



Paralegal Division MCLE Meeting
Location: DuPage County Bar Center
Date: May 2, 2019

11:45 AM - Noon

Welcome/Introductions
Eric Delgado, Division Chair

Noon - 1:00 PM

Program

Illinois Open Meetings Act and FOIA-The Fundamentals.
Emily A. Shupe

Speaker's Bio

See attached

Presentation Summary

Overview of the Illinois Open Meetings Act and Freedom of Information Act.

DCBA Events:

5/16/19 - Diversity PRMCLE Seminar - Doubletree - Lisle

6/7/19 - Presidents Ball and Installation - Prairie Landing - West Chicago

6/20/19 - Eleventh Hour PRMCL Seminar - Granite City - Naperville

8/22/19 - DCBA Golf Outing - Cantigny

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Emily A. Shupe

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Emily joined Rathje Woodward in 2006 and is an experienced counselor, litigator and employment lawyer. Emily has represented clients in a variety of commercial, employment and regulatory matters across the country. Since 2016, Emily also has served as the lead outside counsel for Illinois' second largest public higher education institution. In that capacity, Emily works closely with the college's administration to provide guidance and advice on governance, compliance, and litigation matters. Emily consistently has been recognized as a Rising Star in the Illinois legal community every year since 2014.

Practice Areas

- Litigation
- Employment Law
- Higher Education

Education

- Loyola University School of Law (J.D., 2006) *cum laude*
- University of Illinois at Urbana - Champaign (B.S., 2003)

Bar Admissions

- 2006 State of Illinois
- 2007 United States District Court for the Northern District of Illinois
- 2009 United States Court of Appeals for the Seventh Circuit
- 2012 United States District Court for the Central District of Illinois
- 2013 United States District Court for the Northern District of Illinois Trial Bar
- 2014 United States District Court for the Eastern District of Michigan

Memberships

- American Bar Association
- DuPage County Bar Association
- Illinois State Bar Association
- Robert E. Jones Inns of Court

Awards & Achievements

- Illinois Super Lawyers, Rising Star (2014-2019)

Representative Matters

- In 2016, Emily assumed the role of lead outside counsel to the College of DuPage, Illinois' largest community college. In that capacity, Emily provides legal counsel to the College on a broad variety of matters, including state and federal regulatory matters, accreditation reviews, Open Meetings Act and FOIA compliance, and board governance. Emily also represents the College in state and federal court litigation.
- Since 2012, Emily has served as employment counsel for a chain of grocers and restaurants. Her work has involved internal investigations, reviewing policies and practices, handling complaints, and litigation.
- Since 2012, Emily has served as lead national litigation counsel for several national rehabilitation and therapy services providers. Emily has represented those providers in various commercial disputes in nine states.
- Emily served as trial counsel in a case in which attorney Peter Francis Geraci sought \$90 million in damages for the alleged misappropriation and use of software by a competitor. After an eight-day trial, a jury found in favor of her client on all claims. The court also awarded over \$100,000 in fees as a sanction against Geraci's counsel. *Peter Francis Geraci v. Thomas Macey, et al.*, Case No. 14-cv-6876 (N.D. Ill. 2014) and *Peter Francis Geraci v. Legal Helpers, P.C., et al.*, Case No. 10-CH-4854 (DuPage Co. 2010).
- Emily served as trial counsel in an enforcement action filed in federal court in Wisconsin by the Consumer Financial Protection Bureau. The CFPB sought over \$70 million from the firm's clients. Prior to trial, Emily and a Rathje Woodward team successfully argued that the CFPB's regulation that purported to grant it authority to prosecute the case exceeded the CFPB's authority. The court invalidated a significant portion of that regulation in April 2016. *See CFPB v. Mortgage Law Group*, 182 F. Supp. 3d 890 (W.D. Wis. 2016). The CFPB's remaining claims were tried in a week-long bench trial in April 2017, which is awaiting decision. *Consumer Financial Protection Bureau v. Mortgage Law Group, LLC, et al.*, Case No. 14-cv-513 (W.D. Wis.).
- Emily served as counsel in an action in which the insurer wrongfully failed to indemnify a pasta manufacturer for loss and business interruption resulting from a contamination event at its facility. After a six-day jury trial, the jury returned a verdict of nearly \$2 million in favor of Emily's client. *Foulds, Inc. v. Liberty Surplus Insurance Co.*, Case No. 14-cv-7047 (S.D.N.Y. 2014).
- Between 2013-2016, Emily defended two national law firms and several of their members in more than a dozen separate state regulatory enforcement actions and statewide private class action lawsuits. In those actions, the plaintiffs sought tens of millions in damages from the firm's clients. Emily and the RW team aggressively defended those actions in court and secured favorable settlements in all of them.



- Emily served as counsel for Cronimet and two of its executives in a lawsuit in which a competitor claimed Cronimet had wrongfully hired the executives and misappropriated various trade secrets. Emily successfully argued that the executives' employment agreements were void, and secured dismissal of the competitor's contract, unfair competition and tortious interference claims. *Cronimet Holdings, Inc. v. Keywell Metals, LLC*, 73 F. Supp. 3d 907 (N.D. Ill. 2014).
- Emily served as counsel for a contractor of military housing against its legal liability insurance carrier with respect to the denial of a claim for the clean-up of demolition debris illegally dumped by a subcontractor. The client's loss exceeded \$15 million. After selecting a jury, but before trial commenced, RW was able to obtain a settlement for the client. *Picerne Military Housing, LLC v. American Specialty Lines Insurance Co.*, Case No. 08-273 (D.R.I. 2008).
- Emily represented an indigent defendant in a criminal appeal. Emily drafted the briefs and gave the oral argument that resulted in reversal of the client's money laundering convictions. *U.S. v. Aljabri*, 363 Fed. App. 403 (7th Cir. 2010).

Illinois Open Meetings Act And FOIA: The Fundamentals

Emily A. Shupe
Rathje Woodward LLC
May 2, 2019



What Is The Open Meetings Act?

- ▶ State law that requires that public bodies deliberate and take actions openly.

- ▶ Two important policies:
 - ▶ Protect the citizens' right to know
 - ▶ Strictly construe exceptions to open meetings



Who Is Subject To The Open Meetings Act?

- ▶ “Public Bodies”
- ▶ Examples: city councils, school boards, zoning boards, plan commissions, library boards
- ▶ Includes committees and subcommittees
- ▶ Does NOT include staff meetings, informal internal committees - unless a majority of a quorum is present



Quorums

- ▶ Public bodies act only through their members
- ▶ A “quorum” is the minimum number of members required to hold a meeting
- ▶ 7 member body = quorum of 4 members
- ▶ 5 member body = quorum of 3 members



What Constitutes A "Meeting?"

- ▶ ANY gathering - whether in person or by some other means of contemporaneous communication - of a majority of a quorum
- ▶ 7 member body = 3 members present
- ▶ 5 member body = 3 members present
- ▶ "Meeting" includes emails, texts, and social media messaging
- ▶ "Meeting" includes use of personal accounts



What Constitutes A "Meeting?"

- ▶ Gathering must be held for the purpose of discussing public business
- ▶ So, 3 members of a 7 member board may gather for social purposes, but must be careful not to discuss public business
- ▶ It is the content of the discussion, not the number of individuals present, that matters



What Is Required To Hold A Meeting?

- ▶ Public notice of all regular meetings for the year
- ▶ Public notice (48 hours) of any special or rescheduled meetings
- ▶ Agenda continuously posted 48 hours in advance
 - ▶ Principal Office
 - ▶ Meeting Location
 - ▶ Website
- ▶ Agenda identifies the general subject matter of items up for final action at the meeting
- ▶ Open and convenient meeting location and time
- ▶ Quorum of members present
- ▶ Minutes taken



When May A Public Body Close A Meeting?

- ▶ At a properly-noticed open meeting at which a quorum is present
- ▶ To discuss a subject that falls within an exception to OMA
- ▶ Motion to close the meeting contains a citation to an exception
- ▶ A majority votes to close the meeting
- ▶ Minutes contain a citation to the exception
- ▶ Closed session is recorded and maintained



Meeting Minutes

- ▶ Must identify:
 - ▶ Date
 - ▶ Time
 - ▶ Place
 - ▶ Summary of discussions and record of votes taken
- ▶ Must be approved by the public body by later of 30 days or second subsequent regular meeting
- ▶ Must be made available to the public 10 days after approval unless the meeting was closed
- ▶ Closed session minutes must be reviewed semi-annually

Exceptions To Open Meetings

- ▶ 5 ILCS 120/2: 33 specific exceptions to open meetings
- ▶ Employment, compensation, termination, and discipline of employees
- ▶ Collective bargaining matters
- ▶ Pending or threatened litigation
- ▶ Meetings with auditors regarding risks and frauds
- ▶ Review of closed session minutes for continued confidentiality

No Final Action In Closed Session!

- ▶ A public body may deliberate in closed session
- ▶ Any vote or final action **MUST** occur in open session
- ▶ Final action requires “a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.” 5 ILCS 120/2(e).



Violations Of OMA

- ▶ Bring an action in the circuit court within 60 days
 - ▶ Court may award attorneys' fees to the prevailing party
- ▶ File a request for review with the Public Access Counselor
 - ▶ PAC will review and determine whether further action is warranted



Freedom Of Information Act

All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2



To Whom Does FOIA Apply?

- ▶ Same as OMA - "public bodies"
- ▶ FOIA is broader - public bodies cannot avoid their FOIA obligations by placing records in the custody of third parties
- ▶ Section 7(2) - a public record that is in the possession of a third party that relates to a contracted governmental function shall be considered a public record



What Does FOIA Cover?

- ▶ “Public Records”

A “public record” is any record...and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body. 5 ILCS 140/2(c).

- ▶ Does NOT include personal communications
- ▶ DOES include records in the possession of outside parties
- ▶ Does NOT include information. Caveat: if you can easily create a record from information in a database, you should.



How Do I Make A FOIA Request?

- ▶ Check the public body’s website for information regarding FOIA requests
- ▶ You do NOT have to use a specific form, but it should be in writing
- ▶ You do NOT have to identify the purpose for your request
- ▶ The public body may ask whether the request is for a commercial purpose
- ▶ Be as specific as possible
- ▶ Request records
- ▶ Do not request information or pose questions



I Have Received A FOIA Request - What Now?

Are you the FOIA Officer?

- ▶ Comply with training requirements
- ▶ Note date of request
- ▶ Calculate due date and note the date on the request
- ▶ Maintain a copy of the request
- ▶ Create file for the request, response and related communications
- ▶ Circulate the request to those who are likely to have responsive records and provide them with the due date



I Have Received A FOIA Request - What Now?

If you are NOT the FOIA Officer:

- ▶ Immediately forward the request to the FOIA Officer for your public body



Time For Response

- ▶ Generally - 5 business days from receipt
- ▶ Weekends and legal holidays do not count in the calculation
- ▶ Closures *do* count - you do NOT get extra time!
 - ▶ School breaks
 - ▶ Inclement weather
 - ▶ Unforeseen closures
 - ▶ FOIA Officer vacation



Time For Response - Extensions

Public body may extend the time for a response by 5 additional business days:

- ▶ Records are at another location
- ▶ Request requires collection of substantial number of records
- ▶ Records have not been located and additional efforts are being made
- ▶ Records require review for exemptions
- ▶ Request cannot be filled in 5 days without undue burden
- ▶ Need to consult with another public body
- ▶ Agreement of the parties

Failure to respond, deny or extend within 5 business days is considered a denial of the request.



Unduly Burdensome - 5 ILCS 140/3(g)

- ▶ Categorical requests
- ▶ Must respond within 5 days and give opportunity to narrow
- ▶ Must state in writing WHY the request is unduly burdensome and how filling the request will burden the public body
- ▶ Failure to respond in 5 days bars the public body from later claiming a request is unduly burdensome
- ▶ An unduly burdensome request is not the same as a voluminous request



Voluminous Requests - 5 ILCS 140/3.6

- ▶ More than 5 individual requests for more than 5 categories
- ▶ Combination of individual requests for more than 5 categories in 20 business day period
- ▶ More than 500 pages (unless single record is > 500 pages)



Time For Response - Voluminous Requests

- ▶ Within 5 business days, provide response notifying requester that:
 - ▶ It is a voluminous request
 - ▶ Reasons why it is voluminous
 - ▶ Requester has 10 days to amend
 - ▶ If the requester does not amend, the public body will respond and assess fees
 - ▶ Public body has 5 days from amendment or last day to amend to provide response
 - ▶ Public body may request an additional 10 days to respond
 - ▶ Right of review by the PAC
 - ▶ If requester fails to collect the records, the public body may still assess fees



Time For Response - Voluminous Requests

If, after the time to amend, the request is still voluminous, a public body has 4 options:

1. Provide requester with an estimate of time to collect records and fees to be charged. May require fees up front.
2. Deny request pursuant to exemptions.
3. Declare the request unduly burdensome and provide opportunity to narrow.
4. Provide the records.



Commercial Requests - 5 ILCS 140/2(c-10)

- ▶ Commercial purpose - the use of any part of a public record or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services.
- ▶ Does not include news media, non-profits, or scientific or academic organizations, IF principal purpose of request is:
 - ▶ To access and disseminate information concerning news and current or passing events;
 - ▶ For articles of opinion or features of interest to the public; or
 - ▶ For the purpose of academic, scientific, or public research or education.
- ▶ It is a violation of OMA to not disclose a commercial purpose if requested by the public body.



Time For Response - Commercial Requests

Within 21 working days, a public body must respond in one of four ways:

1. Provide requester with an estimate of time to collect records and fees to be charged. May require fees up front.
2. Deny request pursuant to exemptions.
3. Declare the request unduly burdensome and provide opportunity to narrow.
4. Provide the records.

5 ILCS 140/3.1



Recurrent Requesters - 5 ILCS 140/2(g)

- ▶ In 12 months immediately preceding the request, has:
 - ▶ Made 50+ requests to the same public body;
 - ▶ Made 15+ requests to the same public body within 30 days; or
 - ▶ Made 7+ requests to the same public body within 7 days.

- ▶ Does NOT include news media, non-profits, or scientific or academic organizations.



Time For Response - Recurrent Requesters

- ▶ Within 5 business days - notify requester that he/she is being treated as a recurrent requester and the reasons therefore.

- ▶ Within 21 business days - provide a response to the requester:
 1. Provide requester with an estimate of time to collect records and fees to be charged. May require fees up front.
 2. Deny request pursuant to exemptions.
 3. Declare the request unduly burdensome and provide opportunity to narrow.
 4. Provide the records.

5 ILCS 140/3.2



Exemptions - 5 ILCS 140/7 and 140/7.5

- ▶ A public body may withhold or redact a record or portions thereof if permitted by FOIA.
- ▶ Some commonly cited exemptions include:
 - ▶ 7(1)(a) - prohibited from disclosure by state or federal statute
 - ▶ 7(1)(b) - private information
 - ▶ 7(1)(c) - personal information
 - ▶ 7(1)(f) - preliminary drafts, memos, and recommendations
 - ▶ 7(1)(l) - closed session minutes
 - ▶ 7(1)(m) - attorney and auditor communications
 - ▶ 7(1)(n) - employee grievances and disciplinary cases - unless final disposition
 - ▶ 7(1)(p) - collective negotiating matters



Denial Of Requests

- ▶ Must be in writing.
- ▶ Must state reasons for denial.
- ▶ Must specify claimed exemptions and include factual basis for claimed exemptions.
- ▶ Must state the name and title of the person responsible for the denial.
- ▶ Must provide notice of right to review by the PAC and right to judicial review.



Actions For Alleged Violations

- ▶ File a request for review with the PAC within 60 days of the final denial.
- ▶ No requests for review for commercial purpose requests.
- ▶ File a suit for injunctive or declaratory relief in the circuit court.
- ▶ Court may award attorneys' fees, and, if the Court finds willful and intentional non-compliance, or other bad faith, civil penalties.

Eleventh Hour PRMCLE Seminar

Thursday June 20th 2019
Granite City Food & Brewery
1828 Abriter Ct, Naperville



Need additional PRMCLE credits before the June 30th reporting deadline? No Problem!

Join us on Thursday June 20th from 1:30pm-5:00pm and earn 2 credits PRMCLE/1 credit PRMCLE Mental Health & Substance Abuse (pending MCLE Board Approval). Our Monthly Happy Hour will follow the seminar at the same location—Granite City Food & Brewery in Naperville

Pricing

\$20 DCBA Member
\$10 New Admittee/Government Attorney
\$45 Non-Member

1:30pm-2:30pm *"When Helping Hurts: Compassion Fatigue in the Legal Profession"*

Speaker: Karen Mills, Strohschein Law Group (1 Credit PRMCLE - Mental Health/Substance Abuse)

2:45pm-3:45pm *"Succession Planning"* Speaker: Melissa Smart, Litigation Manager & Senior Disciplinary Commission of the Supreme Court of IL- Attorney Registration & Disciplinary Commission (1 Credit PRMCLE)

4:00pm-5:00pm *"A Survey on Professionalism: Is Civility a Real Problem?"* Speaker: Mary Robinson - Robinson Law Group LLC (1 Credit PRMCLE)

For full agenda and online registration, visit www.dcba.org

Name _____ ARDC # _____

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Registration Fee: _____ \$20 Member _____ \$10 New Admittee/Gov't Attorney _____ \$45 Non-Member

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Note: Please send completed form with payment to DCBA, 126 S. County Farm Rd, Wheaton, IL 60187 or rripp@dcb.org



What Are We Missing? A Town Hall Conversation on Diversity & its Impact on the Legal Profession

Thursday, May 16th 2019

DoubleTree by Hilton Lisle Naperville

3003 Corporate W Dr

Lisle, IL 60532

2:00pm-5:00pm (1:30 Registration)



NWSBA
NORTHWEST SUBURBAN
BAR ASSOCIATION

Moderator: Hon. Vincent F. Cornelius, 12th Judicial Circuit (Will County)

Speakers

Joseph Flynn, Associate Director for Academic Affairs - Northern IL University Center for Black Studies

Jennifer Adams Murphy, Shareholder and Senior Attorney - Wessels Sherman

Alex Karasik, Associate - Seyfarth Shaw LLP

Topics for Discussion

The Past: Where are we and how did we get there?

The Present: How is diversity shaping the current landscape in the workplace?

The Future: Where should we go and how do we get there?

2 PRMCLE Hours/1 PRMCLE Diversity & Inclusion (Pending MCLE Board Approval)

With Generous Support From



For full agenda and online registration, visit www.dcba.org/diversity

Name _____ ARDC # _____

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Phone _____ Email _____

Registration Fee: _____ \$20 Member _____ \$20 Sponsoring Bar Member

_____ \$10 New Admittee/Gov't Attorney _____ \$45 Non-Member

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