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Child Law

The newsletter of the Illinois State Bar Association's Section on Child Law

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Co-Parenting During COVID-19

BY AMY SILBERSTEIN

Co-parenting a child between two divorced, divorcing, or never married parents can be a challenge in "normal" times. While we have all learned many things throughout the past year, including limiting our grocery store trips and staying home on the weekends, we have also learned that co-parenting during a pandemic creates additional and unexpected challenges. Even co-parents who have a generally stable relationship have faced co-parenting challenges this year.

Some of these new and unexpected co-parenting challenges that arose this year as a result of the pandemic, including the the following: the issue of travel- whether alone or with a child; how social a child or parent should be with friends or family members outside of his or her household; whether a child should participate in remote or

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Guardian ad Litem/Child Representative/Attorney for the Child: Seeking Fees & the Likelihood of Payment

BY LISA DUNN

You have been appointed as *Guardian ad litem* (GAL), or child's representative (CR), or attorney for the child by the court. The amount of your retainer is set by the court pursuant to 750 ILCS 5/506 (b), which provides: "The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian ad litem, or child's representative is appointed."

The amount of your retainer and how it is paid should be set forth in your appointment order. Hopefully, you are able to collect the retainer from the parties at your initial meeting, or shortly thereafter. But if you are not paid, do not despair, the court may hear about it soon, at the time

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Co-Parenting During COVID-19

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in-person learning; and what to do if a parent has been exposed to COVID-19, yet still wants parenting time. While each of these problems involves varying risk levels between the two parents, they have still been problems that must be addressed between co-parents, and they usually must be resolved in a short amount of time.

From the outset of pandemic-necessitated restrictions across Illinois, several counties, including Cook County, released their own guidelines related to the pandemic. Cook County General Order 2020 D 8, released on March 18, 2020, specifically states, in pertinent part, as follows:

3. Unless otherwise directed by further order of Court, the parties shall continue to follow their respective parenting time schedules.

4. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders. Parties are strongly encouraged to act in the best interests of their children and are strongly admonished from taking acts that would imperil the physical health of any child, including unnecessary or discretionary travel.

See Cook County General Order 2020 D 8, March 18, 2020.

In short, neither COVID-19-necessitated restrictions, nor the related Illinois state and local guidelines alone have been deemed a sufficient reason to limit or withhold parenting time. However, a parent not acting in the best interests of their child may provide a sufficient basis for limiting or withholding parenting time. Unsurprisingly, not every parent agrees about what is or is not in their child's best interests. Disagreements between parents about their child's best interests is not a new phenomenon, and the COVID-19 pandemic has called into question many previously "normal" behaviors that may now be deemed unacceptable or unsafe.

While the Illinois travel restrictions have not limited travel for the purpose of parenting time exchanges, it does limit unnecessary travel. After discussing client travel plans with multiple child representatives and guardian ad litems throughout the course of the pandemic, the general thought seems to be that a parent should not be travelling with children unless absolutely necessary. In fact, there seem to be few circumstances when travel with children is deemed necessary. If two parents disagree about whether one parent may travel with the children, the general consensus throughout the pandemic appears to be that most judges would not hesitate to deny a travel request should the issue be put before court. That being said, there is no guarantee that a judge will deny such a request; but, if parents can reach an agreement for behavior that may be considered risky by a judge, it is unlikely that a judge would scrutinize or overturn such an agreement.

Often, if both parents are reasonable and critically thinking, deferring to the local government and/or Center for Disease Control and Prevention ("CDC") guidelines has helped parents reach agreements without the need of turning to others or to the Court for guidance. The local government and CDC guidelines have been well thought out by scientists and other individuals educated about both COVID-19 virus and the local communities and community transmission rates. It is hard to argue around the CDC and local government guidelines, if you are working with a reasonable person. If a parent does travel or is exposed to COVID-19, with or without the children travelling or being exposed, the best course of action will be to follow the local government or CDC guidelines related to quarantining, and to not insist on seeing the children even if the quarantine period does fall during the parent's parenting time.

What Happens if Parents Cannot Reach an Agreement on Their Own?

Child Law

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If two parents are in the middle of a divorce or parentage case and already have a guardian ad litem or child representative involved in their case, the easiest solution will be to bring the issue to the guardian ad litem or child representative and let him or her weigh in on the issue. If a guardian ad litem or child representative is already involved with a case, the most certain course of action, to avoid litigation and an unpredictable court ruling, is for a parent to defer to the recommendation of the guardian ad litem or child representative. The court will almost always defer to his or her recommendation as well, so reaching an agreement based on the recommendation will save both parents the time and cost of going to court. However, not every co-parenting situation can be so easily resolved, as many co-parents do not have a readily available third-party attorney looking out for the best interests of their child or children. Another option is to mediate the issue, but in a time sensitive scenario, resolving the issue via mediation is not always feasible.

The final option, when agreement seems to be out of reach, is to bring an emergency or non-emergency pleading in court to either try to limit one parent's parenting time or to force a parent withholding parenting time to allow the other parent to see the child or children. If opting to bring a pleading in court related to COVID-19 and pandemic appropriate behaviors, we have seen the courts err on the side of caution in determining what kinds of behaviors are in the child or children's best interests, when looking at disagreements related to COVID-19. Choosing to be more risk adverse with behaviors for the remainder of the pandemic, especially if dealing with a difficult or disagreeable spouse or former spouse, might be the best way to avoid going to court on a COVID-19 related emergency.

The best way for a parent to handle a conflict around COVID-19 and risky behaviors is to remember to put the child's best interests ahead of their own desires and wants. It is also important to remember that a child's best interests may be child and family specific, and there is not a one-size-fits-all solution to many disagreements. Another good reminder is that the COVID-19 pandemic and disagreements regarding risky COVID-related behaviors will not last forever (hopefully).■

Guardian ad Litem/Child Representative/Attorney for the Child: Seeking Fees & the Likelihood of Payment

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you present your request for fees.

As the cases progresses, you will be working on the case and your fees may increase. In order to get paid, during the pendency of the case, you are to file detailed invoices for services rendered with a copy sent to each party at least every 90 days, as required by 750 ILCS 5/506(b). The statute provides:

Any person appointed under this Section shall file with the court within 90 days of his or her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party. The court shall review the invoice submitted and approve the fees, if they are reasonable and necessary.

What if you do not file itemized invoices every 90 days? There is a Rule 23 case, *In Re Tumminaro,* 2013 IL APP (2d) 120287 (Ill. App.2013), which found that a GAL who did not strictly comply with the 90-day filing requirement of detailed invoices, and the local circuit court rule addressing the same subject, the court had the discretion to consider and allocate the fees. Although this is a Rule 23 case and cannot be cited as precedent, except in limited circumstances, it is useful to know if you inadvertently do not file your detailed invoices every 90 days you may still get paid. Of course, a better practice is to file the invoices monthly. By doing so, you will be meeting the 90-day requirement and more importantly, the parties will know on a more frequent basis the amount of your fees. Perhaps you will even get paid by the parties on a monthly basis.

When you present your request for payment, not only do you want the court to approve the fees, but you will ask the court for an order detailing how much each party is to pay. 750 ILCS 5/506(b) provides: "Any order approving the fees shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate."

In the 19th Judicial Circuit, Lake County, Illinois, there is a form order for payment of fees. The link can be found at: https://www.lakecountycircuitclerk.org/docs/default-source/civil-small-claims/order-for-child-representative-gaurdian-ad-litem-(gal)-attorney-for-child-fees.pdf?sfvrsn=0. Please feel free to use this form as a template and tailor it to your case.

One practice tip is to put a payment plan in your fee order. For example, the party can be ordered to pay you back at a specific rate per month. You can also ask the court to allow the issuance of an Income Withholding Notice to have the amount garnished from a pay check. This could increase the likelihood that you will be paid.

What if you have an order requiring one or both parties to pay, but one or both parties refuse to do so? Your remedies for collection are: you can file a Memorandum of Judgment against real estate. Another option is to file a non-wage garnishment. Perhaps, you could file a wage garnishment. If you are fortunate, you may be able to pursue the collection of your fees by more than one of these options. Another collection avenue, allowed in Cook County, was for the *GAL* to file a Petition for Rule to Show Cause to enforce the payment of GAL fees. But you might ask, how can you do this as a GAL because filing of pleadings is beyond a GAL's scope. (See 750 ILCS 5/506(a)(2)). In a Rule 23 order, in *In Re Marriage of Orloff*, 2018 IL App (1st)

180184-U (Ill. App. 2018), the court held that the GAL in a dissolution of marriage case had standing to file a petition for indirect civil contempt against one of the parties for his failure to pay his court-ordered fees. This is another Rule 23 case to keep handy in your lawyer "tool box" to use, if necessary.

If one or both parties files for bankruptcy, is your fee order worthless? Fortunately, the answer is no and can be found in 750 ILCS 5/506 (b) which provides:

Unless otherwise ordered by the court at the time fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy under 11 U.S.C.A. 523. The provisions of Sections 501 and 508 of this Act shall apply to fees and costs for attorneys appointed under this Section.

Bankruptcy case law has supported this rule. In *Levin v. Greco,* 415 B.R. 663 (N.D. Ill.2009) the court held that a CR's fees were eligible for the domestic support exception to discharge. Judge Gottschall in the United States District Court, Northern District of Illinois found that the fees were not dischargeable in bankruptcy and the CR could collect his fees. You may be wondering if this applies to GAL fees as well. The *Levin* court wrote that "there is no meaningful distinction for purposes of the Bankruptcy Code's domestic support exception between a child representative and guardian ad litem." Id. at 667. This was later addressed in *Bush v. Heimer (In re Heimer),* 549 B.R. 881 (Bankr. N.D. Ill. 2016). The court found that attorney's fees of child representatives, including a GAL, who are appointed for a debtor's child(ren) in state divorce court come within the scope of the Bankruptcy Code's definition of "domestic support obligations," and are therefore non-dischargeable pursuant to §523(a)(5) of the United States Bankruptcy Code. The court also ruled that the automatic stay could be lifted by the state divorce court to determine the amount of the GAL's fees due, and the extent of the debtor's obligation for the fees. It is now well settled law that as a GAL or CR you can continue to pursue the collection of your fees in the domestic relations case, without seeking the assistance of the bankruptcy court to lift the automatic stay, if a party files a Chapter 7 bankruptcy petition.

If one of the parties files a Chapter 13 bankruptcy petition, then the GAL/CR should file a proof of claim for the court-ordered fees in the chapter 13 proceeding. You will be paid through the Chapter 13 plan.

The job of GAL/CR/attorney for a child can be difficult and challenging. The vast majority of attorneys who fill these roles are hardworking and diligent. The attorneys anticipate that they will be paid, except for pro bono cases, and must rely on the court to approve and order those fees. Then, the court needs to be made aware of when a fee order is not being followed and, hopefully, will ensure that payment is made. In light of the current pandemic and the large number of people who have lost jobs or are working fewer hours and earning a reduced or no income, it is highly likely that the non-payment of fees will become more prevalent. That may mean that some of the parties in cases where we are appointed may not be able to pay our fees. It is my hope that this primer will be useful to you in the upcoming months and years.■

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Special Immigrant Juvenile Status Predicate Orders in Domestic Relations

BY MARIA E. BARREIRO

In 2020, more than 14,000 Special Immigration Juvenile Status I-360 visa applications were approved.[1] Special Immigrant Juvenile Status ("SIJS") provides eligible abused, neglected, or abandoned immigrant youth a pathway to lawful permanent residence in the United States of America. Pursuant to 8 USC § 1101(a)(27)(J), in order to qualify: a child must be present in the United States; unmarried; under the age of 21; a juvenile court must have declared the child dependent on the court or placed them under the custody of a state agency, department, individual or entity; the juvenile court must have determined that reunification with one or both parents is not viable due to abuse, neglect, abandonment; and, finally, the juvenile court must have determined that it would not be in the child's best interest to return to their home country.

Generally, these cases begin with an immigration attorney who has screened the child for SIJS visa eligibility. Once the child's eligibility is determined, the immigration attorney will then advise the family to retain a family law attorney for the entry of a Special Immigration Juvenile Status Predicate Order in a state juvenile court.

As previously stated, the finding of neglect, abuse or abandonment must be made by a state juvenile court. Examples of Illinois "juvenile courts" are domestic relations/parentage, domestic violence, adoption, child protection and guardianship courts. 750 ILCS 5/603.11 governs special immigrant child findings and provides definitions for abuse, abandonment and neglect. Additionally, 750 ILCS 5/603.11, provides that Illinois courts that are competent to allocate parenting responsibilities have the jurisdiction to make

findings of abuse, neglect or abandonment. State court orders that provide said findings are referred to as "Special Immigrant Juvenile Status Predicate Orders" ("SIJS Orders"). In domestic relations proceedings, the underlying case must be either a dissolution or parentage matter. It is important that the initial pleadings contain allegations of either abuse, abandonment or neglect, and that it is not in the child's best interest to return to their home country. The petitioning party will be required to provide evidence of said allegations prior to the court making such findings in a Judgment for Dissolution of Marriage or Allocation Judgment.

The petitioning party has the same service and jurisdictional requirements as in any other domestic relations case. The issue of service and jurisdiction can become complex as in some cases a parent cannot be located for service or paternity has not been identified on the child's birth certificate. While 750 ILCS 5/603.11 provides that abandonment includes but is not limited to "failure of a parent to maintain a reasonable degree of interest, concern, or responsibility in the welfare of the child or when one or both the child's parents are deceased or cannot be reasonably located", litigants in Illinois have faced the challenge of proving abandonment when the immigrant child is in the care of one of their parents.

This issue recently arose in *In re Parentage of: Ervin C-R.,* 2020 IL App (2d) 200236. In that case, the child and both of his parents originally resided in Guatemala. Three months after the child's birth, his father left Guatemala and did not have contact with the child or the child's mother for twelve years preceding the mother filing her Petition to Establish Parentage. The child arrived in the United States in November 2016 and was apprehended. The following month the child was released to his mother. The trial court in *In re Parentage of: Ervin C-R.* found that the child had not been abandoned as the child resided with his mother and she could provide for the child. The appellate court found that the trial court had erred in not issuing findings in the SIJS Order and held that abuse, neglect, or abandonment by just one parent was sufficient for the purposes of SIJS Order predicate findings.

It is imperative that when domestic relations practitioners are retained on cases that require SIJS findings that they are able to provide the court with all applicable case law and statutory authority that define the terminology of such findings. A trial court not making the necessary findings will prevent the immigrant child from being eligible for SIJS relief.■

Maria E. Barreiro is a family law attorney in Cook and DuPage counties. Ms. Barreiro represents parties in divorce and parentage cases. She also serves as a child representative and guardian ad litem in Cook and DuPage counties. Ms. Barreiro is a board member of Greenlight Family Services and a proud member of ISBA's General Assembly and Child Law Section Council. She can be reached by email at meb@barreirolaw.com.

1. https://www.uscis.gov/sites/default/files/document/reports/I360_sij_performancedata_fy2020_qtr3.pdf.

High Conflict Parenting Plans

BY ANGELA EVANS

Parenting plans become high conflict parents' bible or constitution in a sense. In the future, this document will inevitably be referred to in hard times. It is what will be read to sort out problems. Parenting plans are likely the one and only thing divorce attorneys write in our cases that can create future peace. We do a lot of separating and ending financial entanglements, but as far as what we salvage in the family unit, the parenting plan is really the one and only thing we do that has the ability to preserve any family unity.

In divorces, no one wins. Divorce attorneys can, however, consider our parenting plans as the flag that may wave at the end of future co-parenting battles. Keep in mind though that the flag won't wave unless it fixes something. So, your clearly written and well contemplated written word solving a future parental dispute, is the only "win" a family law practitioner will ever get.

How do we make sure our parenting plans are worth the paper they are written on? We write something that contemplates future changes, addresses the family's specific needs, and by all means considers the parties' personalities and communication styles. In my opinion, write something that doesn't expect more than is reasonable given the circumstances. For example, if there is a history of any violence or poor communication, don't pretend the parties can find a way to get along one day. If they do fabulous, they won't need your parenting plan. You are writing for worst case scenario, i.e., these people are ready to duke it out like Jerry Springer back in the day. Picture that, then write a plan that keeps the kids from watching the fiasco. Generally, the less cooperation is required, the better chance for peace.

I understand that negotiating an agreed parenting plan that has detail takes work. Frankly, sometimes conflict between the attorneys and a sense of wanting to control the document itself often derails the inclusion of details simply because it's too hard to get it all in the document. We have to pick our battles no doubt. One of the best pieces of advice a judge has ever given me went something like this: "Figure out what each party wants, then narrow it to what each party needs, then aim for the needs."

Think about times when your own parents fought or didn't agree during your childhood. Now picture the kid at issue in what you are about to write in the parenting plan. Think about what that child will be doing at five-, 10-, 15-years-old and the issues that may arise. Think about writings that endure and realize that the needs and issues will change over time, similar to a government's constitution. The founding fathers contemplated each law and topic that would be necessary for carrying on

a government that was peaceful and the constitution endures because it contemplated change. You give your client value if and only if, they don't have to come back to change what you write every time life changes.

Many parents have problems reading the parenting plans. Don't forget who your audience is in this writing, just like when you'd write a letter, article, novel, or anything else. Just because we are lawyers does not mean that everything we write is for the judge. If your client doesn't understand the parenting plan, it isn't worth the paper it is written on and you better believe that stress is going to surround next Christmas when the parents are trying to figure out holiday parenting time at the last minute. Avoid legal jargon. Make sentences short by removing anything extraneous. Finally, read the document with your client.

The reason we have jobs is because LegalZoom will never be able to do what we do, so long as we are actually drafting specific documents that require a wealth of experience in dealing with co-parenting conflict on a daily basis as opposed to populating templates. Bring your client the true value of your experience by giving examples, teaching, and explaining what the document they are about to sign means. Don't hand your client a template you just populated and say good luck. If we do that, we deserve to be replaced by LegalZoom.

Other tips:

1. Make sure you cover statutory minimum requirements. 750 ILCS 5/602.10.
2. Make the language so clear there is no possibility of ambiguity. No ambiguity means no fighting. If your client is in a high conflict co-parenting relationship, fighting is inevitable. Your job is to end/shorten the fight by giving the parents a document that sets them straight when the conflict arises.
3. Look on vendors websites for proposed language. For example, Our Family Wizard has model proposed language to put in your orders that can be found at https://www.ourfamilywizard.com/practitioners/model-order-language.
4. Don't forget proposed plans are due 120 days after the petition per 750 ILCS 5/602.10.
5. Details! High conflict parents need to know what to do without consulting the other parent at all. Give your client the peace of knowing the exact day, time and location for parenting time transfers.
6. Kids' possessions, toys, and clothes. The less stuff you share, the less fighting. Write a plan, if at all possible, that doesn't send much more than the kid back and forth between households.
7. Cell phones. Make it clear that just because you pay for a child's cell phone doesn't mean you control that cell phone when it is with the other parent. Parents generally control day to day decisions, including when and how cell phones are used no matter who pays for them.
8. Don't put child support in the parenting plan. First, the relevant statute doesn't say child support is a requirement for parenting plans. Second, consider how much confusion might be created in the future if someone seeks to modify the parenting plan, but doesn't really want to modify child support.■

Supporting the Illinois Bar Foundation's Lincoln Legacy Society

BY HON. EDWARD J. SCHOENBAUM (RET.)

The Lincoln Legacy Society is the Planned Giving Program of the Illinois Bar Foundation, supporting the Foundation's mission to administer access to justice programs throughout Illinois and offer financial aid to attorneys and their families during times of crisis. There are a number of easy ways to make a planned gift to our foundation, with perhaps the simplest way being to name the foundation as a beneficiary of a property such as a bank account, life insurance policy, or retirement plan.

I recently used one of those ways to establish my first planned gift and intend to set up more in the future. At 78 years old, I need to move quickly.

Gifts to the Lincoln Legacy Society benefit the Illinois Bar Foundation programs, such as the Warren Lupel Lawyers Care Fund, which provides aid to attorneys and their families who are struggling and unable to support themselves and their families due to catastrophic health crisis from heart attacks, injuries from an auto accident, falling down the stairs at home, or any other type of serious health problem. I have served on this important committee for the last three years and have learned so much from reviewing the needs of these attorney applicants.

When COVID-19 broke out this year, we received a cy pres award, recommended by Edelson PC, that enabled us to expand our Lawyers Care Fund to provide grants to attorneys impacted by the COVID-19 crisis and statewide shutdown. Through the COVID-19 Lawyers Care Relief Fund, we were able to provide one-time grants of $2,000 to more than 60 attorneys throughout Illinois who were hit very hard when they could not go to work and needed help covering basic expenses. Our Lawyers

Care Fund Committee reviewed dozens of applications and funded what we could. The need for assistance remains great, and with coronavirus case numbers rising again, we are hoping to raise more money so that we can continue funding those still suffering from COVID-19. The vast majority of our COVID-19 Lawyers Care Relief Fund recipients are solo practitioners or attorneys at small firms, many of whom serve low- income clients or other underserved populations, creating a ripple effect of aid into the community at large. One of our recipients shares her story below:

I think as attorneys we try to plan as much as we can. The one thing we could not plan for was a pandemic that would change the way our personal and work lives operate for the foreseeable future. I have never been more grateful to be a part of a community of professionals that support one another. Just as I was losing hope, the IBF COVID-19 Lawyers Care Relief Fund has helped me stay on track and remain focused on regaining momentum with my law firm. I would like to thank those who donated to the Fund for paying it forward and the committee for coming together to support our community.

Another one of the important initiatives that the Lincoln Legacy Society supports is our Access to Justice Grants Program, which distributes funding to non-profit organizations around Illinois which provide direct civil legal aid services to those in need. Our grantee organizations work to enhance the availability of legal aid to those of limited means, encourage pro bono legal work, and educate Illinois residents about their rights and responsibilities under the law. With our statewide focus, the Foundation has distributed $230,000 to organizations serving our neighbors in need in all parts of Illinois, including the Center for Disability and Elder Law, the Chicago Alliance Against Sexual Exploitation, Family Shelter

Service, Prairie State Legal Services, Land of Lincoln Legal Aid, the James B. Moran Center for Youth Advocacy, and many more.

Illinois attorneys have supported these programs for years and we hope that if you are not one of the many who have that you will think seriously of how you can help support these people in need. We would encourage you to check with your own attorney to have them assist you in reviewing your estate planning options and how much you want to invest in the Lincoln Legacy Society to support these worthy programs. On behalf of the Illinois Bar Foundation, I thank you for your consideration. Please contact Jessie Reeves at 312-920-4681 or jreeves@illinoisbarfoundation.org for more information or to receive a Lincoln Legacy Society enrollment form. I also encourage you to reach out to members of the Lincoln Legacy Society you may know to learn more. A full list of current members is available on our website, www.IllinoisBarFoundation.org.■

The Illinois Bar Foundation Needs Your Help

BY RORY T. WEILER

Since it was established in 1951, one of the primary missions of the Illinois Bar Foundation has been to assist our fellow lawyers who have, through illness or otherwise, fallen upon hard times. Over those 69 years, our Foundation has been there to provide financial assistance to lawyers and their families, and the recent onset of the Coronavirus crisis has created a demand far greater than any previously experienced.

Throughout the state, from Metro East to Moline, and from Chicago to all points south and west, our colleagues have experienced economic havoc in their practices. Many of our friends practicing in solo and small firms, and in small towns, have found the economic crisis has impacted their income and practice operations, and brought the business portion of their practices to the brink. Understanding our mission, the officers and directors of the IBF acted quickly to address the unprecedented economic crisis experienced by many of our colleagues.

Thanks in part to a timely cy pres award recommended by attorney Chris Dore and the law firm of Edelson PC, the Foundation was able to establish a COVID-19 fund to provide economic assistance to lawyers in need. Over 60 of our friends and colleagues throughout the state received economic awards to enable them to sustain their practices and support their families through these difficult times.

COVID-19 will pass, but sadly, the impacts of the disease on our practices and our families will be with us for some time to come. The Illinois Bar Foundation relies on you, our Illinois lawyers, for the funding we need to continue to serve lawyers in need, and to advance our mission of enhancing access to justice throughout the state. While COVID-19 has affected us all, it has affected some less than others. The Foundation needs the support of those of you who can help to continue our mission.

For as little as $100 per year (that's less than $9 per month), you can become an IBF Fellow and assist us in providing aid to those that need it, whether they be our friends and colleagues in need, or the working poor who need representation and access to our court system. If you are able, pledges are available from $1,000 to $25,000, paid annually over ten years.

You can also simply make a one-time donation and help one of the many lawyers and organizations the Foundation provides funding to on an annual basis. Perhaps you are in a firm that handles the kind of litigation where cy pres awards can be secured. With our statewide commitment to access to justice causes and attorneys in crisis, the Illinois Bar Foundation is an ideal recipient for cy pres awards.

Please consider making a pledge, or donation, in the amount you can.

Your gift, along with the gifts of thousands of other lawyers and judges throughout our state, will make a difference to many in need. For more information or to make a donation, visit www.IllinoisBarFoundation.org or contact Jessie Reeves, Director of Events & Administration, at jreeves@illinoisbarfoundation.org or 312-920-4681. ■

Bring Your Clients Value and Don’t Get in Trouble Doing It

BY ANGELA EVANS

An attorney is not helping the division of the marital estate if the attorney is taking the marital estate in by way of attorney fees. Consider that the normal divorce case is going to be split pretty equally (just proportions in practice is somewhat equal) as far as value is concerned between the two parties. The attorney should aim to keep fees under at least 2.5 percent of the value of the marital estate. Why, because your services will not likely tilt the wheel either way much more than that, so 2.5 percent is the threshold where your services become unproductive or lack value.

It’s important to advise a new client looking to divorce of the cost of the litigation and attorney fees. Some people simply cannot afford divorce and need to explore reconciliation a bit further. If an attorney fails to advise their client about what the divorce cost long term really will be then you might end up with a client that would have tried harder to salvage their marriage had they understood the financial end of divorce. A discussion of the emotional and economic role of divorce should include, how are you going to feel if you have to pay attorney’s fees, have you considered the cost of supporting two households, and the percentage of the marital estate’s value that makes sense to contribute towards attorney fees.

Attorney’s should not participate in vindictive behaviors. We are not puppets. If we feel something is wrong, we shouldn’t do it, but if the other side is running up fees, we should be able to get them back. Clients need to know the cost of retaliatory conduct. Ask your client something akin to “are you really sure you want to pay me [insert dollar amount] to prove this point, when you know the judge is never going to call your former spouse a jerk and it will not impact the outcome?” Usually, the answer is “well when you put it that way.”

Understand what your client thinks will bring them value. Attorneys can avoid a lot of unhappy customers if we have a frank discussion with potential clients up front about how the attorney handles cases, including what the attorney will and will not do regarding vindictive conduct or actions likely to adversely affect the children’s interests. If the client seems unwilling or even hesitant about accepting the attorney’s limitations and preferred moral approach to cases, decline the representation. In other words, let the client know that no amount of fees will cause you to do what they are wanting and part ways before there is a big bill and a disappointed client.

Litigation is expensive and emotionally draining. Clients should be advised early on about committing to resolve things. They need to understand what it is they may obtain from court early on also, so they know what they are fighting for and investing in with their attorney fees. If they don’t know what to expect from trial, they have no idea whether or not your fees are worth it.

Parties also need to be made aware that often parties in divorce litigation don’t follow court orders. Even if you get a big win in the court order, you may lose every dime of it trying to enforce the order. Parties are more likely to abide by their own promises than by an outcome they hate imposed upon them by a court order. Clients also have to understand that they can’t get money out of a dry well.

Parties to matrimonial cases have to deal with each other for years to come after they leave the courtroom. Asking for someone to pay the other parties’ attorney fees may often make them feel that they cannot seek recourse in court freely. The divorce attorneys approach to resolving a domestic relations problem is crucial to the future emotional and financial health of the family.■

Can a GAL Obtain Information From Counselors or Not?

BY ANN R. PIEPER

Pursuant to the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/607.6, the court may order counseling for the parents or the children under certain circumstances; however, if the court *does* order the counseling, the court may not receive any information from the counseling pursuant to 607.6 (d); stating specifically:

All counseling sessions shall be confidential. The communications in counseling shall not be used in any manner in litigation nor relied upon by any expert appointed by the court or retained by any party.

Considering the plain language of 607.6(d), may a guardian ad litem speak to the counselor providing services to the children after a court ordered the litigants to obtain the counseling? There is no doubt that GALs may speak with, and rely upon, information received from counselors or mental health professionals who regularly see, and have seen, the children at issue *without* order of the court. Mental health professionals and counselors who have long-term relationships with the children are a wealth of relevant and non-biased information, as well as perspective as to the child's position over time. However, a court ordered counselor *also* will have relevant, and perhaps dispositive, information after they begin treating the minor children.

The reason for the limitation on using information obtained from court ordered counseling is to promote honesty in sessions. Often, people who are involved in litigation will not be honest with counselors if they believe that the information will be used against them in the trial. If they are not honest, of course, the counseling will not be particularly helpful. While the need for confidentiality may increase participation, there is no doubt that every guardian ad litem, and most judges who discuss this issue, *want* the counselor's relevant information to be in front of the court. If the Judge ordered counseling the judge clearly felt compelled, due to the state of the child, the state of the litigation, or the evidence of abuse to the child, to get the litigants and/or their children to a professional. Of course, an appointed GAL must report to the court and make a determination as to the best interests of the child. So, how does a GAL get around what appears to be a statutory prohibition on discussion with a counselor treating children or the parties after the court orders treatment?

The answer is through Supreme Court Rule 907, as well as specific orders when the counselor is appointed. Supreme Court Rule 907 states:

The child representative, attorney for the child or guardian ad litem shall also take whatever reasonable steps are necessary to obtain all information pertaining to issues affecting the child, including interviewing family members and other possessing special knowledge of the child's circumstances.

When a statute and a supreme court rule conflict on evidentiary issues, the supreme court rule prevails. *See Danlan/ Jupiter, Inc. v. Draper & Kramer, Inc.,* 372 Ill. App.3d, 362, at 370 (2007) stating "that a statutory rule of evidence is effective, unless in conflict with a rule or a decision of the Illinois Supreme Court." Pursuant to Supreme Court Rule 907, the guardian ad litem must look at all information—and information from court ordered counseling is, clearly, part of "all information." Beyond the supreme court rule, however; specificity in the order for counseling or mental health services stating that "any Counselor seeing the children pursuant to this Order shall discuss the children with the guardian ad litem so that the guardian ad litem may make recommendations pursuant to the best interest of the children standard to this Court" may solve this conundrum at the front end.■

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Ann R. Pieper is a Shareholder and President of the firm Kavanagh, Scully, Sudow, White and Frederick P.C. Within the past five years, most Ann's practice consists of guardian ad litem work in contested family law and probate matters as well as mediation. Additionally, Ann advises the firm's corporate clients on personnel policies and procedures to reduce litigation exposure and litigates on behalf of the firm's corporate clients in court and at the administrative agency level. Ann's approach to law is practical and realistic as she aspires to identify her clients' problems and find workable and long-term solutions. Ann's education and background give her special expertise in the areas of municipal and library law, school law (especially special education and accommodations concerns), labor and employment law.

ISBA Launches Rural Practice Fellowship Program as Component of Rural Practice Institute

BY DANIEL R. THIES & LOIS J. WOOD

In an effort to address the ongoing shortage of attorneys practicing in rural Illinois, the ISBA has launched the Rural Practice Institute and the Fellowship Program that is a part of that Institute. The Fellowship Program aims to connect rural and small-town law firms interested in hiring law clerks and associates with law students and newer attorneys desirous of practicing law in rural areas of Illinois. Attorneys and law students admitted into the Program will receive a stipend of $10,000 or $5,000, respectively, to encourage their establishment of a practice in rural areas of our State.

Data shows that more than half of Illinois counties have fewer than 0.7 lawyers in private practice per 1,000 residents. Thirty-four Illinois counties have ten or fewer attorneys total in private practice, and 13 counties have a total of five or fewer attorneys in private practice. Worse, many attorneys in rural areas are nearing retirement (for which step we wish them well) and are not being replaced in significant enough numbers to avoid a growing crisis in access to justice.

The ISBA Special Committee on the Rural Practice Initiative created two complementary fellowship programs to address the issue:

1. a clearinghouse to connect law students (summer fellows) with rural practitioners for an 8-10 week summer clerkship; and
2. a clearinghouse to connect young lawyers (associate fellows) with experienced practitioners searching for a permanent associate to whom they might eventually transfer their practice.

As an extra incentive, both summer fellows and associate fellows accepted into these programs will be eligible to receive a stipend. Summer fellows will receive a $5,000 relocation and expense stipend from the ISBA, plus any amount that the experienced practitioner agrees to pay them. This arrangement will allow fellows to earn $8,000-$10,000 per summer, which is extremely competitive for summer opportunities for law students. Associate fellows will receive the same $5,000 relocation stipend planned for the summer fellows, but in addition, the associate fellows will also receive a $5,000 stipend upon the completion of their first year as a rural practitioner. This second stipend will serve as an additional inducement for young and new lawyers to relocate permanently to rural areas.

"I look at this as part of succession planning," ISBA President Dennis Orsey said. "We know in a number of the counties in the state of Illinois we have an aging lawyer population. A number of these practicing attorneys have good, viable practices with a built-in client base. What they're looking for are younger attorneys who are willing to settle in that rural community and eventually take over their practices."

Applications from both potential summer fellows and from law firms or experienced practitioners seeking to employ a fellow will be due by February 12, 2021.

Additional information about the RPI program, as well as the application, can be found at https://www.isba.org/ruralpractice.

The RPI Special Committee will inform applicants if they are accepted into the program by March 1, 2021 and, to facilitate the scheduling of interviews, will provide both summer fellows and experienced practitioners with each other's contact information at that time. The deadline for summer fellows to accept an offer of employment and for experienced practitioners to secure a summer clerk fellow will be March 14, 2021.■

Daniel R. Thies and Lois J. Wood are co-chairs of ISBA's Special Committee on the Rural Practice Initiative.

A Virtual Pro Bono Opportunity to Help Those in Need

BY MICHAEL G. BERGMANN

Illinois Free Legal Answers (https://il.freelegalanswers.org/) is a virtual legal clinic where low-income Illinoisans can submit a question online to ask a pro bono lawyer for help with a civil legal issue. Volunteer lawyers then log onto the site at their convenience and answer questions waiting in the queue that they feel comfortable addressing. All of the interactions are through a website, so all that is needed is internet access and a device to be able to start helping people. Especially, during the COVID-19 pandemic, this is a great way to help those in need from the comfort and safety of your own home or office.

A project of the American Bar Association, Free Legal Answers was created as a national platform to increase access to advice and information about non-criminal legal matters for those who cannot afford legal assistance. It is now active in 42 jurisdictions within the United States, including Illinois, with the Public Interest Law Initiative (PILI) as the statewide administrator. Since it was launched, the Illinois Bar Foundation has been the primary funder of Illinois Free Legal Answers. PILI provides the necessary support, including an online resource page with training videos and sample questions and answers. The ABA provides malpractice coverage for volunteer lawyers.

Adults who have met financial eligibility guidelines, are not currently incarcerated and are not requesting assistance with criminal law matters are able to ask questions through the website. Before users are allowed to request legal advice, they will be asked questions to establish eligibility. Most clients' questions tend to be in one of the big three civil legal aid categories—family, housing and consumer law. However, since the pandemic and resulting shutdown, people now are also asking about employment and benefits issues.

Any lawyer who is registered as active and authorized to practice with the ARDC, including those with house counsel status can volunteer. Additionally, those with inactive or retired status and out-of-state licensed attorneys can volunteer under Supreme Court Rule 756 by filling a form through PILI each year with the ARDC. Typically, there are anywhere from 75-125 questions in the queue at any given time waiting to be answered. From August 2019 to August 2020 alone, 1,954 legal questions have been answered through the site.

Starting September 1, 2020, self-represented litigants in Illinois can also submit a question online about their civil appeal and receive an answer from a pro bono lawyer with the launch of Illinois Free Legal Answers for Civil Appeals, the first-ever legal help desk for appeals in Illinois. The program was created to address the pressing need to provide help to self-represented litigants (SRLs), who account for 41 percent of civil appeals filed in the state.

Illinois Free Legal Answers for Civil Appeals will operate through the Illinois Free Legal Answers platform. This initiative is a unique partnership between PILI, the Illinois Supreme Court Commission on Access to Justice (ATJ Commission), the Administrative Office of the Illinois Courts (AOIC), and an Illinois Appellate Legal Answers Advisory Committee, which is comprised of a variety of legal stakeholders throughout the state. Low-income litigants with a civil appeal can submit their questions to a lawyer through the website and the platform is open to both appellants and appellees.

Illinois Free Legal Answers is a convenient way for attorneys to volunteer their skills in a way that best fits their schedule while assisting those who have nowhere else to turn. You can learn more about Illinois Free Legal Answers at www.pili.org/pro-bono/legal-answers or visit the site to register at http://il.freelegalanswers.org/.■