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The Journal of the DuPage County Bar Association

Volume 33, Issue 4 | December 2020

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# DCBA Brief

The Journal of the DuPage County Bar Association  
www.dcbabrief.org

Volume 33, Issue 4  
December 2020

## Table of Contents

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**3** Editor's Message

**5** President's Message

## Articles

**8** Small Business Bankruptcy Alternatives Post COVID-19  
- By *Barbara L. Yong*

**14** The Impact of the COVID-19 Pandemic on Legal Services  
- By *Raleigh D. Kalbfleisch*

**20** Illinois Law Update  
- By *Editor Rachel Legorreta*

## News & Events

**26** December Bar Notes  
- By *Robert Rupp*

**27** ISBA Update  
- By *Kent A. Gaertner*

**28** DCBA, IICLE and You

**30** Board Stories: Part Two

**34** Legal Aid Update  
- By *Cecilia Najera*

**36** COVID-19: The Short and Long-Term Mental Health Consequences  
- By *Dr. Diana Uchiyama*

**40** A Wellness Committee Event

**43** Classifieds

**44** Where to Be with DCBA

**Dexter J. Evans**  
*Editor-in-Chief*

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## Walking in a Winter COVIDland

By Dexter J. Evans



Dexter J. Evans is an equity partner at Woodruff Johnson & Evans where he focuses his practice on personal injury litigation. Dexter is the Editor-in-Chief of the DCBA Brief and an active member of the DuPage County Bar Association. He is a member of the Million Dollar Advocates Forum. He earned his J.D. from Northern Illinois College of Law where he graduated *magna cum laude* in 2005.

The holidays are here already?! What a strange and interesting year. As I write this, I really hope that I have been able to safely get together with family and friends which of course is challenging this particular year. I have always looked forward to October through December because they are my favorite holidays back-to-back-to-back. In my younger days, it was all about the eager anticipation of new toys and video games. Now, it is all about seeing family and friends I do not necessarily get to see throughout the year. Will that happen? Maybe? Who will I be able to see? Who knows?

It has been a trying year for all of us. Our routines have been significantly altered. Our practices substantially changed. I wonder if I will remember how to enter a courthouse once we are allowed back in. I went back to wearing a suit on a regular basis. I never realized how uncomfortable dress shoes were until I had not worn them for several months.

What is impressive was the way in which we have been able to adapt to something most of us never saw coming in such a short period of time. I doubt that any courts thought they would be routinely conducting hearings via Zoom. Personally, I never heard of Zoom before the pandemic. At the outset, there was frustration with lack of access to the courts which is understandable. We had to learn that patience is a virtue. The courts eventually adapted to the changing times and quite well/quickly, I might add. I am impressed with how efficient court hearings are when done remotely.

Whenever we are allowed back into court, I wonder if remote hearings will continue.

Whether you like remote hearings or not is of course relative to your particular practice area. For myself, travel to and from court could take up to three or four hours in certain circumstances for a court hearing that may last no longer than 60 seconds. That essentially consumed almost half of an entire workday. Will jury trials be done remotely? Probably not. Will all participants be required to wear masks? Probably, at least initially.

The fact of the matter is that something that a lot of us thought would only last a couple weeks (or months) seems to be here for the foreseeable future. We must continue to adapt and find better and more efficient ways to communicate and get back to trials by jury. I have no doubt that the courts are currently planning on exactly how they will bring jurors back to the courtroom in a safe manner. There is a saying that “Life comes at you fast.” We learned that the hard way this year. However, we will continue to adapt and craft our new normal.

New Years Eve 2020. I wonder if there will be a bigger celebration in history than December 31, 2020. Years from now, when we look back to this year, it will be difficult to find a lot of good to pull from it. Yet, there were good moments in 2020 even if the year itself was a complete and utter train wreck. We saw front-line workers risking their lives to save others. We saw people wear masks that were uncomfortable, if not to protect themselves, just to be respectful of their fellow human beings.

Thank you to December article editor, **Raleigh Kalbfleisch**, who also authored one of this month’s legal articles as well as author **Barbara Yong**. (Continued on page 6)

# DuPage County Bar Foundation

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Thank you for supporting the DuPage County Bar Foundation  
Happy holidays.

## President's Message

# The Loss of an Icon

By Wendy M. Musielak

On September 17, 2020, Ruth Bader Ginsburg lost her courageous battle with cancer. Like everything else in her life, she fought with everything in her to beat this disease. She died in the same year that we are celebrating 100 years of women having the right to vote. It was only 13 years before Ruth Bader Ginsburg was born that women received the right to vote. At the time of her death, we all know that she was a Supreme Court Justice. We've been able to read or hear about the struggles and the challenges she endured to get to that position. A brilliant woman and a dedicated mother, Justice Ginsburg dealt with so many things that women today do not have to fully face because women like Ruth Bader Ginsburg paved the path for us. That is not to say that women still do not face obstacles, but because of the people who came before us, we have so many more opportunities that we may never have had but for the efforts of people like Ruth Bader Ginsburg.

In our own association, we have progressed. It was not until 1995 that Judge **Linda Davenport** became the first female president of this organization. In 2019, for the first time, the President, President-Elect, Second Vice-President and Third Vice-President were all women. I am proud to be one of those four consecutive women.

As an organization, we have continued to grow and become more diverse. The one thing that I can say for sure is that our organization must continue to adapt to the changes in our profession and our world. I love that I am part of an organization that brings people from all different backgrounds together for one common goal. We all have different experiences (some good and some bad) throughout our

lives. We all have different paths that brought us to the DuPage County Bar Association. But when we come together for a common goal, we learn that we can accomplish anything. By celebrating our differences and our unique perspectives, we do not become stagnant. We grow as individuals and as an organization. With all that has happened in 2020, I often reflect on my theme for the year "Together we are Stronger." When I say, "Together we are Stronger," I do not mean that we all must become alike. What I mean is that each one of us brings something special to the organization and everywhere else in our lives and because of that, and our various upbringings, backgrounds and experiences, we build a stronger tomorrow together.

Which brings me back to Ruth Bader Ginsburg. There is no question that Justice Ginsburg and Justice Antonin Scalia were vastly different in their views. When asked about Justice Scalia in 2007, Justice Ginsburg said "We are two people who are quite different in their core beliefs, but who respect each other's character and ability. There is nobody else I spend every New Year's Eve with." It is my hope that we learn from the example Justices Ginsburg and Scalia set for all of us, vastly different people with polar-opposite views who debated hardily and remained the best of friends. I think we can all learn from this example in how we deal with one another. Different views make us think better. Different views make us challenge ourselves. Different views make us strong. Different views make us question the status quo and make changes when appropriate. Take the time to challenge yourself and make yourself better. *(Continued on page 6)*



DCBA President, Wendy M. Musielak is a Partner at Esp Kreuzer Cores LLP in Wheaton, where she concentrates her practice in family law. She graduated with highest honors from DePaul University College of Commerce with her Bachelor's Degree in Finance and Management in 1999 and earned her J.D. from DePaul University's College of Law in 2003. In 2015, Wendy was admitted to practice before the United States Supreme Court. Wendy was recognized as the DCBA Lawyer of the Year in 2013.

The DCBA BRIEF is a publication of the  
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**DCBA Brief welcomes members' feedback.**

Please send any Letters to the Editor to the attention of Dexter Evans, at email@dcbabrief.org

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**Walking in a Winter COVIDland**  
*(Continued from page 3)*

We also want to recognize the Lawyers' Assistance Program, Executive Director, **Diana Uchiyama** for her contribution of a timely article from LAP and this month's Case Law Editor, **Rachel Legorreta**.

Happy Holidays! Happy New Year! And, as Bill Belichick would say, "We're moving on to 2021." Peace! ☐

**The Loss of an Icon**  
*(Continued from page 5)*

Have discussions with others who are quite different in their core beliefs, but at the end of it, remain friends and remain respectful. That is how we as a society keep growing. That is how we keep the spirit of Justice Ruth Bader Ginsburg alive. ☐



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# Articles

- 8** Small Business Bankruptcy Alternatives Post COVID-19  
- *By Barbara L. Yong*
- 14** The Impact of the COVID-19 Pandemic on Legal Services  
- *By Raleigh D. Kalbfleisch*
- 20** Illinois Law Update  
- *By Editor Rachel Legorreta*



## Articles Editor

Raleigh D. Kalbfleisch

Raleigh D. Kalbfleisch is a sole practitioner concentrating in family law. She is a graduate of Purdue University and the Quinnipac University School Law and was a visiting student at Chicago Kent College of Law. She is an active member of the ISBA, DCBA and Family Law Section. She is a past president of D.A.W.L and on the Board of the DuPage Bar Foundation.

# Small Business Bankruptcy Alternatives Post COVID-19

By Barbara L. Yong

Insolvency is defined as either having more debts than assets based on a balance sheet test or being unable to pay your debts as they come due.

Once a business is insolvent and is operating in the “zone of insolvency,” business owners have a fiduciary duty to operate in the best interest of creditors. If they fail to do so, they can be held personally liable for newly created business liabilities, despite the protections normally afforded them by the corporate veil.

Business owners must also recognize they have personal liability for certain business debts like unpaid income tax, sales tax, employee withholding tax, union dues, wages, unfunded and underfunded pensions.

It is important to determine whether the business can break even or become profitable. One way to do that is to prepare a 13-week cash flow analysis taking into account projected income and expenses, both fixed and variable.

Sometimes you can create or increase profitability by making operational changes like eliminating certain product lines, changing vendors or renegotiating vendor contracts, closing some locations, renegotiating leases and business loans, laying off employees and making other changes. Chapter 11 bankruptcy can help accomplish some of these goals.

But if, at the end of the day, despite these efforts, the business is going to continue to lose money, the owner needs to decide whether it would be better to close the business.

**Possible alternatives include:**

1. **Winding down the business yourself.** Under the Illinois Business Corporation Act, a business has 2 years to wind down its affairs after it is shut down. The owners are responsible for notifying creditors (and customers) that the business is closed, selling assets to try to maximize their value, and making a distribution to creditors under the priority scheme established by Illinois law. Secured creditors are paid first up to the value of their collateral. Priority claims (taxes and wages) are paid second, followed by unsecured creditors. Owners holding claims can be paid along with the other creditors, but they cannot take dividend-type distributions until all claims have been satisfied.
2. **Filing chapter 7 or 11 to liquidate the business.** In chapter 7, the liquidating is done by a trustee appointed by the bankruptcy court. In chapter 11, the debtor conducts the liquidation or reorganization as a “debtor-in-possession” or DIP.
  - a) **Chapter 11** of the Bankruptcy Code provides a corporation or an individual an opportunity to reorganize their business. Because of the dramatic changes in the law that occurred February, 2020, a conventional Chapter 11 should not be considered unless the undisputed debts exceed \$7,500,000. Chapter 11 can be an expensive, long drawn-out process, but in the right circumstances can be a very effective tool for reorganizing a struggling business.

The primary goals of filing Chapter 11 are: (1) to provide for an equality of distribution among creditors of equal priority in order to prevent a race to the courthouse by those same creditors; (2) an ability to preserve the business whose intrinsic value is worth more than its liquidation value; and (3) that distributions be fair and equitable between classes in a scheme established by Congress.

Either a company or a group of a company’s creditors can file a Chapter 11 Petition under the Bankruptcy Code in order to provide for either a restructuring of debt or an orderly liquidation of the assets. It is generally preferable to enable a Debtor to continue to operate rather than reorganize or sell the business. A Debtor that is forced to close its doors cannot obtain a discharge of its debts. Moreover, once the bankruptcy is over, the creditors would be able to obtain judgments against the Debtor and attempt to pierce the corporate veil in order to attack the principals of the Debtor.

To enable reorganization, the Debtor is provided with several tools to assist in restructuring its debts without the hindrance of creditors:

- the Debtor is permitted to continue to operate and to remain in possession of all of its assets;
- upon the filing of the case, an automatic stay is entered stopping collection of prepetition claims and stopping creditors from interfering with the property of the DIP;

## About the Author



Barbara L. Yong is a partner with the law firm of Golan Christie Taglia LLP. Her practice focuses primarily on commercial litigation, reorganization and bankruptcy. Barbara counsels individuals and businesses in financial difficulty and represents both debtors and creditors in chapters 7, 11, 12 and 13. She graduated from Loyola University School of Law.

**“ Currently, the Bankruptcy Code does not explicitly require a debtor or trustee to undertake any due diligence prior to commencing an action under Section 547, but simply says that a debtor or trustee “may” do so**

- the DIP can use, sell or lease property of the estate even if the property is subject to the interest of another entity;
- the DIP can obtain financing for its customary business operations and offer incentives to the lender such as a priority claim to recover their loan ahead of certain other creditors; and
- the DIP can elect to assume or reject any leases or executory contracts and the damages sustained by the other party to the executory contract will be in the same priority of payment as general unsecured creditors.

In addition, the DIP has the ability to recover money or property transferred before the commencement of the case. Section 547 of the Bankruptcy Code permits a debtor, subject to certain conditions and defenses, to “claw-

back” payments made to creditors within 90 days of the filing of a bankruptcy petition (or one year for “insiders”).

The Debtor also has an exclusive period of 120 days to propose a Plan of Reorganization. That period can be extended with court approval for as long as 18 months. The Plan may modify the rights of any class of creditors and the Plan can be confirmed even though one or more classes of creditors oppose the Plan. All that needs to happen is for one class of creditors who are impaired to vote for the Plan.

There are also protections provided to creditors under Chapter 11. First, a creditor may obtain a dismissal of the case if it was filed in bad faith or in which there is no feasible prospect of a Plan. Creditors can also obtain the appointment of an independent trustee or an examiner when there is evidence of fraud, gross incompetence or misdealing. Additionally, any secured creditors may obtain relief from the automatic stay when its interests are not adequately protected and the property is not necessary to reorganize the Debtor. Finally, the secured creditors can obtain adequate protection when property it has a security interest in is being used, sold, leased or borrowed against during the Chapter 11.

Once the exclusive period for a Debtor expires, creditors may propose their own Plan. The court may not confirm a Plan if the holder of a claim that is impaired will not receive under the Plan at least what it would have received if the Debtor liquidated under Chapter 7. The court may not confirm a Plan unless the court determines the Plan confirmation is not likely to be followed by liquidation or further reorganization. Finally, for protection of creditors, the UST may appoint committees of creditors to investigate the Debtor’s past and current operations, oversee the DIP operations and negotiate with the DIP concerning the reorganization Plan.

b) **The Small Business Reorganization Act – Chapter 11, Subchapter V.** In the Bankrupt-

cy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Congress amended the Bankruptcy Code and Title 28 of the U.S. Code to provide special rules and procedures for “small business debtors.”<sup>1</sup> The small business provisions of BAPCPA “institut[ed] a variety of time frames and enforcement mechanisms designed to weed out small business debtors who are not likely to reorganize.”<sup>2</sup>

After more than ten (10) years of practice under BAPCPA, Congress concluded that “[n]otwithstanding the 2005 Amendments, small business Chapter 11 cases continue to encounter difficulty in successfully reorganizing.”<sup>3</sup> In response and to “streamline the bankruptcy process by which small businesses debtors reorganize and rehabilitate their financial affairs,” Congress enacted the Small Business Reorganization Act of 2019 (“SBRA”). The SBRA was signed by the President on August 26, 2019 and became effective on February 19, 2020.<sup>4</sup>

The primary effect of the SBRA is the creation of a subchapter to Chapter 11 for small business debtors. SBRA addresses the unique issues faced by small businesses in the bankruptcy process. Originally, the threshold jurisdictional amount for SBRA was \$2,725,625 in secured and unsecured debts combined. On March 27, 2020, the amount was increased to \$7,500,000.

SBRA’s primary advantage was the creation of the new Subchapter V for Chapter 11 for small business debtors. SBRA also amended or otherwise affected many other provisions of the Bankruptcy Code, including by declaring about two dozen Sections and subsections of Chapter 11 to be inapplicable in Subchapter V cases, a half-dozen of which may become re-applicable if the court so orders “for cause.”

Here are just a few of the highlights in the provisions of new Subchapter V:

- A trustee will be appointed in every Subchapter V case.

Ordinarily, a trustee will act as a fiduciary for creditors; usually in lieu of the appointment of a creditors’ committee. However, a Subchapter V trustee has different duties, such as<sup>5</sup>:

- Overseeing the debtor’s case, including examining proofs of claims and, if advisable, opposing discharge of the debtor;
  - Furnish information to any party in interest;
  - Make a final report and file a final account of the administration of the estate with the court and with the United States trustee;
  - Investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor’s business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan; file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate;
  - Appear at hearings related to the administration of the bankruptcy case including: hearings on valuation of property, confirmation of a plan, modification of a plan, sale of property of the estate;
  - Facilitate the development of a consensual plan of reorganization; and
  - If a plan is not consensual, make the distributions to creditors pursuant to the plan.
- Only the small business debtor may file a plan of reorganization, and it must do so within 90 days after the order for relief (which may be extended by the court “if the

1. “Small business debtor” is defined in Section 101(51D) of the Bankruptcy Code.

2. H.R. Rep. No. 109-31, at 19 (2005). Cracking down on alleged excesses and inappropriate uses of bankruptcy was a major theme of several other parts of BAPCPA as well.

3. H.R. Rep. No. 116-171, at 4 (2019).

4. The SBRA was substantially based upon proposals made and vigorously advocated by the American Bankruptcy Institute and the National Bankruptcy Conference.

5. The Subchapter V trustee’s duties are found in 11 U.S.C. §1183.



Donor-Advisor: **Richard W. "Dick" Kuhn**  
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# SO MORE IMPACT

## WHAT DICK SEES

Dick Kuhn is founder and managing partner of Kuhn, Heap & Monson focusing on estate/trusts, real estate and corporate matters. He hails from a multi-generational DuPage County family. He sees need, especially for senior citizens and others with fewer resources. Dick sees the Greatest Generation who gave their all for this country and never asked for anything in return. Now many, living alone or in poverty, need help. Dick engages with DuPage Foundation to provide that help.

**“I’m all about DuPage County. I live here. I work here. I raised my kids here. They’re raising their kids here. We want the best for every resident. DuPage Foundation is providing those connections. It’s second to none.”**

Dick’s involvement with DuPage Foundation goes back decades and is deep. His familiarity with DuPage Foundation is intimate. He has served as a Trustee and is a DuPage Foundation Legacy Society member.

**“When clients come to me for financial direction and are interested in philanthropy, I tell them to look to DuPage Foundation.”**

When Dick isn’t referring clients to DuPage Foundation, he’s playing lead guitar in OMT, a rock-n-roll band that performs at Chicagoland fests and charitable events.



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need for the extension is attributable to circumstances for which the debtor should not justly be held accountable”).

- The rules for the contents of a Subchapter V plan of reorganization are more debtor-friendly than under existing Chapter 11. Notably, a loan secured by the principal residence of the debtor may be modified by the plan if the proceeds of the loan were used for the small business.
- The requirements to confirm a plan are more debtor-friendly than under existing Chapter 11, particularly the rules for confirming a plan over the opposition of an impaired class of creditors.
- You can still confirm a Plan even without a class of accepting creditors so long as you pay your creditors all of your disposable income over the next 3 to 5 years.
- No Absolute Priority Rule. The requirement that equity holders of a small business provide “new value” to retain their equity interest in the Debtor without paying creditors in full has been eliminated. Instead, the new law only requires that the Plan does not discriminate unfairly, is fair and equitable, and provides that all of the Debtor’s projected disposable income be applied to payments under the Plan or the value of the property to be distributed under the Plan is not less than the projected disposable income of the Debtor.

In addition to the creation of “Subchapter V” to Chapter 11, the SBRA also makes important amendments to the statutory provisions governing preference actions. Currently, the Bankruptcy Code does not explicitly require a debtor or trustee to undertake any due diligence prior to commencing an action under Section 547, but simply says that a debtor or trustee “may” do so. The SBRA addresses this issue by requiring a debtor or trustee to consider a party’s statutory defenses “based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses” prior to commencing an action under Section 547.

The SBRA also impacts where preference defendants can be sued. Currently, claims under \$13,650.00 must be brought in the district where the defendant resides (as opposed to where the bankruptcy case is pending), but the SBRA raises this threshold amount to \$25,000.00. Oftentimes, the simple costs to defend an out-of-state preference action outweighed the benefits of pursuing valid defenses in small preference actions. This change flips the analysis, requiring debtors or trustees to weigh the costs of bringing out-of-state actions with the prospect of minimal recovery.

3. **Making an assignment for benefit of creditors (known as an ABC).** This is an out of court bankruptcy-type process where you hire a chosen individual to perform the liquidation. The assets are transferred to the assignee, they notify creditors of the assignment, conduct the sale of assets and make a distribution. They publish notice of the sale which is conducted as an auction subject to higher and better offers. If the assets are sold quickly, they can sometimes preserve the “going concern” value of the business. It is also possible for former owners to use the ABC process to reacquire assets without being deemed a successor and being saddled with the debt of the former company.
4. **Giving the collateral to the lender to liquidate.** If the business owes the bank or other secured lenders more than the business assets are worth, the owners can turn over the keys and relinquish possession. With real estate, this is known as a deed in lieu of foreclosure. With personal property, you can simply turn over the collateral to the lender. This may include inventory, equipment, vehicles, furniture, accounts receivables, etc. The lender must liquidate the collateral in a reasonable manner if it wants to hold the business owner liable under his or her personal guaranty.

At the end of the day, all of these alternatives are preferable to simply ignoring the warning signs of a struggling business, waiting to get sued and paying a whole lot of legal fees. □

# The Impact of the COVID-19 Pandemic on Legal Services

By Raleigh D. Kalbfleisch

On March 13, 2020, the White House issued a **Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak**, known as SARS-CoV-2 (“the virus”).<sup>1</sup>

The COVID-19 pandemic has taken all nations on the planet by surprise and continues to drive the quest for efficient and effective remedies, both scientific and social, that will contain the spread of this highly contagious virus. In addition to creating an economic, humanitarian crisis, the outbreak is triggering multiple impacts (social, political, environmental, etc.) on the global stage. The consequences of the pandemic are still unpredictable, but there is little doubt that the effects have already impacted the global and local justice and legal aid systems.

Longstanding systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19. The term “racial and ethnic minority groups” includes people of color with a wide variety of backgrounds and experiences.<sup>2</sup> There is increasing evidence that some racial and ethnic minority groups are being disproportionately affected by COVID-19. Inequities in wealth, education and healthcare access affecting these groups are interconnected and influence a wide range of health and quality-of-life outcomes and risks.<sup>3</sup>

As the COVID-19 pandemic continues to spread rapidly throughout the U.S. and across the globe, communities of color, people with disabilities, and LGBTQ+ people are likely to be among those who will be disproportionately affected by COVID-19. Some of the many disparities in the social aspects of health that put racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19<sup>4</sup> may include: **Discrimination** – discrimination exists in systems meant to protect well-being or health. Examples of such systems include health care, housing, education, criminal justice and finance. Discrimination that includes racism, can lead to chronic and toxic stress and shape social and economic factors that put some people from racial and ethnic minority groups at increased risk for COVID-19; **Healthcare Access and Utilization** – people from some racial and ethnic minority groups are more likely to be uninsured than non-Hispanic whites, and healthcare access can also be limited for these groups for many reasons including lack of transportation, child care and inability to take time off of work. Language and cultural barriers between doctors and patients play a role in healthcare inequalities; **Occupation/Educational Gaps** – individuals from some racial and ethnic minority groups are disproportionately represented in essential work settings such as healthcare facilities, farms, factories, grocery stores and public transportation and those who work in those settings have more chances to be exposed to COVID-19. These people may also not have the

1. <https://www.disasterlegalaid.org/advocates/covid-19/>

2. <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>

3. U.S. Department of Health and Human Services. Social Determinants of Health [online]. 2020 [cited 2020 Jun 20]. available from <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>[external icon](#)

4. <https://www.americanprogress.org/issues/race/news/2020/03/27/482337/coronavirus-compounds-inequality-endangers-communities-color/>

financial ability to take time off of work to recover from an illness or may not have the paid sick days available for recovery; **Housing:** Some racial and ethnic minority groups live in crowded conditions that make it more challenging, if not impossible, to follow prevention strategies. Growing unemployment rates for some racial and ethnic minority groups during the COVID-19 pandemic may also lead to greater risk of eviction and homelessness or sharing of housing.<sup>5</sup>

### Impact Globally

In order to obtain the very latest information on the impacts of COVID-19, gathered from a sample of the world's justice and legal aid systems between April 7th and 27th, 2020, the Global Access to Justice Project conducted an empirical survey that collected both quantitative and qualitative data on how access to justice has changed due to the pandemic from the following 51 countries: Australia, Belgium, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Cuba, Cyprus, Democratic Republic of Congo, Denmark, Ecuador, Ethiopia, Finland, France, Georgia, Honduras, Hungary, India, Ireland, Italy, Japan, Kazakhstan, Kenya, Kosovo, Lithuania, Malawi, Maldives, Mongolia, Namibia, Nepal, Netherlands, New Zealand, North Macedonia, Pakistan, Poland, Portugal, Seychelles, Sierra Leone, Singapore, South Africa, Spain, Taiwan, Tajikistan, Tanzania, United States, Vanuatu, Zambia and Zimbabwe.<sup>6</sup>

The survey analyzed some of the negative impacts of COVID-19 on both the supply and demand for legal services from three different angles: (i) a summary overview; (ii) vulnerable groups; (iii) the judicial and legal aid systems. The survey also analyzed the negative impacts of COVID-19 on some vulnerable groups which were disproportionately affected by the outbreak.<sup>7</sup>

In the context of gender-based and family violence, the data is alarming. For example, in Brazil, the number of femicides increased 44.9% during the quarantine, while other lethal crimes committed against the rest of the population decreased by 19%. In China, the presumed epicenter of the outbreak, cases of gender-based violence practically doubled during the quarantine period, while Cyprus, France, Singapore and Taiwan all reported an increase of 30%. National experts also reported a significant increase in the number of such incidents in Argentina, Chile, Colombia, England, Italy, Mexico, Nepal and Spain. Moreover, according to a survey recently published

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5. *Id.*

6. <https://verfassungsblog.de/impacts-of-covid-19-the-global-access-to-justice-survey/>

7. *Id.*

## ARTICLES

by Statistics Canada, 12% of young women aged between 15 and 24 were very, or extremely, anxious about the possibility of domestic violence.<sup>8</sup>

The causes for the increase of gender-based and family violence during the pandemic are multifaceted, involving not only the confinement of victims and assailants, but also the social isolation resulting from the distancing of women and girls from their support and protection networks (friends, family members, non-governmental organizations, etc.). Unfortunately, a majority of national governments failed to take special preventative measures for gender-based and family violence during lockdown.<sup>9</sup> In contrast, the mandatory social isolation measures appear to have motivated justice systems and legal aid agencies to invest in the use of technology in order to avoid face-to-face contact. It also appears that limited resources and improvised solutions have undermined the capacity to maintain normal levels of access to justice during the pandemic and significantly impacted an individual's access to the legal system.<sup>10</sup>

It seems that the widespread disruption to justice systems and legal aid agencies will continue for the foreseeable future. It also appears that the economic crisis triggered by mandatory social isolation measures has already raised the prospect of cuts to legal aid funding. Only 8% of justice systems continue to work normally and 92% of judicial authorities are now delaying or suspending all matters except those deemed "urgent". In some countries, serious doubts have arisen as to the individual legal systems' capacity to maintain the rule of law during the pandemic or to prevent the arbitrary infringement of civil liberties, whether by private individuals, organizations or governmental authorities.<sup>11</sup>

On July 22, 2020, the World Health Organization launched the COVID-19 Law Lab initiative which gathers and shares legal documents from over 190 countries across the world to

help states establish and implement strong legal frameworks to manage the pandemic. The goal is to ensure that laws protect the health and well-being of individuals and communities and that they adhere to international human rights standards.<sup>12</sup> The new Lab is a joint project of the United Nations Development Programme (UNDP), the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the O'Neill Institute for National and Global Health Law at Georgetown University.<sup>13</sup>

The COVID-19 Law Lab is a database of laws that countries have implemented in response to the pandemic. It includes state of emergency declarations, quarantine measures, disease surveillance, legal measures relating to mask-wearing, social distancing and access to medication and vaccines. The database will continue to grow as more countries and themes are added. It will also feature research on different legal frameworks for COVID-19. The research will focus on, among other issues, the human rights impacts of public health laws. It builds off the work of the UHC Legal Solutions Network, which was established to help countries achieve universal health coverage through the implementation of rights-based legal frameworks.<sup>14</sup>

### Impact in the United States

*Pro Bono* legal services can be funded by grants from the State and Federal Governments along with private grants from charitable foundations and excess proceeds from class action lawsuit settlements.<sup>15</sup> Legal Services Corporation (LSC)<sup>16</sup> received \$50 million in the \$2 trillion stimulus package passed by the Senate to stabilize households and businesses affected by the coronavirus outbreak. The funding helped LSC's 132 grantees assist low-income clients facing job losses, evictions and other problems stemming from the pandemic.<sup>17</sup> LSC continues to need funds to service lower income and in-need individuals impacted by the pandemic and submitted a request to Congress for \$100 million in emergency funds to enable grantees to provide additional assistance as a result of the pandemic. The

8. *Id.*  
9. *Id.*  
10. *Id.*  
11. *Id.*

12. <https://www.who.int/news/item/22-07-2020-new-covid-19-law-lab-to-provide-vital-legal-information-and-support-for-the-global-covid-19-response>

13. <https://www.undp.org/content/undp/en/home/news-centre/news/2020/covid-19--new-law-lab-to-provide-vital-legal-information-and-sup.html>

14. *Id.*

15. <http://www.nlada.org/tools-and-technical-assistance/civil-resources/civil-legal-aid-funding>

16. Legal Services Corporation (LSC) is an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. The Corporation currently provides funding to 132 independent nonprofit legal aid programs in every state, the District of Columbia, and U.S. territories.

**“ As the COVID-19 pandemic continues to spread rapidly throughout the U.S. and across the globe, communities of color, people with disabilities, and LGBTQ+ people are likely to be among those who will be disproportionately affected by COVID-19.**

and President Trump said that he would not consider any coronavirus aid until after the election but, as of the writing of this article, there appears to be some negotiation continuing anyway.

Legal services providers nationwide anticipated a spike in legal needs arising from COVID-19, and to determine the severity of the needs and impact of the virus, the LSC conducted a survey studying the COVID-19 pandemic's effects on legal aid organizations and low-income Americans seeking legal help. The data was collected from June 15-23 from 129 legal services organizations that receive funding from LSC.<sup>21</sup>

The survey found that the need for civil legal aid is immense. The vast majority, 97%, of LSC grant recipients anticipate a sharp increase in legal needs arising from COVID-19 in the areas of eviction, foreclosures, unemployment assistance and appeals, consumer debt and income maintenance. The economic consequences being caused by the pandemic and subsequent shutdown have resulted in an overall spike in legal needs in areas such as evictions, unemployment claims and domestic violence. 94% of recipients surveyed said that they are seeing clients who are newly eligible for LSC-funded legal aid. On average, grantees are reporting a 17.9% increase in the number of eligible clients due to the pandemic.<sup>22</sup>

CARES Act, enacted into law on March 27, 2020, included \$50 million for LSC.<sup>18</sup> In May, the House passed the HEROES Act which includes an additional \$50 million for LSC.<sup>19</sup> By April 20, 2020, LSC had awarded and distributed \$49.5 million (99%) to grantees already delivering legal aid through LSC grants. The remaining \$500,000 will be applied to management and oversight costs. LSC has provided grantees with guidance for required quarterly reporting.<sup>20</sup> Unfortunately, the Senate recessed in October and was unable to agree upon legislation for further funding of LCS or any other aid packages

The survey also found that all LSC grant recipients are continuing to provide legal services amid the current pandemic; 239 grantee offices are open to the public and 755 offices are providing services remotely. Nearly 95% of recipients reported that clients have been requesting assistance with evictions, including illegal lockouts, utility shutoffs and foreclosures. The majority of recipients also reported that clients are struggling with issues of income maintenance, such as problems with stimulus checks and unemployment benefits. Other key areas of need are domestic violence, general family law issues and

17. <https://www.lsc.gov/about-lsc/lsc-and-covid-19>

18. <https://www.pandemicoversight.gov/sites/default/files/2020-06/LSC-CARES-Act-Spending-Plan.pdf>

19. <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Updated%20Heroes%20Act%20Summary.pdf>

20. <https://www.lsc.gov/about-lsc/lsc-and-covid-19>

21. <https://www.lsc.gov/media-center/press-releases/2020/lsc-survey-finds-major-impact-covid-19-pandemic-legal-aid>

22. *Id.*

## ARTICLES

consumer debt. More than three quarters of the grant recipients said funding was insufficient going forward because of an anticipated increase in community need, a decrease in help from the states, and a need to hire more staff.<sup>23</sup>

Clinics are often staffed by *pro bono* attorneys and the clients for legal aid providers include individuals from every ethnic group, people from rural, suburban and urban areas. Many are homeowners and renters, veterans, families with children, people with disabilities and the elderly. Women comprise 70% of clients.<sup>24</sup> As the COVID-19 pandemic has swept across the United States, many states initially adopted rent moratoriums or halted court proceedings in eviction cases. A federal moratorium on evictions expired June 24 and a second was set to expire at the end of August. As more of these measures are lifted, experts predict that court systems will see an overwhelming number of eviction cases. LSC has calculated it would cost \$2,567,000,000 just for its grantees to meet the legal needs of low-income Americans at risk of eviction.<sup>25</sup>

Among those groups assisting the often disenfranchised and marginalized members of society is Lambda Legal. Lambda Legal is the oldest and largest national legal organization. Its mission is to ensure the civil rights of lesbians, gays, bisexuals, transgender people and those living with HIV through litigation, education and public-policy work. Lambda Legal has stepped into the COVID fray to seek support and legislation for some of the more vulnerable individuals they service. Lambda Legal, along with nearly 200 national, state, and local organizations, sent a letter to Congressional leaders asking that they ensure the protection of vulnerable communities in any COVID-19 response legislation. The letter was drafted by Lambda Legal, Family Equality, the Center for American Progress, the Human Rights Campaign, the National Center for Lesbian Rights, the National Center for Transgender Equality, the National LGBTQ+ Task Force Action Fund, PFLAG National, SAGE and True Colors United.<sup>26</sup> In March of 2020, Lambda Legal filed a lawsuit against the Trump administration

for refusing to enforce nondiscrimination protections for their communities in HHS-funded programs.<sup>27</sup> Lambda Legal also helped to lead a coalition of 183 organizations that called on Congress to ensure nondiscrimination protections for LGBTQ people in any COVID-19 response.<sup>28</sup>

### Moving Forward

On April 30, 2020, the American Bar Association Young Lawyers Division's Disaster Legal Services Program and Paladin, a justice tech company specializing in *pro bono* software, launched the first national disaster relief *pro bono* portal. The centralized, sortable database will list opportunities to serve those impacted by COVID-19, as well as the recent tornadoes in Tennessee and earthquakes in San Juan, Puerto Rico and future disasters as they occur.<sup>29</sup> The ABA is making the portal available for free to all attorneys across the country in an effort to effectively deploy America's lawyers to help individuals in times of emergencies. Through the Disaster Relief Portal, volunteer attorneys will be able to filter opportunities by practice area, communities to serve, type of engagement and the ability to work remotely. State hotline hosts and legal services organizations will be able to post opportunities to the DLS program's portal as they come in to increase their volunteer pools. The portal will allow the ABA and Paladin to gather important data around needs, volunteer interests and, ultimately, *pro bono* connections to aid in better volunteer matching.<sup>30</sup>

On March 12, 2020, legal aid and *pro bono* advocates across regions in the United States met over a conference call to discuss a COVID-19 legal response. The call was chaired by Tiela Chalmers, co-chair of the Disaster Legal Assistance Collaborative (DLAC) in California, and CEO of the Alameda County Bar Association and Legal Access Alameda, in collaboration with Pro Bono Net.<sup>31</sup> The meeting resulted in the creation of several databases where individuals, attorneys and advocates interested in continuing to share information, resources and strategies could access a new COVID-19 Legal Response

23. *Id.*

24. *Id.*

25. <https://www.lsc.gov/about-lsc/lsc-and-covid-19>

26. [https://www.lambdalegal.org/blog/20200420\\_183-organizations-congress-nondiscrimination-protections-covid19](https://www.lambdalegal.org/blog/20200420_183-organizations-congress-nondiscrimination-protections-covid19)

27. [https://www.lambdalegal.org/news/dc\\_20200612\\_hhs-finalizes-1557-rule](https://www.lambdalegal.org/news/dc_20200612_hhs-finalizes-1557-rule)

28. *Id.*

29. <https://www.americanbar.org/news/abanews/aba-news-archives/2020/04/amid-covid-19--aba-and-paladin-launch-disaster-relief-pro-bono-p/>

30. *Id.*

31. <https://www.disasterlegalaid.org/advocates/covid-19/>

listserv. The databases share weekly digests with curated resources, events and updates.

The American Bar Association has also created a task force to address legal needs arising from the coronavirus pandemic. The task force will include up to 20 representatives from top legal organizations in the United States. The group will identify legal needs arising from the pandemic, make recommendations to address those needs and help mobilize volunteer lawyers and legal professionals for people who need help.<sup>32</sup> During the 2020 ABA Virtual Annual Meeting, the House of Delegates considered approximately 58 resolutions. The House of Delegates adopted a total of seven resolutions relating to the COVID-19 pandemic.<sup>33</sup> Among the resolutions were ones where the ABA “Urges Congress to enact legislation extending the administrative forbearance of federally-held student loans, as included in the Coronavirus Aid, Relief and Economic Security Act; Urges governments to prevent an eviction crisis, housing insecurity among renters and destabilization of the housing market, especially the

depletion of affordable housing, during and in the recovery from the state of emergency attributable to the COVID-19 pandemic; Urges federal, state, local, territorial and tribal legislatures to enact legislation, and correctional and detention facilities for both adults and minors to enact policies requiring that all incarcerated persons are provided with: 1) soap, paper towels, hand sanitizer, and facial tissues in sufficient quantities to prevent the transmission of infectious disease; 2) personal protective equipment including personal sanitizing products and face masks that are effective in preventing existing and emerging infections in sufficient quantities to prevent the transmission of infectious disease; and 3) sufficient facilities for hand washing, including unrestricted access to clean water and working sinks.”<sup>34</sup>

Thankfully, the legal system in the United States is robust and replete with attorneys, judges and advocates that are willing and able to innovate and make the necessary changes to continue to help those in need and maintain what is, in my opinion, the best legal system in the world. □

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32. <https://www.americanbar.org/advocacy/the-aba-task-force-on-legal-needs-arising-out-of-the-2020-pandem/>

33. <https://www.americanbar.org/advocacy/the-aba-task-force-on-legal-needs-arising-out-of-the-2020-pandem/>

34. [https://www.americanbar.org/content/dam/aba/events/labor\\_law/2020/2020-aba-annual-meeting-covid-resolutions.pdf](https://www.americanbar.org/content/dam/aba/events/labor_law/2020/2020-aba-annual-meeting-covid-resolutions.pdf)

# Illinois Law Update

Editor Rachel Legorreta

## **Under the Illinois Marriage and Dissolution of Marriage Act, a Civil Union Partner Has Standing to Petition for the Same Visitation and Parental Responsibilities as a Stepparent**

*Sharpe v. Westmoreland*, 2020 IL 124863

In *Sharpe*, Kris Fulkerson, a civil union spouse of Matt Sharpe, filed a petition seeking visitation and allocation of parental responsibilities of Mr. Sharpe and Crystal Westmoreland's child, A.S., after Mr. Sharpe passed away.

Matt Sharpe and Crystal Westmoreland were married and had a child, A.S. In January 2013, Mr. Sharpe and Ms. Westmoreland divorced and agreed to share equal parenting time of A.S., with A.S. maintaining a primary residence with Mr. Sharpe. In November 2013, Mr. Sharpe entered into a civil union with Ms. Fulkerson. Ms. Fulkerson and her children moved in with Mr. Sharpe and A.S. In January 2017, Mr. Sharpe passed away and Ms. Westmoreland took full custody of A.S. As part of her taking full custody of A.S., Ms. Westmoreland no longer let A.S. live with Ms. Fulkerson and her children, and further, disallowed A.S. from visiting Ms. Fulkerson and her children. Ms. Fulkerson then filed petitions seeking visitation and an allocation of parental responsibilities for A.S.

The trial court granted Fulkerson leave to intervene. It then certified two questions of law to the appellate court: (1) whether a party to a civil union has standing to request visitation with her deceased partner's child as a stepparent and (2) whether that party has standing to request parental responsibilities. The appellate court answered both questions in the negative and Ms. Fulkerson appealed to the Illinois Supreme Court.

In reviewing the two questions certified to the appellate court, the Supreme Court reviewed the Illinois Marriage and Dissolution of Marriage Act. Under the Act, only certain people may file a petition for visitation or allocation of parental responsibilities for a child, such as a stepparent and grandparent. Stepparents are treated preferentially under the Act and may seek visitation and allocation of parental responsibilities under certain circumstances if their spouse dies or becomes disabled. The Act defines a stepparent as "a person married to a child's parent, including a person married to the child's parent immediately prior to the parent's death."

The Supreme Court also looked at the definition of civil union when answering the two questions. It found that under the Civil Union Act, a party to a civil union is "any definition or use of the terms 'spouse', 'family', 'immediate family', 'dependent', 'next of kin', and other terms that denote the spousal relationship, as those terms are used throughout the law." The court noted that a party to a civil union is afforded the same legal rights as persons that are legally married.

In reviewing both the Illinois Marriage and Dissolution of Marriage Act and the Civil Union Act, the Supreme Court found that when a child's parent enters into a civil union with an individual that is not the child's other parent, that individual then becomes a stepparent, and meets the standing requirement to petition the court for visitation, allocation of parental responsibilities, or both as allowed under the Illinois Marriage and Dissolution of Marriage Act.

**An Expert's Testimony Regarding a Procedure He Performed on His Daughter and Minor Errors in Closing Statements Do Not Create Prejudice a Plaintiff**

*Ittersagen v. Advocate Health and Hospitals Corp.*, 2020 IL App (1st) 190778

In *Ittersagen*, the plaintiff brought a medical malpractice lawsuit against Advocate Health and Hospitals Corporation d/b/a Advocate Medical Group and Dr. Anita Thakadiyil. In his suit, the plaintiff claimed both were negligent for failing to diagnose the plaintiff with sepsis, failing to refer him to the emergency room for treatment, and performing an incision and drainage in an outpatient setting without first administering intravenous fluids and antibiotics. The plaintiff further alleged that the defendants' negligence resulted in him contracting toxic shock syndrome, which led to below the knee amputations of both of his legs.

The plaintiff's lawsuit proceeded to a jury trial, in which the trial court entered judgment on the jury's verdict for both of the defendants. The plaintiff then appealed and argued that the trial court committed several errors. In his appeal, the plaintiff argued that the trial court failed to dismiss a juror for cause, granted a motion *in limine* preventing one of his experts from testifying as to the treating physician's standard of care, allowed defendant's expert to testify about his personal practices despite a motion *in limine* prohibiting such testimony, and further argued that he was prejudiced by certain statements made in defense counsel's closing argument.

In reviewing the plaintiff's appeal, the appellate court first looked at the juror in question's relationship with the

defendant, Advocate Health and Hospitals Corporation. After the plaintiff had rested his case and while the defendants were presenting their case, the juror disclosed to the court that his private investment firm had a business relationship with Advocate. The juror further disclosed that as part of his role at the firm, he oversees all of the new investments his company makes, including money that the Advocate endowment invests. The juror stated that his bonus is tied to the growth of these investments. When questioned by the trial court if his financial compensation would be affected by the outcome of the case, the juror said it would not. After further questioning, the juror stated that he could stay neutral and unbiased to both parties.

When the appellate court reviewed the record, it determined that the plaintiff failed to demonstrate that the juror's

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## ARTICLES

relationship with Advocate rose to the level of presumed bias. The court noted that no evidence was presented to the trial court about the relationship between the defendant and the Advocate endowment. The appellate court further noted that there was insufficient evidence to show any fiduciary relationship between the juror and the defendants.

The appellate court next reviewed the two relevant motions *in limine*. The first motion *in limine* concerned the plaintiff's expert, a pulmonologist and critical care expert. The defendants sought to bar the plaintiff's expert from rendering opinions as to the standard of care of plaintiff's treating physician, a family practice physician. The defendants argued that the plaintiff's expert was offering opinions from the perspective of a critical care specialist and pulmonary physician, and not an internal medicine or family practice physician. After arguments, the trial court barred the plaintiff's expert from rendering such an opinion, but allowed the plaintiff's expert to testify about the plaintiff's sepsis diagnosis and that the treating physician's treatment caused the plaintiff's injury.

In reviewing the trial court's ruling on the motion *in limine*, the appellate court opined that any error in barring the plaintiff's expert from testifying regarding the standard of care was harmless. The appellate court reasoned that another expert hired by the plaintiff, a family medicine physician, testified extensively as to the treating physician's standard of care. The appellate court stated that the jury was able to hear sufficient testimony regarding the plaintiff's theory of negligence and how the treating physician's actions caused the plaintiff's injury.

For the second motion *in limine*, the appellate court opined that the plaintiff forfeited the issue of the defendant's expert's testimony regarding his own performance of an incision and drainage procedure on his daughter when the plaintiff did not object to the testimony at trial. The appellate court further reasoned that no prejudice resulted from the defendant's expert's testimony.

Finally, the appellate court considered the plaintiff's argument

that defense counsel misled the jury by making significant errors in its closing argument. The plaintiff argued that defense counsel asked the jurors to stand in the position of a party and determine the standard of care from an inner perspective, and further, misstated prejudicial testimony regarding a post-occurrence change to the standards used to diagnose sepsis. In holding that defense counsel's statements during closing statements were not prejudicial to the plaintiff, the appellate court reasoned that defense counsel's remarks were a direct reference to the evidence and battle of experts presented by both parties. The court further reasoned that any misstatements regarding the change in standard of care were minor errors, as the trial court instructed the jurors to disregard any comments made by the attorneys that do not accurately reflect the evidence.

### **Observing Glassy Eyes, Smelling Alcohol Emitting From a Defendant, and a Defendant Admitting to Drinking Provides an Officer With Reasonable Suspicion to Provide Field Sobriety Testing During a Traffic Stop** *People v. Patel*, 2020 IL App (4th) 190917

In *Patel*, the defendant was arrested for driving under the influence (DUI) after being pulled over for driving 49 miles-per-hour in a 30 mile-per-hour speed zone. After the officer stopped the defendant's vehicle for speeding, the officer observed the defendant's eyes were glassy and noticed the odor of alcohol emitting from the vehicle and the defendant. The officer inquired whether the defendant had consumed any alcohol and the defendant admitted to consuming 2 ½ India pale ale beers. The officer then began field sobriety testing without first returning the speeding ticket or the defendant's driver's license to the defendant. After the field sobriety tests were completed, the defendant was arrested for DUI.

The defendant filed a Motion to Quash Arrest and Suppress Evidence. The defendant alleged that the officer unreasonably prolonged the traffic stop for field sobriety testing because he had no "reasonable articulable suspicion that the defendant was driving under the influence." After a hearing on the defendant's motion, the trial court granted the defendant's motion, reasoning that the totality of the circumstances did

not rise to sufficient suspicion to conduct the field sobriety tests. The State appealed, arguing that the officer did in fact have reasonable suspicion.

In reviewing the case, the appellate court reversed the trial court's decision. In holding that the officer did have reasonable suspicion to conduct the field sobriety tests, the appellate court reasoned that the officer was able to point to specific, articulable facts – not to inchoate, unparticularized hunches – suggesting that

he encountered a possible DUI in progress. While the officer did not initially stop the defendant for DUI, upon encountering the defendant, the officer noticed the defendant's eyes were glassy and an odor of alcohol emitting from the vehicle and the defendant. Further, the appellate court pointed out that the defendant admitted to consuming 2 ½ beers at a restaurant immediately prior to the traffic stop. All of these taken in conjunction together, were enough to create a reasonable suspicion to conduct the field sobriety tests. □

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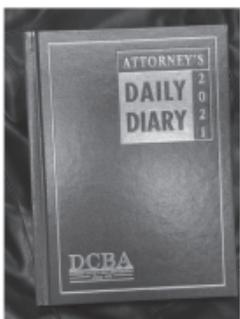
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# News & Events



[26](#) December Bar Notes  
- *By Robert Rupp*

[27](#) ISBA Update  
- *By Kent A. Gaertner*

[28](#) DCBA, IICLE and You

[30](#) Board Stories: Part Two

[34](#) Legal Aid Update  
- *By Cecilia Najera*

[36](#) COVID-19: The Short and Long-Term Mental Health Consequences  
- *By Dr. Diana Uchiyama*

[40](#) A Wellness Committee Event

[43](#) Classifieds

[44](#) Where to Be with DCBA

December Bar Notes



## December Memories

By Robert Rupp

As fall turns to winter and the cold starts to settle in the bones, it is not surprising that we turn to memories of warmer days and happier times. As I looked back on the content of this column in past Decembers, I was certainly reminded of those happier times. But I was also drawn to some encouragement when I see that while we have changed with the times, the times have not changed us.

The theme of welcoming new lawyers seemed to be a common theme in years past as November marked the admission of new lawyers to the profession and, for many, their first year as new DCBA members. In 2020, we didn't even wait for these new lawyers to become lawyers to extend the collegial arm that sets our community apart. When the call went out that bar candidates were in need of space to sit for the (first time ever) online bar exam, nearly 50 member firms offered to open their doors. Many thanks to those of you who did so. **We are now working to enroll, as members, those new lawyers who passed the October exam.** The DCBA waives dues for the first year of a new attorney's career. When they take part in association activities by attending monthly CLE programs or social events, they earn a 50% reduction on dues in their

second and third years. This formula has historically worked very well for our association as we retain well over 50% of the new lawyers who join each year. If you know of a new lawyer who has not found their way to DCBA, please help us find them. It is incumbent upon all of us to reach out to them with a welcome hand as this is what truly binds the new lawyer to our community. Perhaps, more than ever, there is a tremendous need for caring and committed mentors. This class of lawyers have had so much of their final year of law school and entry into the profession turned completely upside down if not taken away altogether. Please consider becoming a mentor ([www.dcba.org/mentor](http://www.dcba.org/mentor)) or participating in the Ask a Senior Lawyer program ([www.dcba.org/seniorlawyers](http://www.dcba.org/seniorlawyers)) to assist with the essential work of developing this next generation of lawyers.

Another common December theme was to invite attendance at the Holiday Gala and the DuPage Bar Foundation Holiday Breakfast. Sadly, the Holiday Gala will not be occurring this year, but there are several virtual and socially-distanced DCBA Holiday activities that I hope you can make a part of your month. At the time of writing, we are still working on the details of a virtual

Holiday Cookie Clinic and a special DCBA Secret Santa. Visit the website or watch for your Docket e-newsletter next Thursday for an update. On December 10th, we know there will be a Drive-Thru Toy Drive hosted by DCBA Lawyers Lending a Hand. Bring your (new, unwrapped) toy to the Bar Center, enjoy a holiday treat and receive a special thank you from the DCBA.

It saddens me, as I know it does many of you, that we will be unable to gather in the ARC for the traditional DBF Holiday Breakfast this year. Rest assured though that the Bar Foundation Board is hard at work planning events to occur on December 17th that will make certain the day passes with some fanfare. What is most important, though, is that each of you consider a donation to the DBF Holiday Fund. *(Continued on page 42)*

## About the Author

Robert Rupp is the Executive Director of the DuPage County Bar Association. He has worked in professional association management since 1994, serving a variety of national and international medical and legal associations, including the American Bar Association.

## ISBA Update



## ISBA Continues to Stand Up for Illinois Lawyers

By Kent A. Gaertner

As this issue of the *DCBA Brief* hits the streets, we are heading into the holiday season. I can't help but think back to the way the world was last year at this time. So much has changed and not for the better in most instances. The election will also be in the books by the time this comes out. Hopefully, we can find ways to move our country forward in a spirit of cooperation post-election, no matter what the result is.

As you know, over the past months both the ARDC and the Chicago Bar Association/Chicago Bar Foundation have presented proposals to the Illinois Supreme Court that would drastically change the practice of law in Illinois. The ARDC proposals generally address the role of non-attorney marketing services and what role they could occupy in generating legal services that could be advantageous to attorneys, without violating rules on fee sharing with non-lawyers and putting clients at risk. The CBA/CBF proposals go much further. Their proposals come from an assumption (with no backup evidence or data) that decreasing the cost of legal services will increase access to justice. Many of their recommendations propose allowing non-attorneys to start providing services normally provided

by attorneys. My article in last month's *Brief* goes over their recommendations in more detail.

The ISBA is working with the ARDC to arrive at a rule or rules which would allow non-lawyer marketing services to provide leads to participating attorneys while safeguarding the attorney's independence and the client's money paid for the lawyer's services. The ISBA has responded to the CBA/CBF with a letter rejecting a majority of their recommendations based upon lack of data or evidence that the recommendations would actually increase access to justice. The ISBA also expressed concerns that the recommendations would not adequately protect client's interests and would not be feasible in actual practice. If you wish to read the letter setting forth the ISBA's position, please feel free to contact me or check it out on the ISBA website. I will keep you posted on these recommendations as they progress in the coming weeks.

At the last Board of Governors meeting, the finance committee and bar staff went over the current financials of the ISBA. Not surprisingly, due to COVID, expected income to the Association was down. However, expenses were also dramatically

lower than budgeted. This more than compensated for the loss of income. The reserves of the Association, due to prudent investing, have continued to grow. The bottom line is that the ISBA remains on very solid financial ground as we wind our way through the COVID crisis.

The Scope and Correlation Committee has decided to explore the possibility and the extent of any issues of sexual harassment in the legal profession in Illinois. This could result in possible Rule changes to the Code of Professional Conduct or the establishment of a Code of Conduct adopted by the ISBA. I will keep you posted on any further news regarding the Committee's work on this important subject.

Not unexpectedly, the ISBA has announced the *(Continued on page 42)*

### About the Author

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



Illinois Institute  
for Continuing  
Legal Education

## DCBA, IICLE and You

The DCBA sections have been busy providing valuable MCLE programs for members. These are being recorded for viewing more than ever this year and are available online through the DCBA portal to IICLE. Most are free of charge to DCBA members when you use your DCBA login to access the portal. Following is a new list of some of the latest

programs available. The full list of available MCLE programs can be found in the IICLE catalog.

Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE®) on the DCBA website under “Legal Community” -> OnDemand CLE -> Online CLE

Catalog. You must be logged into your DCBA Membership Profile in order to view courses for free or at a reduced, member price.

If you have any questions, please contact Continuing Education Manager, **Barb Mendralla** at [bmendralla@dcba.org](mailto:bmendralla@dcba.org). □

Title/Topic	Speakers	Date	Area(s) of Law	Credits
<p><b>Building and Promoting Your Professional Brand</b> A walk through of the current digital landscape; where you should be, what you should be doing and how it relates to building a professional brand as an attorney. The session covers your Google listing, website, social media, Google pay-per-clicks, ads, video marketing, reputation management and more. The goal is to provide participants with a basic understanding of where to focus their efforts and what boxes they need to check to build their business.</p>	<p><b>Patti Baron Mellott</b> and <b>Frank Jones</b>, OVC, Inc.</p>	7/1/20	Ethics & Professional Responsibility, Law Practice Management	1.0 PR - Other
<p><b>Business Basics of Law Firm Management</b> Learn the basics of law firm management, including the use of bank accounts, IOLTA accounts, malpractice coverage, client selection, retainers, billing, cash flow, marketing a law business, and requirements for law practice operation.</p>	<p><b>Raiford Palmer</b>, Operations Officer of Sullivan Taylor Gumina &amp; Palmer, PC</p>	7/8/20	Ethics & Professional Responsibility, Law Practice Management	1.0 PR - Other

<p><b>Road Warriors - Practicing Across Multiple Circuits</b> Learn the ins and outs of the various circuit courts from some true road warriors.</p>	<p><b>Oran Cart</b>, Cart Law Offices <b>Bridget G. Wrobel</b>, Law Office of Bridget G. Wrobel, LLC <b>Jason Wilkins</b>, Law Office of Jason A. Wilkins</p>	<p>7/15/20</p>	<p>Law Practice Management</p>	<p>0.75 PR - Other</p>
<p><b>Your Professional Reputation and Civility</b> Learn how civility and professionalism best serve clients effectively in the long run and how they affect your reputation.</p>	<p><b>Hon. David E. Schwartz and Hon. Kenton J. Skarin</b>, 18th Judicial Circuit Court</p>	<p>7/22/20</p>	<p>Ethics &amp; Professional Responsibility, Civility</p>	<p>1.0 PR - Other</p>

**2020 DuPage Bar Foundation Holiday Fund**

While we will be unable to gather for our annual Holiday Breakfast this year, the financial needs of local law students and community organizations assisting in the effort to provide access to justice will not take a holiday. Your support of the annual DBF Holiday Fund provides the resources to award over \$18,000 in DBF grants and scholarships.

We look forward to hosting a virtual event on December 17th to share some holiday cheer via Zoom.

- All donations to the Holiday Fund over \$25 will receive a chance to win one of our signature DBF Gift Card Wreaths which have become a tradition at the Holiday Breakfast, along with other fun prizes.
- All donors of \$100 or more will be invited to stop by the Bar Center on December 17 to pick up a hearty breakfast served up to-go by our friends at Chef by Request.
- Donations of \$1500 or more will have a full breakfast buffet for 10 delivered to the donors location of choice.

All donors will also be recognized on our virtual gift tree on the DCBA website and in the *DCBA Brief*.

*Thank you for supporting the DBF Holiday Fund!*

## Board Stories

# Getting to Know the DCBA Leadership

## Part Two



James J. Laraia,  
*General Counsel*



Jennifer Friedland,  
*Associate General Counsel*



Rebecca Krawczykowski,  
*Director*



Ronald Menna,  
*Director*

For this second installment, we introduce you to General Counsel, **James J. Laraia**, Laraia & Whitty, P.C., Associate General Counsel, **Jennifer Friedland**, Momkus LLC and Directors **Rebecca Krawczykowski** (pronounced “Krawz-uh-kowski”), Fay, Farrow & Associates, P.C. and **Ronald Menna**, Fischel | Kahn.

### How many years have you been on the DCBA board?

**Laraia:** Too many to count. I started out on the Executive Committee as Assistant Treasurer in 2008 and served two terms in that capacity. I was then on the Board of Directors for two years before becoming Third Vice President and working my way up. After being off the board for a few years after my term as Immediate Past President was up, I then returned to the Executive Committee last year as Associate General Counsel. So, the better part of the last 12 years!

**Friedland:** Newly appointed in 2020.

**Krawczykowski:** First year.

**Menna:** Less than one year.

### What is your practice area?

**Laraia:** Family law, general civil litigation.

**Friedland:** Commercial litigation and trust and estate litigation.

**Krawczykowski:** Family Law.

**Menna:** Complex commercial litigation (mostly chancery); Guardianships; Decedent’s Estates; General Business; Civil Appeals.

### Why did you become an attorney?

**Laraia:** I think I was always meant to be an attorney. Having worked for my father, in one capacity or another, from when I was a teenager and then again through College, I grew up being around the law and, in my opinion, the greatest generation of attorneys that DuPage County has ever had. Being around and speaking with my father, Ralph Gabric, Joe Mirabella, Jack Donahue, Justice Jorgensen, Steve Culliton, John Kincaid, George Lynch and others, the importance of attorneys in our society and the good they can do for their clients and others really had a significant impact on me and shaped my future.

**Friedland:** In the early 2000s, I realized that I couldn’t work at Barnes & Noble forever (not because I wouldn’t, but because...Amazon). Then, it was just a matter of what would pair nicely with my English degree. I love to read and write, so law school it was.

**Krawczykowski:** My personal history of being adopted made me want to help other people through that process. I started to become enamored with law school after watching *The Paper Chase* when I was

a teenager. I took an Intro to Law class my Junior year at Downers Grove North High School which sealed the deal for me. I fondly remember visiting the courthouse to observe proceedings and we were even able to talk to a judge. Ever since then, I knew I wanted to be an attorney.

**Menna:** I was a debater in high school and college. It seemed a logical career path. Also, no one offered me a career in water polo.

**Name one positive thing that you have experienced during the COVID-19 Pandemic.**

**Laraia:** COVID-19 was fairly difficult at first, but seems to have created a new norm for practitioners. Though initially having remote court appearances was something that I resisted and felt could be just a stop-gap, the ability to handle cases in multiple counties without the necessity of travel, has provided greater flexibility in getting issues resolved. Though I prefer the one-on-one interaction with attorneys to address and handle problems in court and to resolve same, remote court dates have been working well and appear to be the new normal and the future of our court appearances.

**Friedland:** My husband and I love to cook. During the lockdown last spring, we were able to spend more time expanding our cooking skills with more complex dishes. It was nice to get away from our kids' Mac and Cheese for a bit.

**Krawczykowski:** At the beginning of shelter-in-place, being faced with being an attorney/mommy/preschool teacher, I decided that I would make sure my almost 3-year-old son could spell our name by the end of shelter-in-place. It only took one day.

**Menna:** Since my "new" commute is 10 seconds, I use my "old" commute time on the prairie path and in forest preserves.

**Do you have a book, podcast, movie or TV show recommendation to help your fellow members pass time during the pandemic?**

**Laraia:** Interesting question. Being the geek that I am, as a child of the '70s and '80s, the Mandalorian on Disney+ is a really good series that was produced better, in my opinion, than the last trilogy of Star Wars films. As a blast from the past, having not watched the series when it originally aired, I've also enjoyed watching The West Wing.

**Friedland:** Schitt's Creek is the only television show that I watch. I love the humor of Eugene Levy and Catherine O'Hara, and that it is delivered in short, time-manageable episodes. Between litigation and three kids, watching dramas, action or suspense just brings unnecessary stress into my life.

**Krawczykowski:** I am currently watching "Alone" which is on the History Channel. It is a competition show

where people are given limited items, are supposed to survive off the land all by themselves and the winner is the last to tap out. Several seasons in, I am pretty sure I am a survival expert now, and my enjoyment comes from shouting things at the TV such as, "Sir, you are starving. You need to concentrate on fishing, not on building a board game!" and "Stop trying to trap mice! You're burning more calories setting the trap than you will get from eating them!"

**Menna:** Podcasts – Econ Talk; and Dan Carlin's Hardcore History.

**What website do you visit most often?**

**Laraia:** The attorney in me would say Bill4Time as I use that program for billing. When out of the office, I would say most of my time that is internet-related would be on social media like Facebook or Twitter and checking up on my children's accounts on Instagram.

**Friedland:** Equal doses of CNN and Fox News. And then I throw my hands up.

**Krawczykowski:** Twitter. I will admit outright I am addicted to Twitter. I am a political junkie and I follow the top political journalists in the country so that I can get the breaking news before anyone else.

**Menna:** That would be telling, wouldn't it? The internet is like the library. You go to the place your mood takes you. It varies from day to day.

**What is something you like to do the old-fashioned way?**

**Laraia:** This is a loaded question for me as I am a self-proclaimed "old school" type of person. I think even my wife would say that I celebrated my 60th birthday when I was actually 40. I'm still a person who likes to write out my arguments and pleadings before I type them. I write out and outline my deposition questions, and still print out everything to read instead of trying to read from the computer.

**Friedland:** I keep a written check book (I know, I know...).

**Krawczykowski:** I maintain a paper diary/calendar. When I am on the spot in court to select a new date, it is much faster than waiting for an internet-based calendar to load.

**Menna:** According to my daughter: "Literally everything."

**When did you first join the DCBA?**

**Laraia:** I joined the DCBA in 2001 right after graduation from law school and admission to practice.

**Friedland:** When I became an Associate at Momkus LLC in 2006.

**Krawczykowski:** I joined as a law student member around 2009 and have been a member since.

**Menna:** 1990.

**How were you first introduced to the DCBA?**

**Laraia:** I was introduced to the DCBA even before I was an attorney through different functions and events that my father attended or was involved in.

**Friedland:** My firm encourages all of our attorneys to join the DCBA – both back in 2006 when I joined and today.

**Krawczykowski:** John Fay encouraged me to join as soon as I entered law school.

**Menna:** My then partners suggested I join, as I had started practicing in DuPage.

**Why did you join the DCBA?**

**Laraia:** I knew of the DCBA prior to becoming an attorney and saw all of the good that its members could accomplish through my father and his friends' accomplishments. I remember stories about how the Bar Association assisted the courthouse during its initial closures when the courthouse was "sick" and how the members went out of their way to help the court and the judges. I remember the members being involved in different events and trips through the Bar Association and saw the great friendships and camaraderie that was created through the organization. It was a no-brainer to join the DCBA and to be a part of its great traditions and rich history.

**Friedland:** I was initially interested in CLE opportunities and my first memory of attending a DCBA event was a new lawyer seminar that took place on Saturday mornings at the Bar Center. I was in

awe of the attorney-presenters, who eventually became my colleagues and friends.

**Krawczykowski:** I joined to meet other people, make friends, network in the community and also to stay updated on emerging issues in the law.

**Menna:** To get to know DuPage lawyers and judges.

**What is the biggest benefit that the DCBA has provided to you?**

**Laraia:** Great experiences, life-long friends, great opportunities and legal mentoring.

**Friedland:** By far, it has been getting to know other lawyers in our community and feeling that we are all held to a certain level of professionalism when we are advocating for our clients.

**Krawczykowski:** The relationships that I have developed while networking with the DCBA have resulted not only in lasting friendships, but also with numerous referral sources that have enriched my practice.

**Menna:** Getting to know DuPage lawyers and judges. I have made some very strong friendships as a result.

**What is your favorite service that DCBA is providing to its members in light of the COVID pandemic?**

**Laraia:** I believe the consistency in providing great benefits to the DCBA members has been my favorite or best services from the DCBA. The continuation of continuing legal education seminars via zoom has made it even easier to

obtain those benefits without having to leave your office.

**Friedland:** I have been extremely impressed with how well the DCBA transitioned into online CLE learning and with COVID-related topics.

**Krawczykowski:** Hands down, the transition of CLE's from being in person to being conducted via Zoom. I still feel like I am able to receive the information I am wanting to have, I still feel like a part of the community when I see hundreds of other attorneys on the calls and I do not even have to drive to the courthouse!

**Menna:** On-Line CLE.

**What led to your decision to join the DCBA Board?**

**Laraia:** See answer to “why I joined DCBA.”

**Friedland:** I have been interested in being more involved with the DCBA, but have not felt that I could find the time to meaningfully contribute until now, as my children are a bit older and our firm has successfully completed its first succession plan.

**Krawczykowski:** Last year I was the president of the DuPage Association of Women Lawyers. As my term in DAWL was coming to an end, I was looking for a new opportunity to serve our legal community. DCBA has provided me with so many benefits over the years that it seemed the DCBA Board would be a logical next step.

**Menna:** My time on the DuPage Bar Foundation was winding down, and I

still wanted to serve our legal community. The Board opening presented itself and I ran for the position.

**What is your favorite thing about being on the DCBA Board?**

**Laraia:** The board members and the relationships you make on the board. Bringing together many different types of people who truly want to help out the DCBA members and each board member bringing their own unique view and ideas to the table.

**Friedland:** Well, so far, I have only been able to “meet” by Zoom, but I anticipate my favorite thing will be spending time with the board members and getting to know them better. Maybe someday I can experience one of these awesome retreats I keep hearing about!

**Krawczykowski:** The board is made up of an incredible diversity of backgrounds, skills, practice areas and personalities. I am very impressed with the dedication of time and energy that the board members exhibit to make our organization as impactful as it is.

**Menna:** I just started, so ask me in a year. So far, the Board’s camaraderie and shared goals are about as good as I have seen in the boards on which I have been a member.

**Describe a DCBA Board project you are especially proud of.**

**Laraia:** An accomplishment I am most proud of while being part of the DCBA Board and Executive Committee was the reorganization of the committees into Substantive Law Sections and the

creation of the leadership groups, or Section Councils, for each section or committee. This was accomplished through the great work that the planning committee had done the year prior to my presidency. Though the fundamentals of those changes made during my presidency have changed over time, the expansion of the different groups by which our members could be involved and creating more opportunities for our members to be in a leadership role to further the DCBA, has been exciting to see. Every president wants to “make their mark” on the organization. In reality, there are very few moments of dramatic change that are remembered by the membership, but to see that you leave your time on the Board or on the Executive Committee with positive changes, or that you help the membership in a positive way, is the most satisfying accomplishment we may have on the Board.

**Friedland:** I cannot take any credit for the DCBA’s board projects since I am new to the board, but I am always amazed at the many different volunteer service projects accomplished by the DCBA – especially Lawyers Lending a Hand.

**Krawczykowski:** I am looking forward to the upcoming virtual networking events that are in development. The pandemic has caused us all to become so isolated, but it is important to continue to feel connected to a community for our own well-being. I know that DCBA will be able to combine technology with a little creativity to help us to maintain that sense of community.

**Menna:** The Joint DCBA/DuPage Bar Foundation COVID-19 Lawyer Assistance Fund. It is the right thing to do. □

Legal Aid Update



## Legal Aid Update: 2020 Year in Review

By Cecilia Najera

Dear 2020, it's been real, but I am not sad to see you go. We have spent over half the year social distancing. You gave us the longest spring ever, and we are still longing for days of normalcy when we can attend concerts and CLE in person. What have we been up to, you ask? A whole lot of Zoom and landscaping the yards to which we have been contained. We finally got to watch some professional and college sports, but I miss being able to greet so many of my colleagues in person. I am realizing just how much business was done in person and between statuses. 2020 has been full of so many ups and downs and some enjoyable day drinking.

The ups and downs of 2020 have provided opportunities to use established resources and find new ones. At Legal Aid, we have continued to thrive. We received an award through a probate case thanks to **Mr. Jack Zanker and his estate, the Office of Public Guardian, Judge Robert G. Gibson, James Bromberek and Frank Valenti**. This award has allowed Legal Aid to update the office computers and

network. DLA began a relatively quick road to updating its IT in August. Since October, staff has enjoyed not having to be tethered to their office desks and has had the ability to work from home, access the network remotely and securely, schedule remote conferences with more than just two attendees and answer and transfer business lines to wherever they may be. This technology has allowed us to service clients remotely and bring technology to those that may not have access to Zoom otherwise, for example, some of our clients in nursing homes that do not have access to Zoom. Additionally, visitors were not allowed in the nursing home unless they had a negative COVID test result from a test completed within a couple of days of the visit. We were able to honor the nursing home's policy and still serve our client by bringing a laptop to the nursing home for our client to use so she could attend a guardianship court date while the attorney used a phone in the vestibule to attend concurrently. We also now have an IT company that monitors our IT security and a point of contact to call whenever we may need assistance.

We are so grateful to have experts handling these issues for us now.

DLA was invited to apply for a second grant award from an anonymous grantor in the amount of \$125,000. We were awarded this amount for the purpose of serving the immigrant community, and in particular, individuals who speak English as their second language. We are using this award to pay the salary and benefits of our Spanish-speaking attorney, **Jennifer Nunez**, and to access translators through LARC. It has been a game changer for clients needing an interpreter with their attorneys to be able to communicate outside of standard business hours. Attorneys are better able to prepare cases and serve

## About the Author

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

clients. Some clients no longer have to fear reprimand at work for being on the phone with their attorney during work hours.

Although we refrained from assigning *pro bono* attorneys any cases during the months of March and April because we were unsure how the private bar was being affected by the pandemic, our numbers remain quite steady. The number of intakes completed for applicants from March of 2019 to October of 2019 was 566 and for 2020, during the same period, 500 intakes were completed.

We are now looking forward to and working on Judges' Nite 2021. Although Judges' Nite may not look like it has in the past, the DCBA remains committed to making sure there is some fundraising event to benefit DLA, and there will still be an Online Silent Auction. If you are interested in joining the Judges' Nite Events Commit-

tee, please contact **Lisa Giese** at [lisa@mngfamilylaw.com](mailto:lisa@mngfamilylaw.com). If you have a condo near the Chicagoland area, golf package, or other item you would like to donate to the silent auction to benefit a good cause, please contact me at 630-653-6212.

I have observed that our community is exhausted by 6 p.m. and yet we move forward. Even though pandemic time seems to stand still, and the days are long, time is precious. The spirit of the holidays is now upon us. The heart to serve at food pantries, help our neighbors in times of need and give legal assistance, is alive and well in DuPage. DLA wishes you all a very Happy Holidays! □

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# LRS Stats

8/1/2020 to 8/31/2020

The Lawyer Referral & Mediation Service received a total of **921 referrals, including 21 in Spanish** (791 by telephone and 130 online referrals) for the month of August.

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

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

Administrative Law . . . . .	1
Animal Law . . . . .	2
Appeals . . . . .	0
Bankruptcy/Credit Law . . . . .	3
Business . . . . .	20
Collection . . . . .	77
Consumer Protection . . . . .	9
Contract Law . . . . .	4
Criminal Law . . . . .	181
Elder Care . . . . .	19
Employment Law . . . . .	70
Estate, Trusts and Wills . . . . .	88
Family Law . . . . .	220
Federal Courts . . . . .	0
Government Benefits . . . . .	4
Immigration Law . . . . .	4
Insurance Law . . . . .	13
Intellectual Property Law . . . . .	1
Mediation . . . . .	2
Modest Means . . . . .	0
Personal Injury . . . . .	84
Real Estate Law . . . . .	107
School Law . . . . .	3
Tax Law . . . . .	1
Workers Compensation . . . . .	8

# COVID-19: The Short and Long-Term Mental Health Consequences

By Dr. Diana Uchiyama

*From Our Friends at Lawyers' Assistance Program (previously published on the [illinoislap.org](http://illinoislap.org) website.)*

There has been a tremendous disruption to the natural rhythm of life that we previously engaged in, without much thought, prior to the COVID-19 pandemic. We took for granted the ability to go to work on public transportation, the ability to walk around in a crowded train station or shopping mall, the ability to wait in line at a crowded coffee shop, the ability to get lunch at a buffet, the ability to travel, and the ability to work in an office building sharing space with colleagues and strangers without fear for our safety and well-being. We shook hands without care, and hugged friends and loved ones at our own personal discretion. We stood close to people while we engaged in conversations and had meetings and conferences where many people gathered. We attended weddings, baby showers, and birthday parties for people we loved and cared about. We never believed that our way of life, our access to services, and our ability to find critical and necessary life staples could ever be disrupted. We come

from a land of plenty and an age of excess and immediate pleasure, with little patience for disruption and change and a strong desire to be able to continue to do what we have done for all of our lives. We feel much grief and longing for the lives we lived before and took for granted, and feel overwhelmed with the knowledge that this life will be on hold and disrupted for extended and unknown periods of time and we may forever be changed as a result.

This pandemic, along with the majority of states imposing stay at home orders to minimize the rapid spread of the virus to allow our medical systems to be able to keep up with the demand for medical services, critical care and ventilators, was not a world we could imagine just a few months ago. We have all recently become familiar with never before used words and concepts such as “flatten the curve,” “social distancing,” “contact tracings,” “abundance of caution,” “self-quarantine,” and “community spread” to name a few. We have incessantly watched the news and read articles to try to gain a better understanding of the changes

that have quickly taken place, all without much help in increasing our knowledge or reducing our anxieties. Simply put, there currently are no hard and fast answers, no cures, and we have no idea when this virus will leave our world and allow us to return to the world we now view as a distant memory. I often speak about the factors that contribute to traumatic experiences. Currently, we are living in a trauma-inducing life event. One of the most basic and primitive human needs is the need for physical safety. We all want to feel safe in our world and in our home. When our feelings of personal safety are jeopardized, we feel unstable, unsafe, and uncertain navigating the world. The desire to remain healthy and vital is an essential desire for all of us, and this pandemic has jeopardized our ability to feel in control of our health, safety, and wellness because of the “invisible nature” of this virus. It lives amongst us, unseen by us, and some of us are carriers of the virus without knowledge or symptoms. We may spread the virus to people we love and care about even though we may feel healthy and well. This virus also attacks some people with a harshness

and unfairness that feels unpredictable and random. While we know that people who are elderly, male, immunocompromised, and living or congregating in small group settings can fan the flame of this virus, we cannot understand why some people die while others live, why it attacks and kills some young and healthy people, why some children die from the virus while others don't, and why we still lack an understanding of the virus to help combat the spread. We have learned that it attacks African American and Hispanic people at a higher rate than others in the general population and still don't really know why, other than people in those communities may have a higher rate of pre-existing conditions, live in more urban areas, and oftentimes have less access to quality medical care and testing.

Many of us currently live in fear of harming those we love causing avoidance and distancing from other family members. We cannot be with our loved ones if they get sick and need to go to the hospital. Many of us who have loved ones in nursing homes or long-term care facilities

are no longer able to visit them. We hear stories of front-line medical staff that sleep in their cars or garages, so they do not infect their families. Recently, I read a story about a family where the mother became ill due to the fact that she was a nurse in a nursing home, and fell into a coma the day after she experienced symptoms, succumbing to the disease within several days, never regaining consciousness. Her husband then became ill, and was hospitalized and placed on a ventilator, and while home alone, their twenty-year old son was found dead on the sofa a few days later, a victim of the same virus that killed his mother. How could this happen in a seemingly healthy family system and so quickly? We grieve those we lose and feel guilt that we cannot mourn them or be with them while they are sick. We experience the aftershocks of their illnesses, and many people who do recover from the virus, have long-term medical problems for which we were not prepared.

The state of the economy and unemployment is another trauma-inducing event. Most of us were employed in February

2020, and by the end of April 2020 the unemployment rate rose to a record 14.7% with a loss of over 20.5 million jobs. In one short month, we wiped out a decade of job gains. The COVID-19 virus has shuttered businesses and led to massive layoffs in a very short period. Many law firms are slashing pay and compensation packages and furloughing

## About the Author



Dr. Diana Uchiyama, JD, PsyD, CAADC is the Executive Director of the Illinois LAP Program. Before joining LAP, she was the Administrator of Psychological Services for DuPage County, worked as a Staff Psychologist and Juvenile Drug Court Coordinator for Kane County. She has a Certified Advanced Alcohol and Drug Counselor, and an Advanced Mindfulness Training Certificate. She has a masters and doctorate in Clinical Psychology and practiced law as a Cook County Assistant Public Defender.

or firing people who were loyal and good employees in order to remain solvent. Many people faced job reductions, were placed on part time status, and if lucky to retain your job, had to begin working from home with other family members and their children who were no longer in school. Schools were canceled, online learning became the norm, and webinars, zoom conferences and telehealth became the wave of the future. Summer associate positions were terminated and bar exams were placed on hold.

According to an article published in The Washington Post on May 4, 2020 titled "The Coronavirus Pandemic is pushing America into a Mental Health Crisis," there is a strong link between economic upheaval, suicide and substance use. After the Great Recession of 2008, there was a 1.6% uptick in suicides. The Meadows Mental Health Policy Institute in Texas, using such critical information, predicts that if unemployment rises by 20 percentage points, like levels reached during the Great Depression, suicides could increase by 18,000 and overdose deaths by more than 22,000.

Finally, we cannot minimize the psychological toll that social distancing and stay-at-home orders have on human beings. While necessary to flatten the curve of spreading the virus, the lack of mobility, loss of connection to others, and social isolation can lead to higher levels of anger, stress, confusion, PTSD, anxiety, depression, and substance abuse disorders, and these negative effects may last a long time. When social isolation is combined with other stressors, including job loss and financial insecurity, the long-term outcomes may worsen. People often engage in numbing behaviors to manage uncomfortable feelings and many people feel a loss of control, purpose, and agency

over their lives. Our normal ways of coping may not be available to us anymore, including going to a health club, worshipping at a church, synagogue or mosque, being able to visit with friends and family, or being able to gather for social activities.

The sense of predictability and the way we have organized our world has been disrupted to a great extent. Many of us feel disorganized and have a difficult time staying on task. In Illinois, sales of alcohol have increased by 50% and marijuana sales have doubled since the pandemic began. We are on the cusp of a tremendous mental health and substance abuse crisis, the likes of which we have never seen or experienced before. Yet the mental health and substance abuse systems have been woefully underfunded and under prioritized for decades and may not be able to adequately handle this influx of people.

LAP is here to help you if you are a legal professional who needs mental health or substance use services. During this pandemic, we are seeing more and more people reaching out to LAP for help, many experiencing mental health challenges, substance abuse and suicidal thinking. We are here to help and assist you navigate through this challenging time. We have telehealth services for assessments and evaluations and for individual and group therapy. We are free and confidential with immunity.

Do not suffer in silence. Do not think you are alone. Do believe that we can help. Do have hope that things can get better. Do send an email or make a phone call. Do know that LAP is here to help. Contact **312-726-6607**, [gethelp@illinois-lap.org](mailto:gethelp@illinois-lap.org) for more information. □

# Welcome

**Welcome to the new DCBA members.**

## **Attorneys:**

**Heather L Kramer**, Rathje Woodward LLC; **Benjamin S. Van Airsdale**, Carter & Tani; **Danielle Giannola**, Giannola Legal LLC; **Daniel J. Giannola**, Giannola Legal LLC; **Philip S. Ungar**, Office of the State's Attorney; **Nathan Raymond**, Raytheon Technologies Corporation; **Samantha A. Guttenberg**, Mirabella, Kincaid, Frederick & Mirabella.

## **Affiliate Members:**

**Kenneth O. Soyemi**, Cook County Health and Hospital System; **Michele A. Morgan**, Old Second National Bank.

## **Legal Community Members:**

**Olga Bronovytska**, **Christien Cain**, **Eleni B. Begaj**, Rathje Woodward, LLC.

## **Student Members:**

**Shannon Thompson**, **Kimberly Leslie**, **Samuel Ross**, **Lucas Szulczynski**.

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 James W. Zurek



*Jennifer Gullang guiding a stress-reducing exercise.*

## A Wellness Committee Event

October 1st found a hardy group of DCBA members taking advantage of a Wellness Committee event in Winfield for a stress relief experience. At this event, professional counselor, Grant Stenzel, spoke regarding the impact of work-related stress on the body and mind, including the added impact of COVID-19 on mental health. Jennifer Gullang of ThePiEproject then guided a workshop designed to help regulate stress

and mood through basic body movement and breathing skills, concluding with a burning ritual to release stress. The activity had an added bonus of providing participants with PRMCLE credit.

### Learning Objectives:

- To understand the impact of well-being and resilience on the ethics of practicing law and showing up as your best self for your clients.
- Define and build Self-Care in coping with stress and work/life balance while dealing with increased caseloads and how that assists your legal practice.
- Define and build Expectation Management in coping with stress and clients that have been affected by COVID-19 and are therefore more critical and difficult to handle.



*Grant Stenzel discusses work-related stress*

- Discuss ways to respond appropriately with emotionally charged clients. Define and build Boundaries in coping with stress in relationships with coworkers and with demanding clients.

Participants: **Maria Antonioli, Andrew Cores, Jessica Defino, Paul Deluca, Lisa Giese, Rebecca Krawczykowski, Melissa Marin, Robert McDonough, Wendy Musielak, Emily Rapp and Robert Rupp.** □



*Yoga exercises to help cope with stress*

## December Bar Notes (Continued from page 26)

The Holiday Fund which benefitted from all the breakfast and raffle tickets each year is the primary funding mechanism for the DuPage Bar Foundation's law school scholarships and community grants. If you are a regular donor to the Holiday Fund or if this would be your first time giving, please take a moment to give today at [www.dcba.org/DBFHoliday2020](http://www.dcba.org/DBFHoliday2020).

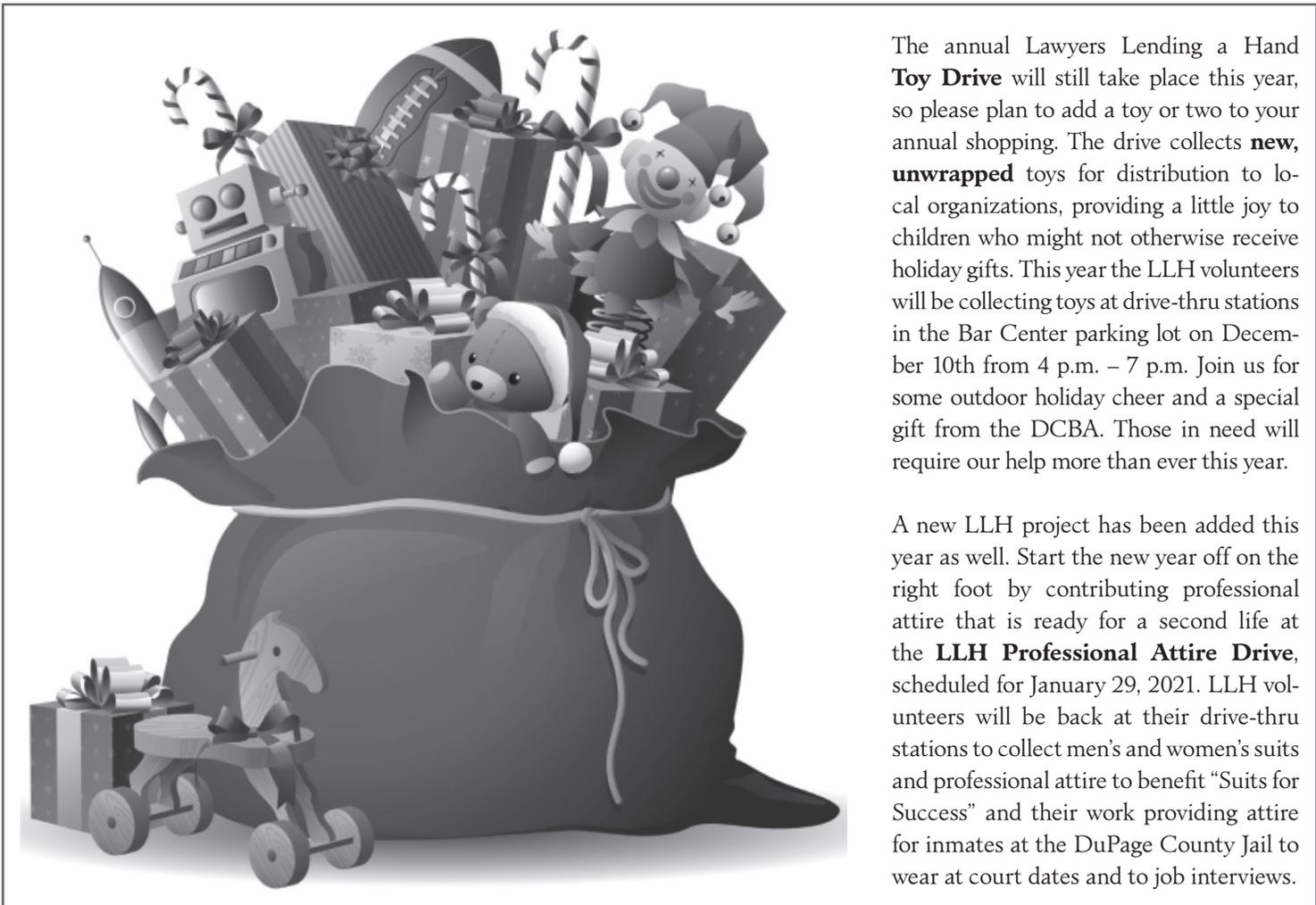
So, bring on December and Old Man Winter! The DCBA is ready!

The DCBA Staff joins me in wishing you all the happiest of holiday seasons. □

## ISBA Update (Continued from page 27)

Mid-Year Meeting in December will be held virtually. The Assembly meeting will also be held by Zoom. Perhaps this is not all bad. Our last Assembly meeting held this past summer on Zoom had one of the largest participation rates in recent history. Details will be available soon on the ISBA website.

If you have any questions on the above synopsis, please contact me at [kent@pfeiffer-lawoffices.com](mailto:kent@pfeiffer-lawoffices.com). I wish you all a joyous holiday season. Stay well and safe! Wear that mask and social distance. The life you save may be your favorite senior citizen! □



The annual Lawyers Lending a Hand **Toy Drive** will still take place this year, so please plan to add a toy or two to your annual shopping. The drive collects **new, unwrapped** toys for distribution to local organizations, providing a little joy to children who might not otherwise receive holiday gifts. This year the LLH volunteers will be collecting toys at drive-thru stations in the Bar Center parking lot on December 10th from 4 p.m. – 7 p.m. Join us for some outdoor holiday cheer and a special gift from the DCBA. Those in need will require our help more than ever this year.

A new LLH project has been added this year as well. Start the new year off on the right foot by contributing professional attire that is ready for a second life at the **LLH Professional Attire Drive**, scheduled for January 29, 2021. LLH volunteers will be back at their drive-thru stations to collect men's and women's suits and professional attire to benefit "Suits for Success" and their work providing attire for inmates at the DuPage County Jail to wear at court dates and to job interviews.

# Classifieds

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Where to Be  
with DCBA

# DBF Holiday Breakfast Goes Virtual

The DuPage Bar Foundation would have been holding its annual holiday breakfast on December 17 this year in the Attorney Resource Center on the 3rd floor of the courthouse, but the world has required some changes for all of us, including how we gather. The breakfast historically brings together the local judiciary and attorneys to celebrate the holiday season and take some time to enjoy each other's company while raising money for the Foundation. In the last few years, the Foundation raised in excess of \$12,000 annually from the extremely generous law firms and attorneys that donated money for the breakfast.

This year we are changing it up, but still asking for your generosity and support of the Foundation. To make things more interesting and for safety and social distancing, we will offer three ways to contribute to the Foundation. First, we will have a holiday cookie delivery opportunity. We will be offering 4 different

kinds of cookies, to be ordered by the dozen, and when the time comes, we will bake and provide contactless delivery to your home or wherever you may choose within DuPage County. (See order form on page 4.) Next, Chef by Request, will be offering a selection of breakfast items to either be picked up at one of three locations or via delivery for breakfast orders for more than 10 people. More details will be provided by the DCBA and DBF. Third, we will be offering a fun balloon-pop prize giveaway. Just donate to the Foundation and your name will be written on the outside of a balloon that may have a prize ticket inside. The balloons will be popped and the winners announced via live stream on December 17. More details to come with that one as well. Pick one or pick all three of the options to celebrate the season and help the Foundation this year.

We are still asking for gift card donations to make the holiday wreaths filled with

gift cards that are usually raffled off each year (think of all those credit card points just waiting to be cashed in; I know my online shopping hit an all-time high this year). We will still be offering the gift card wreaths as part of the balloon pop giveaway and the winners will receive the wreaths via delivery. The cards can be dropped off at, or mailed to, the DCBA any time before December 17th. The Foundation is also happy to accept larger prizes for the raffle; hint, hint people with Bears, Cubs and Sox tickets.

Finally, one of the very important parts of the breakfast is the Foundation's opportunity to award grants to local non-profit organizations. We are still awarding grants and the recipients will be announced at a later date.

Please join the DBF, the judiciary and your colleagues at the virtual breakfast and support the Foundation and its dedication to supporting justice in DuPage. □

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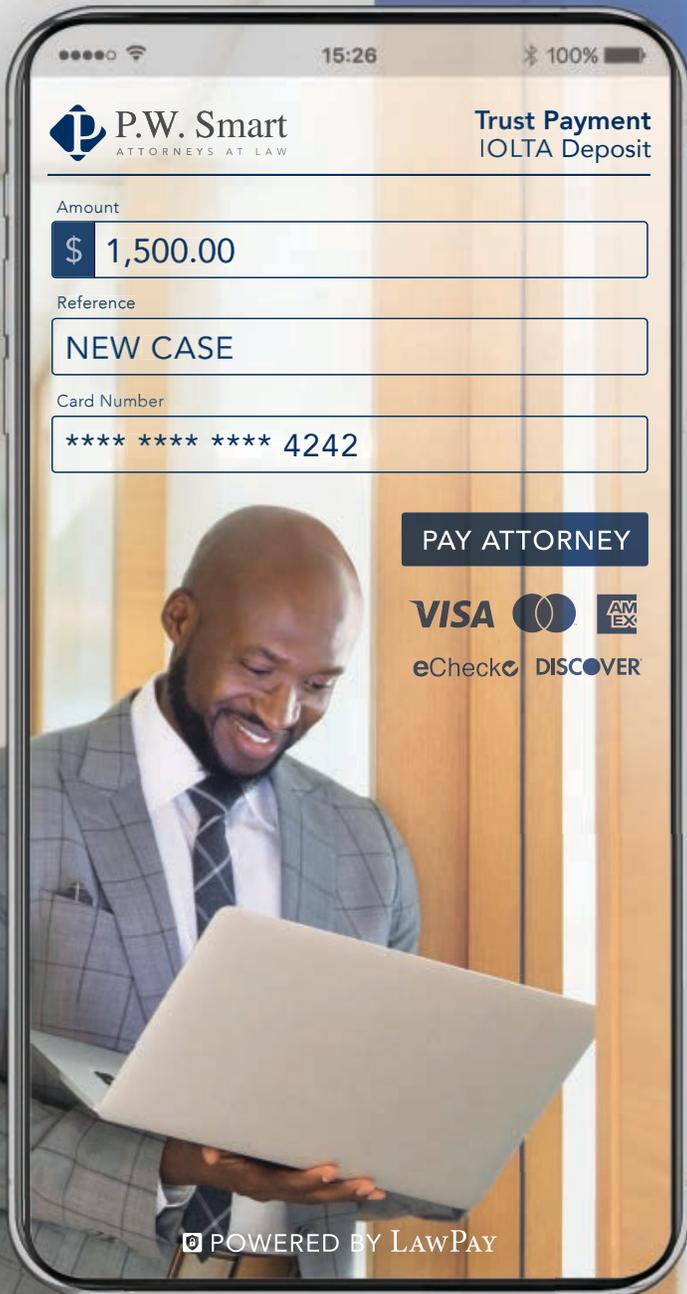
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HAPPY  
*Holidays*



### A Message from the OVC Team

The OVC Team from near and far wishes you a safe and healthy holiday. During these unprecedented times, we all yearn for connection and a return to normalcy. We look forward to the New Year and seeing all of our DCBA friends in-person at Unwind!

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