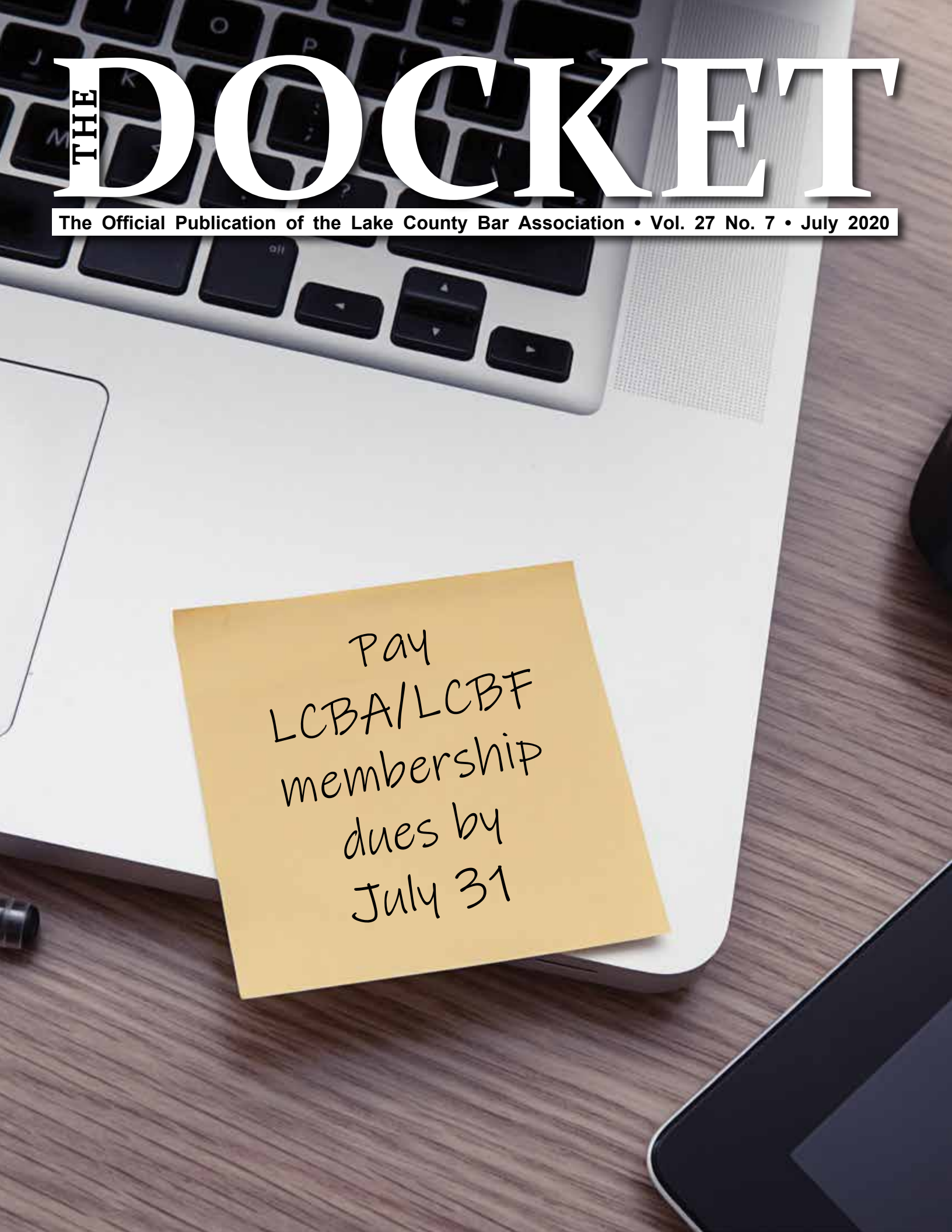
THE DOCKET

The Official Publication of the Lake County Bar Association • Vol. 27 No. 7 • July 2020



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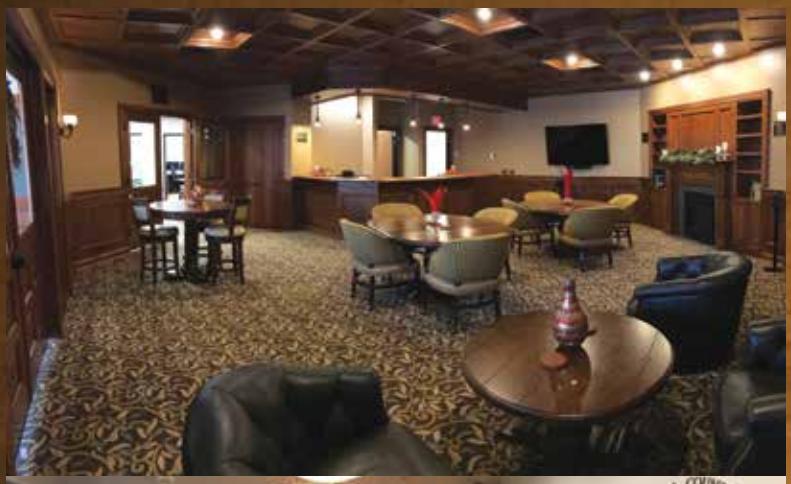

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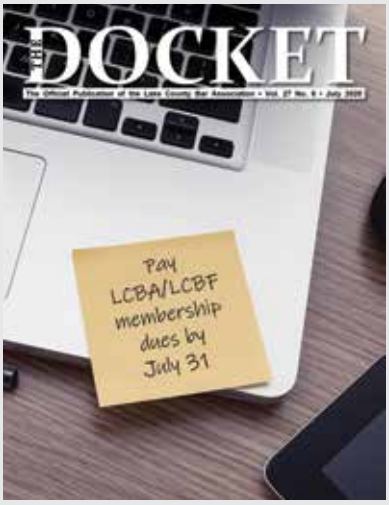

A publication of the

LAKE COUNTY BAR ASSOCIATION est. 1912

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The Docket is the official publication of the Lake County Bar Association, 300 Grand Avenue, Suite A, Waukegan, Illinois 60085 (847) 244-3143, and is published monthly. Subscriptions for non-members are $45.00 per year.

All submitted manuscripts are considered by the Editorial Board. All letters to the editor and articles are subject to editing. Publications of advertisements is not to be considered as an endorsement of any product or service advertised unless otherwise stated.

Changes are Coming

The President's Page

BY PATRICIA L. CORNELL
PRESIDENT

Ever since I have been a board member for the Lake County Bar Association, The Docket has always been a topic of discussion. These discussions varied from how many times someone's picture appeared in a publication to whether we should keep printing it. The Lake County Bar Association board was told for many years that The Docket was profitable. It is also a fact that the editors of The Docket have always had a difficult time obtaining substantive articles to publish. One of these issues remains true today, the other, not so much. The 2019-2020 year was the first time in several years that the Board was able to have real certainty regarding our budget.

Our Treasurer, Kathleen Curtin, began working on the 2020-2021 proposed budget with Dale, our Executive Director, earlier this year. They met weekly to produce a proposed budget that took into consideration the impact of COVID19, among other things. Both Brian J. Lewis and Stephen J. Rice, our last 2 presidents (apparently with the same middle initial) did a very good job at cutting costs and increasing revenue. Additionally, Dale found a new company to publish the Docket and that alone reduced the cost of the publication in the last 2 years. However, this simply isn't enough.

Our recent budget discussion tended to focus on the fact that our publication continues to operate at a significant loss. The Board directed Dale to ask the publisher whether there were additional changes we could make with respect to cost and form, in addition to those changes already instituted by the publisher.

The pandemic resulted in many of our members not receiving The Docket in printed form because most people were not at work to receive the mail. Most of our lives are now consumed with Zoom and some of us are only reluctantly becoming more tech savvy. Therefore, the Board thought this would be a perfect time to transition The Docket to an electronic format.

Taking into account the information received by Dale in response to his inquiries, the Board was provided with several alternative scenarios, along with related costs of printing and mailing for each. These options ranged from printing the publication every quarter to producing 12 months of electronic copies. Printing and mailing 12 issues of The Docket may result in a loss of over $10,000.00 (printing just 6 issues, without also publishing electronic editions, would result in a greater loss). The possibility of essentially breaking even exists if we print and mail 6 issues and then publish 6 issues in electronic form. It is important to note that both of these comparisons assume that advertising income remains the same.

Moving to distributing our publication by electronic means has been discussed for years. It is true that the Lake County Bar Association website does have PDF versions of The Docket for members to review – but these are typically created after the hard copy is published. It is no secret, as well, that a majority of our members enjoy receiving a

printed version of the publication – they have been very vocal about it. Members have told us they feel it is important to be able to leave these copies in their waiting room or on their desk for visitors to view.

The discussion at the board meeting regarding this issue was extensive. Based on all the facts, it appears that the most cost-effective plan for The Docket would be to annually produce 6 editions in hardcopy form and another 6 editions as electronic versions only.. The Board will be revisiting this issue again in December to decide if we should continue along this path. It is entirely possible that our publication will not receive sufficient articles in the upcoming year to warrant producing The Docket monthly. It is very important that our members submit articles.

The current LCBA Bylaws state, in Section 4, Paragraph A (3) as to each standing committee:

> "...3. Each Committee, except the Nominating Committee and the Judicial Selection & Retention Committee, should keep and maintain written minutes of each meeting as needed and circulate to the committee's members. Minutes shall be prepared by the Vice-Chair, Co-Chair, or designee of each Committee and shall memorialize the proceedings at Committee meetings...."

Committee minutes do not have to state every single thought or discussion that occurred in the meeting. But, at a minimum, they should indicate when and where the meeting was held, a brief description of what occurred, and then next meeting date, time and location. These minutes, if published in the Docket, would help to inform fellow members of the Committees' work and remind them of upcoming meetings as well.

The Bylaws also provide in Section 4, Paragraph B (2):

> "...2. Each Legal Practice Committee shall annually submit not less than one article of at least 1,500 words to The Docket. Qualifying articles will discuss issues of relevant substantive law...."

The Docket editors and committee members – also comprised of fellow bar members - operate diligently. Last minute submissions are very common, and the committee often has to essentially drop everything to review the articles to meet the deadline for printing. So, please keep this in mind because they too have their own deadlines in their businesses and personal lives. It might also be nice for you to thank them for their dedication the next time you run into one of the committee members – whether in person or through Zoom. Please contemplate writing a Docket article in the very near future as submissions will be one of the factors the Board will consider when we review this topic again at the December board meeting.

19th Judicial Circuit Court Update

BY CHIEF JUDGE
DIANE WINTER

As State activities enter Phase 4 of the Restore Illinois Plan in response to COVID-19, the Nineteenth Judicial Circuit continues to implement changes necessary to restore judicial circuit functions.

Weddings. Judges have resumed performing weddings. The weddings will be conducted through the Zoom video conference application instead of in person at the courthouse. The license application with the County Clerk and payment of the $10 fee to the Circuit Clerk can be accomplished in one day and must be in person. The couple will register for a wedding appointment and call in the day of the wedding for their Judicial assignment and corresponding Zoom link. All parties will sign in to Zoom from anywhere in Lake County and the judge will perform the ceremony. Judge Cornell had the honor of performing the first Zoom video conference wedding which was featured on Channel 2 News.

Branch Courts. Branch courts will open via the Zoom video conference application beginning July 6th. All traffic defendants will receive notice that they must appear for their ticket via Zoom. The municipality's attorney contact information will also be provided to the litigants in the hope that, most of the litigants will negotiate their ticket resolution in advance of their court date. The Clerk of the Circuit Court's counter will reopen July 6th in each of the branch courts which will allow defendants to pay their tickets.

Jury trials. Jury trials are the last virtual frontier. The Jury Trial Task Force chaired by Judge Victoria Rossetti and Judge Mitchell Hoffman continues to gather information from other jurisdictions and evaluate the Nineteenth's facilities and technology. The task force is charged with determining how the Nineteenth Judicial Circuit will do civil and criminal jury trials, whether in person, virtually, or a mix of both. The task force looks forward to the input of the Lake County Bar Association members from the recent bar survey. It is important that the new plans work for the attorneys, jurors, judge and court personnel. As COVID numbers continue to decrease in Waukegan, we hope to have a plan in place soon that will reassure potential jurors that all possible virus precautions have been taken, they can serve as a juror safely, and the procedures will allow for all constitutional protections.

Changes in the Judiciary. On July 2nd, the Nineteenth Judicial Circuit welcomed our newest judicial member, Randie Bruno. She will be training virtually with judges from various divisions concentrating in the traffic/misdemeanor division for a three-week period. Judge Bruno will hear traffic cases assigned to the Round Lake Beach branch court beginning July 27th. Judge Cornell will move from Round Lake Beach and be assigned to a court call in the Waukegan Courthouse. As we know, one change in the judiciary causes a ripple effect, so there may be some more court call moves as well.

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Thank You Steve and Welcome Tricia

BY NICHOLAS A. RIEWER
PRESIDENT

I would like to take this opportunity to thank Steve Rice for his dedication and service, acting as President of the Lake County Bar Association for the past year. Because of my involvement with the Foundation, I am able to see, first-hand, how much time the Association President devotes to fulfilling his/her duties. It is almost like taking on a second fulltime job, and that would be in a normal year. I think we can all agree that the last six months have been anything but normal. I can't imagine that when Steve was sworn in as President, he anticipated becoming the video guru that he has, explaining to the association members how the Lake County Courthouse was going to continue to operate without allowing attorneys or litigants in the hallowed halls. In any event, Steve, thanks for a great job in, at best, very difficult times.

I would also like to take this opportunity to welcome Judge Patricia Cornell as the new President of the Lake County Bar Association. Although we are in the mist of unprecedented times, I am certain that Tricia will not only do a good, but exemplary job. Several years ago, when Tricia agreed to become the future President of the Association, I doubt that she thought she would become a "Zoom" President. In any event, good luck, and I look forward to working with you over the next year.

One of the primary missions of the Lake County Bar Foundation is to raise money for charitable organizations. 2020 was supposed to be the year that we hosted the Biennial Gala, typically in late November. The Gala is our main fundraising event that we host in order to raise money to distribute to charitable organizations. Unfortunately, because of the Pandemic, we had to make the tough decision to cancel the live Gala. Without the fundraising from the Gala, we will not be able to provide support to charitable organizations during this year.

Instead of the live Gala, we are attempting to put on a virtual fundraiser. So, this year, we have decided to host a virtual art auction.

Final details are still being worked out, but here is the basics of what will occur:

In August The Lake County Bar Foundation will purchase 8 x 8-inch blank canvases which will be available for purchase by the talented LCBA/LCBF members, their talented family members, friends and those work-

ing for, volunteering for and benefiting from the charitable organizations supported by the Foundation, for a very modest price of $10. You, the Association members, family and friends, will then create masterpieces on said canvases and return them to the Association office before the end of September.

All of the masterpieces will be posted on a special page on the website for all to view online, and at the LCBA/LCBF office, and perhaps other locations in Lake County. The viewing timeframe will be several weeks to allow everyone to look at all the masterpieces, spread the word to family and friends across the country, and hopefully select several that you plan to proudly display in your home or office.

We anticipate having several categories of masterpieces, such as "kid art," "regular people," like you and me, art, and "Judges art." We also hope to have several real artists donate some of their works for a "Celebrity" category.

Beginning November 2, the bidding window will open to allow you and your family to bid on your favorite pieces of art. Bidding will begin at $30 or $35 per piece. Currently the plan is to close the bidding on November 20, when this year's live Gala would have been held, with either a virtual or small live event where winning bidders can pick up their new pieces of art.

We are attempting to keep the cost of this virtual art auction as reasonable as possible, to allow as many people the opportunity to participate.

Once all of the final details have been worked out, you will receive an email setting forth the specifics. This will be a fun way to get many of our members involved in the process of raising money for our charitable mission and showcase our artistic talents.

Thank you and I look forward to your participation. Zoom, Zoom.

June 2020
Monthly Case Report

Editor's Note: Monthly Case Report is provided by 19th Judicial Circuit Law Librarian, Emanuel Zoberman

Illinois Second Appellate – Civil

In re Estate of Holms
Appellate Court of Illinois, Second District, December 23, 2019, --- N.E.3d ----2019, IL App (2d) 190139, 2019 WL 704690

Background: Husband petitioned to probate deceased wife's estate listing himself as spouse and heir. Daughter of deceased wife filed counterpetition arguing husband was not heir of decedent's estate pursuant to property settlement agreement (PSA) executed by husband and wife in legal separation proceeding. Following hearing, the Circuit Court, Lake County, Michael J. Fusz, J., found that husband was spouse and heir to wife's estate. Daughter appealed.

Holdings: The Appellate Court, Schostok, J., held that:
1 PSA was final settlement of all property rights arising as a result of their marriage;
2 home purchased by wife after execution of PSA was within purview of PSA; and
3 language in PSA was sufficient to demonstrate intent to waive statutory spouse's award.

Reversed and remanded.

U.S. Bank N.A. v. Gold
Appellate Court of Illinois, Second District, September 23, 2019, 2019 IL App (2d) 180451, 146 N.E.3d 484, 38 Ill.Dec. 294

Background: Mortgagee brought mortgage foreclosure action against mortgagors. The Circuit Court, Lake County, No. 09-CH-4751, Michael B. Betar and Margaret A. Marcouiller, JJ., court struck mortgagors' counteraffidavit and granted mortgagee's motion for summary judgment. Mortgagors appealed.

Holding: The Appellate Court, McLaren, J., held that mortgagors' counteraffidavit failed to comply with requirement that affidavit not contain conclusions and thus was properly stricken.

Affirmed.

O'Neil v. Illinois Workers' Compensation Commission
Appellate Court of Illinois, Second District, WORKERS' COMPENSATION COMMISSION DIVISION, February 4, 2020, --- N.E.3d ----, 2020 IL App (2d) 190427WC

Background: Workers' Compensation Commission affirmed decision of arbitrator concluding causal relationship existed between workers' compensation claimant's right knee injury and accident that occurred at workplace, and reversed award of penalties and attorney's fees. The Circuit Court, Lake County, Mitchell L. Hoffman, J., confirmed Commission's decision. Claimant appealed.
Holding: The Appellate Court, Hudson, J., held that Commission did not have authority to assess penalties against workers' compensation carrier.

Affirmed and remanded.
Holdridge, J., dissented with opinion.

Prinova Solutions, LLC v. Process Technology Corporation Ltd.
Appellate Court of Illinois, Second District, March 23, 2018, 2018 IL App (2d) 170666, 103 N.E.3d 366, 422 Ill.Dec. 234

Background: Buyer filed a complaint against purported seller, asserting causes of action for breach of contract, breach of implied warranty of merchantability, and breach of implied warranty of fitness for a particular purpose, alleging to have purchased defective food blending and processing equipment from purported seller. Purported seller filed motion to dismiss, alleging that contract was between buyer and a foreign company and that neither he nor his company was named in it. The Circuit Court, Du Page County, No. 14–L–1114, Ronald D. Sutter, J., granted seller's motion to dismiss, without prejudice. Buyer filed amended complaint against foreign company, named purported seller as a respondent in discovery, and issued interrogatories and document requests to purported seller. The Circuit Court, Sutter, J., denied purported seller's motion to dismiss, and later allowed purported seller's motion to certify question of whether discovery statute allowed a defendant who had been dismissed from the lawsuit without prejudice to be converted into a respondent in discovery and thereafter converted to a defendant again.

Holding: The Appellate Court, Spence, J., held that discovery statute allowed for defendants who had already been dismissed from a lawsuit, without prejudice, to be converted into a respondent in discovery, and thereafter converted to a defendant again in all civil actions.
Certified question answered.

Olson v. Lombard Police Pension Fund
Appellate Court of Illinois, Second District, January 23, 2020, --- N.E.3d ----, 2020 IL App (2d) 190113, 2020 WL 370371

Background: Former police officer sought review of police pension fund retirement board's denial of his application for line of duty disability pension. The Circuit Court, DuPage County, Bonnie M. Wheaton, J., affirmed board's decision. Former police officer appealed.

Holding: The Appellate Court, Michael J. Burke, J., held that officer failed to meet burden of establishing causal connection between preexisting lower back issues and duty-related incident.

Affirmed.

Illinois Second Appellate – Criminal

People v. Banks
Appellate Court of Illinois, Second District, March 12, 2020, --- N.E.3d ----, 2020 IL App (2d) 180509, 2020 WL 1228445

Background: Defendant was convicted in the Circuit Court, Lake County, No. 17-CF-1146, Daniel B. Shanes, J., of four counts of unlawful delivery of a controlled substance. Defendant appealed.

Holding: The Appellate Court, McLaren, J., held that defendant's substantive due process rights were violated when State breached cooperation agreement police had entered into with defendant.

Reversed.

People v. Craig
Appellate Court of Illinois, Second District, February 28, 2020, --- N.E.3d ----, 2020 IL App (2d) 170679, 2020 WL 967375

Background: Defendant was convicted in the Circuit Court, Kane County, John A. Barsanti, J., of predatory criminal sexual assault of a child and aggravated criminal sexual abuse. Defendant appealed.

Holdings: The Appellate Court, Schostok, J., held that:
1 pro se defendant's posttrial statements raised claim of ineffective assistance of counsel sufficient to trigger the Circuit Court's duty to inquire into factual basis of defendant's claim
2 defendant's ineffective assistance claim was properly presented to the Circuit Court.

Remanded.

People v. Suggs
Appellate Court of Illinois, Second District, March 17, 2020, --- N.E.3d ----, 2020 IL App (2d) 170632, 2020 WL 1281211

Background: After defendant's convictions for first degree murder, attempted murder, and attempted armed robbery were affirmed on appeal, 405 Ill.Dec. 163, 57 N.E.3d 1261, defendant petitioned for postconviction relief. The Circuit Court, Lake County, Daniel B. Shanes, J., summarily dismissed petition for postconviction relief, and defendant appealed.

Holdings: The Appellate Court, Birkett, P.J., held that:
1 requirement that court take signature qualities of youth into consideration when imposing sentence did not apply to 23-year-old defendant;
2 defendant did not exhibit signature qualities of youth that require juveniles to be treated differently from adults when planning and executing offense; and
3 trial court appropriately evaluated 23-year-old defendant's rehabilitative potential when imposing sentence.

Affirmed.

People v. Maron
Appellate Court of Illinois, Second District, December 31, 2019, --- N.E.3d ----, 2019 IL App (2d) 170268, 2019 WL 7344835

Background: Defendant was convicted in the Circuit Court, McHenry County, Sharon L. Prather, J., pursuant to guilty plea, of predatory criminal sexual assault of a child and aggravated criminal sexual abuse. Defendant appealed.

Holdings: The Appellate Court, Jorgensen, J., held that:
1 statements made by defendant during police interview were obtained in violation of defendant's right to counsel, but
2 video of interview was admissible at sentencing hearing.

Affirmed.

People v. Hinton
Appellate Court of Illinois, Second District, October 31, 2019, --- N.E.3d ----, 2019 IL App (2d) 170348, 2019 WL 5617038

Background: Defendant pled guilty to disorderly conduct. The Circuit Court, DuPage County, No. 16-CM-2607, Alexander F. McGimpsey, J., denied defendant's motion to withdraw plea. Defendant appealed.

Holding: The Appellate Court, McLaren, J., held that newly adopted Supreme Court Rule applied to defendant's claim on appeal that trial court erred by imposing fines, and thus matter would be remanded to trial court to allow defendant to file motion challenging the imposition of fines.

Remanded.

A Right to be Tried by a Jury, but No Right to be Part of One: An Argument for Including Felons on Juries

BY MARGARET SHADID

Currently, twenty-eight states and the federal government permanently bar convicted felons from serving on a criminal jury.[1] The justifications for unilaterally excluding individuals with felony convictions range from maintaining the probity of the jury to combating an inherent bias within felons.

Such justifications are fundamentally flawed, and the statutory exclusion of felons from juries should be unconstitutional because such laws violate the Sixth Amendment right to a fair and impartial jury.

I PER SE EXCLUSION OF FELONS FROM JURY SERVICE VIOLATES THE SIXTH AMENDMENT RIGHT TO A FAIR AND IMPARTIAL JURY

The Sixth Amendment provides that, for all criminal prosecutions, a person has a right to a trial by a fair and impartial jury.[2] The jury must be drawn from a representative cross-section of the community.[3] Laws prohibiting felons to serve on juries unconstitutionally remove an entire cross-section of the community.

Margaret Shadid is a May 2020 graduate of The UIC John Marshall Law School. She plans to take the Illinois Bar Exam in September 2020, and is currently seeking employment before her clerkship in the Northern District of Illinois begins in September 2021.

1 James M. Binnall, *Felons Barred from Jury Duty: An Unjustified Punishment*, The Conversation. https://theconversation.com/felons-barred-from-jury-duty-an-unjustified-punishment-91378#:~:text=In%20most%20remaining%20states%2C%20convicted,–%20grand%2C%20civil%20or%20criminal (Nov. 5, 2018).

2 US Const. Amend. VI. The Sixth Amendment reads: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining the witnesses in his favor, and to have the assistance of counsel for his defense.

3 *Taylor v. Louisiana*, 419 U.S. 522, 526-30 (1975).

a. A representative cross-section of the community includes individuals with felony convictions

Individuals with felony convictions are members of the community in which they live after their release from prison. They reside, work, and raise families in, and contribute to, such communities. However, the fact that felons contribute to and take active roles in their communities does not stop a large number of such states and the federal government from prohibiting felons from participating in the judicial process.

In *Duren v. Missouri*, the Supreme Court provided a test to determine whether the cross-section requirement of the Sixth Amendment has been met.[4] The Court explained that a Sixth Amendment violation occurs when three elements are present: (1) that the group alleged to be excluded is a "distinctive group" in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process.[5] This section will address each element of the *Duren* test in turn.

> In applying the test provided by the Duren Court, it is clear that the exclusion of felons from jury service is a violation of the cross-section requirement of the Sixth Amendment.

As for the first element — that the group alleged to be excluded is a "distinctive group" in the community — *Duren* did not define distinctiveness. Many circuits have nevertheless adopted the following definition: A defendant must show (1) that the group is defined and limited by some factor (*i.e.*, that the group has a definite composition such as race or sex); (2) that a common thread or basic similarity in attitude, ideas, or experience runs through the group; and (3) that there is a community of interest among members of the group such that the group's interests cannot be adequately represented if the group is excluded from the jury selection process.[6] Taking on the first element in the definition, the population of convicted felons is defined and limited by the fact that they now live with a felony on their criminal record. They are, possibly, as defined as a group could be, as their limiting factor is accessible by employers, co-workers, and peers throughout the community. They are limited by their conviction in various ways, including the inability to obtain certain jobs, the inability to vote in some states, and the social stigma which so often follows them. Second, individuals with felony convictions share a common thread in experience to which few other groups can relate or have empathy. They share the experience of being arrested and charged with a crime, potentially going through trial proceedings at a state or federal level, and, in many cases, serving time in prison. Once out of prison, felons also have the shared experience of being integrated back into their communities with all of the limitations that come with being a convicted felon, including lack of available employment or opportunities and the requisite social stigma that comes with the conviction. This thread of experience is shared among all individuals with felony convictions and is undeniably a strong one. Third, the group's interest cannot be adequately represented as things currently stand. The community of convicted felons may have a number of common interests: judicial reform, the ability to serve in the judicial process as someone who has been through the other side of it, or bringing a perspective to the jury deliberations which currently is not present. When those with felony convictions are excluded from juries, these interests cannot be adequately represented, as there is no other group who could represent them from the unique perspective of a felon. Based on the above test, felons are a distinctive group in the community.

The second element in the *Duren* test is that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community. When a statutory ban is placed on felons serving on juries, the number of felons represented in venires is zero. That representation cannot be considered fair and reasonable in relation to the number of felons in any given community because there are felons in all communities. When a group of people is excluded in its entirety, the representation is inherently unfair and unreasonable, regardless of how many members of the group are in the community.

The third element in the *Duren* test — that this underrepresentation is due to systematic exclusion of the group in the jury selection process — is met with the most certainty in the case of the exclusion of felons from juries.

This systematic underrepresentation is best seen by

4 *Duren v. Missouri*, 439 U.S. 357 (1979).
5 *Id.*
6 *See, e.g.*, *United States v. Raskiewica*, 169 F.3d 459, 463 (7th Cir. 1999); *Ford v. Seabold*, 841 F.2d 677, 681-82 (6th Cir. 1988); *Willis v. Zant*, 720 F.2d 1212, 1216 (11th Cir. 1983).

looking at the inverse. It has been held that the Sixth Amendment does not provide a right to a jury free of individuals with felony convictions.[7] The Ninth Circuit in *Coleman v. Calderon* refused to declare that a California law barring ex-felons from jury service granted a liberty right amounting to due process in federal proceedings. The defendant contended that the California statute[8] created a federal due process liberty interest in a jury composed of non-felons. The court held that for a state right to implicate the United States Constitution in such a way, the interest must be of "real substance." The right to a jury of non-felons, according to the court, did not have "real substance." Similarly, district courts have held that the Sixth Amendment right to a fair and impartial jury does not require a bar on convicted felons as jurors.[9] On the contrary, it is the position of this paper that the right to a fair and impartial jury requires that felons *not* be excluded.

II EXCLUSION OF INDIVIDUALS WITH FELONY CONVICTIONS FROM SERVING ON JURIES DISPROPORTIONATELY AFFECTS MINORITY POPULATIONS

Felon exclusion from juries reduces the participation of black males on juries by as much as thirty percent.[10] This is so because the United States convicts and incarcerates black Americans at a much higher rate than white Americans. In 2016, although African Americans and Latinos together made up 29% of the United States population, they made up 57% of the United States prison population.[11] The result for African Americans is an imprisonment rate 5.9 times higher than white Americans.[12] It is not hard to see how these rates translate into disproportionately high rates of African Americans, especially men, who have felony convictions on their record. In 2010, 8% of all adults in the country had a felony conviction on their record.[13] For African American men, however, the rate was 33%.[14]

Most recently, California changed its relevant law on the issue and now allows those with felony convictions (aside from those who are registered sex offenders with felony convictions) to serve on juries. The intent behind enacting the change in California's law was to make juries more representative of the state's population. Thirty percent of black men in California were barred from serving on juries because of the previous law prohibiting felons from doing so.[15]

Courts have failed to address this issue head-on, instead focusing on the rational basis standard of review and finding, most often, that the exclusion of those with felony convictions serves a legitimate government purpose, regardless of the disproportionate amount of people of color left out of the process.[16] Most states and the federal government have yet to make a shift in California's direction, but there are advocates pushing for a change in law based on the racial disparities at play. For example, an empirical study conducted on felon exclusion from juries in Georgia[17] found that felon exclusion radically homogenizes juries. In Georgia, it led to a reduction in the number of African American men expected to serve as a juror from 1.65 to 1.17 per jury.[18] In many other counties in Georgia, the effect was even more staggering — reducing the number of African American male jurors to less than 1 per jury.[19]

Not only does felon exclusion affect black males[20] in their ability to serve on a jury, but, more importantly, scholars have suggested that it deprives black male defendants of the opportunity to be tried by a fair cross-section of their community, as well.[21] Studies have shown that the whiter the jury, the more likely it is to convict people of color.[22] Our society should not continue to take this risk, and should allow more people of color in the jury pool both for the benefit of such jurors and as to not deprive black defendants of an impartial jury, as is their constitutional right.[23]

III THE JUSTIFICATIONS FOR EXCLUDING FELONS FROM JURY SERVICE ARE UNSUPPORTED AND CONTRADICTORY

Two justifications are most often presented to defend the blanket exclusion of individuals with felony convic-

7 *Coleman v. Calderon*, 150 F.3d 1105, 1117 (9th Cir. 1998) (cert. denied, 199 S.Ct. 625 (1998)); (cert. granted on other grounds, 525 U.S. 141 (1998)).
8 Cal. Civ. Proc. Code §203(a)(5).
9 *U.S. v. Boney*, 977 F.2d 624 (D.C. Cir. 1992).
10 Brian C. Kalt, *The Exclusions of Felons from Jury Service*, 53 AM. U. L. REV. 65, 67 (2003).
11 The Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System*. April 19, 2018.
12 *Id*.
13 Sarah K. S. Shannon, et. al, *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*. Demography, 54:1795-1818 (2017).
14 *Id*.
15 Debra Cassens Weiss, *New California Law Allows Felons Who Served Their Time to Serve on Juries*. ABA Journal, October 11, 2019.
16 *See, e.g.*, *U.S. v. Greene*, 995 F.2d 793 (8th Cir. 1993) (holding that a facially race-neutral statute excluding felons is valid absent a showing of purposeful discrimination, because exclusions of those with felonies serves a legitimate government purpose); *U.S. v. Arce*, 997 F.2d 1123 (5th Cir. 1993) (holding that excluding convicted felons from jury selection is rationally related to serving a legitimate government interest).
17 Darren Wheelock, *A Jury of One's "Peers": The Racial Impact of Felon Jury Exclusion in Georgia*. 32 JUST. SYS. J. 335 (2011).
18 *Id*. at 352.
19 *Id*.
20 It is understood and undisputed that the United States incarcerates all minority groups at a higher rate than white Americans, and that this is not limited to black males. For the purpose of this paper and in accordance with the paper's length, the focus is on black males in order to portray the numbers in the most persuasive light.
21 Sharion Scott, Note, J*ustice in the Jury: The Benefits of Allowing Felons to Serve on Juries in Criminal Proceedings*, 57 Wash. U. J.L. & Pol'y 225).
22 Anna Roberts, (*Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias*, 44 CONN. L. REV. 827).
23 U.S. CONST. AMEND. VI.

tions from serving on juries. The first is inherent bias, and the second is maintaining the probity of the jury. This section will address each argument in turn.

a. Inherent Bias as a justification for felon exclusion

The inherent bias rationale is based on the idea that convicted felons harbor biases directly resulting from their experiences with the criminal justice system.[24] Courts throughout the country have held that this bias could be detrimental to judicial proceedings and would often favor the defense.[25] As one court explained:

> The Legislature could reasonably determine that a person who has suffered the most severe form of condemnation that can be inflicted by the state—a conviction of felony and punishment therefor—might well harbor a continuing resentment against "the system" that punished him and an equally unthinking bias in favor of the defendant on trial, who is seen as a fellow underdog caught in its toils. Because these antisocial feelings would often be consciously or subconsciously concealed, the Legislature could further conclude that the risk of such prejudice infecting the trial outweighs the possibility of detecting it in jury selection proceedings.[26]

This paper is not intended to argue that the above analysis of previously incarcerated persons is always inaccurate. Undoubtedly, many who have spent time in the criminal justice system will feel disdain towards it. This does not, however, justify a per se exclusion of all felons from the jury process.

To prevent such bias assumed to be held by all convicted felons, laws barring jurors with felonies simply exclude felons altogether. However, the criminal justice system does not exclude other potentially biased groups in the same way. There are numerous identifiable groups which likely have a bias one way or another in the criminal justice system. Victims of crimes and their family members, for example, have the potential to be biased in criminal cases because of their experience, but they are not unilaterally excluded. Political groups that have as a main tenet of their beliefs a distrust of or opposition to the government, such as anarchists, are not unilaterally excluded. On the contrary, a proposed statute to exclude all victims of crimes or those who identify as anarchists due to their biases either against defendants or against the government would be seen as absurd. Rather, these individual biases are dealt with through the *voir dire* process. There are plenty more groups which have a strong potential for a bias detrimental to the criminal process — police officers, anti-death penalty individuals, white supremacists, to name a few — but all of these groups are screened for bias during *voir dire*. The only exception is felons, who are purported to have an inherent bias which, as opposed to the other potentially biased groups, is unshakeable.

Interestingly, courts have found that felon status alone does not necessarily imply bias.[27] If it were true, then actual prejudice would not be the relevant standard. Rather, a showing of felon status alone would be sufficient to overturn a conviction. The fact that courts are hesitant to do so implies a hesitancy to accept the fallacy that a felony conviction alone is indicative of inherent bias in criminal proceedings. If multiple courts can find that all felons are not biased and that an individual determination of their ability to serve impartially on a jury is warranted, then the federal government and other state jurisdictions should do the same.

Felons should be treated in the same way as other groups with a potential bias: on a case-by-case basis, where lawyers and judges can determine if the individual can be impartial. To do otherwise continues to perpetuate the stigma that the judicial system currently operates on: that all felons are inherently biased. This is harmful both to our system as a whole and to the individuals we exclude from it.

b. Probity as a justification for felon exclusion

The second most common justification for felon exclusion is to uphold the probity of the jury, either because felons themselves are "bad" or because the stigma associated with their status will taint the integrity of the jury.[28] This rationale relies on the false assumptions that a felony conviction is undisputable evidence of bad moral character and that a person's character is incapable of change for the better.[29]

As is the case with inherent bias, courts have held that probity of the jury is a sufficient justification to exclude felons.[30] The reasoning is misguided. As legal

24 James M. Binnall, *The Exclusion of Convicted Felons from Jury Service: What Do We Know?* National Association for Court Management. Court Manager, Volume 31, Issue 1.

25 *Carle v. United States*, 705 A.2d 682, 686 (D.C. 1998) (rejecting a challenge to a felon exclusion rule, citing inherent bias); *United States v. Greene*, 995 F.2d 793, 797 (8th Cir. 1993) (holding that having felons in the jury pool harms the chances of "having jurors who can conscientiously and properly carry out their sworn duty to apply the law"); *Rubio v. Superior Court*, 593 P.2d 595, 600 (Cal. 1979) (plurality) (upholding a rule excluding felons from juries to promote impartiality).

26 *Rubio*, 593 P.2d at 600 (Cal. 1979).

27 *Boyd v. Jones*, No. 16-62555-CIV-Gayles, 2018 WL 3240009, at *9 (S.D. Fla. July 3, 2018) (applying an "actual bias" standard when a felon was found to have served on the jury which convicted defendant); *United States v. Boney*, 977 F.2d 624, 633 (D.C. Cir. 1992) (finding that a statutory ineligibility of a juror based on felon status did not automatically render the juror biased).

28 *See Scott* at 238.

29 *Id*.

30 *See, e.g.*, *United States v. Casey*, 2013 WL 12190486, *5 (D. Puerto Rico) (finding that the United States' interest in ensuring the probity of jurors outweighs a defendant's interest in a jury which could include someone with a felony); *Arce*, 997 F.2d at 1127 (upholding federal felon exclusion law on the grounds of probity); *United States v. Foxworth*, 599 F.2d 1, 4 (1st Cir. 1979) (holding that felon exclusion serves the purpose of assuring the probity of the jury).

scholar Brian Kalt noted, "misdemeanants, juvenile delinquents, and everyone in the population who has ever committed a crime without being caught" is currently eligible to serve on juries in all jurisdictions.[31] If all those who commit crimes are inherently flawed and a threat to the purity of our system, then excluding felons from jury pools does little in the way of a solution.

As a society, we need to ask what it is about felons which makes their presence on a jury risk its probity. If it is the fact that they chose to violate the law, then their exclusion is underinclusive, as we do not prohibit all those who violate the law from juries. If it is the theory that their time in prison undermines their ability to maintain the integrity of the jury, then we are choosing to incarcerate people in hopes that they are rehabilitated, while at the same time denying that rehabilitation is a possibility (by deeming all such individuals to be eternally lacking in probity). Neither of these arguments is sufficient to justify a blanket exclusion on felons.

The probity rationale does not take into account the people who may have committed crimes without being caught, the amount of people who have committed misdemeanors but stopped short of a felony, the number of criminals who have committed felonies but were able to negotiate their crimes down to a lesser charge, or the fact that the United States considers rehabilitation to be one of the driving factors of incarceration. The probity rationale simply declares it impossible that a felon can be rehabilitated enough to sit on a jury. The theory is under inclusive and contradictory, and thus should not be submitted as a justification for exclusion.

31 Kalt, *supra* note 10, at 102. *See also*, James M. Binnall, *Sixteen Million Angry Men: Reviving a Dead Doctrine to Challenge the Constitutionality of Excluding Felons from Jury Service*, 17 Va. J. Soc. Pol'y & L. 1, 31 (2009).

CONCLUSION

The Sixth Amendment provides that defendants have a right to be tried by an impartial jury comprised of a fair cross-section of their community. To exclude all felons from jury service deprives defendants of this right, deprives felons of contributing to the judicial system, and the justifications for such per se exclusions are unsupported and contradictory. In order to adhere to the Sixth Amendment and to help eliminate the stigma our society places on those with criminal convictions, all jurisdictions should permit felons to sit on juries.

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Beyond a Reasonable Doubt: Undefined for the People, Undefined by the People

BY TYLER PEARSON

Every person is presumed innocent until proved guilty. No person shall be convicted of any offense unless his guilt thereof is proved beyond a reasonable doubt.[1] The presumption of innocence and the standard of proof required to sustain a criminal conviction are two of the most fundamental principles in the Illinois (and American) criminal justice system — so fundamental that they have been codified by the Illinois Legislature.

However, despite the Legislature's apparent intent to emphasize the importance of these principles, "Illinois is one of only 11 states that do[es] not define 'reasonable doubt' for juries."[2] In fact, well-established precedent exists in Illinois that expressly prohibits any jury instruction that attempts to define the concept.[3] The Illinois Supreme Court's rationale, which relies on precedent dating back over a century, is that reasonable doubt should not be defined for the jury because, "the words themselves sufficiently convey its meaning."[4] In other words, the term speaks for itself and the court feels as though jurors are better left to their own devices to determine what it means.

Neither the Illinois Supreme Court nor the Legislature will provide an answer to questions that juries have been asking for years: "what *is* beyond a reasonable doubt? What does it mean?" This article discusses some of the issues with Illinois' failure to define the "beyond a reasonable doubt" standard of proof and the implications invariably linked to that failure.

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1 720 ILCS 5/3-1.

2 Rhys Saunders, *Is It Time to Define 'Beyond a Reasonable Doubt?'*, Illinois Bar Journal (Jul. 17, 2018), http:// https://www.isba.org/barnews/2018/07/isittimetodefinebeyondareasonabledo.

3 *See* Illinois Pattern Jury Instructions, Criminal, No. 4.19 (approved July 18, 2014) (citing *People v. Speight*, 153 Ill.2d 365, 374 (1992); *People v. Failor*, 271 Ill. App.3d 968, 970-71 (4th Dist. 1995)).

4 *People v. Downs*, 2015 IL 117934, ¶24..

BURDENS OF PROOF

The U.S. Supreme Court has stated that "[t]he function of any standard of proof is to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication."[5] The Court has further opined that "[b]y informing the factfinder in this manner, the standard of proof allocates the risk of erroneous judgment between the litigants and indicates the relative importance society attaches to the ultimate decision."[6] In other words, each standard is the result of a balancing test between the possibility of getting an unjust judgment and how important the ultimate issue is.

Proof beyond a reasonable doubt is the highest burden or standard of proof that we have in our judicial system, but it is not the only standard. It is one of three standards. The first standard of proof is "preponderance of the evidence." This is the standard used in most civil cases and it is the lowest standard of proof. It requires that the plaintiff prove that the allegations are simply "more probably true than not true."[7] To put that into percentage terms, it should be more than 50% likely that the contentions and allegations are true. The second standard of proof is the "clear and convincing evidence" standard. This standard comes from a case heard by the U.S. Supreme Court in 1984. This standard requires the plaintiff to prove that the allegations or contentions are "highly probable."[8] It is considered an "intermediate standard" because it is a fluid standard that falls somewhere higher than "preponderance of the evidence" but somewhere lower than "beyond a reasonable doubt." This standard is the least common standard that courts apply, and its application is typically limited to very specific types of issues and cases. Finally, above clear and convincing evidence is the "beyond a reasonable doubt" standard. This standard is used in all criminal cases and requires the highest degree of certainty because the nature of criminal cases oftentimes involves the deprivation of a person's life, liberty, or property via incarceration or imprisonment, which necessarily reaches Fifth Amendment Due Process territory. Nevertheless, the U.S. Supreme Court and 10 other states—including Illinois—still outright refuse to even attempt to define what proof "beyond a reasonable doubt" is or explain what it means.

Over the years, courts' and legislators' rationales regarding defining the "beyond a reasonable doubt" standard have been inconsistent and left more questions than answers.

Over the years, courts' and legislators' rationales regarding defining the "beyond a reasonable doubt" standard have been inconsistent and left more questions than answers. In 1850, in *Commonwealth v. Webster*, Chief Justice Lemuel Shaw of the Massachusetts Supreme Judicial Court defined reasonable doubt, "which served as the basis for most jurisdictions' reasonable doubt instructions."[9] Chief Justice Shaw stated:

> Then, what is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.[10]

In 1954, the U.S. Supreme Court said that "[a]ttempts to explain the term 'reasonable doubt' do not usually

5 *Colorado v. New Mexico*, 467 U.S. 310, 315-16 (1984) (citing *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).
6 *Addington v. Texas*, 441 U.S. 418, 423 (1979).
7 *See*, Illinois Pattern Jury Instructions, Criminal, No. 4.18 (approved July 18, 2014).
8 *Colorado v New Mexico*, 467 U.S. at 316.
9 MCCORMICK ON EVIDENCE 517 (John W. Strong ed., 5th ed. 1999) (citing *Com. v. Webster*, 59 Mass. 295, 296 (1850)).
10 *Com.*, 59 Mass. at 320.

result in making it any clearer to the minds of the jury."[11] In 1970, the U.S. Supreme Court in *In Re Winship* created what is often referred to as the "*Winship* standard." There, the Court established that the Due Process Clause *requires* proof beyond a reasonable doubt of every element of a charged offense in criminal proceedings. The Court relied on William Blackstone's notion from 1769 that "the law holds that it is better that ten guilty persons escape than that one innocent suffers."[12] Then, eleven years later in *Jackson v. Virginia*, the U.S. Supreme Court expanded the *Winship* standard to include "not only the inquiry of whether the jury was appropriately instructed on the reasonable doubt standard, but also whether the evidence on record could reasonably support those findings."[13]

In 1994, four years after the U.S. Supreme Court extended the *Winship* standard, the Court again addressed the issue of providing reasonable doubt jury instructions in *Victor v. Nebraska*.[14] In that case, the U.S. Supreme Court held that the instructions given "were adequate and correctly instructed the jury on the concept of reasonable doubt." However, the Court also stated that "the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course" and that it is a term that is "not easily defined."[15] Despite the majority opinion, Justice Ginsburg, relying in large part on the words of the Federal Judicial Center's proposed definition, wrote a strong dissent opinion advocating that defining reasonable doubt would aid the jury.[16]

So, if reasonable doubt is a standard that protects the innocent, and it is a standard of proof that has constitutional implications, how can courts (and the legislatures of several jurisdictions) take the position that they are not constitutionally required to define it? And, if it is a term that is not easily defined by scholars and some of the greatest legal minds in the history of American jurisprudence, how can jurors be reasonably expected to define it in a way that protects not only a defendant's constitutional right to due process but also his constitutional right to a trial by an impartial jury?

SIXTH AMENDMENT RIGHT TO A TRIAL BY AN IMPARTIAL JURY

The Sixth Amendment states, in relevant part that: "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an *impartial jury* of the State and district wherein the crime shall have been committed . . ."[17] So, what does "impartial" mean? The dictionary definition of "impartial" is: "not partial or biased" and "treating or affecting all equally."[18] Additionally, it states that "impartial stresses an absence of favor or prejudice." Inherent in the concepts of impartiality and equality is objectivity. In fact, it's *assumed* that, when determining whether something is equal (or fair or just), an objective rather than a subjective standard is being applied. Because, in doing so, it increases the likelihood of reaching a conclusion which analyzes facts from a very specific point of view, increases the likelihood that the conclusion has taken multiple factors into consideration, and it decreases the likelihood that conclusions are based off emotions, preconceived notions, or assumptions.

But, how can a jury comprised of laypeople from a given community render a fair, just or impartial verdict if they are left to individually define the standard? If they are left to apply a standard without being told exactly what the standard is, they are each left to decide on their own how to weigh and measure the information in front of them. Litigators and trial attorneys often emphasize and remind a jury throughout the course of a trial how much their common sense and life experiences are valued when listening to evidence, deliberating, and rendering a verdict. That is because we want jurors to use those tools when evaluating *facts*. However, when it comes to the law, jurors are instructed, many times in the course of their duties, to "follow the law" and "apply the facts to the law in order to reach a verdict." In other words, when it comes to factual interpretation, jurors are the fact *finders*—the ones who have a duty to decide what is true and what is not—based on their subjective life experiences and "common" sense. But, in contrast, when it comes to the law, jurors' interpretations, life experiences, and common sense are not factored into the equation at all.

When it comes to the law—the rules that govern our daily life—juries are not given the same subjective discretion. Courts and legislatures do not leave it up to juries to decide what the law means. The law is laid out in detailed instructions codified by state and federal legislators; these are not mere suggestions or recommendations, they are instructions. The rationale behind this distinction is multi-facetted, but one important reason is because nonlawyers and laypeople are not necessarily aware that language and terms within the law have very specific meanings, many of which differ from the ordinary meanings attributed to those same words. Also, because while it may be true that fair and impartial fact-finding requires the use of subjective lenses like life experience and common sense, it is also true that every person carries with them different biases or preconceived notions. Every person receives and interprets information differently which is one reason why a jury consists of multiple factfinders from different cross-sections of the community.

The inconsistencies the U.S. Supreme Court has shown in its rationale over the years begs several ques-

11 *Holland v. United States*, 348 U.S. 121, 140 (1954).
12 *Id*., at 938-39 (citing Robert C. Power, *Reasonable and Other Doubts: The Problem of Jury Instructions*, 67 TENN. L. REV. 45 (1999) (emphasis added).
13 Greene, *supra* note 19, at 939 (citing *Jackson v. Virginia*, 443 U.S. 307 (1990)).
14 511 U.S. 1 (1994).
15 *Id*. at 5.
16 Greene, *supra* note 19, at 940.
17 U.S. CONST. amend. VI., cl. 1. (emphasis added).
18 Merriam-Webster Dictionary, *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/impartial (last visited, April 14, 2020).

tions: if "beyond a reasonable doubt" is, in fact, "pretty well understood" then how is it also true that it is a term "not easily defined?" If terms like "reasonable" have very specific meanings worthy of a jury instruction defining it, then how can "beyond a reasonable doubt" not be equally worthy? How can juries possibly decide something impartially if the standard being applied not only allows jurors to attribute their own meanings to the words, it *requires* them to do so? The answer is they cannot. A criminal defendant's right to a trial by an impartial jury has been eroded, and the erosion will continue unless and until the U.S. Supreme Court and jurisdictions such as Illinois contextualize, explain, and define exactly what "beyond a reasonable doubt" means.

DEFINING BEYOND A REASONABLE DOUBT

Although the U.S. Supreme Court has not defined or explained "beyond a reasonable doubt," other jurisdictions have. In fact, Illinois, along with Kentucky, Mississippi, Oklahoma, Texas, Wyoming, Oregon, South Carolina, Vermont, Virginia, and West Virginia, are the only states that do not define reasonable doubt to a jury.[19] Over the years, Illinois reviewing courts have even admonished trial courts for providing juries with any clarification or explanation of the meaning of reasonable doubt. Despite juries' requests for assistance, Illinois trial courts may only advise the jury that it is the jury's job to define reasonable doubt.[20] But, the very fact that juries often turn to the court for guidance when it comes to the issue of what "beyond a reasonable doubt" means is evidence that "the words themselves [don't quite] sufficiently convey its meaning.".[21] Furthermore, the fact that all but eleven states have jury instructions defining and explaining beyond a reasonable doubt is evidence that the U.S. Supreme Court's lack of doing so is not because "the term is not easily defined."[22] In fact, as mentioned, the Court has held that "the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so."[23] When looking at the sum of all the parts, courts and legislatures that refuse to define or explain the meaning of beyond a reasonable doubt do so as a matter of choice. Or, in other words, it is a lack of a desire to define or explain the meaning of beyond a reasonable doubt, not an inability to do so.

19 Greene, *supra* at 941 (citing Timothy P. O'Neill, *Instructing Illinois Juries on the Definition of "Reasonable Doubt": The Need for Reform*, 27 LOY. U. CHI. L.J. 921 (1996)).

20 *See People v. Turman*, 2011 IL App (1st) 091019, ¶ 19 (the jury asked the trial court judge for a "more explicit, expansive definition of reasonable doubt. The trial court responded, "reasonable doubt is not defined under Illinois law. It is for the jury to collectively determine what reasonable doubt is."); *See also People v. Thomas*, 2014 IL App (2d) 121203, ¶ 14 (the jury sent a note to the judge asking, "What is the legal definition of reasonable doubt?" The judge replied, "It is for you to determine.")

21 . *Downs*, 2015 IL 117934, ¶24.

22 *See Victor*, 511 U.S., at 5.

23 *Id*.

After researching several of the states that have jury instructions defining and explaining the meaning of beyond a reasonable doubt, one thing became apparent — every instruction is extremely similar in language, and leaves very little up to question or interpretation.[24] Many states' jury instructions have similar qualifiers such as ". . . the law does not require . . . [proof] beyond all possible doubt" and "[a] reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt." Some states go further than to hold that juries are to be instructed on the meaning of reasonable doubt. States like Washington even hold that it is reversible error *not* to instruct the jury on the meaning of reasonable doubt, "even if the parties do not request the instruction and even if no objection is made to its omission."[25] It is time the U.S. Supreme Court and states like Illinois follow suit. It is time they look to other jurisdictions and adapt or adopt a jury instruction that includes language that defines, explains, and ultimately, clarifies the meaning of beyond a reasonable doubt. Illinois would do well in considering the jury instruction given to juries in New York.

New York's jury instruction states:

> The law uses the term, "proof beyond a reasonable doubt," to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. The law recognizes that, in dealing with human affairs, there are very few things in this world that we know with absolute certainty. Therefore, the law does not require the People to prove a defendant guilty beyond all possible doubt.
>
> On the other hand, it is not sufficient to prove that the defendant is probably guilty. In a criminal case, the proof of guilt must be stronger than that. It must be beyond a reasonable doubt. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence.
>
> Proof of guilt beyond a reasonable doubt is proof that leaves you so firmly convinced of the defendant's guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant's identity as the person who committed the crime. In determining whether or not the People have proven the defendant's guilt beyond a reasonable doubt, you should be guided solely by a full and fair evaluation of the evidence. After carefully evaluating the evidence, each of you must decide whether or not that evidence convinces you beyond a reasonable doubt of the defendant's guilt.
>
> Whatever your verdict may be, it must not rest upon baseless speculations. Nor may it be influenced in any way by bias, prejudice, sympathy, or by a desire to bring an end to your deliberations or to avoid an unpleasant duty.[26]

This jury instruction is extremely detailed while also being extremely helpful in understanding a right that is as much fundamental as it is nuanced. A similar instruction ought to be given in federal courts and in state courts such as Illinois. If Illinois cares enough to codify a criminal defendant's right to the presumption of innocence and right to be proven guilty beyond a reasonable doubt, then it must recognize that the only way to adequately protect a criminal defendant's constitutional right to due process and right to a trial by an impartial jury is by not only requiring the government to provide proof of guilt beyond a reasonable doubt, but also by providing that jury with an objective, impartial standard to weigh facts and evidence against to either alleviate or establish that doubt.

CONCLUSION

As long as "beyond a reasonable doubt" is left undefined by courts and legislatures, a criminal defendant's constitutional right to an impartial jury will be compromised, eroded, and left undefended. It is time that "beyond a reasonable doubt" is explained to the jury.

24 *See* New York Pattern Jury Instruction, CJI2d; California Pattern Jury Instruction, CALCRIM No. 220; Florida Standard Jury Instruction, 2.03; Washington Pattern Jury Instruction, WPIC Chapter 4

25 *Id.*

26 New York Pattern Jury Instruction, CJI2d

LAWYER REFERRAL SERVICE

Why should YOU join the LCBA Lawyer Referral Service?

The LCBA Lawyer Referral Service (LRS) is a valuable member benefit as well as a public service. LRS provides member attorneys with an opportunity to build business through client referrals. The service benefits the public by helping callers quickly find an attorney in the area of law in which they need help. The LRS is widely publicized and all LCBA members in good standing who carry the required malpractice insurance are eligible to join.

The LRS program is designed to assist persons who are able to pay normal attorney fees but whose ability to locate legal representation is frustrated by a lack of experience with the legal system, a lack of information about the type of services needed, or a fear of the potential costs of seeing a lawyer.

The Lawyer Referral Service is an intuitive win/win/win. We're helping the public, by providing them with legal resources with some degree of reliability; we're helping our members, by playing matchmaker with clients whom they can help for a minimal referral cost; and we're helping the Bar Association and our public image by offering our services. Although not all of the matches will work out, the risks and costs are minimal and the rewards are great.

Deborah Goldberg, Goldberg & Kane

"I have been a member of the referral service for many years, particularly in the fields of Trusts & Estates. The service has generated a stream of potential clients, some of which are not viable but many of which have ripened into clients for litigation or estate planning. Frankly, I don't mind answering people's questions about our field of law, which most people find confusing. The referral service has been a great way for potential clients to speak with me and discuss the issues before having to spend money and before I have to commit to the clients. I whole-heartedly recommend the LCBA's Client Referral Service as a way to grow your practice."

Fredric Bryan Lesser, Lesser, Lutrey Pasquesi, & Howe LLP

As a long-time member of the LCBA Lawyer Referral Service I know how useful it is to be a member of the service. I have obtained several cases through the service and would strongly recommend that attorneys seeking cases join. Compared to the many online services that claim to provide cases, the LCBA's referral service actually delivers at a much lower cost.

Steve McCollum, Law Offices of Steven P. McCollum, P.C.

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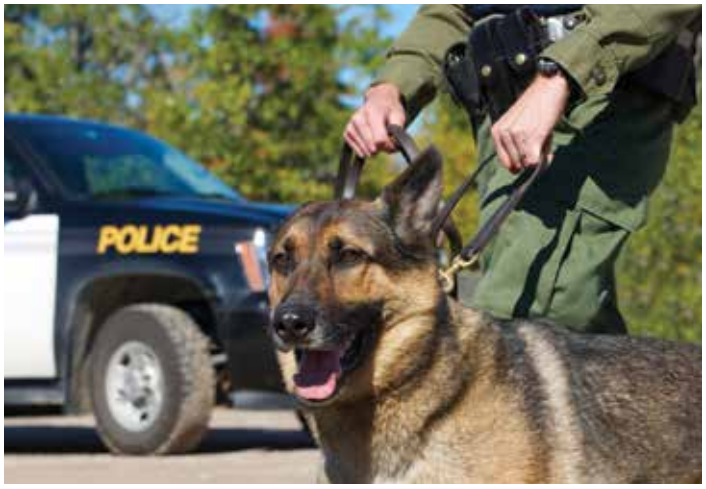

Illinois Supreme Court Reverses Third District on Drug-Dog Sniff Case:

Sniff Outside of Motel Room is NOT a Fourth Amendment Search

BY RUTH LOFTHOUSE

The Third District's decision in the case of *People v. Lindsey*[1] was the subject of my article included in the May, 2019 Docket. On April 16, 2020, in an opinion authored by Justice Theis, the Illinois Supreme Court reversed the Third District's decision[2] and found no Fourth Amendment violation where evidence of heroin was obtained as a result of a warrantless drug-dog sniff in the alcove outside of the Defendant's motel room door.[3]

FACTS AT TRIAL

Rock Island police officers had information that the defendant was selling narcotics from his motel room. The defendant was initially arrested for driving on a suspended license, and during that arrest told the officers that he was staying in room number 129 at the American Motel Inn. Officers then learned from the motel staff that he was in fact staying in room 130, and then went to motel room 130 with a drug-sniffing dog.

The dog sniffed at the room's door handle and in the surrounding alcove and it signaled an alert to the odor of narcotics. The police officers then obtained a search warrant and thereafter recovered 4.7 grams of heroin in the defendant's room. Prior to trial, the defendant sought to suppress evidence of the heroin on the basis that the initial dog sniff outside of the motel room was a Fourth Amendment search that required a warrant.

At the suppression hearing, officers testified that room 130 was "set back in a little alcove," that it shared with room 131. The alcove had its own door, but the door was "propped open" and was therefore open to the public when the drug sniff occurred. The Rock Island County Circuit Court denied the motion to suppress and found there

Ruth Lofthouse is an Assistant State's Attorney for Lake County. Previously, she practiced family law.

1 *People v. Lindsey*, 2018 IL App (3d) 150877.

2 *People v. Lindsey*, 2020 IL 124289.

3 The Fourth Amendment of the U.S. Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. am. 4. Illinois adopted this Amendment. *See* Ill. Const. art. I, §6. "This court interprets the search and seizure clause of the Illinois Constitution in 'limited lockstep' with its federal counterpart." *People v. LeFlore*, 2015 IL 116799, ¶ 16..

was no Fourth Amendment search because a hotel guest may have a reasonable expectation of privacy in his room but not in the corridor outside because the "corridor is a public place of accommodation, and, as such, [police] have the right to walk that dog down there."[4] The defendant was convicted of unlawful possession with intent to deliver a controlled substance.

THIRD DISTRICT APPELLATE COURT

The Third District Appellate Court reversed the trial court and found that the drug-dog sniff was a Fourth Amendment search which required a warrant. It found that the government violated the defendant's reasonable expectations of privacy when it used a sophisticated drug dog, "a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion."[5]

The dog's free air sniff did not detect the odor of narcotics inside Room 130 but rather outside

ILLINOIS SUPREME COURT

After granting review, the Illinois Supreme Court reversed the Third District and affirmed the trial court. Like the trial court, the Supreme Court found that there was no Fourth Amendment search, but it applied different logic than that used by the trial court.

While the trial court agreed with the defense that the defendant's motel room was his "home" for purposes of the Fourth Amendment, the Illinois Supreme Court disagreed, instead holding that the defendant's motel room was not his "home" under the Fourth Amendment and accordingly the surrounding alcove and door seams were similarly not protected by the Fourth Amendment. The Court also found that the defendant had no reasonable expectation of privacy from a drug sniff that occurred outside his motel room.

The Illinois Supreme Court analyzed the case under the two prongs of a Fourth Amendment search: the property-based approach and the privacy-based approach. Under the property-based approach, the government's search of the area "immediately surrounding and associated with the home," also known as curtilage, is a Fourth Amendment search regardless of the tool used.[6] Under the privacy-based approach, apart from a physical trespassory violation, the government's search of a person's home by use of a device that is not in general public use to explore details of the home that would previously have been unknowable without physical intrusion is a Fourth Amendment search.[7]

Using the property-based approach, the Illinois Supreme Court found that the defendant did not present sufficient evidence that motel room 130 was his "home" in either a subjective or objective sense. The Court supported this finding by referring to the defendant's misrepresentation to the police that he was staying in room 129, not room 130, and due to the lack of evidence presented concerning the length of his stay. The Court explained in a footnote:

> [w]e do not imply, however, that a hotel or motel room may never be a home or that the area outside such a room may never be within its curtilage. That is a case-by-case factual determination. As the defendant aptly notes, "a person residing in a motel long-term could indeed have curtilage depending on the facts of the case."[8]

The Illinois Supreme Court found that the alcove and door seams of room 130 did not constitute protected curtilage under the United States Supreme Court decision in *United States v. Dunn*[9] because the alcove was shared with room 131 and could be easily accessed by other guests and members of the public, the alcove's door was propped open when the dog sniff occurred and the defendant gave no other objective or subjective indication that the alcove was private. The Illinois Supreme Court stated:

> The concept of curtilage may be incongruent with respect to a place of temporary lodging because the area around that place is not 'physically and psychologically linked to it' and does not belong to the person staying there.[10]

Under the expectation of privacy approach,[11] the Illinois Supreme Court found that, "[the dog's] free air sniff did not detect the odor of narcotics inside Room 130 but rather outside,"[12] and the defendant did not have a reasonable expectation of privacy outside of his motel room:

4 The trial court primarily relied upon the Eight Circuit's holding in *United States v. Roby,* 122 F.3d 1120 (8th Cir. 1997).

5 The Third district primarily relied upon the Seventh Circuit's holding in *United States v. Whitaker*, 820 F.3d 849 (7th Cir. 2016). *See Lindsey*, 2018 IL App (3d) 150877, at ¶ 20.

6 *Florida v. Jardines,* 569 U.S. 1 (2013).

7 *Kyllo v. United States*, 533 U.S. 27, 32 (2001).

8 *Lindsey*, 2020 IL 124289, at ¶ 27, n.2.

9 *Lindsey*, 2020 IL 124289, at ¶¶ 29-31, addressing *United States v. Dunn*, 480 U.S. 294 (1987), which provides the factors that courts should consider when determining the umbrella of Fourth Amendment "curtilage" protections.

10 *Lindsey,* 2020 IL 124289, at ¶ 27.

11 The Supreme Court in *Lindsey* stated, "[i]n determining whether a person has a reasonable expectation of privacy in a place searched, we consider the person's ownership or possessory interest in the place, the person's prior use of the place, the person's exclusive control of the place or ability to exclude others from it, and the person's subjective expectation of privacy in the place." *Lindsey*, 2020 IL 124289, ¶ 40, citing *People v. Johnson*, 237 Ill. 2d 81, 89 (2010).

12 *Lindsay*, 2020 IL 124289, at ¶ 39.

> [D]efendant undoubtedly wanted his illegal activity to remain private. "The test of legitimacy is not whether the individual chooses to conceal assertedly 'private' activity" but "whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment." *[Citation.]* When the defendant's expectation was but a sliver of hope that the odor of narcotics would not be sensed by a drug-detection dog in the alcove outside his motel room, that expectation is not reasonable and not subject to fourth amendment protection.[13]

Based on these findings, the trial court's judgment was affirmed.

In their dissent, Justices Burke and Neville disagreed with the majority's finding that the defendant had no Fourth Amendment protections to his motel room and thus no expectation of privacy therein. It also disputed the majority's logic that the dog's free air sniff did not detect the odor of narcotics inside Room 130 but rather outside.

The dissent also argued that the majority disregarded the established precedent of the United States Supreme Court as set forth in the case of *Kyllo v. United States*,[14]

13 *Lindsay*, 2020 IL 124289, at ¶ 42.
14 *Kyllo*, 533 U.S. at 32.

and *Florida v. Jardines,*[15] in which the Supreme Court held that the "government agent's use of a monitoring device to obtain information about the interior of an enclosed space in which a person has a reasonable expectation of privacy constitutes a search under the fourth amendment—even if the monitoring device collecting the information is itself located outside the enclosed space."[16] The dissent noted that there would have not have been sufficient evidence in the complaint and affidavit to justify a search warrant of the motel room absent the evidence that the drugs were *inside* the motel room.[17]

WHERE ARE WE NOW?

In *Lindsey*, the Illinois Supreme Court emphasized that the defendant must show, on a case-by-case basis, that the lodging for which he seeks Fourth Amendment protection qualifies as his "home," and temporary lodging in particular may not be protected at all. While this may seem helpful for law enforcement to gain potential evidence via the utilization of drug-sniff dogs in public, temporary lodging locations, there is an apparent contradiction in the Illinois Supreme Court's holding with the ruling of the United States Supreme Court's holding in *Stoner v California*:[18]

> It is true...that when a person engages a hotel room he undoubtedly gives 'implied or express permission' to 'such persons as maids, janitors or repairmen' to enter his room 'in the performance of their duties.' [citation.] But the conduct of the night clerk and the police in the police [*sic*] in the present case was of an entirely different order.
>
> * * *
>
> No less than a tenant of a house, or the occupant of a room in a boarding house, [citation], a guest in a hotel room is entitled to constitutional protections against unreasonable searches and seizures. [citation.] That protection would disappear if it were left to depend upon the unfettered discretion of an employee of the hotel. It follows that this search without a warrant was unlawful.[19]

The dissent in *Lindsey* also asserted that the majority's determination that the drug dog only smelled outside of the defendant's motel room is contrary to the precedent of the United States Supreme Court. As of this writing, it is unknown whether the defendant in *Lindsey* will seek certiorari from the United Supreme Court.

15 *Florida v. Jardines,* 569 U.S. 1 (2013).
16 *Lindsey*, 2020 IL 124289, at ¶ 53, citing *Jardines, Kyllo*, and *United States v. Karo*, 468 U.S. 705, among others.
17 *Lindsey*, 2020 IL 124289, at ¶¶ 63-67.
18 *Stoner v. State of Cal.*, 376 U.S. 483 (1964) (where the Court held that the hotel owner could not provide consent to the government to perform a search of a hotel guest's room).
19 *Id.* at 489-490 (1964).

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Ramblings of Ole' Judge Crankypants

"Disingenuous, Disingenuous....Pants on Fire!"

BY JUDGE CRANKYPANTS

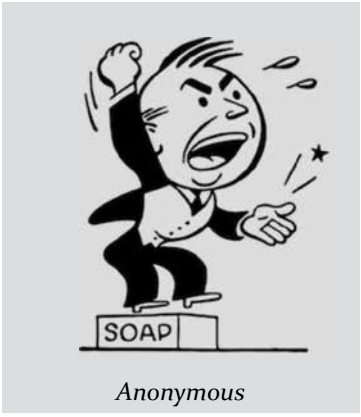
After many years as a lawyer and a judge, I've had a chance to reflect on some of the things I've seen and heard over the years. In retirement, I have the opportunity to expound on my observations although now no one is required to pay attention.

Conversely, I can speak bluntly without being misinterpreted, quoted out of context or precipitating change of judge motions. In other words, I can speak my mind freely - it's very liberating!

The perceived decrease in civility in the legal profession is a huge topic of discussion nowadays, all the way from the Lake County Courthouse coffee room to the Illinois Supreme Court and beyond. Virtually every month, legal publications have articles in which the authors wring their hands and decry the loss of manners, courtesy (professional and otherwise) and the general lack of civility in the profession. Blame is alternately ascribed to shortcomings in law school education, poor training or supervision, the "younger generation" (Oh...those KIDS!) or the general decline in courtesy, manners and politeness in modern society.

I'm not so old or obtuse to believe that everything was better in the "Good Olde Days." There were always some overly aggressive, "in-your-face" lawyers who would push the envelope by using tactics such as name-calling, nasty letters, abusive phone calls and employment of other not-so-subtle tactics as making loud, spurious, "speaking" objections during depositions or at trial.

On the other side of the bench, there were always a few old-timer, iron-pants judges who would light you up for a slight fashion *faux pax,* clicking of a ball-point pen during court or even use of the wrong color pen. (In my opinion, unbuttoned shirts, ties worn at "half-mast" and gum-chewing are particularly grievous offenses). Occasionally a jurist might suffer a flare-up of the dreaded "robitis" disease. This malady was not restricted to novice judges, but once it gained a foothold, it could resist any attempted cure and could definitely have a chilling effect on the entire courtroom.



Anonymous

I am very aware that certain words and phrases trend in and out of vogue and I am now accustomed to such things as sentences, *any and all sentences,* beginning with "So..." I am comfortable with the idea that our beloved language continually evolves and have been able to adapt to those changes for the most part. While I am aware that incivility seems to be on the rise in our society, in my time on the bench, I noticed a substantial increase in the use of certain key words, akin to a dog whistle for lawyers.

For one example, how often have

we heard a lawyer comment that his or her opponent was being "disingenuous" in their written or oral arguments? On first blush, it almost sounds like a compliment - it's a pretty five-syllable word obviously with Latin origins.[1] Maybe my own education was inadequate, but I never heard the word "disingenuous" growing up or in grade school, high school, college or law school. In fact, I don't remember ever hearing the word at all while I was practicing law.

The first time it was uttered by an attorney in the heat of a courtroom argument, I was quite impressed. I thought the attorney was either much smarter than everyone else or he/she had just brushed up on his/her high school copy of "30 Days to a More Powerful Vocabulary" and was trying to show off their superior use of language. But when I researched its exact meaning - I was a bit shocked.

Use of the word, which, by the way, is habit-forming, propels any users down the inevitable path of routine and simple name-calling. Calling someone or something "disingenuous" is really a "nice" way of saying:

"My learned opponent is a G_ _ _ _ _ N LIAR who has earned and will suffer the unquenchable fires of HELL!"

Use of the word is particularly offensive when the speaker first patronizingly refers to his/her opponent as "learned" or "my colleague' before indirectly suggesting (via the word "disingenuous") that opposing counsel is a scoundrel who would lie to his/her spouse, his dying mother and the trial judge just to gain some slight advantage for his/her client or themselves.

If you disagree with a particular argument or believe it is illogical, not supported by the case law, or not relevant to the issues at hand, why not simply say so? What is the value in accusing your opponent of lying or being dishonest?

Using this word, or similar words, immediately raises emotions in opposing counsel, and frankly, in their clients and the presiding judge who immediately senses this will not be a hearing on the respective merits of the case, but rather a personal attack that may quickly initiate a mutual exchange of insults that devolves into a shameful dogfight in open court.

Like any *ad hominem* attack, calling someone "disingenuous" distracts from the real issues to be decided (indeed, this may be the speaker's intent) and indicates to anyone present that the speaker must resort to name-calling in order to try to win the day. It also reinforces the stereotypical belief by some non-lawyers that some attorneys are no more than bullies who are unable to provide a cogent, winning argument without stooping low.

I respectfully suggest there are a number of alternatives that would be much less offensive and frankly, have more of a positive impact on the Court. How about:

"Your Honor, I must respectfully disagree with my opponent's reliance on _____ case; that case was based on completely different facts" or "that case did not consider the issues we have before us today" or "counsel may not realize that this case was overruled"; or

"Your Honor, I respectfully submit that counsel was mistaken when he/she suggested the deposition of _____ supports their claim. None of the testimony of _____ mentioned the issue of _____"; or

"Your Honor, I know that counsel was not present for the deposition (or is relatively new to the case, etc.) however, the deposition testimony is really contrary to their position in that......"; or

"Your Honor, I am sure counsel's previous statement regarding _____ was simply an innocent slip of the tongue since the record and case law clearly indicate the contrary is true."

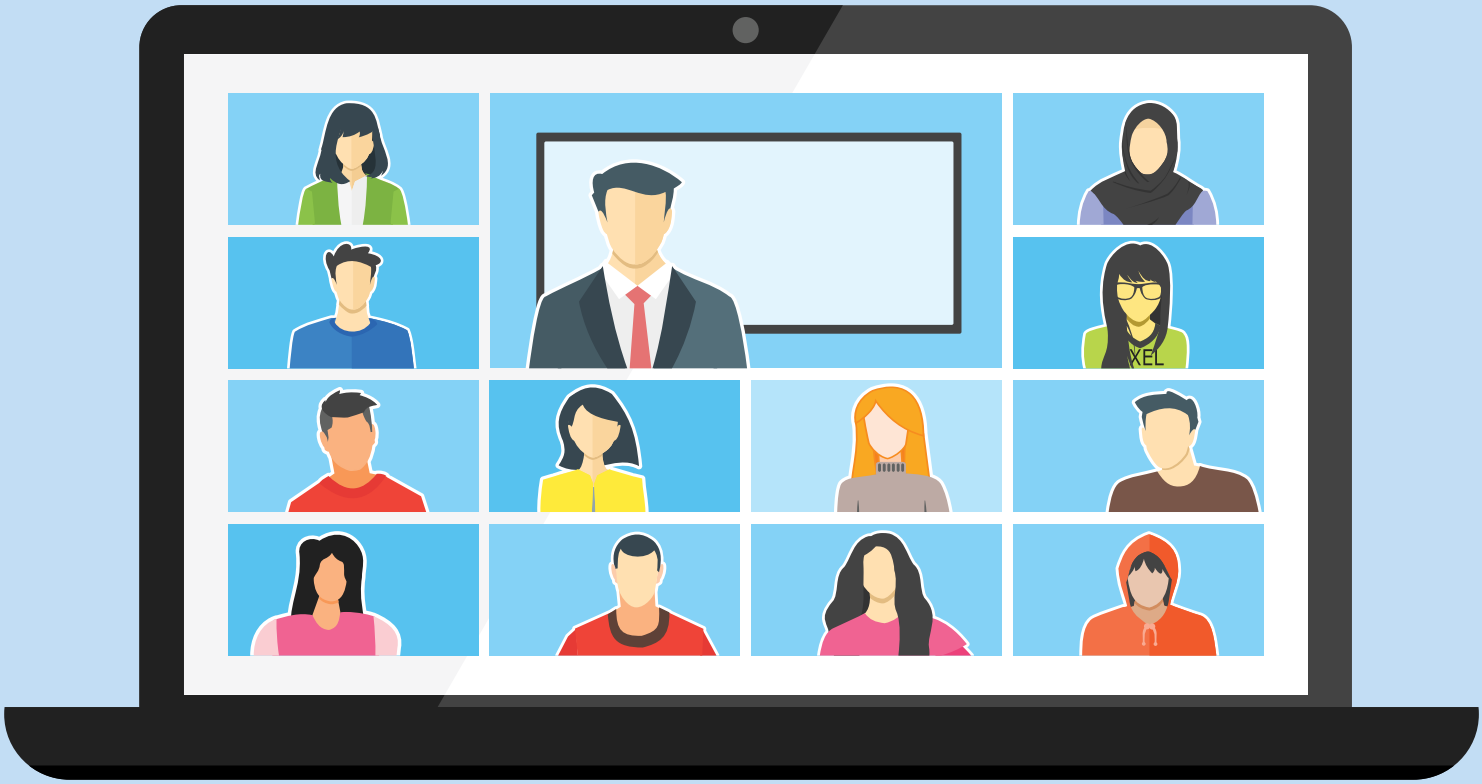
When delivered in a calm tone of voice with supporting documentation, remarks such as these will make the intended point while also preserving the dignity of the proceeding. This in turn can only serve to enhance the attorney's professional reputation with any bystanders and with the Court. While this will not be determinative of the issue to be decided, an attorney's civility and courtesy in the courtroom will, at the very least, cause the Court to have a favorable impression of the attorney which may unconsciously factor into the Court's ultimate decision. As Grandma used to say about chicken soup: "It can't hurt!"

Let's all play nice!

Respectfully,
Old Judge Crankypants

> The perceived decrease in civility in the legal profession is a huge topic of discussion nowadays.

1 According to Merriam-Webster.com, "Ingenuous has its roots in the slave-holding society of ancient Rome. Its ancestor *ingenuus* is a Latin adjective meaning "native" or "freeborn" (itself from *gignere*, meaning "to beget"). *Ingenuus* begot the English adjective ingenuous. That adjective originally meant "freeborn" (as in "ingenuous Roman subjects") or "noble and honorable." But it eventually came to mean "showing childlike innocence" or "lacking guile." In the mid-17th century, English speakers combined the negative prefix *dis-* with *ingenuous* to create *disingenuous*, meaning "guileful" or "deceitful."



HOW TO LOOK *Your Best* DURING VIRTUAL COURT

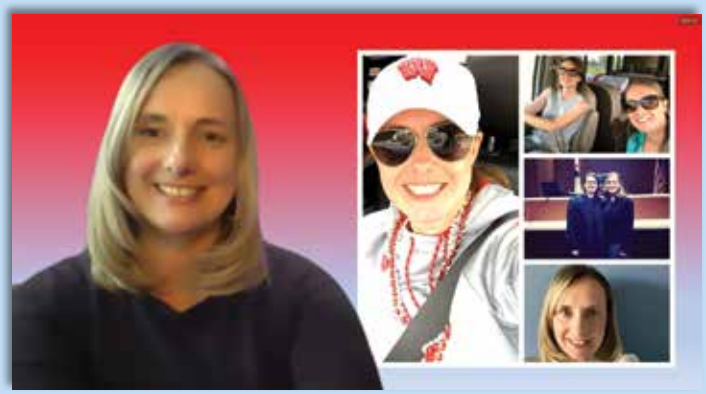
BY THE ASSOCIATION OF WOMEN ATTORNEYS OF LAKE COUNTY (AWALC)

AWALC is an organization of Lake County lawyers dedicated to promoting the harmonious practice of law, providing social and networking opportunities, advancing professional education and serving the community.

Due to Covid-19 the Association of Women Attorneys of Lake County was not able to have their annual swearing in dinner. The board was sworn in on Zoom on May 6, 2020. As we venture into this new Zoom way of life during the Covid-19 pandemic, AWALC wanted to give the Lake County Bar Members some tips and tricks to keep in mind so they always look amazing and professional for virtual court.

The 2020-2021 Executive Board for AWALC: President - Karissa Anderson, Vice President – Jennifer Luczkowiak, Co-Secretaries – Lisa Dunn & Deanna Hoyt, Co-Treasurers – Greta Berna & Amy Lonergan, Immediate Past President – Rachel Kane, Ex-Officio – Honorable Veronica O'Malley.

The 2020-2021 Board of Directors for AWALC: Kat Allen, Renea Amen, Honorable Janelle Christensen, Jeff Flacklam, Joy Gossman, Sarah Kahn, Kathleen Laughlin, Jeremy Spitzer, and Rebecca Whitcombe.

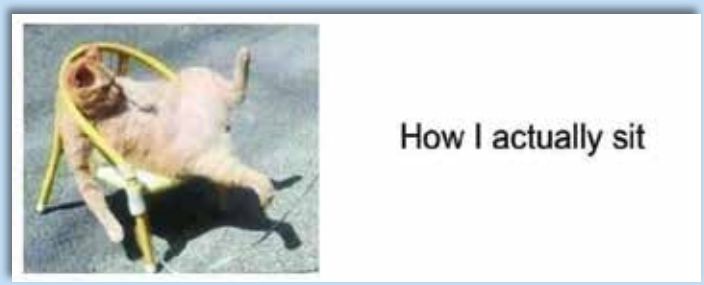


DON'T have a background that is of you and your friends.

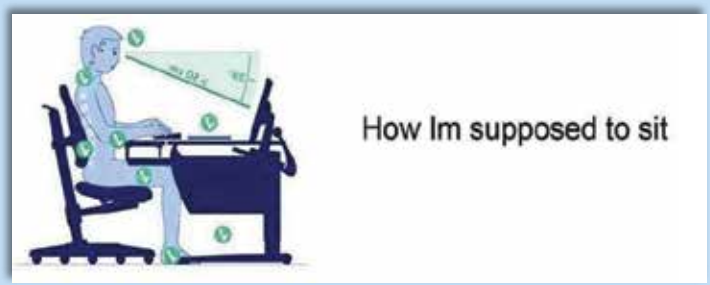
DO show your support for local legal aid clinics!

DON'T wear your sweatshirt from your friend's 30th Birthday party

DO wear an appropriate blouse that brings out the color of your eyes.



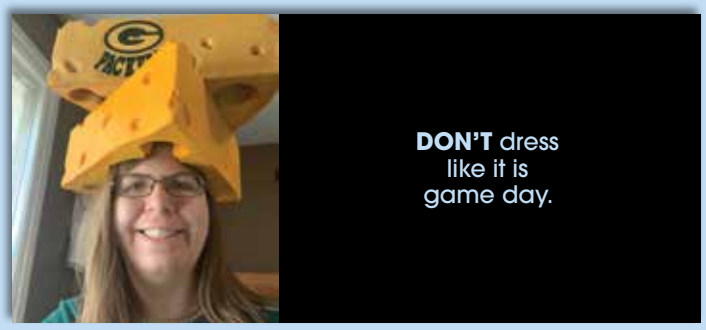
DON'T give new meaning to the phrase "bad posture" on your Zoom Court Calls.



DO Pretend you are sitting in chambers during a pre-trial with the Judge only four feet from you.

DON'T Have your co-counsel sitting on your lap during your Zoom calls.

DO keep your co-counsel safely locked out of your "office."



DO show your team pride in the background.

Time to Renew your Membership

In the Director's Chair

BY DALE PERRIN
EXECUTIVE DIRECTOR

By the time you read this, assuming you read it, your membership in the Lake County Bar Association & Foundation will be up for renewal. The organization's dues cycle is July to June. So as of July 1, your membership is due to be renewed. In Mid-June you, or someone in your office, received an old-school paper invoice sent via snail mail (no offense to anyone employed by the postal service).

As of this writing, approximately one third of our members have already renewed either online or by check. Thank you to all who have taken care of your renewal so quickly.

Several changes were made with this year's renewal invoices. First, all renewal invoices were pre-generated, printed and mailed. Second, your Courthouse Access Pass, donation to the Foundation's Charitable Fund, and a credit card processing fee were automatically added.

If you decide to pay the old-fashioned way (with a check via mail or hand delivery) then simply subtract the credit card processing fee from the total. If you prefer to pay with a credit card, the easiest way is to log-in to your member profile page from the LCBA website and click the "Renew Membership" link.

If you decide not to pre-pay for a courthouse access pass and/or support your Foundation with your dues, simply subtract those amounts, and the CC processing fee, and send a check for just your dues. If you just want to pay for your dues online with a credit card, you'll need to call or email the LCBA office to let us know so we can adjust off the pass and donation first.

This all sounds very complicated, but it really isn't. My recommendation is to make it simple and send a check for $12.50 less than what the invoice total is. This will be under $400 for everyone other than those participating in the Lawyer Referral Service.

Additionally, your Board of Directors has agreed to a 90-day grace period to pay before suspending memberships. Not that we want you to wait that long, but if necessary, due to the Coronavirus Pandemic and Stay at Home order, you require additional time to pay your renewal, you have until the end of September. You also have the option to pay monthly (11 equal payments) if you prefer that option. You'll need to call the office to make that arrangement.

Finally, if you have decided NOT to continue your membership with the Lake County Bar Associa-

tion & Foundation, due to retirement or relocation, please call us or send an email informing us so we can properly suspend your membership and delete the invoice. Otherwise we'll continue to send reminders and contact you regarding renewal.

I sincerely hope you continue to be a part of our community for another year and rely on us for timely and important information regarding the legal profession and issues. If there is a benefit or activity you'd like to see us provide, that we currently don't, please let me or any one of your Board members know so we can figure out how to make it happen.

Thank you for your continued support and involvement. It is my hope and wish that we will be able to see each other and catch up in person real soon. Until then, stay well, stay safe, and stay active (in the LCBA).

To place an ad or for information on advertising rates, call **(847) 244-3143**

DAY	MEETING	LOCATION	TIME
1st Tuesday	Diversity & Community Outreach	LCBA	12:15-1:15
1st Thursday	Real Estate	Primo, Gurnee	5:30-6:30
1st Thursday (Even Mo.)	Docket Editorial Committee	LCBA	12:15-1:15
2nd Tuesday	Criminal Law	LCBA	12:15-1:15
2nd Tuesday (Odd Mo.)	Immigration	LCBA	4:30-5:30
2nd Wednesday	Family Law Advisory Group (FLAG)	LCBA	12:00-1:00
2nd Wednesday	Civil Trial and Appeals	LCBA	4:00-5:00
2nd Thursday	Young & New Lawyers	TBD	12:15-1:15
2nd Thursday	Trusts and Estates	LCBA	12:15-1:15
3rd Tuesday	Local Government	LCBA	12:15-1:15
3rd Tuesday	LCBF Board of Trustees	LCBA	4:00
3rd Wednesday	Debtor/Creditor Rights	Varies	5:30-6:30
3rd Wednesday	Family Law	C-105	12:00-1:00
3rd Wednesday (Odd Mo.)	Employment Law	Varies	5:15-6:15
3rd Thursday	LCBA Board of Directors	LCBA	12:00 noon

- RSVP to a meeting at www.lakebar.org.
- Meetings subject to change. Please check your weekly e-news, the on-line calendar at www.lakebar.org or call the LCBA Office @ (847) 244-3143.
- Please feel free to bring your lunch to the LCBA office for any noon meetings. Food and beverages at restaurants are purchased on a individual basis.

Board of Directors' Meeting

April 30, 2020

BY TARA R. DEVINE
SECRETARY

ACTION ITEMS:

1. **Consent Agenda:**
   a. March Minutes – P3
   b. March New Members – *Motion to Approve Consent Agenda; Motion Seconded; Motion passed.*

2. Treasurer's report:
a. June – March 2020 Financial Report – P6
Discussion had on 2019-20 and 2020-21 budget.

OLD BUSINESS:

1. 2020-2021 LCBA Dues Invoices. Discuss process for sending dues renewal invoices and inclusion of a Foundation contribution. Foundation President, Nick Riewer to join conversation. Nick Riewer present and discussed the LCBF in general, the LCBF Gala and the membership dues renewal invoices. President Steve Rice also discussed the renewal invoices and opened it up to discussion.

2. Upcoming Meetings & Events –

a. Annual Meeting Luncheon: To discuss: Bylaws, and Full/Partial Remote Meeting. Discussion had regarding virtual meeting (up to 250 can log on) logistics of voting/objections, and logging in via the LCBA website. *Motion to set Annual Meeting for May 19th; Motion seconded; Motion passed.*

b. Installation Dinner: Date, etc.
Discussion had regarding virtual swearing in and an installation dinner later this summer/year.

c. Golf Outing
Discussion had on July Golf outing and possible limitations and potentially moving the date.

3. Real Life launch
Update on Real Life Launch; *Motion to approve Nate Hatch (correct last name?) as part of the launch; Motion Seconded; Motion passed.*

4. PPP Loan Update
Update given on the PPP Loan and the prior application process.

NEW BUSINESS:

1. LCBF 2020-2021 Board Nominees – P21 - Recommend nominees for the 2020-2021 LCBF Board Motion to approve nominees made; Motion Seconded; Motion passed.

2. Judicial Bar Poll Comments
Discussion on whether or not to keep the Comment section on the Judicial Bar Poll. Members of the Judicial Retention & Selection Committee to discuss.

3. 2020-2021 Proposed Budget - P22 – Review of and discussion of proposed budget.

Motion to adjourn:
@ 1:24 pm

Next Board Meeting:
May 28, 2020

BOARD MEMBERS PRESENT

Stephen Rice
President

Hon. Patricia Cornell
First Vice President

Joseph Fusz
Second Vice President

Kathleen Curtin
Treasurer

Tara Devine
Secretary

Brian Lewis
Past President

Hon. Christen L. Bishop
2017-2020 Director

Katherine S. Hatch
2017-2020 Director

David R. Del Re
2018-2021 Director

Thomas A. Pasquesi
2018-2021 Director

Dwayne Douglas
2019-2022 Director

Daniel Hodgkinson
2019-2022 Director

Dale A. Perrin, Executive
Director

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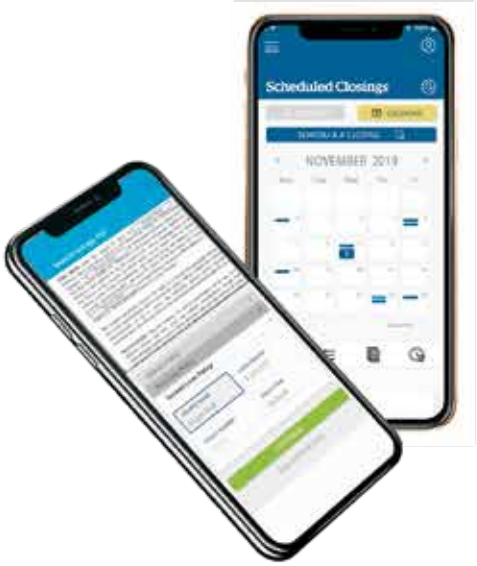

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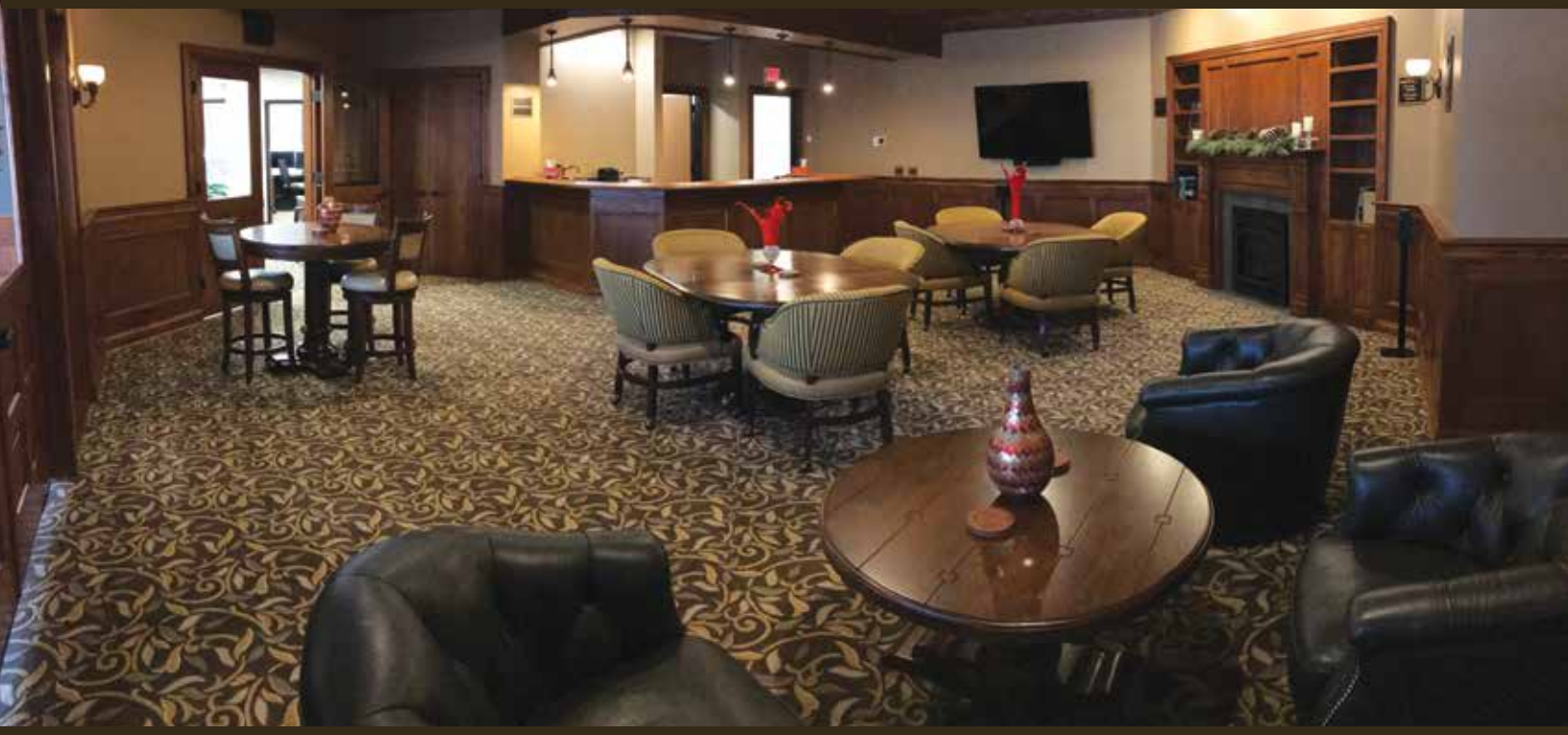
MEMBER RECEPTION



MEMBER RECEPTION SPONSORSHIP OPPORTUNITIES

LCBA Member Receptions will generally be held on the 4th Thursday of every month.

Your $500 sponsorship includes:

- Recognition in advertising before the event and on signage at the event
- Reception from 4:30 – 6:30 p.m.
- Complimentary beer and wine. Upgrades available for additional fee.

Contact Dale Perrin at dale@lakebar.org to add your name to a reception.

LAKE COUNTY BAR ASSOCIATION est. 1912