



# **Estate Planning and Probate Law & Civil Law Sections CLE Program Webinar January 24, 2024**

## **Welcome/Announcements and Introduction**

Sara Riechert, Estate Planning and Probate Law Section Chair

Dominick Lanzito, Civil Law Section Chair

**12:00 PM – 1:00 PM**

## **Program**

### **Navigating the Law Division and Probate Court to Secure Approval of Injury/Death Settlements Obtained on Behalf of A Decedent**

Brad Pollock, Taxman, Pollock, Murray & Bekkerman, LLC and Alex Benigni, Aronberg Goldgehn

The speakers will address the issues faced by attorneys when they are required to obtain court approval of a settlement on behalf of personal injury client who has died or in Wrongful Death Act case. The presentation will cover the interplay between the Wrongful Death Act, Survival Statute, and Probate Act. Alex concentrates her work on [Probate Court matters] and Brad concentrates his practice on personal injury and Wrongful Death Act litigation.

## **Link to Evaluation**

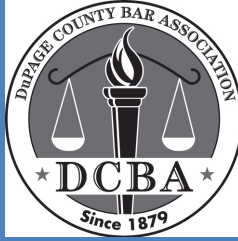
The evaluation must be completed to receive CLE credit.

<https://www.surveymonkey.com/r/EstateCivil01242024>

## **Next Program**

February 22<sup>nd</sup> – Joint Civil Law CLE with ALA and ISBA - Illinois Supreme Court Year in Review: Civil

February 28<sup>th</sup> – Planning for and administering estates with digital assets – Mike Frisch and Afton Gauron, Croke Fairchild Duarte & Beres



**DCBA Events:** January 25<sup>th</sup> - [Lawyer Lending a Hand](#) - Feed My Starving Children, Aurora

February 23<sup>rd</sup> - [Judges' Nite](#) - McAninch Arts Center at COD, Glen Ellyn

March 21<sup>st</sup> - 24<sup>th</sup> - [2024 President's Trip](#) - Phoenix, AZ

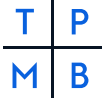
**2024 Attorney Security Pass** - Renew your pass today! All 2023 Passes expire January 31, 2024. If you received confirmation of your ARDC registration for 2024, you can renew your court ID through the DCBA website at this link - [dcba.org/courtid](http://dcba.org/courtid). If you renew online, a sticker will be sent in February. Please note, if you have lost your transponder or have never had one before, visit the Bar Center.

#### **DCBA OnDemand CLE is Available on IICLE:**

Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) catalog on the DCBA website under the menu item **CLE & Events**→**IICLE Online Library**. You must be logged into your DCBA Membership Profile to view courses for free or at a reduced price.

#### **View & Print CLE Certificates through the DCBA Website:**

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MENU

FOUNDING PARTNER

# Bradley N. Pollock



Bradley N. Pollock has been successfully representing people hurt or killed by the wrongful conduct of others for more than twenty-five years. He has secured numerous record-setting financial recoveries for his clients both at trial and through settlement, which have been featured in the news. Brad began his legal career in 1995 working as an insurance defense attorney in Chicago. He then elected to switch sides taking his defense experience and using it for the benefit of his injured plaintiff clients. Since that time, Mr. Pollock has dedicated

himself to obtaining justice for his clients and, at the same time, promoting change to prevent future unnecessary injury or loss of life.

Brad concentrates his legal practice in areas that include: wrongful death; [catastrophic personal injury](#); traumatic brain injury; transportation/motor vehicle collisions; [construction injuries](#); [medical malpractice](#); products liability; [premises liability](#); and [nursing home neglect and abuse](#).

The Illinois Supreme Court has appointed Mr. Pollock, by order of the Court, to serve: (1) on its Supreme Court Character and Fitness Committee for the Second District of Illinois from 2010-2020 (acting as its Chair from 2013 to 2017); (2) on its Supreme Court Civil Jury Instruction Committee; and (3) as one of nine attorneys on the Attorney Registration & Disciplinary Commission (ARDC) Review Board.

The legal community has also recognized Mr. Pollock's accomplishments. In 2018 Brad was selected by Super Lawyers Magazine as one of the lawyers on its 'The Top 100' list in Illinois for 2018 and 2019. 'The Top 100' list consists of 100 lawyers selected from all areas of the legal practice throughout the State of Illinois. With over 90,000 lawyers in Illinois, it is quite a distinction. In 2016, Mr. Pollock was named "Lawyer of the Year" by the DuPage County Bar Association. Brad has been selected by his peers in Illinois as a "Super Lawyer" in personal injury since 2008 (a distinction given to less than 5% of lawyers in his field). A survey of Illinois lawyers conducted by the Law Bulletin Publishing Company has also named him a "Leading Lawyer" in personal injury (limited to less than 5% of lawyers in his field). Brad has been chosen as a "Top 100 Trial Lawyer" by the National Trial Lawyers since 2013. He also holds a "Superb" rating from AVVO.

Brad also serves on the Illinois State Bar Association Tort Section Council (acting as Chair from 2016-2017) and on the Civil Practice Section Council. At the request of the DuPage County Bar Association, Brad acted as the lawyer (general counsel) for the legal organization from 2011-2013 and again from 2018-2020. He is a Past President of the American Inns of Court, Robert E. Jones Chapter. Brad has given numerous lectures to fellow attorneys in the area of injury law, including outside of the State of Illinois. He also serves as an adjunct professor at Midwestern University and as a member of the College of DuPage Paralegal

## Results

- Some examples of Mr. Pollock' s noteworthy results include:
- \$18.6 million recovery in Cook County for a Chicago construction worker who suffered a traumatic brain injury after falling from defective construction equipment.
- \$7.3 million medical malpractice verdict in Cook County following a surgeon' s failure to completely remove a woman' s benign facial tumor (co-counsel).
- \$7 million recovery in Cook County for a union pipefitter that suffered knee injuries while working in muddy conditions.
- \$5.7 million recovery in DuPage County for a spinal cord injury following a spinal surgery (co-counsel).
- \$5.35 million in Cook County for a fractured leg resulting from a golf cart rollover resulting in part from an unsafe cart path.
- \$3.125 million record recovery in DuPage County for an ankle injury following a golf cart vehicle rollover accident.
- \$3.1 million medical negligence recovery in Cook County on behalf of 5-year-old girl following the misplacement of a central venous catheter resulting in stroke.
- \$2.55 million in DuPage County for a young woman injured by an unattended motor vehicle that struck and severely injured her leg.
- \$2.5 million medical malpractice verdict in Cook County for a man that experienced hearing loss and imbalance following a failed ear surgery (co-counsel).
- \$1.75 million medical malpractice recovery in Cook County resulting from a delay in diagnosis of an occluded artery in the patient' s leg following a surgical procedure that resulted in nerve damage.
- \$1.75 million medical malpractice recovery in DuPage County resulting from a delay in

diagnosis of prostate cancer.

- \$1.5 million resolution of DuPage County medical malpractice wrongful death cause of action involving the death of a 2-day old prematurely born infant.
- \$1.1 million record medical malpractice verdict in Will County on behalf of an 82-year-old woman that sustained a nerve injury during an endoscopic carpal tunnel surgery.
- \$1.1 million medical malpractice recovery for a boy that suffered a facial nerve injury following surgery to remove a benign tumor.
- \$1 million recovery in a Cook County motor vehicle death.
- \$1 million recovery for an elderly man that tripped over an improper curb suffering a head injury.
- \$1 million recovery for a woman that tripped over an exposed bolt in the floor of a Chicagoland retail store and suffered a head injury.
- \$950,000 recovery in Kane County for a 92-year-old female resident of a supportive living facility that was caused to fall following a medication error which resulted in her death.
- \$925,000 medical malpractice recovery for a gangrenous toe resulting from a post-surgical wrap that had been applied too tightly.

## **BAR ADMISSIONS**



- 
- Illinois Bar, 1995
  - U.S. District Court Northern District of Illinois, 1996

## EDUCATION



- 
- Loyola University of Chicago School of Law, Chicago, Illinois J.D.— 1995
  - University of Illinois, Urbana/Champaign B.A., with distinction, 1992

## HONORS & AWARDS



- 
- Selected to Super Lawyers Magazine 'The Top 100' Lawyers in Illinois (2018)
  - Named Lawyer of the Year in 2016 by the DuPage County Bar Association
  - Appointed by the Illinois Supreme Court to serve on its Character and Fitness Committee for the Second District - 2010 to present (Appointed Chair 2013 to 2017)
  - Appointed by the Illinois Supreme Court to serve on its Civil Jury Instruction Committee 2015 to present.
  - Selected by his peers as an Illinois Super Lawyer (less than 5% of Attorneys in Illinois)
  - Named a Leading Lawyer by Law Bulletin Publishing Company (less than 5% of Attorneys in Illinois)
  - Names a Top 100 Trial Lawyer by the National Trial Lawyers

## PROFESSIONAL ASSOCIATIONS



- American Association for Justice (AAJ)
- Illinois Trial Lawyers Association (ITLA) - Member of the Board of Managers; Invited lecturer
- Illinois State Bar Association (ISBA) - Appointed to Tort Section Council: 2011 to Present (Chair in 2016-17); Appointed to Civil Practice Section Council: 2014 to present; Invited lecturer
- DuPage County Bar Association (DCBA) - General Counsel 2011 to 2013; Appointed Civil Practice Committee Chair 2007 & 2014; Appointed Chair of the Trial Advocacy Program 2007 to present; Past appointee of Judiciary Committee; Invited lecturer
- American Inns of Court/DuPage County Chapter - President 2011-2012; Presenter
- Chicago Bar Association (CBA), Member; Invited lecturer

# Contact Us

FREE CASE EVALUATION

**Name\***

**Phone\***



# Alexandra R. Benigni



## ASSOCIATE

T: 312.755.3141  
F: 312.291.7639  
abenigni@agdglaw.com

Business Divorce and Complex Ownership  
Dispute Resolution  
Business Litigation  
Government Relations  
Insurance Coverage Litigation and Analysis  
Trusts and Estates

## EDUCATION

LOYOLA UNIVERSITY CHICAGO  
SCHOOL OF LAW, J.D., 2020  
INDIANA UNIVERSITY BLOOMINGTON,  
B.A., 2015

## ADMISSIONS

ILLINOIS  
U.S. DISTRICT COURT FOR NORTHERN  
DISTRICT OF ILLINOIS

## COMMUNITY INVOLVEMENT

CORNERSTONE SERVICES (MEMBER,  
BOARD OF DIRECTORS)

Alex is an associate in the firm's Business Litigation, Trust and Estate Litigation, and Insurance Coverage practice groups. Her experience includes advising and representing clients through all phases of litigation, including preparing and successfully arguing motions before state and federal courts, deposing and presenting witnesses for discovery depositions and managing all aspects of the discovery process. Her insurance experience includes the analysis and litigation of complex insurance coverage matters.

After earning her law degree, Alex served as a Judicial Law Clerk for the Circuit Court of Cook County, Chancery Division. While in law school, she completed externships with the Antitrust Bureau of the Illinois Attorney General's office and the Northern District of Illinois, competed with the Saul Leftkowitz Moot Court Competition Team, and was a Student Fellow with the Institute for Consumer Antitrust Studies. Alex also served as an Executive Editor and Staff Editor for the *Loyola University Chicago Law Journal*.

Prior to attending law school, Alex worked as a legal assistant in the Complex Commercial Litigation department of a national law firm.

## PROFESSIONAL BACKGROUND

Alex joined Aronberg Goldgehn in 2021. Her prior experience includes legal positions with the Circuit Court of Cook County, Chancery Division; Illinois Attorney General Antitrust Bureau; Northern District of Illinois, as well as serving as a law clerk at three different Chicago-based law firms.

## COMMUNITY INVOLVEMENT

Alex serves on the Board of Directors of Cornerstone Services, a 501(c)(3) organization that provides progressive, comprehensive services for people with disabilities, promoting choice, dignity and the opportunity to live and work in the community.

## RELATED NEWS

- Alex Benigni to Participate in Joint Estate Planning and Civil Law MCLE Program for DuPage County Bar Association
- John C. Sciacotta and Alexandra R. Benigni to Conduct Mock Cross Examination in CBA Business Divorce and Complex Ownership Disputes Committee Webinar
- Four Aronberg Goldgehn Attorneys to Share Guardianship Insights at DCBA 2022 Mega Meeting
- Insurance Coverage Alert - Court Finds Law Firm's Policy Void Due to Misrepresentations Regarding Prior Knowledge

THE DUPAGE COUNTY  
BAR ASSOCIATION PRESENTS

49<sup>TH</sup>  
ANNUAL  
Judges'  
Nite



# Bonnie's DREAMHOUSE



Date

FRIDAY  
FEBRUARY 23, 2024

THE BELUSHI AUDITORIUM  
AT THE COLLEGE OF DUPAGE



A DUPAGE LEGAL AID  
FOUNDATION FUNDRAISER



# Navigating the Courts to Obtain Settlement Approval in Death Cases



Presented by: Alexandra R. Benigni – [abenigni@agdglaw.com](mailto:abenigni@agdglaw.com)

&

Bradley N. Pollock – [bpollock@tpmblegal.com](mailto:bpollock@tpmblegal.com)

Your Client is  
deceased...

And you think you have  
a settlement

## The Basics:

Who is the Representative  
of the Estate With  
Authority to Settle?

Who benefits from the  
settlement?

Survival Act Claim (Estate  
of the Decedent)

Wrongful Death Act Claim  
(Next of Kin of the  
Decedent)

# Examples

Client Has a Dog Bite Personal Injury Claim and Dies Due to Unrelated Causes

- Survival Act Cause of Action

Client is Killed Instantly in a Crash with a Semi Tractor Trailer

- Wrongful Death Act Cause of Action

Client Dies Due to Medical Malpractice, But Experiences Conscious Pain and Suffering before death

- Survival Act and Wrongful Death Act Causes of Action

# Choosing the Appropriate Representative in a Death Case

Opening a Probate Estate and Appointing an Administrator of the Decedent's Estate

- Superior to below Representatives

Appointing a Special Administrator Under the Wrongful Death Act– No Survival Action

Appointing a Special Representative Under 735 ILCS 5/2-1008

- Death after case filed
- Limited to Insurance Coverage

# Wrongful Death Act

## Purpose

- Statute (*740 ILCS 180 et seq.*)
- Remedy for Surviving Spouse and Next of Kin
- Distribution based upon Next-of-Kin dependency
- Generally, degree of dependency determined by Law Division.

## Elements

- That the defendant owed a duty of care to the decedent Defendant failed in this duty of care;
- Defendant's failure proximately caused the death; and
- That there are damages that resulted from it.

# Special Administrator Under the Wrongful Death Act

## Definition

- Temporary in nature
- Limited capabilities
- Relation to lawsuit

## Importance

- “In the event that **the only asset of the deceased estate is a cause of action arising under this Act**, and **no petition for letters of office** for his or her estate has been filed, the court, upon motion of any person who would be entitled to a recovery under this Act, and after such **notice to the party's heirs or legatees as the court directs**, and without opening of an estate, **may appoint a special administrator for the deceased party for the purpose of prosecuting or defending the action . . .” 740 ILCS 180/2.1.**

# Sample Petition to Appoint Special Administrator

## PETITION TO APPOINT SPECIAL ADMINISTRATOR

Pursuant to 740 ILCS 180/2.1, and pursuant to the Petition of [REDACTED], mother of [REDACTED], a Deceased Adult, the following is stated:

1. That on [REDACTED], 2021, [REDACTED], a Deceased Adult, was caused to sustain fatal bodily injuries following a motor vehicle accident at or near the intersection of [REDACTED] in the City of [REDACTED], County of Cook, State of Illinois.

2. That [REDACTED], left surviving him the following next-of-kin: (a) [REDACTED], his father; (b) [REDACTED], his mother and (c) [REDACTED] (a minor), his sister.

3. That due notice has been given to all heirs and legatees regarding this Petition.

4. That the only asset of the Estate of [REDACTED], Deceased Adult, is a Wrongful Death cause of action against the above-captioned Defendants.

5. That no Petition or Letter of Office of this Estate [REDACTED] have been filed.

# Sample Petition to Appoint Special Administrator

5. That no Petition or Letter of Office of this Estate of [REDACTED]

[REDACTED] have been filed.

6. That upon appointment of [REDACTED] as Special Administrator of the Estate of [REDACTED] a Deceased Adult, Petitioner will ask for leave to file a Complaint at Law under the Wrongful Death Act, against the above-captioned Defendants.

7. That [REDACTED] is competent to act in the capacity of Special Administrator, pursuant to 740 ILCS 180/1, 180/2, 180/2.1

WHEREFORE, it is prayed that [REDACTED] be appointed Special Administrator of the Estate of [REDACTED] a Deceased Adult, and that a Wrongful Death cause of action be filed pursuant to 740 ILCS 180/2.1.

[REDACTED]

Special  
Representative  
Under 735 ILCS  
5/2-1008(b)(1)

## Definition

- Abatement; change of interest or liability; substitution of parties
- Limited capabilities
- Relation to lawsuit

## Importance

- Applies to the death of a party after an action is filed
- No probate letters of office
- Requires verified petition
- Recovery limited to Insurance coverage
- Recovery distributed pursuant to the Probate Act
- Must be done 90 days from spreading the death of record

# Survival Act

## Purpose

- Permits specified causes of action to survive after death
- Benefits the Estate
- Distribution directed under probate estate

## Statute (755 ILCS 5/27-6)

- “In addition to the actions which survive by the common law, the following also survive: actions of replevin, actions to recover damages, including punitive damages when applicable, for an injury to the person (except slander and libel), actions to recover damages for an injury to real or personal property or for the detention or conversion of personal property, actions against officers for misfeasance, malfeasance, or nonfeasance of themselves or their deputies, actions for fraud or deceit, and actions provided in Section 6-21 of the Liquor Control Act of 1934 . Nothing in this Section affects the applicability of Section 2-1115 of the Code of Civil Procedure or Section 2-102 or 2-213 of the Local Governmental and Governmental Employees Tort Immunity Act”

# Special Administrator vs. Appointed Representative of the Estate

- A Special Administrator is appointed in the law division case, and only possesses the authority to prosecute the Wrongful Death cause of action and no other causes of action, including survival actions
- In contrast, a representative of a decedent's estate (called an executor or administrator) is appointed in a probate division case to administer and manage the deceased person's estate
- In both circumstances, notice must be provided to the heirs of the deceased

# Best Practice: Planning to Open Probate

- Opening probate takes several weeks
  - Obtaining the death certificate
  - Executing the forms necessary to open probate
  - Testate Estates (with a will) vs. Intestate Estates (without a will)

# Who Serves as Administrator of the Estate when the Deceased died without a will?

- Preference for Administrator
  - Surviving spouse or person nominated by them;
  - Legatees or person nominated by them (preference to children of decedent);
  - Children or a person nominated by them

# Documents Necessary to Open Probate

- Necessary documents include the Petition, Affidavit of Heirship, Oath of Office, and a Bond of Legal Representative.
- Bond is required unless there is a will that specifies that no bond is required
  - The Bond protects the estate from malfeasance, and is similar to a guarantor / co-signor
  - Surety bonds and empty estates

## Court Approval is Required for Death Case Settlements

A death case can be approved in the probate court if an underlying lawsuit has not been filed.

Where a probate estate has been opened – the probate court must approve/oversee distribution of estate assets.

Where a Wrongful Death Act or personal injury case is filed – the underlying court must approve the settlement.

# What is the Underlying Court Approving in the Settlement Petition?

- That the total settlement was fair and reasonable
- Confirming that all heirs and next of kin have notice of settlement/Petition
- That a probate estate was opened if necessary
- That a reasonable settlement amount was allocated between the Wrongful Death Act Claims and the Survival Act Claims
- That attorneys fee and costs are reasonable
- That lien payments are reasonable
- That there is an agreed upon allocation between the next of kin on the Wrongful Death Act settlement proceeds (Degrees of dependency)
- If there is no agreement – the court will conduct a hearing and make a determination on dependency
- That all accounting is accurate
- The amount that each next of kin will receive and the amount that will go to the probate estate for distribution
- Returning for proof of filing of vouchers
- Dismissal of case
  
- \*Remember to check the local rules for requirements

# Next of Kin Under Wrongful Death Act

- The term “next of kin,” in its technical legal meaning, means persons nearest in degree of blood **surviving**. *Wilcox v. Bierd*, 330 Ill. 571, 162 N.E. 170 (1928). (Emphasis added).
- “The next of kin of any deceased person are definite blood relatives or a definite class of blood relatives or kinsmen in existence at the time of the death of the deceased, **who would take his personal property in case he died intestate.**” *Id.* (Emphasis added)
- “[W]hile the General Assembly abandoned the laws of intestate succession as the basis for determining how wrongful death proceeds are distributed among the class of eligible beneficiaries, **it manifestly retained the laws of intestacy as the means for identifying the members of that class.**” *Morris v. William L. Dawson Nursing Ctr., Inc.*, 187 Ill. 2d 494, 719 N.E.2d 715 (1999) (Emphasis added).
- “Nothing in the Wrongful Death Act alters the general rule that survivors eligible for a wrongful death award are determined by the descent and distribution provisions of the Probate Act.” *Booker v. Lal*, 312 Ill. App. 3d 170, 726 N.E.2d 638 (2000)

# Dependency Hearings

- “The amount recovered in any such action shall be distributed by the court in which the cause is heard or, **in the case of an agreed settlement**, by the circuit court, to each of the surviving spouse and next of kin of such deceased person **in the proportion, as determined by the court**, that the percentage of dependency of each such person upon the deceased person bears to the sum of the percentages of dependency of all such persons upon the deceased person.” *740 ILCS 180/2(b)* (emphasis added).

# Dispute Resolution for Dependency

## Importance of agreement

- Avoidance of unnecessary expenses
- Closure in having reached a mutual solution
- Awareness of potential for conflicts

## Alternative paths to litigation

- Meditation
- Negotiation

# Proceeds from Wrongful Death and Survival Act Cases

- If there is no pending law division proceeding, the representative of the decedent's estate shall file a petition for approval of the settlement.
- Upon approval, the judge shall determine the expenses and attorney's fees to be deducted from the settlement proceeds.
- This petition must include a report by the attorney for the petitioner outlining whether the proposed settlement is just and proper.

# Proceeds from Wrongful Death and Survival Act Cases

- If there is a pending law division proceeding, and the case is disposed of through a judgment or a settlement, the representative of the decedent's estate shall file a petition in the probate court for authority to receive the proceeds of the action.
- If the wrongful death action was brought by a special administrator, no action in probate is required with respect to the disposition of the wrongful death action itself.
- However, where the wrongful death action was brought by the appointed representative of the decedent's estate, the representative shall petition for authority to receive the proceeds and vouchers for expenses paid and distributions made pursuant to the order of the law division.

# Guardianships

- Where funds are to be distributed to a minor or a person with a disability, it is generally necessary to file a separate guardianship action.
- The Court can direct that the proceeds be deposited in an account for the benefit of the ward (755 ILCS 5/24-21) or direct that the balance be held and administered by the guardian according to the requirements of the Probate Act.
- DuPage County Local Rules require that the minor or ward's legal representative file a petition with the probate judge for approval of the settlement.