were lunch meetings at Ki's Steakhouse and usually lasted all day. At that time we did not have a legal aid attorney, let alone a legal aid service. The DCBA doled out indigent cases to private attorneys, where, theoretically, all DCBA members had to participate. However, most of the cases were family law and divorce



Then DCBA President Colleen McLaughlin with Brenda Carroll at the 2012 Installation Dinner (at which Carroll was awarded the Ralph Gabric Award). Photos by Jeffrey Ross.



cases, and those attorneys who did not practice family law were at a loss as to what to do. We tried a number of things, including allowing an attorney who did not want to accept a case to “buy out” of his or her obligation. Finally, we decided to hire a full time legal aid attorney, which was a very big step at that time.

The arduous task began, and I served with others, including attorney **John Kincaid**, on the committee to interview for the position. We interviewed many, many attorneys before we chose Brenda. Brenda was very soft spoken and seemed so very kind - just the sort to deal with the indigent. More importantly, she knew family law. Even though some members of the board initially challenged the choice, everyone to this day agrees that in 1988, the DCBA made the best decision, as a bar association, but more importantly to the thousands of people helped by the Legal Aid. Brenda is simply the best.

***Robin Roe, Office Manager,
Legal Aid***

It's been my honor and privilege to have worked with Brenda over the

years and regardless of what the definition of the word “is” is, I know everyone will agree when I say, “Brenda *is* Legal Aid.” The defender of the less fortunate, Brenda expects so little for the help she has given to so many. She does not measure her accomplishments as an attorney by the awards bestowed upon her, or the titles granted to her, but rather by a crayoned thank you note or a Christmas card with an updated photograph of one of the hundreds of children she has championed over the years. A truly humble and gracious woman, I marvel at her knowledge of character, and her strengths of guidance and wisdom. She is my hero.

***Dorothy Mintz, Private Attorney
and Board Member of Prairie
State Legal Services***

Brenda is a very down-to-earth, genuine, approachable person. She is able to interact with everyone—from anyone in the boardroom, at



Brenda Carroll with Robin Miller

the train stop, in the cafeteria, or along the race route at the Chicago Marathon, in support of our fundraisers. She has guided Legal Aid through ups and downs, good times and bad times, and all the changes in personnel and leadership around her. Brenda has earned the reputation of being an experienced, skilled attorney throughout the State of Illinois. Over 25 years, she has seen many different legal cases, situations, and scenarios. She has represented an endless number of clients and has appeared before a countless number of judges. She is always prepared, professional, and civil in her demeanor. Brenda is always ready to unselfishly share her expertise with those who need advice; she is a great mentor and advisor, especially to newer attorneys and women. In addition, she continues to grow and to learn the law and its practical application. It is for all these reasons and more that we love, cherish, and respect Brenda Carroll. I congratulate her on 25 years of service and look forward to 25 more!

Lynne Kristufek, Private Attorney

My first position as an attorney



Brenda Carroll with Connie Gessner (our thanks to Laura Kern for these images).

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Brenda Carroll talking with Jacki Hamler.

was as the very first associate attorney of Legal Aid, working directly under Brenda. She was, and is, an amazing mentor, boss, and just a great person to be around. During my first week working at Legal Aid, I had a suicidal client who sent me a letter stating the client was going to commit suicide. Being a brand new attorney, I, of course, turned to Brenda to see what to do. We reviewed the ethics rules regarding disclosing client communications, and very quickly called the local police department, who took the client to a hospital for the client's own safety. They also took a copy of the client note, well before we had determined that no other attorney-client information was included in the note.

During our time in Legal Aid, Brenda and I traveled to Indiana for a domestic violence seminar. Now, everyone knows of Brenda's beautiful reddish-blond hair, full and curly. Well, the first morning we awoke, I was surprised to see that Brenda's

curls and full hair are not manufactured by curling irons or hair dryers, but are natural and effortless. And we worked, for a lengthy period of time, together quite well, on case after case. However, when it was time for me to move on to the State's Attorney's Office, I was unsure of how to break the news to Brenda. So, I called her and **Jim Reichardt**, who was chair of the DCBA Legal Aid Committee at the time, to take them out to a bar and give my resignation. For anyone who leaves a position they love doing, this way is the best

way to handle it. Brenda often mentions the bar resignation from time to time.

Over the years, Brenda has become one of my closest friends, and a person I go to for legal knowledge, personal guidance, and support. A group of us, mentioned more in the musings of **Laura Kern**, get together for dinner once a month to talk shop, share stories, and laugh and cry together. Many of us in the group have undergone some major personal issues, and without a doubt, Brenda is the first one there for each of us, making time for support and comfort when we need it. It has been more than twenty years since I was hired by Legal Aid and began working with Brenda. I am not only proud of my time there, but also of the fact that I continue to have Brenda as my friend and colleague.

Connie Gessner, Private Attorney

I think the best way to honor Brenda is simply to share a story about her. Many, many years ago,

in a time when there were wolves in Wheaton, Brenda and I drove in a snowstorm to Galena to spend a weekend with friends in Eagle Ridge. The snow came down hard and the road iced over. Cars and trucks skidded off the road, or had already landed in the ditch. Each time we slid, Brenda would grab my arm and yell, "Jesus, Mary, and Joseph!" But, being the polite person she always is, she would immediately apologize for trying to kill us.

Mercifully, the road was closed, leading Brenda and I to wait out the storm at a truck stop in Rochelle, Illinois.² We learned that in this truck stop, a person could purchase an engagement ring, take a shower, and go to church; all of this is in addition to eating truck stop food, which I believe was chicken-fried steak for Brenda and I. Every time someone walked in, I would run up to them and ask if the road was open. Much later, someone came in and answered "yes" to the road being open, so Brenda and I decided to leave. A waitress cautioned us, "Honey, these boys (the truckers) do this for a living and they're not leaving." Brenda and I did not do that for a living, so we left. The drive took us ten hours to get to Galena, and I cannot think of too many people I would rather spend hours with at a truck stop in Rochelle, Illinois than Brenda Carroll. And for those memories and a thousand more, I thank her.

Laura Kern, Private Attorney

Brenda has been part of many groups of colleagues, many with intriguing names, and each with its

² Interesting fact – the teams of Rochelle Township High Schools are known as the Hubs, a nod to fact that the town at the intersection of several state and interstate highways and two railroad lines.

own individual purpose. The overall goal of any of these social groups was to support each other. One of those groups is the Crushers, which has no specific connotation, other than it is was a name that I coined and the rest of the group liked. The group includes Brenda, me, **Terry Fawell, Robin Miller, Connie Gessner, and Lynne Kristufek**, and is a group of women lawyers who meet on a semi-regular basis for case discussions, friendship, dinner, camaraderie, and support. One of my favorite stories is when I hosted the Crushers at my house for dinner. I was excited to show them my newly decorated bedroom and brought them upstairs to see it. Upon entering the room, Brenda puts her finger on her chin, narrows her eyes and states, "So this is where it all happens!" I cannot enter my bedroom without laughing since that day.

It is that humor, and her disarming demeanor, that I feel defines her. There are stories that are so funny that they could not be shared here, such as an incident involving swimming in Lake Geneva during a 1990's ISBA meeting. There are others, such as Brenda playing trivia games. When asked in the game, "What do men like to do most of all," Brenda answered quizzically, "Golf?" The other story that I love about Brenda, that also defines her as a lawyer, involves a case she had with the now **Judge James Konetski**, when he was an attorney. He represented one party, and Brenda represented the other party. Konetski, in my opinion, was rather excited and flustered, and may have raised his voice to Brenda. Brenda, in her Brenda-way, placed her hands on Konetski's face and said, "Jim, Jim, it's me, Brenda." Konetski was disarmed and the case settled in a reasonable and fair fashion. That is

Brenda, a voice of reason, and unflappable in any situation. I knew the day I met Brenda some many, many years ago that this was someone sent by God to be my friend; and there could be no better friend, no more honest and genuine person, than Brenda!

Cecilia Najera, Legal Aid Attorney

Brenda is not only a wonderful woman to work with, but also a great teacher, sincere mentor, and loyal and encouraging friend. It truly has been a pleasure working with her and learning from her over the years. I have always thought that she inspires others by example, and often felt that she is a caretaker of the community in which she lives. She not only directs Legal Aid, but also serves on the Elder Abuse Multidisciplinary Team, and is a very loved aunt and sister. She has mentored at least 12 staff attorneys, while serving as our fearless director.

I asked a few of my former co-workers to help me describe Brenda in one word. Our former Office Manager, **Christine Scheckel-Dettmann** said, "Class. She is always able to keep a calm demeanor." This is so true, because Brenda brings dignity and grace, with a twist of humor and wit, to every situation she encounters. After the first trial I ever did, a young mother collapsed to the ground sobbing after hearing that she had lost custody of her child. I looked at Brenda in wide-eyed horror, not knowing what to do with the client. She beckoned my client with a wave of a finger and told her to follow her, in a stern, but car-

ing voice. I was in awe when my client got up off the floor and followed her to the vestibule- just like that, and with a nod from **Judge Mitton**. This was not a one-time occurrence. Brenda can silence a manic applicant with a wave of a finger and a look. It is magic.

She loves Legal Aid because the program gives voice to those that might not be heard otherwise. Those who are a part of Legal Aid are always a part of the fellowship, and never really leave. Her past clients still send Christmas cards. Past staff attorneys and staff (even those that didn't work at Legal Aid at the same time) visit with each other outside of work and in the courthouse. Brenda is the glue that holds us all together. Her friendship and strong example have guided us, and made us better people. We have been truly blessed to have her in our lives.

Nancy Griffin, DuPage County Assistant State's Attorney

I have known Brenda ever since volunteering at Legal Aid and then becoming a staff attorney. I am one of the many graduates of "the BMC

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Brenda Carroll with Laura Kern in the background.

post-law school practicum on family law,” for she has mentored and employed many people such as myself. She is extremely hard working, maintaining as full a case load as her staff attorneys; while also writing grant applications; attending fundraisers; hiring, training, supervising and evaluating staff; budgeting; and attending to countless other unknown tasks and duties. On top of that, she always kept the most difficult clients for herself, while she could have easily foisted those off on others, including me.

One thing Brenda taught me is that trial practice can be humbling—just when you think you are riding high, something happens that reminds you of your place in the world. Brenda does not hesitate to share these experiences, such as a recent episode when, on her return from having approached the bench, and maybe a few others prior to that, another female attorney kindly pointed out to her that her skirt was inside out. Brenda inquired, “How could you tell?” The attorney replied,

“It’s all the tags and labels showing.” And that is what makes Brenda, well, Brenda - totally focused on her work. Over the years, she and I have pondered the mystery of how many of the couples, especially in the pater-nity courtroom, ever got together. Brenda philosophically attributes it all to the “beer factor,” which makes people appear more attractive and fascinating at the time than they really are. And it is that sense of humor that also makes Brenda, well, Brenda.

James Reichardt, Private Attorney

I first met Brenda Carroll when I first joined the DuPage County Legal Aid Committee twenty-five years ago. My impressions remain that the program was chaos inhabited by the well-meaning. Upon Brenda’s arrival on the scene, order prevailed and a twenty-five year era of serious and devoted service to the deserving poor in DuPage County began. I believe one of the early problems that we had in Legal Aid was the assignment to pro bono volunteer lawyers of cases for clients who turned out not to be

qualified to receive free aid. One of Brenda’s first accomplishments was to tighten up the screening process. By tighten up, I mean establish a screening process in the first place. With Brenda at the helm at Legal Aid, we could rest assured anyone given a free lawyer was truly deserving under the financial guidelines of the federal legal aid program.

Although Brenda is Irish, she has no tolerance for small talk whatsoever. In any phone conversation with Brenda regarding business, once you have covered the subject under discussion, you are likely to hear a crisp and cheerful “goodbye” from the other end of the phone. That is Brenda. It’s how she gets so much work done. However, I also had the chance to work with her on the same side of a case, as Brenda and I were co-counsel back in 1989. We obtained a *writ of habeas corpus* to release a minor who had been incarcerated in the psychiatric ward of a local hospital by the child’s crazy father. Brenda and I went together to meet with the client, and were impressed with his calmness and sanity. We had a very exciting and accelerated hearing before **Judge Bruce Scidmore**, who, with his typical courage and disregard of political consequences, ordered the hospital to release the young man. I can honestly say in this case that everyone has lived happily ever after. I treasure this memory of perhaps my greatest moment as a lawyer working shoulder to shoulder with Brenda Carroll. More importantly, to quote Humphrey Bogart in the movie, *Casablanca*, “this is the beginning of a beautiful friendship.”³



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³ The author takes no position as to whether Mr. Reichardt believed Brenda Carroll to be Rick Blaine or Captain Louis Renault.

The Honorable Bonnie M. Wheaton, Circuit Judge

The story of how Brenda began might be a bit hazy for me – hey, it was 25 years ago. I know that we debated about hiring an attorney, because the vast majority of the indigent cases involved domestic relations, and most of the attorneys lacked any experience in that area. This meant that the divorce attorneys were overburdened with “freebies.” I could go on repeatedly with every instance of why I think Brenda is a wonderful person and superb lawyer, but I am only one voice among many. Many of us agree that she was the best pick we could have ever hoped for. **Ted Duncan** (the Honorable Edward Duncan, retired) used to appoint Brenda on EVERYTHING where there were issues and no money. She could handle it all and maintained a calm and even demeanor.

Sean McCumber, Private Attorney

I have had the honor of serving as president of the Legal Aid Foundation in 2008, and will have that honor again in 2013. I am truly amazed by Brenda, because she is humble, and yet larger than life. She has a wealth and breadth of knowledge that is unmatched, and a disarming way of getting people to see things her way. I have never been Brenda’s opposing counsel, but I have served in cases with her involving some unusual guardianship issues. In one case that went off without a hitch, we

were able to have a good laugh over some comments made by the adult for whom Brenda had so diligently brought guardianship proceedings to



(photo by Jeffrey Ross)

protect, because as the disabled adult informed me during our investigation, “the Republic of Italy tried this before and they couldn’t get control of me. Anyways, I have to go back to advising the appellate court.” In another case, the only laugh we were able to have was that a disgruntled litigant in a guardianship matter, unhappy that we felt differently than her about the disabled adult, promptly threatened to have Brenda and I disbarred.⁴

⁴ For the record, this idle threat never came to fruition.

I have watched Brenda face opponents, both lawyer and litigant, with dignity and respect, no matter how little is afforded to her in return. She defends all, but does not give false hope to litigants. She is honest and forthright. Is she perfect? No, and no one ever could be. Does she get my jokes? No, because she is proper and dignified, and I am rough around the edges. Can she do almost anything? That is hard to say, but I do know that she has managed to stretch the Legal Aid budget to cover the lean times, and to manage a stable of volunteer attorneys to help shoulder the massive amount of need for pro bono services. She wears many hats in Legal Aid – senior partner, managing partner, head of the finance committee, mentor, and so on.

In 25 years, she has become a fixture of Legal Aid, a woman of amazing skills and talents, and a beacon of the profession. She has touched the lives of chil-

dren with her involvement in the Child Friendly Courts Foundation and the Zoo Ball. She has mentored and served as an example for female attorneys through her involvement in the DuPage Association of Women Lawyers, and she has been a friend to many. For the unsung moments in her career, and for the honors she may never know she deserves, may these words from the members of the bench and bar in DuPage County be just a few voices in the chorus that sings, “Thank you Brenda, and may we have another 25 years together!” □



DCBA UPDATE

Celtic Lawyers: A Modern DCBA Forum

BY LESLIE MONAHAN

I may have married into the nice Irish Monahan name, but I am ¼ Irish by blood, so I have greatly enjoyed the Celtic Law Society's Celtic Lunch in the past and am happy that the DCBA Board has agreed to add the lunch to our roster of events (read more about this in Sharon Mulyk's President's Page). I can't say I'm a huge fan of corned beef and cabbage, but I greatly enjoy seeing the McNulty Irish Dancers and everyone dressed in their best Celtic green. We hope to see you for this year's Celtic Lunch on March 15 at Klein Creek. You will definitely want to be there as we bring back the candidate forum as an opportunity to learn more about the candidates for DCBA Third Vice President and the open Director positions.

The forum is sure to be more entertaining than the US Presidential debates of the past year and will be an opportunity to inform yourself about the candidates before voting in April. Maybe you will be one of the candidates in the forum on March 15th! The Third Vice President position is up for election. The person elected for this position will move up the ranks to serve as President of DCBA in 2016-2017. There are also four Director positions up for election, three of the regular Director slots and one of the New Lawyer Director positions. Candidates for New Lawyer

Director must be admitted to the practice of law for seven years or less as of July 1, 2013.

Serving as a Director of DCBA is a great way to increase your involvement in the Association and to have a direct role in guiding DCBA as it moves into the future. We are a strong organization due to past quality leadership and we will need more quality leaders to provide direction as the organization grows. And growing we are! I was recently notified by the ABA that among other Bar Associations in the country, DCBA has the greatest percentage of growth in membership over the past five years. In August of 2005, we had 1,940 members and in August of 2012 we were up to 2,821 – an increase of 46%! We are looking for a few good men and women to lead as we grow.

The members of the Board of Directors have clear duties and expectations: each must be a current member of DCBA, he or she must participate in a Board orientation and become familiar with the bylaws and procedures of the association and must never hesitate to request additional information to ensure they understand the effects of the decisions being made. Each member is expected to attend monthly Board meetings and be prepared to discuss the items on the agenda for those meetings. Board

Members are expected to attend many DCBA events and serve as members of the Membership Committee, recruiting new members and working with existing members to ensure their retention. Board Members have a fiduciary responsibility to DCBA to promote the financial health and well-being of the Association.

If you would like to learn more about what it means to serve on the Board of Directors, I would be happy to answer any questions for you or you are welcome to contact any existing Board Members to learn about their experiences. Nominating petitions and information about the Board can be found on the website on the Board of Directors page or by calling 630-653-7779. I hope that you will consider serving DCBA at this level. If so, I look forward to learning more about you at the Candidates Forum at the Celtic Luncheon on March 15. □

Leslie Monahan is the Executive Director of the DuPage County Bar Association and the DuPage County Bar Foundation. A graduate of North Central College, she previously worked with the Promotional Products Association of Chicago, American Fence Association and Coin Laundry Association.

School Standards; Green Standards

BY JAMES F. MCCLUSKEY



photo © REP3.com

In January, the Board of Governors of the Illinois State Bar Association met at the Chicago regional office to discuss several items for the upcoming year.

The General Counsel of the ISBA, Charles Northrup, provided a memorandum concerning statewide lawyer access to court facilities. In addition, an update was provided on recently concluded federal court litigation on the same issue in Will County. Will County has agreed, for a nominal fee, to provide a county court pass to all lawyers in the state of Illinois who wish to gain access to the court facilities without going through security. Previously, Will County required that all lawyers join the Will County Bar Association at a substantial cost to gain access to the court facilities. The litigation settled this matter and now all lawyers in the state can gain access to the Will County court facilities for a nominal fee.

A number of issues were discussed regarding access to all court facilities, including courthouse security, the use of special access passes as a revenue source for individual counties, the impact on relationships with local bar associations, the role and interest of the court as reflected by the involvement of the ARDC, and the overall efficacy of the ISBA spearheading the effort for a statewide access pass. By motion, the Board authorized the new Chair of the Scope and Correlation Committee, **Richard Felice**, to com-

municate with the Illinois Sheriff's Association to gauge its interest in establishing a statewide access pass.

The Federal Civil Practice Section Council chair, Glenn Gaffney, has been focusing on the theme of civility and professionalism in litigation. One significant obstacle to civility in cases involving *pro se* litigants is the absence of information or direction to assist the *pro se* litigants in successfully navigating the court system. Council members have also observed the difficulty of *pro se* litigants in maintaining standards of civility and professionalism, which has an impact on the entire court system and affects many ISBA members, directly and indirectly. The Section Council members drafted recommendations that have been approved by the Section Council and, with President Thies' approval, were sent to Chief Judge James Holderman. Judge Holderman has requested that the ISBA Board of Governors approve the recommendations. This was done at the January meeting. These recommendations will improve the civility and professionalism for all involved in the federal system.

The ISBA Standing Committee on Legal Education, Admission and Competence requested that the Board of Governors approve the Standards and Rules of Procedures for Approval of Law Schools by the American Bar Association. The ABA is the organization responsible for the certification of law schools in the United States. The

ISBA Standing Committee on Legal Education requested that ABA Standard 306 add the following factors:

- The percentage of students who participate in judicial externships;
- The percentage of full-time faculty who have ever been licensed to practice law in any jurisdiction;
- The percentage of full-time faculty who participate in at least one committee of a national, state or local bar association;
- The percentage of students who participate in moot court competitions, mock trial competitions, mediation/negotiation/arbitration competitions, legal writing competitions, client counseling competitions, or other co-curricular activities designed to improve skills necessary to become a competent member of the bar;
- The percentage of tenure-line faculty who teach skills-based courses;
- The percentage of skills-based courses that are taught by full-time faculty; and

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James F. McCluskey, a principal of Momkus McCluskey LLC, handles a wide range of litigation. His areas of expertise incorporate 30 years of experience in contract, shareholder disputes, real estate, partnership dissolution, and professional liability litigation. He is the 18th Circuit's Governor of the Illinois State Bar Association and Past President of the DCBA.



LEGAL AID UPDATE

DuPage Legal Assistance Posts Its 2012 Annual Report

BY BRENDA CARROLL

The DuPage Legal Assistance Foundation presents each year to the members of the DuPage County Bar Association a copy of its Annual Report. The Foundation is a 501(c)(3) Corporation which oversees the activities of the DuPage Bar Legal Aid Service. The members of the Foundation have the following qualifications (a) a licensed attorney in good standing in the State of Illinois, (b) membership in the DuPage County Bar Association, and (c) an interest in the activities of and the purposes for which this corporation has been formed.

**2012 ANNUAL REPORT
DUPAGE LEGAL ASSISTANCE
FOUNDATION
*An Illinois not-for-profit
corporation***

PURPOSE

The DuPage Legal Assistance Foundation was incorporated as an Illinois not-for-profit corporation on October 10, 1975 for the following purposes:

A. To assist natural persons and community organizations to secure legal protection against injustice and to obtain due process of law and the equal protection of the laws;

B. To promote knowledge of the law and of legal process, rights and responsibilities among the poor and the public generally; and,

C. To study the use of law and legal process to combat poverty and living conditions among the poor and to provide counsel to natural persons and groups seeking these ends.

DUPAGE BAR LEGAL AID SERVICE STAFF

DIRECTOR/MANAGING ATTORNEY

Brenda M. Carroll

STAFF ATTORNEYS

Cecilia Najera

Scott Hollmeyer

SUPPORT STAFF

Robin Roe, Office Manager

Barry Cullum, Paralegal

Lucy Cortez, Intake Coordinator

Maribel Rodriguez, Secretary/
Receptionist

VOLUNTEER ATTORNEYS/ TRANSLATORS

Daniele Pfluger

Crystal Arias (non-attorney,
translator)

LEGAL AID STATISTICS

The DuPage Bar Legal Aid Service is located at the DuPage County Bar Center, 126 S. County Farm Road, Wheaton. Individuals seeking legal assistance may call for a telephone screening or "intake" daily, Monday

through Friday, from 9 a.m. until 2 p.m. During the screening process, potential clients are asked a series of questions by Intake Coordinator Lucy Cortez to determine if they meet the financial and case-type guidelines for free legal assistance with our program. After the screening process, the individual must submit a written application with the required verification necessary to complete the application process. If approved, the applicant is assigned to either a staff attorney or a private attorney who is a member of the DuPage County Bar Association. Applicants who are denied but fit other criteria may be referred to the State's Attorney's office, Prairie State Legal Services, the Lawyer Referral Service, the DCBA's Modest Means program or a No Retainer attorney.

Brenda Carroll has been the DuPage Legal Assistance Director since 1988. She earned her JD at IIT Chicago Kent College of Law in 1986. She was admitted in Illinois and the Northern District in 1986 and to the U.S. Supreme Court in 2005. She serves as Vice President of the Child Friendly Courts Foundation and is a Past President and former Board Member of the DuPage Association of Women Lawyers and DuPage County Bar Association.

2011-2012 COMPARISION STATISTICS

	<u>2010/11</u>	<u>2011/12</u>
TOTAL SCREENINGS	1,879	2,063
DENIED AND REFERRED TO:		
Lawyer Referral Service	600	577
Prairie State Legal Services	2	0
Out of County	7	18
No Retainer	13	14
States Attorney's Office	0	0
Public Defender's Office	0	0
Reduced Fee Panel (DCBA)	25	17
ACCEPTED AND REFERRED TO:		
Private Attorney Involvement	150	171
In House Attorneys	359	334
COMPLETED CASES:		
Private Attorney Involvement	115	129
In House Attorneys	368	341
TOTAL PRO BONO HOURS:		
Private Attorney Involvement	2,451.67	3,744.91
In-House Attorneys	3,877.51	4,485.60

DUPAGE LEGAL ASSISTANCE FOUNDATION STATEMENTS OF FINANCIAL POSITION FOR THE YEAR ENDED JUNE 30, 2012

ASSETS	
CURRENT ASSETS	
Cash and Contributions Receivable	\$ 137,567
Prepaid Expenses	<u>0</u>
TOTAL CURRENT ASSETS	<u>137,567</u>
TOTAL FIXED ASSETS	<u>18,552</u>
TOTAL ASSETS	<u><u>\$ 156,119</u></u>
LIABILITIES AND NET ASSETS	
CURRENT LIABILITIES	
Accounts Payable	\$ 1,736
Accrued Expenses	<u>12,865</u>
TOTAL LIABILITIES	<u>14,601</u>
NET ASSETS	
Unrestricted – Operating	<u>141,518</u>
TOTAL NET ASSETS	<u>141,518</u>
TOTAL LIABILITIES AND NET ASSETS	<u><u>\$ 156,119</u></u>

- The percentage of students who participate in clinical opportunities.

Clearly, these suggested additions are made with the thought that law school curriculum be taught by professors who have some practical experience in order to prepare the students to be practicing attorneys. The Board of Governors deferred the proposal by the Standing Committee on Legal Education, Admission and Competence until the March meeting.

The ISBA developed a Model Environmental Policy for its members and the Illinois legal community. The purpose of the policy is to encourage individuals and our organizations to have a positive impact on our natural environment, the clients' environment and the community's environment. The following actions were requested to be taken and approved by the ISBA:

- Resource and energy conservation was requested, whereby members of the ISBA conserve their natural resources and energy whenever

practicable.

- Specifically, it was requested that the ISBA and its members look to suppliers of their various law office products to provide items that are functionally identical but can be provided by a vendor within close proximity of the member's law office. One product may have traveled 50 miles and another may have traveled 5,000 miles in the process accounting for different levels of fuel consumption and air pollution.
- A law firm can affect the consumption of resources and energy. Direct resource consumption includes office supplies, computers, printers, promotional products and water among others. Direct energy consumption includes electricity to power the office, natural gas to heat the office, and transportation fuel for business trips.
- The request by the ISBA is to have its members consider the environmental impact of decisions made by a law office on a daily basis. For example, a law firm may choose to use electronic forms, make duplex printing the default setting, use recycled paper, correspond only electronically (e-mail and video conferencing) with willing clients, use lower quality print settings for drafts, and use vegetable-based inks.
- A law firm may lessen its energy consumption and associated environmental impact by purchasing renewable energy; using power saving settings on printers, computers, and kitchen appliances; decreasing the energy consumption of its lighting and HVAC system; encouraging public transportation and alternative work arrangements; and purchasing offsets for business travel and renting fuel efficient vehicles.
- In the area of waste and pollution management, it was requested that members of the ISBA adhere to

this policy. On the issue of waste, law firms should keep in mind the old adage that one person's garbage is another person's treasure. Can old furniture or computers be donated to a non-profit or some other worthy organization? Can leftover food from a firm meeting or event be donated to a local food pantry or kitchen?


- If waste cannot be eliminated or repurposed, the original products should be chosen to maximize recyclability, to minimize the waste generated, and to minimize the inherent environmental harm associated with a product that will ultimately be discarded.

The ISBA encourages law firms to advertise their participation in this program and to post the law firm's policy on its website or another place visible to clients.

The environmental policy set forth by the Environmental Law Section Council was approved by the ISBA Board of Governors.

The State and Local Taxation Section Council recommended that a new voluntary dues check off be instituted for an Unauthorized Practice of Law Litigation Fund. The ISBA at this time is considering the state of the economy and several other requests for voluntary dues check offs, and decided to defer this request to a later date.

Finally, the ISBA is well aware of the economy and how it affects its members. The ISBA's Budget Committee is looking for suggestions from its members and the Board as to the effectiveness of the judicial evaluation and judicial advisory polls. The committee is considering whether several of the ISBA standing committees and judicial evaluation committees can be consolidated in order to reduce expenses and preserve resources of the ISBA. This is in the research stage, and no action was taken by the Board on any proposal to reduce any committees addressing judicial evaluation and advisory polls. □



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WHERE TO BE IN MARCH:

The Celtic Legal Society Lunch

The DCBA has many activities for the members of the Bench and Bar throughout the year. For example, there's the Mega Meeting in January; Judges' Nite in February; the President's Ball in April;... Ooops; forgot March. In March there's.... Well, actually, there hasn't been a DCBA activity in March.

Yes, the Justinian Society has its St. Joseph's Day dinner, and the Celtic Legal Society has had its lunch; but

over the years there hasn't been any activity meant for the entire membership of the DCBA in March. This year, however, marks the beginning in what looks to be a new era; a new March DCBA event.

The Celtic Legal Society of DuPage County, Ltd., was founded in November of 1991 to promote and perpetuate the traditions of attorneys of Irish ancestry through community service and charitable works. Of course, it

doesn't harm that tradition if the attorneys have a bit of merriment along with their service and good works. Concerned about keeping the proverbial torch lit into the future, the Celtic Legal Society members looked to the DCBA. Each year, the DCBA election cycle takes place in the March time frame, but there has been a lack of a time and event that allowed candidates to get their message to the voting membership, or a place for the

members to see and meet all or most of the candidates at one time. A simple note, and maybe a photo in the Brief is really insufficient, and a letter or an ad doesn't quite do the job either. And so....

The DCBA will now be hosting the Celtic Legal Society Lunch. Of course, there will be the traditional green beer, the corned beef and cabbage, the Irish singing and the McNulty Dancers. But March is the perfect time of year for an activity that should be the focus of the DCBA membership, because March is the season for the petitions and campaigns of those who want to give of their time to serve the other members by guiding and directing the future of the Association: the prospective officers and directors. So what better way to combine a festive time with an opportunity to meet the candidates for DCBA offices, and find out something about them (in a not too serious setting)?

So where should YOU be on March 15 at 11:45? At Klein Creek Country Club, celebrating St. Paddy's Day, and meeting the future leadership of your Association! □



Celtic Legal Society organizers, John Howlett (left) and Brigid Duffield (right) with former Attorney General Jim Ryan (center)

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mu • tu • al [myoo'choo el] *adj. -*
1 held in common 2 for each other 3 shared



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