THE
DOCKET
March 2009
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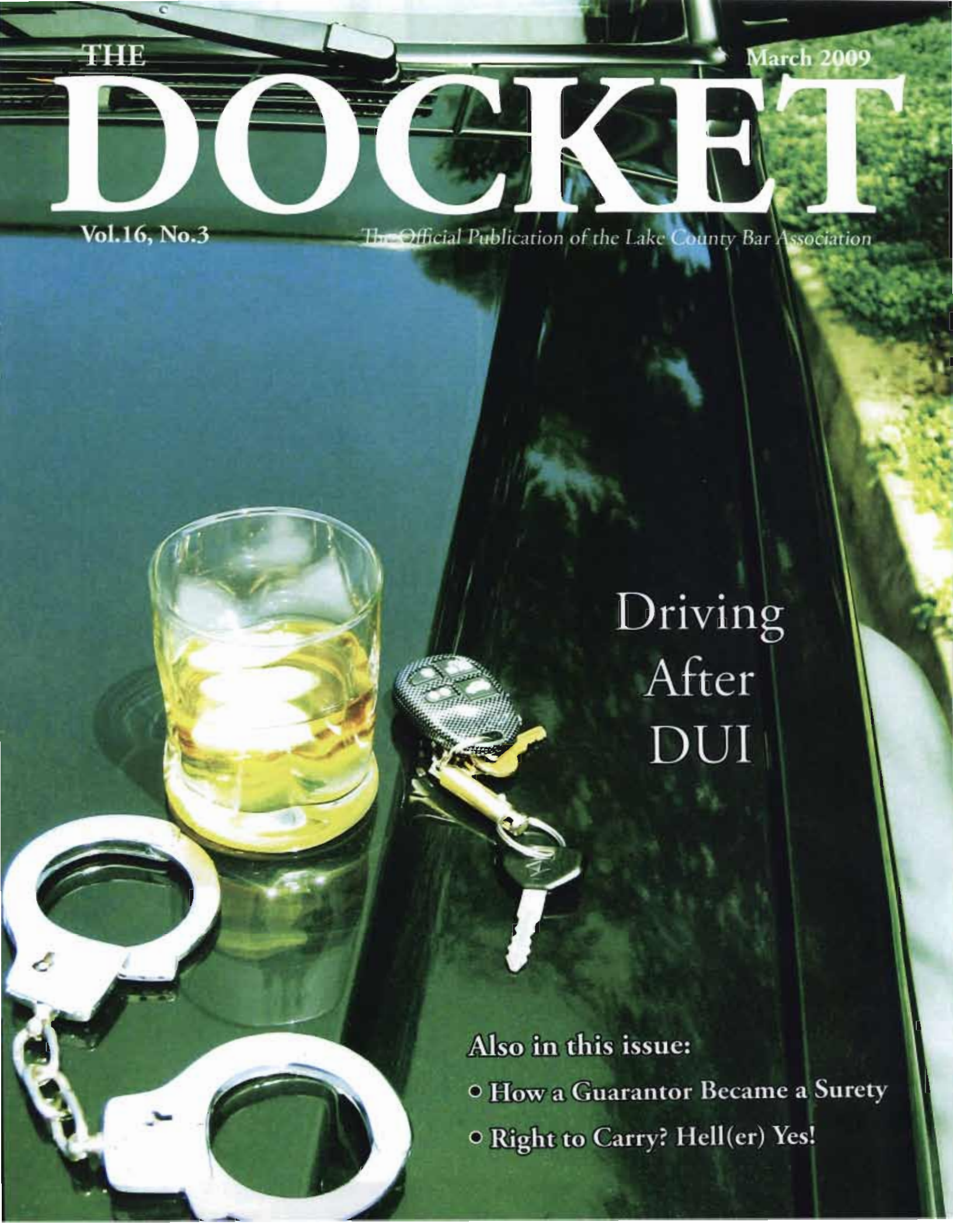
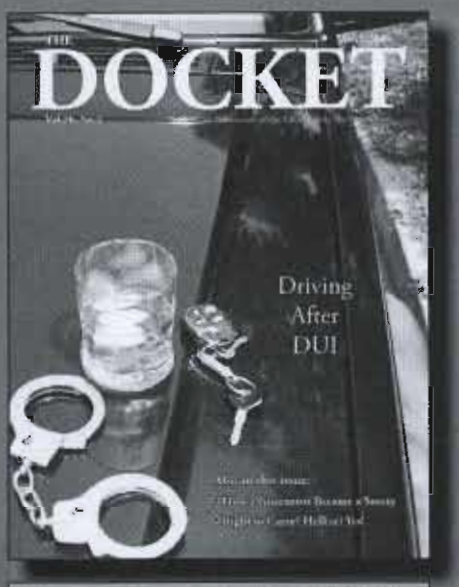


Driving After DUI

Also in this issue:

- How a Guarantor Became a Surety
- Right to Carry? Hell(er) Yes!



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THE
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COLUMNS & OTHER CONTENT

ADVERTISERS

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President's Page

People's Law School—A Huge Success

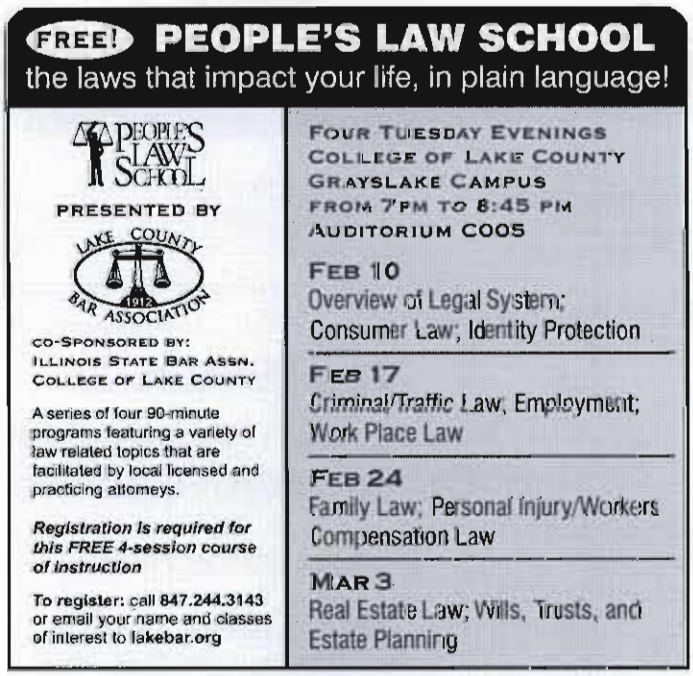
by Bryan R. Winter

The first LCBA People's Law School was a great success. The program consisted of four 90-minute sessions of free instruction to the public explaining the legal system in general and specific topics of the law. At each session, four or five LCBA members provided well-prepared presentations highlighting important issues and concepts in various practice areas.

For members who missed it, below is a copy of the ad that ran on alternating days for a week in the Lake County News-Sun and the Daily Herald. As you can see from the ad, a wide range of topics was covered. The LCBA also received promotional help from veteran courthouse reporter Tony Gordon of the Daily Herald. Tony wrote informative articles about the program and helped to spread the word that Lake County lawyers and judges were providing useful legal information to the public for free.

The results of these efforts were impressive. The bar office pre-registered over 175 attendees for the program. During the planning sessions, the goal of signing up 75 attendees was generally considered a reasonable target for a first-time project. Exceeding that goal by 100% is a strong indication of the public's interest in the legal system. This interest was also illustrated by the thoughtful questions of the attendees after each session (a few clearly had their own cases in mind). The attendees were quite appreciative of the programming, as indicated by their evaluation forms.

In addition to delivering positive messages about the legal system, lawyers and judges at each presentation promoted the LCBA's Lawyer Referral Service. If you still haven't signed up with the Lawyer Referral Service, I encourage you to do so as efforts to promote the service will continue. Also, a concerted effort was made to explain that, due to the finality of court decisions, the legal process takes time to complete. The LCBA website was continuously promoted as a source of legal information. Perhaps future sessions can be recorded and accessed through our website as a podcast to improve content for the site. The Internet is an efficient way to communicate not only with our members, but with the public.



Sample Advertisement for the People's Law School

The People's Law School was a suecessful collaboration with the ISBA and the College of Lake County. Special thanks should go to Gayle Miller, Committee Chairperson of our Associate Member Committee, who secured the large auditorium at CLC for the program at no cost to the LCBA.

The successful completion of the People's Law School represents a significant step by the LCBA to educate and connect with Lake County residents. The LCBA has definitively engaged society! As I've said throughout the year, making positive contact with the public promotes our profession and the legal system as a whole.

Future months will be busy as well. On March 11, the annual Doctor/Lawyer Dinner will take place at Lovell's of Lake Forest featuring Daniel J. Heckman II, an economist with US Bank. This might be the year we find common ground with the doctors! On March 26 at 12:00 in courtroom C-201, the Brown Bag Seminar will cover IRS Tax Problems and Resolutions. Finally, the Real Estate Committee and the Wills, Trusts and Probate Committee will travel to New Orleans April 16-19 for a joint seminar. You can register for all of these events by going to our website, www.lakebar.org. ◊

Bryan Winter at
brywinter@aol.com

Annual Doctor/Lawyer Dinner

Wednesday—March 11, 2009

6:00 p.m.—Social Hour
7:00 p.m.—Dinner & Program

Lovell's of Lake Forest
915 W. Waukegan Road
Lake Forest, IL

"A Current Economic Outlook"
Daniel J. Heckman II
Regional Investment Manager and Senior Portfolio Manager, US Bank

Brown Bag Seminar

Thursday—March 26, 2009

12:00 p.m.
Courtroom C-201

"IRS Tax Problems and Resolutions"

Real Estate & Wills, Trusts & Probate Committees Seminar

April 16-19, 2009

Astor Crowne Plaza
New Orleans—French Quarter

Chief Judge's Page

guest written by
Circuit Judge John T. Phillips
& Associate Judge Michael J. Fusz

Hon. James K. Booras

The 19th Judicial Circuit Mental Health component of its TIM (Therapeutic Intensive Monitoring) Court became a reality as a result of coordinated planning and implementation efforts and a lot of hard work. With the support and urging of the Lake County Board, a steering committee of representatives of the Lake County Health Department/Behavioral Services, the 19th Circuit's Probation Department, Psychological Services, and Circuit Judges, the Lake County State's Attorney, the Lake County Public Defender and the Lake County Sheriff labored to create the concept and then the operational model of what goes on each Friday morning in Courtroom C-403.

The project was an outgrowth of the Drug Court project and initial planning of the Mental Health Court begun in February 2005 at the direction of then Chief Judge Christopher Starck. The concept applied the same team approach that was underway with the Drug Court. When the team members adopted criteria, created their written orders and participant agreements, and formulated their operational guidelines under the watchful eyes of Judges John Phillips and Victoria Rossetti, the Circuit Court judges approved the start of the program. Judge Mike Fusz was assigned the task of hearing this weekly "TIM Court" call, as it has come to be known, differentiating it from "Drug Court." The first participants began with the first call in February 2007, and to date, the program has had six successful graduates. There are over 25 participants presently in the program, and there is always an on-going screening process for prospective members.

The TIM Court Program (Mental Health component) was created for defendants who come into the criminal justice system primarily because of mental illness or substantial personality disorders, which make it particularly difficult for them to conform their conduct to the requirements of law. The program aims at addressing their unique needs for supervision and counseling, ensuring medication compliance, and providing a support network to facilitate personal growth and ultimate independence. The team approach attempts to be as non-adversarial as possible with all team members working together to stabilize the offender and end the criminal behavior.

Defendants eligible for consideration must be residents of Lake County with a current Axis I diagnosis of mental illness under the DSM IV (Rev), and who are facing charges or are on probation for non-violent felony or misdemeanor charges. The defendants must be at least 18 years old and must be amenable to treatment; that is, they must be committed to accepting all of the program's many intensive requirements. While many of the participants have substance abuse issues, those whose main problems appear to be caused by addiction rather than psychological or psychiatric problems are referred for possible acceptance into the Lake County Drug Court. The team members for both programs are essentially the same.

An initial referral can come from nearly anyone, including private attorneys, law enforcement, Assistant Public Defenders, Assistant State's Attorneys, judges, Court Services staff, Health Department staff or caseworkers. To begin the process, a petition must be signed along with executed consent forms for the release of medical and psychiatric records. After the records are obtained, a determination is made whether the applicant needs a more up-to-date psychological assessment. The State's Attorney's Office also reviews the initial investigative reports, criminal record, and contacts the al-

The Hon. John T. Phillips is a Circuit Judge with the Nineteenth Judicial Circuit.
The Hon. Michael J. Fusz is an Associate Judge with the Nineteenth Judicial Circuit.

leged victims of the offense to explain the program and to obtain their assent, if possible.

After this initial investigation, if the applicant appears to be acceptable—that is, he wants to participate in the program and the initial assessment indicates that the team can offer him programs or a stable living situation—a formal staffing is scheduled with members of the entire team to determine whether the defendant will be accepted into the program. If the defendant is deemed acceptable and then requests admission, the form of participation is determined. A "pre-plea" form of deferred prosecution may be offered for misdemeanor offenders with no substantial history of serious criminality, or there may be plea and a post-conviction disposition. If the case is accepted on a pre-plea basis, the defendant must agree to a stringent set of bond conditions so that his or her behavior can be intensively monitored. These conditions are all-encompassing. For individuals charged with more serious offenses, or for those with a substantial criminal history, the State may insist on a plea for a probationary term and will make a contingent offer based on probable acceptance by the team. A frequent condition is a term of stayed jail and/or periodic imprisonment.

After acceptance, the defendant is required to appear in court on a weekly basis, every Friday morning at 9:00 a.m. in C-403. Like the Drug Court program, TIM Court does involve intensive monitoring, especially for new clients. The clients are given detailed contact information for their caseworkers and are encouraged to frequently communicate when any issues or problems arise. The team reviews progress reports twice a week and tries to spot any problems or potential obstacles before they become insurmountable. The team also uses a wide variety of sanctions and techniques to motivate and encourage compliance.

Cases involving serious personality disorders can be particularly difficult for the courts, but TIM Court has the advantage of very close oversight by mental health professionals. These professionals help to explain the individual's unique problems and how to effectively deal with issues as they arise. Even so, the cases tend to be very challenging because the participants' unpredictability, frequent attempts to split staff, and crisis-oriented lifestyles require patience, understanding, flexibility and resourcefulness. Day-to-day issues such as the need for a stable and safe home environment, the absence of a supportive family or peer group, or the negative influence of family or friends are constant problems, as are financial and employment issues, which are becoming even more common in the current economy.

The dedication of the team members is what makes our TIM and Drug Courts work. For most of the team members, working in the program is an "additional" duty, and for all members the work involves extra hours, early mornings, late nights and quick responses to crises.

Any question about the cost of the program or whether TIM Court is worth the time and trouble is answered at the graduation of a successful client. It is difficult to describe the feeling of accomplishment and gratification when a person, who had slipped completely under society's radar, is able to once again become a productive and happy person with a renewed sense of confidence and independence. The six success stories we have had thus far are not just statistics—they are six human beings whose lives and whose families have been changed for the better. They, in turn, have inspired the team members to continue their work with renewed energy and a sense of purpose. We hope that the team's continued work will produce many more successes. Please visit TIM court some Friday morning. You will probably be surprised at what you see and hear, and you most certainly will not be disappointed. ◊

Native Son

Hercules Paul Zagoras

by Ann Buche Conroy

A native son, Hercules Paul Zagoras has, with the exception of school years and several years of service in the United States Navy, spent his entire working life in and around Waukegan. Named for the mythical Greek wunderkind Hercules, Paul has fought occasional legal battles reminding him of some of the twelve labors required of that son of Zeus and Alcmene.

Paul has three adult children and two grandchildren. He currently resides in Lake Forest. His practice has covered forty-seven years, with some notable successes in both state and federal courts. Ask him to tell you about them—it is an interesting and fun history of local legal activity.

Educated in Waukegan schools, the University of Illinois and Chicago-Kent College of Law, Paul was a winner of the four-year N.R.O.T.C. Hollaway Scholarship, a fleet-wide distinction. He also won a two-year Chicago Title Merit Scholarship that helped him at the U. of I.

Paul's father, an immigrant from the Greek Islands, operated a small hotel on Madison Avenue in Waukegan for some years, and had three restaurants. The early Burgundy Room was begun in his hotel and served as a watering hole for lawyers and others for many years. (It still acts as a place of relaxation and shop talk today, at another location.)

With extensive experience in tax, municipal, real estate, zoning, administrative law in various fields, appeals, land acquisition and prosecutions for a number of Lake County communities, Paul is perhaps most pleased to have been instrumental in helping several local attorneys, as young practitioners, to learn municipal law. His readily-remembered matters include several appellate cases, one of which was a search and seizure incident, undertaken for a friend, which went to the United States Supreme Court, where he won the case. He recalls that there was a great deal of paperwork accompanying the matter and numerous rules, procedural and substantive, to which adherence was mandatory. The time involved was long and arduous. But in the end, the result came from that august body typed out on an 8-1/2" by 11" sheet of paper, with nothing very formal about it at all.

Named for the mythical Greek wunderkind Hercules, Paul has fought occasional legal battles reminding him of some of the twelve labors required of that son of Zeus and Alcmene.

Another time, in federal court, Paul, the Public Administrator for whom he worked, and Judge Dixon were all sued by a disgruntled party for half a million dollars. The Public Administrator and the judge were both represented by the Attorney General. Zagoras was on his own—a scary prospect when $500,000 was at stake. He won, nevertheless, and breathed a healthy sigh of relief when the matter was concluded. One of his Supreme Court cases involved a roadblock occurrence in which Judge Lange had ruled against his client. The Supreme Court used the occasion to announce a then precedential determination that the Court can increase the rights of a litigant but cannot take away existing rights.

On the local front, early in their practices, Zagoras and Bernie Winter, who had been classmates in Law School, were election judges, one for each major party. The story illustrates how far we may have come in the forty-four years since this incident. The voters were met with what was called a "bed sheet ballot." There were 160 spaces to be marked. Ballot counting was done by indi-

Ann Buche Conroy is an Assistant State's Attorney in the Child Support Division of the Lake County State's Attorney's Office and a member of The Docket Editorial Board.

viduals checking each ballot visually. It took days to complete. It is still an open issue if electronics have greatly improved our situation today.

What advice comes from this long-time practitioner? Paul advises young lawyers to: (1) watch motion practice; you can learn from seasoned attorneys and avoid the pain of making some of those mistakes yourself. His involvement in the infamous, local, Woody Kelly case taught him: (2) if you are ever sued for slander, be sure to check your malpractice policy at the outset; it could be your salvation. And: (3) "Accountants may make more money, but law is more fun."

For anyone whose practice has spanned nearly half a century, there is always the question, "Any regrets?" Not for Paul Zagoras. He has loved it all, learned from his mistakes and rejoiced in his victories. He sees the changes time has wrought, though sometimes ruefully. His penchant in later years has been to do more post-trial and less trial work—fewer witnesses, less factual discovery. He believes that civility among lawyers has suffered from the greater number of attorneys and the greater volume of cases. Once upon a time, you knew everyone involved in the case. You could get along with less formal discovery—everybody shared information. Lawyers were all colleagues, not the enemy. And justice was still served.

A local boy makes good. Hercules Paul Zagoras, still going strong and glad to be one of the long-standing and still practicing attorneys in Lake County. ◊

LCBA Associate Member Committee Growing

LCBA President Bryan Winter and First Vice President Scott Gibson recently stopped in at a meeting of the Associate Member Committee. The next meeting of the committee is Tuesday, March 10, 6:30 p.m., at the College of Lake County Grayslake Campus, room T-102. Now is the time for paralegals, support staff and vendors to get involved in this growing committee.

How a Guarantor Became a Surety

by Mark A. Van Donselaar

A long-time business client calls you with a question about a contract that he is about to enter into on behalf of his business. The party with whom he is contracting is demanding that the contract include either your client's personal guaranty, or that your client act as a surety for any debt owed under the contract. Being a layman, your client does not know the difference between a personal guaranty and a surety, so he wants you to explain the difference. This article will do just that, while focusing on the recent Second District Appellate Court case, *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*,[1] which blurs the line between the two. (The Illinois Supreme Court granted leave to appeal on January 28, 2009.)

"There is substantial distinction between the liability of a surety and that of a guarantor. A surety's undertaking is an original one, by which he becomes primarily liable with the principal debtor, while a guarantor is not a party to the principal obligation and bears only a secondary liability."[2] Stated somewhat differently, the distinction between a suretyship and guaranty is that "a surety is in the first instance answerable for the debt for which he makes himself responsible, while a guarantor is only liable where default is made by the party whose undertaking is guaranteed."[3] A contract is "one of suretyship when one obligates himself to pay the obligee, absolutely and wholly, without the necessity that the obligee exhaust his remedies against the principal before proceeding against the surety."[4] A guaranty is "an undertaking to be responsible for the performance of an obligation of a third person upon his failure to perform it."[5]

Whether the obligation assumed by a party is that of a guarantor or a surety "is to be determined by the intent of the parties as collected from the language of the instrument and the circumstances attending its execution."[6] Where the express terms of the instrument are ambiguous, "the parties' intentions can be determined from their declarations and conduct and from the surrounding circumstances."[7] Where the terms of the instrument are unclear and there are questions of the parties' intent, parole evidence may be used to determine whether the contract at issue is a surety or a guaranty.[8]

The word "guarantee" is frequently used interchangeably with the word "surety."[9] "The terms 'suretyship' and 'guaranty' are often confounded from the fact that the guarantor is in common acceptation

1. No 2-07-0045 (Ill. App. 2d Dist. Nov. 4, 2008) (2008 WL 4880189) (leave to appeal granted Jan. 28, 2009).
2. *Vermont Marble Co. v. Bayne*, 356 Ill. 127, 136, 190 N.E. 291, 295 (1934) (Justice Orr, dissenting).
3. *Id.* at 132, 190 N.E. at 294.
4. *Chandler v. Maxwell Manor Nursing Home*, 281 Ill. App. 3d 309, 321, 666 N.E.2d 740, 749 (1st Dist. 1996).
5. *Kreizelman v. Stevens*, 311 Ill. App. 3d 161, 168, 35 N.E.2d 532, 535 (1941).
6. *Vermont Marble Co.*, 356 Ill. at 132, 190 N.E. at 293.
7. *Chandler*, 281 Ill. App. 3d at 322, 666 N.E.2d at 749.
8. *Vermont Marble Co.* 356 Ill. at 133, 190 N.E. at 294; *City Nat'l Bank of Murphysboro, Ill. v. Reiman*, 236 Ill. App. 3d 1080, 1093, 601 N.E.2d 316, 324 (5th Dist. 1992).
9. *Vermont Marble Co.*, 356 Ill. at 131, 190 N.E. 293

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a surety for another."[10] Thus, the determination of whether a contract is a surety or a guaranty does not depend upon technical language, such as security, surety, guaranty, or guarantee, which may be used in the contract.[11] To ignore the circumstances in which such terms are used attaches too much importance to them.[12] It is the nature of the obligation, whether primary, which would indicate a surety, or secondary, which would indicate a guaranty, that is the determinative factor for distinguishing between a surety and a guaranty.[13]

Perhaps the most significant distinction between a guaranty and a surety is that a surety may avail himself of the protections afforded by the Sureties Act.[14] The Sureties Act was first passed in 1874.[15] Section 1 of the Act provides:

> When any person is bound, in writing, as surety for another for the payment of money, or the performance of any other contract, apprehends that his principal is likely to become insolvent or to remove himself from the state, without discharging the contract, if a right of action has accrued on the contract, he may, in writing, require the creditor to sue forthwith upon the same; and unless such creditor, within a reasonable time and with due diligence, commences an action thereon, and prosecutes the same to final judgment and proceeds with the enforcement thereof, the surety shall be discharged; but such discharge shall not in any case affect the rights of the creditor against the principal debtor.[16]

In *Wurster et al. v. Albrecht*[17] the Appellate Court for the Second District examined the section of the Sureties Act quoted above and found that if not for the statutory provision, the holder of the note would not be required to comply with the surety's demand to sue. However, the "statute was undoubtedly enacted for the purpose of compelling diligence by a creditor to the end that a surety may be protected against loss."[18] Thus, if demand is made by the surety under the provisions of Section 1 of the Sureties Act and a lawsuit is not diligently brought by the creditor, then the surety may be protected from liability to the creditor.

It was not until the Second District Appellate Court's decision in *JP Morgan Chase Bank, N.A.* that the protections of the Sureties Act have been extended to apply to a guarantor. The facts of *JP Morgan Chase Bank, N.A.* are stated fairly simply: the plaintiff in the case extended a line of credit to the primary defendant, Earth Foods, Inc. (Earth Foods), which was "personally guaranteed" by three co-owners of Earth Foods.[19] The defendants sent the plaintiff a letter in which they warned that Earth Foods was depleting its inventory and demanded that the plaintiff take action. When the plaintiff filed suit against Earth Foods and the co-guarantors, the co-guarantors responded by asserting an affirmative defense based on the protections found in Section 1 of the Sureties Act.

The circuit court granted the plaintiff's motion for summary judgment on the ground that defendants were guarantors, not sureties, and, therefore, the Sureties Act did not apply. On appeal, the defendants argued, in part, that the circuit court

10. *Id.* at 132, 190 N.E. at 294.
11. *Id.* at 131, 190 N.E. at 293
12. *Id.* at 133, 190 N.E. at 294
13. *Id.*
14. 740 ILCS 155/0.01 *et seq.*
15. *City Nat'l Bank of Murphysboro, Ill.*, 236 Ill. App. 3d at 1091, 601 N.E.2d 323.
16. 740 ILCS 155/1.
17. 237 Ill. App. 284 (2d Dist. 1925).
18. *Wurster v. Albrecht*, 237 Ill. App. 284, 288 (2d Dist. 1925).
19. From the appellate court's opinion, it does not appear as though the issue of whether the guaranty may have actually been a surety was raised.

erred when it found that the provisions of the Sureties Act did not apply. The Plaintiff countered with its successful argument in the circuit court that the Sureties Act did not apply because the defendants were guarantors, not sureties.

For its analysis, the appellate court turned to Black's Law Dictionary for the definition of "surety," which it found to be "[a] person who is primarily liable for the payment of another's debt or the performance of another's obligation."[20] The court quoted further from Black's, noting that "[a] surety differs from a guarantor, who is liable to the creditor only if the debtor does not meet the duties owed to the creditor; the surety is directly liable."[21] The appellate court reasoned that the definitions found in Black's Law Dictionary supported the plaintiff's argument that sureties are distinct from guarantors.[22]

However, that did not end the court's examination of the relationship between sureties and guarantors, though it did seemingly end any chance the plaintiff had of prevailing. The court went on to state that "the dictionary definition [of the term surety] does not in this case provide the 'popularly understood' meaning of the term."[23] After alluding to the fact that it did not agree with the definition of the word "surety" found in Black's Law Dictionary, the court set out on an extended analysis of the use of the words surety and guaranty.

As part of its analysis, the court found that "[t]he terms suretyship and guaranty are often confounded from the fact that the guarantor is in common acceptation a surety for another, and thus the word guarantee is frequently used interchangably with the word surety."[24] The court continued its analysis and found Illinois cases that have used the term surety in a general sense and those that have used the term in a specific sense.[25] Used in its general sense, the term surety has been used to describe "a relationship in which a person undertakes an obligation of another who is also under an obligation or duty to the creditor/obligee."[26] Used more specifically, surety has been used to describe a contract in which the surety is in the first instance answerable for the debt for which he makes himself responsible, as opposed to a guarantor, who is only liable where default is made by the party whose undertaking is guaranteed.[27] Accordingly, the court concluded that the term surety "has more than one popularly understood meaning."[28] The term surety could refer to any situation in which a person agreed to be held liable for the debt of another, whether the liability was primary or secondary.[29] It could also be used to refer strictly to a surety, who is primarily liable.[30]

After alluding to the fact that it did not agree with the definition of the word "surety" found in Black's Law Dictionary, the court set out on an extended analysis of the use of the words surety and guaranty.

The court continued its examination to focus on when liability attaches to either a surety or a guaranty. A surety is primarily liable as though there is joint and several liability with the principal.[31] The exact moment that a guarantor becomes liable for the debt of the principal is less certain.[32] Some cases stand for the proposition that a guarantor's liability is only triggered after the creditor has proceeded against the principal and failed to receive full satisfaction.[33] Other authority holds that a guarantor's liability is triggered by the principal's de-

20. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, No 2-07-0045, slip op. at 5 (Ill. App. 2d Dist. Nov. 4, 2008).
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* at 6.
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 6-7.
30. *Id.* at 7.
31. *Id.*
32. *Id.*
33. *Id.*

fault, regardless of attempts by the creditor to recover from the principal.[34] The court found the position that imposes liability regardless of the creditor's collection efforts to be the more persuasive position.[35] In light of its determination that liability is imposed against a guarantor upon the principal's default, regardless of attempts against the guarantor's principal, the Court reasoned that any differences between primary liability of a surety and secondary liability of a guarantor appear to be only academic.[36]

After the analysis described above, the Court circled back to the issue of whether the legislature intended to distinguish between a surety and a guaranty or whether the legislature meant to use the term surety in its general sense to describe both surety and guaranty scenarios. The court concluded that based upon the intertwined use of the terms guaranty and surety and the confusion surrounding the use of the term surety, the "legislature did not mean to draw the type of precise distinctions we discussed above, but instead used the word in its general sense."[37] That court offered no authority for its determination of what the legislature intended.

It would seem that the very essence of the legislature is to make precise distinctions between divergent positions in the statutes that it enacts. Certainly, some statutes allow for more than one reasonable interpretation. However, where the legislature has specifically used a single, precisely defined term and left out another related, yet distinctly different, term, it would seem that the statute should be read to include only the term that has been used to the exclusion of the unused term.

An example of the fine distinctions made by the legislature and enforced by the appellate court is demonstrated in *Micro Switch Employees' Credit Union v. Collier*.[38] In that case, the plaintiff loaned $7,300 to the defendant for him to purchase a car from a car dealer. The defendant fell into arrears, so the plaintiff repossessed the car and filed suit for certification of title and judgment in the amount owed on the loan. The circuit court granted judgment in the plaintiff's favor, and the defendant appealed arguing that the Motor Vehicle Retail Installment Sales Act ("MVRISA") applied to the transaction and that the plaintiff violated the provisions of the MVRISA with respect to the notice required to be provided to the defendant.

On review, the appellate court found that the MVRISA did not apply to the transaction because it only applied to purchasers of automobiles who buy from a dealer under a retail installment transaction.[39] The court ruled that the plaintiff was not a retail seller under the definitions of the MVRISA because it was not engaged in the business of selling motor vehicles.[40] Additionally, the defendant paid the automobile dealer the total amount of the purchase in a single payment, so the transaction at issue did not fit the definition of a retail installment transaction.[41]

Despite the fact that the definitions found in MVRISA clearly did not support its applicability to the scenario at hand, the defendant in *Micro Switch Employees' Credit Union* continued to argue that the statute should apply to his situation because the purpose of the MVRISA was "to protect the buyer from the myriad of oppressive practices which, under the best of circumstances, seems to

34. *Id.*
35. *Id.*
36. *Id.* at 8.
37. *Id.* at 9.
38. 175 Ill. App. 3d 828, 530 N.E.2d 595 (2d Dist. 1988).
39. *Micro Switch Employees' Credit Union v. Collier*, 175 Ill. App. 3d 828, 830, 530 N.E.2d 595, 596 (2d Dist. 1988).
40. *Id.* at 831, 530 N.E.2d at 597.
41. *Id.* at 830, 530 N.E.2d at 596. Defining retail installment transaction as "a credit sale of a motor vehicle by a retail seller to a retail buyer for a deferred payment price payable in one or more installment."

characterize installment selling."[42] But the court remained firm in its holding that the statute did not apply. "While the purpose of [MVRISA] may seem to warrant including agencies like Micro Switch which make installment loans for car purchases, it is clear that the legislature has chosen to include only retail sellers and sales finance agencies. The language of the statute is clear and precise. Had the legislature intended to include lenders such as the plaintiff, it would have done so. Where the language of the Act is certain and unambiguous, the only legitimate function of the courts is to enforce the law as enacted by the legislature."[43]

Though the language of the statute at issue in *Micro Switch Employees' Credit Union* may not have the history of double use that the term surety has, it is difficult to determine how the language of the Sureties Act is any less certain than that of the MVRISA that would prompt the court to step outside of the clear language of the statute and apply it to guarantors as well as sureties.

As support for its decision, the court notes that the Sureties Act was created "to compel diligence by a creditor to make certain a surety is protected against loss" and that such purposes would be better served by extending such protections to guarantors and sureties.[44] The court continued, "Given the [Sureties] Act's purpose, which applies to sureties and guarantors alike, and given the exceptionally close relationship between those two terms, we agree with defendant's position that the legislature must have intended the word 'surety' in the [Sureties] Act to encompass a guarantor."[45] The court did not make reference to any Illinois authority for its determination that the Sureties Act should apply to guarantors as well as sureties. However, it did refer to a decision from the First Circuit of the United States Court of Appeals that interpreted the Sureties Act and found that it applied to guarantors and sureties alike.

When asked by a client for advice regarding surety and guaranty agreements, the Illinois practitioner would be wise to advise his clients as to the differences between sureties and guarantees.

When asked by a client for advice regarding surety and guaranty agreements, the Illinois practitioner would be wise to advise his clients as to the differences between sureties and guarantees as they relate to the applicability of the Sureties Act. Additionally, as long as *JP Morgan Chase Bank, N.A.* remains authority, clients should also be counseled that a court may determine that the Sureties Act applies to both surety and guaranty agreements. ◊

42. *Id.* at 831, 530 N.E.2d at 597.
43. *Id.*
44. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, No 2-07-0045, slip op. at 9..
45. *Id.* at 9-10.

Right to Carry? Hell(er) Yes!

by Newton Finn

On June 26, 2008, the U.S. Supreme Court issued perhaps the most explosive civil rights ruling since *Roe v. Wade*. In *District of Columbia v. Heller,* 128 S. Ct. 2783 (2008), five supreme court justices signed off on an opinion that put the right to keep and bear arms on the same lofty level as the rights of free speech and the free exercise of religion. Instead of overturning a D.C. law on narrow grounds—a law that, among other things, prevented a policeman from having a functional handgun in his home—the Court wrote a treatise on the right of self-defense that undermined the validity of gun control laws on the books of many states, including our own. Believe it or not, the Wild West is back.

Settling the debate about whether the Second Amendment pertained to individual rights or merely militia service, the Court's historical analysis led to only one conclusion: the amendment's words were intended to "guarantee the individual right to possess and carry weapons in case of confrontation." Among the precedents favorably cited in the opinion were two nineteenth century state supreme court cases. One "struck down a prohibition on carrying pistols openly (even though it upheld a prohibition on carrying concealed weapons)." The other similarly "held that citizens had a right to carry arms openly" and praised this right as "calculated to incite men to a manly and noble defense of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations."

Indeed, the *Heller* justices found this right of open carry to be so inherent, so fundamental, that it predated the Second Amendment, which only "codified" it. In the words of a constitutional scholar quoted in the opinion, "the right to bear arms has always been the distinctive privilege of freemen," and

Newton Finn has practiced law in Lake County for more than 30 years, concentrating in land use issues, appellate advocacy, and public interest litigation. Mr. Finn is also an ordained minister, community organizer, and published author. "Reasonable Doubt" (North Shore magazine), his eyewitness account of the trial of Juan Rivera for the Holly Staker murder, won a Herman Kogan Meritorious Achievement Award for legal writing.

thus "it was not necessary that the right to bear arms should be granted in the Constitution, for it had always existed." Such a fundamental right, the opinion made clear, is not subject to an "interest-balancing" approach, by which courts would determine, on a case-by-case basis, "whether the right is really worth insisting upon." Rather, such rights "are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad."

Does *Heller* recognize no reasonable restrictions on the right to keep and bear arms? Of course not. Along with the power to proscribe the concealed carrying of weapons, felons and the mentally ill can be denied gun ownership, guns may be banned from schools and other public buildings, the commercial sale of guns can be controlled, and unusually dangerous weapons can be outlawed. This last restriction, it should be noted, cannot generically include handguns, which the Court described as "an entire class of arms that is overwhelmingly chosen by American society for that lawful purpose (of self-defense)." While the opinion left open the possibility of other allowable restrictions, perhaps including the registration of guns or gun owners, it left little doubt that additional regulations would have to be limited in scope and targeted at special risks.

Let me bring *Heller* home. One Illinois statute, 720 ILCS 5/24-1(a)(10), purports to impose criminal liability on anyone who "carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town . . . any pistol, revolver, stun gun or taser or other firearm," subject to exceptions irrelevant to the following scenario. A manly guy (or you may substitute "gutsy gal") is walking down a sidewalk in Waukegan, nowhere near a school or other public building, minding his own business. In his wallet is a FOID card and on his hip is a loaded six-shooter lawfully purchased from Shrank's Smoke'n Gun. *Heller* presents two options to the Waukegan police, the Lake County State's Attorney, and the 19th Judicial Circuit. The first is to arrest, prosecute, and convict the guy, who will eventually beat the rap and turn the tables as the plaintiff in a civil rights suit. The second option is to just leave him alone—or drop any charges ASAP—since he is only doing what the Supreme Court said he could do, with no intent to commit a crime.

Why do I have this sneaking suspicion that the first option, not the second, will be the one chosen by the Lake County law enforcement community? Maybe it's wisdom, maybe it's cynicism, maybe it's just being jaded by too many years spent as one adversary facing another. But should that "*Heller*" of a civil rights case come through my office door, "Shootin' Newton" will be interested in taking the case! ◊

Driving After DUI

Illinois' New Monitoring Device Driving Permits

by Lisa L. Dunn

The judicial driving permit, a limited license formerly granted to first offenders (as those offenders are defined by 625 ILCS 5/11-500) is abolished for all persons arrested for DUI after January 1, 2009. The first-time DUI offender can still be eligible to drive during the Statutory Summary Suspension after the 31st day of the suspension, but now receives a Monitoring Device Driving Permit (MDDP) issued under Section 6-206.1 of the Illinois Vehicle Code. It should be noted that the length of the summary suspension has doubled: six months for a test failure and twelve months for a test refusal.

This article covers: (1) the parameters of the permit; (2) the DUI offender's eligibility to receive a permit; (3) the restrictions imposed by the permits; (4) how to apply for an MDDP; and (5) certain terms and conditions of the MDDP program.

Scope of the MDDP

An MDDP will allow the DUI offender to drive to **any** location at **any time** during the suspension with the requirement that the car must be equipped with a Breath Alcohol Ignition Interlock Device (BAIID). The offender, or any individual driving the vehicle, must provide a breath sample into the BAIID unit prior to starting the vehicle and at random intervals throughout the travel time. This prevents someone else from blowing into the machine to get the car started. Offenders will not be restricted by time or distance: they can drive 24 hours per day, 7 days per week to any location as long as a BAIID device is installed on the vehicle. This differs from the judicial driving permit, which was granted for a specific purpose limiting the days, hours, and seope of driving. A DUI offender may opt to not participate in the BAIID program, but then would not be eligible for any other driving relief during the Statutory Summary Suspension. Driving during a summary suspension without an MDDP subjects the driver to being charged with a Class 4 felony.

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Eligibility for an MDDP

A DUI offender must meet several conditions to be eligible for an MDDP. The conditions include: 1) the offender must have an otherwise valid driver's license at the time of the DUI arrest; 2) the arrest cannot have resulted in death or great bodily harm; 3) the offender cannot have been previously convicted of reckless homicide or aggravated DUI resulting in a death; 4) the offender may not operate a commercial motor vehicle with a commercial driver's li-

Lisa L. Dunn is an attorney with an office in Arlington Heights. She represents clients in criminal and traffic matters in Lake and Cook County. She is also a 14-year veteran of the Secretary of State, Department of Administrative Hearings, currently working as a part-time contractual hearing Officer and has extensive experience with DUI license reinstatement hearings, BAIID violations, and interpretation of the rules and regulations of the Secretary of State. The views expressed in this article are not those of the Illinois Secretary of State but those of the author.

cense during the period of the Statutory Summary Suspension; 5) the offender must be a first offender as defined by 625 ILCS 5/11-500, which is a person who has not failed a chemical test or refused a chemical test or had any findings of guilty in the past five years; and 6) the offender must be 18 or older.

Restrictions on the MDDP

The MDDP is not effective until the 31st day of the Statutory Summary Suspension period, affording an offender no driving relief during the first 30 days of the period. The program requires that the offender use an Illinois certified BAIID provider to install and monitor the BAIID on any vehicle that the offender will use during the period of the Statutory Summary Suspension. There are currently six vendors in Illinois who are certified to provide BAIIDs and services. All certified vendors are required to have installation sites statewide. A list of the BAIID installation sites and certified installers are available at www.cyberdriveillinois.com by searching for the BAIID program, or by calling (217) 524-0660.

The BAIID is a mechanical unit installed in a vehicle, and it requires the operator to take a Breath Alcohol Concentration test prior to starting the vehicle. BrAC is measured by the weight of alcohol in the volume of breath based upon grams of alcohol per 210 liters of breath. If the unit detects a BrAC test result below the alcohol set point, the unit will allow the vehicle ignition switch to start the engine. If the unit detects a BrAC test result above the alcohol set point, the BAIID prohibits the vehicle from starting.[1] As noted above, an individual found driving a vehicle without a BAIID during the Statutory Summary Suspension period can be charged with a Class 4 felony.

An individual may receive an exemption from installing a BAIID on a vehicle in very limited instances. This exemption may be granted if the DUI offender needs to drive employer-owned vehicles during the course of work hours and no vehicle is specifically assigned to the offender.

Application for an MDDP

DUI offenders should inform the court of their desire to obtain an MDDP at the first court appearance. The court does not have the authority to deny an MDDP or to require that the DUI offender participate in any alcohol-related classes or programs. The offender will complete an application form supplied by the Secretary of State, and which the Clerk's office will forward to the Secretary of State. The Secretary of State will review the application and the offender's records to determine eligibility. The offender will be required to pay a $30 per month nonrefundable monitoring fee to the Illinois Secretary of State for the length of the MDDP. This fee must be paid in full before the MDDP is issued. Once the offender has satisfied all the requirements, the Secretary of State will send the MDDP to the offender. The Secretary of State's office has indicated that it will issue the MDDPs as efficiently as possible. Another form is available if the DUI offender chooses to opt out.

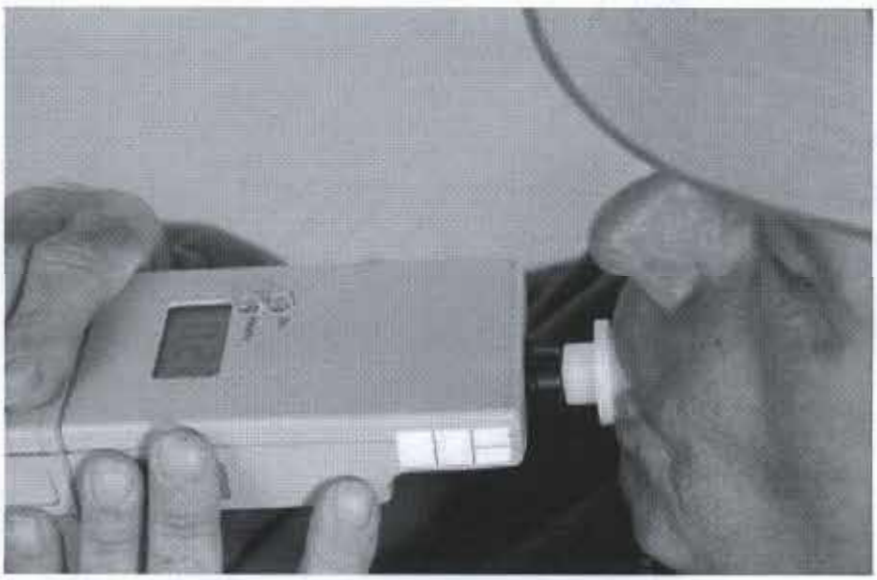
Participation in the MDDP Program

Upon receipt of the MDDP, the offender has 14 days to have the device installed on any and all cars that the offender wishes to drive during the Statutory Summary Suspension. The offender must take the vehicle(s) to a certified BAIID installation company. These private companies charge an installation fee, monthly

1. 92 Ill. Admin. Code Sec. 1001.410, available in the Illinois Register, Volume 33, Issue 2, January 9, 2009, pages 203-500.

rental fees, and calibration fees. An indigent fund is available to assist in the cost of the BAIID if the court finds that the offender is indigent. This finding will not apply to the Secretary of State monitoring fee.

The BAIID device will be read within the first 30 days for an initial monitor report. Thereafter, it will be read no longer than every 60 days for the purposes of calibration and having a monitor report of the device's activity prepared, which is sent to the Secretary of State by the BAIID provider or installer. The BAIID installer has seven days from the date of installation of the device to notify the Secretary of State of the installation. If the Secretary of State is not notified of the installation, then the MDDP will eventually be cancelled. If the BAIID detects an accumulation of five violations, the machine will be recalled for monitoring. The Secretary of State's office will review the results and determine if there have been any violations during the monitoring period. If no violations are detected, no further action will be taken. If there are violations, the Secretary of State will send a letter to the DUI offender and give him an opportunity to explain the violations. If the offender does not respond to the request, or the explanation is deemed insufficient, the Statutory Summary Suspension may be extended for an additional three months. The offender will then be required to submit to monitoring every 30 days, or the MDDP may be cancelled.



An offender can elect to opt-out of the MDDP program at any time. This is done by surrendering the MDDP to the Illinois Secretary of State. The Secretary of State will then give the offender authorization to have the BAIID device removed from his vehicle(s).

Once the DUI offender installs the MDDP, the Secretary of State deems him a BAIID Permitee. BAIID Permitees have numerous requirements that they must follow during the term of the Statutory Summary Suspension. If the Permitee violates the terms and conditions of the BAIID program, the Secretary of State can either extend the length of the Statutory Summary Suspension or cancel the MDDP and authorize the immediate removal/deinstallation of the BAIID device. The DUI offender will continue to operate his vehicle with the MDDP and BAIID device installed on the vehicle until the termination of the period of statutory summary suspension. ◊

It's 10 am...

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A New Non-Profit Takes Root In Lake County

by Barbara Bell

Soon after the U.S. economy plunged into the worst economic downturn since the Great Depression, Andrew Sagartz opened a nonprofit law firm in Bannockburn. BENNU Legal Services, as the firm is named, is one of a few nonprofit law firms in Lake County. Prairie State Legal Services in Waukegan is the largest such organization.

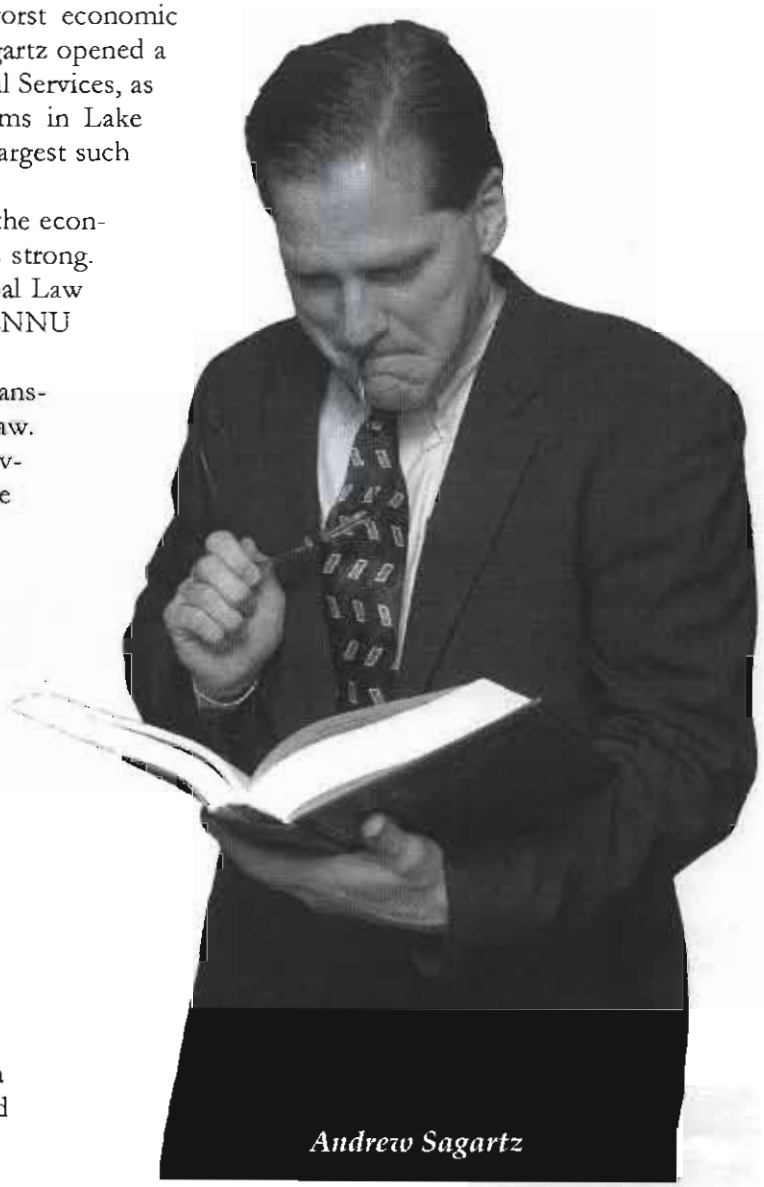
Sagartz, an immigration attorney, said that although the economy is weak, the demand for affordable legal services is strong. He ran a successful private practice called Calmec Global Law Group for 6-½ years in Libertyville before opening BENNU in November.

Although BENNU is prepared to handle business transactions, most of its work so far has been immigration law. In addition to his work in Bannockburn, Sagartz also travels to Aurora once a week to meet with clients because many people in that area need an immigration lawyer.

BENNU offers what Sagartz calls "low bono services," meaning that clients pay what they can afford based on their income and the federal poverty level. "The low bono is kind of a newer concept," Sagartz said.

Sagartz is in the process of obtaining 501(c)(3) status for BENNU, which would make BENNU a charitable organization eligible for tax deductible donations and certain grants from the state or federal government. Eventually, BENNU will seek private donations. As a 501(c)(3) organization, BENNU will also be exempt from state and federal income taxes.

Sagartz is also working to secure grants from the federal government so that BENNU will be able to help immigrants who are victims of domestic violence or sexual abuse apply for special visas. He's looking for a "holistic" way to help immigrants who have suffered abuse and he wants to partner with agencies to accomplish that.



Andrew Sagartz

Barbara Bell is a former journalist who recently became an attorney. She practices in Libertyville.

When Calmec was in existence, Sagartz found there was a strong need for immigration law services but many clients could not pay the market rate. Calmec did a few pro bono cases a year and allowed some clients to set up payment plans to make legal services more affordable. But Sagartz was concerned that not enough people who needed the help of an immigration lawyer were being served.

"A lot of clientele often come from challenging economic conditions," Sagartz said.

Gradually, Sagartz began to think about creating a nonprofit law firm to help those without financial means get the legal assistance they need. "It's been cooking for quite a while," he said.

Larry Smith, managing attorney at Prairie State in Waukegan, said he's glad to have BENNU because the need for helping low-income clients is great. While BENNU's fees are based on what a client can pay, Prairie State does not charge for its services. "We're happy to see attorneys available," Smith said.

Prairie State is a legal services corporation whose purpose is to provide free civil legal services to those who cannot afford an attorney. As a legal services corporation, however, Prairie State is forbidden by federal law from helping undocumented immigrants except in cases in which the immigrant is a victim of domestic violence, according to Smith. For example, Prairie State can help a woman who has been victimized by domestic violence apply for a visa under the Violence Against Women Act. But other than that responsibility, it cannot do much else for undocumented immigrants, according to federal law.

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BENNU operates with a board of directors to whom Sagartz reports. He is an employee of BENNU, serving as its executive director. In addition, BENNU has an advisory council whose purpose is to speak for the community BENNU serves. The public owns a nonprofit law firm, similar to a public trust.

"We'll always live lean as a nonprofit," Sagartz said. "Our challenge is to try to figure out how to keep the lights on."

The name BENNU stands for the Egyptian phoenix, a bird associated with the rising of the Nile, creation, resurrection and the sun. Sagartz chose this name because, he asserts, immigrants come to the United States to start a new life. "It's not a lifestyle choice," Sagartz said. "It's

about being able to feed your family."

BENNU is based in an office on Route 22 in Bannockburn. Sagartz works out of a modest windowless office that sometimes doubles as a conference room. "It's never been about corner offices," he said. Bannockburn was chosen for BENNU's location because it's close to Interstate 294 and some of its clients come from Indiana and Wisconsin. "This is a good blend. Respectful but not lavish," Sagartz said.

Besides Sagartz, BENNU also employs another lawyer, two paralegals, a person who handles the business side of BENNU, an intern and a volunteer from a congressional office. BENNU maintains long hours six days a week to help clients. The firm's hours are from 8 a.m. to 8 p.m. Monday through Friday and 10 a.m. to 4 p.m. Saturday.

BENNU's staff spends a lot of time educating immigrants about their Constitutional rights. They focus on the Fourth and Fifth amendments, putting on seminars at churches and libraries to teach immigrants about the right to be free from unreasonable searches and seizures as well as their right to remain silent.

"Immigrants are sometimes targets for overreaching authority and xenophobic groups," Sagartz said.

All of BENNU's employees are bilingual. Sagartz, who speaks Japanese, feels strongly that it is important for someone on staff to be able to speak the same language as clients because it puts the clients at ease. In addition, although many clients can speak English fluently, some of them choose not to because they do not have confidence in their speaking ability.

"They're shy about making mistakes," Sagartz explained, which is something he can understand from his own experiences.

Sagartz's journey as an immigration lawyer began before he went to law school. While attending college, he studied in Japan. "I just had a sense I wanted to experience other cultures," he said. "There is nothing like being abroad."

In the early 1990s, he was living in Boston and met his future wife, who is from Japan. He helped her obtain a green card, which made her a permanent resident of the United States. Getting a green card is an odyssey in itself, requiring many steps and much patience.

"I had been through the process with my wife myself," Sagartz said. "I thought this is an area where people could use some help."

Sagartz is passionate about protecting immigrants from people who try to prey on their ignorance of American law. He calls himself a "notarital hunter." Occasionally, Sagartz will come across a group or individual claiming to be knowledgeable about immigration law, and yet no one in the organization is licensed to practice law. Such organizations often take an immigrant's money with the empty promise of helping the person gain lawful status to reside in the United States. Such organizations are illegal under the Illinois Consumer Fraud Act. "I've seen a lot of very sad stories," Sagartz said.

While at Calmec, Sagartz and his colleagues created a one-page form to report groups or individuals engaging in the illegal practice of law to the Illinois Attorney General. "I think we got a couple of them shut down," Sagartz said.

He views the unauthorized practice of law as an economic threat to unsuspecting immigrants. The practice in the worse case scenario could lead to an immigrant being deported because they were given the wrong advice.

Sagartz acknowledges that immigrants will probably experience tough times as the economy goes through its worst recession since the 1930s because society tends to perceive immigrants as a threat in such a situation. But Sagartz said he couldn't help but be optimistic about the future because he finds immigrants to be so hopeful.

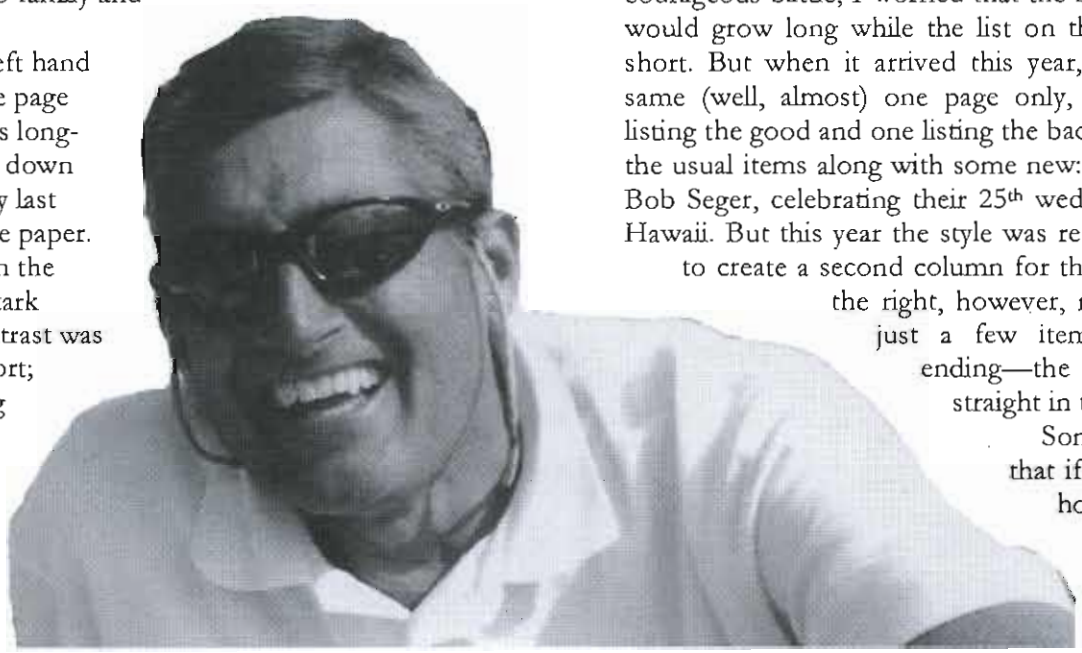
"The American dream is alive and well," Sagartz said. "If there's anybody who believes in the American dream, it's the immigrants." ◊

The List

by Kathleen M. Ryan

It would arrive every year like clockwork; sometime after Thanksgiving, before Christmas. I would come home at night and find it in the mailbox or on the kitchen counter lying among the family photos, news letters and colorful greeting cards. It was always my favorite and always the same. It was printed on simple paper; one page only. The page was divided in half creating two columns; the one on the left entitled *The Good*, and the one on the right entitled *The Bad*. Being the political junky that he was, I was certain that he delighted in listing the good on the left and the bad on the right.

Under each heading was a bullet point list, set forth in simple phrases with no explanation. That was left to the reader's imagination. I would imagine the three of them sitting together at the kitchen table in the old farm house where they lived creating "The List." I would think of how they must have reminisced about the events of the past year, each contributed items to be placed on the list, debated about what should make the list and what shouldn't and then finally written the final version to be sent out to family and friends.



The left hand side of the page was always long-stretching down to the very last inch of the paper. The list on the right, in stark visual contrast was always short; containing very few items, one of them invariably mentioning the Cubs' latest loss.

In the early years, the list would contain bullet points such as:

- Blake was born
- Mary got her Master's Degree
- Jimmy Buffet concert at Alpine Valley
- Opening Day at Wrigley Field

And on and on it went for years; a list of concerts and sporting events attended, family vacations, and happy memories. Always conspicuously omitted was any self-indulgent reference to his many accomplishments.

Every year the list grew, but some things always remained the same: the concerts and sporting events, the annual family trip to the Outer Banks, the joyful moments of his son's life such as Blake learned to walk, started kindergarten, graduated from grammar school, got his braces off, got his driver's license, learned to play the guitar, took his new car to Homecoming, and the Cubs lost in the playoffs.

Over the past two years while he fought his courageous battle, I worried that the list on the right side would grow long while the list on the left would grow short. But when it arrived this year, it was exactly the same (well, almost) one page only, two columns, one listing the good and one listing the bad. It contained all of the usual items along with some new: the Police concert, Bob Seger, celebrating their 25th wedding anniversary in Hawaii. But this year the style was reformatted just a bit to create a second column for the good. The list on the right, however, remained the same, just a few items with the usual ending—the Cubs lost three straight in the playoffs.

Someone once said that if you want to know how to live your life, you should think about what you would want people to say about you

Kathleen M. Ryan practiced law with Scott Landa at their firm: Ryan, Ryan & Landa.

when you are gone and then live your life backwards. As I listened to the eulogies delivered at his memorial service, I couldn't help but think that at a very young age he must have decided how he would want to be remembered and then lived his life in just that way.

Many times when people are faced with their own mortality they set out to accomplish unfulfilled dreams, mend broken relationships, or travel the world. They try to change the direction of their lives. Two-and-a-half years ago when he heard the diagnosis he changed nothing because, in my humble opinion, he didn't have to. There were no unfulfilled dreams, except those cut short by time. There were no broken relationships to mend, no apologies to be delivered, he didn't want to jump out of airplanes or visit the Taj Mahal, he wanted to go on living each day as he had in the past—adding happy memories to the good side of the list and making sure that the listings on the right were few and far between. In his usual selfless manner, he didn't want to disrupt the normal thythms of life for his wife and son and so he went on living as always, focusing only on the positive and never on the negative. He never engaged in self-pity, never questioned why. He never complained about the side effects of the medication or the loss of his physical abilities. When he could no longer drive, and his wife would drive him to the office he referred to her as "Driving Mr. Daisy."

I had the great privilege of knowing him for 17 years. I always marveled at his upbeat personality and his infectious smile. In all of the years that I knew him, and in all of the time that we spent together practicing law, and enjoying life, not one unkind or cross word ever passed between us. He was always the man with the kind words and the positive attitude. He would also quietly perform acts of kindness such as starting your car in the winter so that it would be warm when you left work. He was the master of the Thank You note, never letting any gift go unrecognized. On the day he died, I received a note from him. He told me how much he enjoyed his trip to Pinehurst with my boys; how much he loved the historic nature and beauty of the course and how he took great pleasure in watching the young men with the long drives. He wrote that he hoped he would be with the boys on the next trip but as it turned out, the last round at Pinehurst was his final round.

Hope. A word we heard a lot about during this past election. He was the champion of hope long before it became the anthem of the election. He always hoped that things would turn around, he hoped that he would golf again, sail again, pilot his plane one more time, see his son graduate from high school, celebrate another anniversary with his wife; he was the master of keeping hope alive. On the day that be died, he was at the office. When he left, he mentioned that he hoped he would be back in the Spring and he hoped that he would find all of his files in good order. And then he was gone. He leaves behind a legacy of kindness, laughter, and love. He was an all-state athlete in high school, excelling in tennis and hockey. He was a sailor, a golfer and a pilot. He was a fierce competitor and a true gentleman. He was an excellent attorney, working tirelessly on behalf of his clients and demanding perfection only from himself.

I know that it will arrive again this year, just after Thanksgiving, before Christmas. It will be the same as always, one page, two columns with a bullet point listing of the events of 2009.

When they rose to speak about him, his friends recalled the good times, just as he would have wanted, most of which had been included on the list over the years. They universally agreed that he would want to be remembered with laughter. And so he was. And they all spoke of their deep and abiding love and admiration for their friend and the life he led.

I know that it will arrive again this year, just after Thanksgiving, before Christmas. It will be the same as always, one page, two columns with a bullet point listing of the events of 2009. And just as he would want it to be, the list on the left will be long and the list on the right will be short. If I were to add my own bullet point to The List of 2009 it would read:

- The Good: Every day spent with Scott Landa.
- The Bad: Every day without him. ◊

Executive Board Meeting

January 15, 2009, Minutes

by Marjorie Sher, Secretary

Members present: Bryan Winter, *President,* Scott Gibson, *First Vice-President,* Elizabeth Rochford, *Second Vice-President,* Rick Lesser, *Immediate Past President,* Perry Smith, *Treasurer,* Marjorie Sher, *Secretary,* Hon. Valerie Ceckowski, Margaret Georgevich, Tom Gurewitz, Steve McCollum, Chris Boadt, *Executive Director.*

1. **Prior Minutes**. A motion was duly made, seconded, carried and it was resolved that the minutes from the December 18, 2008, Board and Executive Session Meetings were approved.
2. **New Members.** After discussion and upon motion duly made, seconded and carried, it was resolved that the Lake County Bar Association would admit the proposed new members, associate members and student associate members to the Association. The board, on behalf of the Bar, welcomes the following new members:

   Attorney Members:
   Matthew A. Dietzen
   Ellen Barron Feldman
   Caroline Kaplan
   Stephen L. Richards
   Susan J. Silverman
   Mark Wilson

   Associate Members:
   Christel Griffin
   Jenna Ball
3. **Judicial Selection and Retention Committee and Recent Bar Poll.** The Bar Poll results have been tabulated and tendered to the Judicial Selection and Retention Committee. There is a requirement that in order for the results for an applicant to be released, 25% of the Bar Association must have sufficient knowledge of the applicant. As a result, only eleven out of the twenty-two candidates were able to be rated. This recent Bar Poll received the most member responses of any other Bar Poll, with 313 attorney members rating the potential candidates for Associate Judge. From the 23 applicants, only 22 candidate names were included on the Bar Poll, as the Bar was never notified of the last applicant. That last applicant, when discovered, was contacted by the Bar Association. The applicant and the Bar Association agreed that the issuance of an amended Bar Poll was not necessary. Eleven of the 23 applicants were required to be interviewed by the Judicial Selection and Retention Committee. The final three interviews were scheduled to be held on Wednesday, January 21, 2009.

   Release of information. The Bar plans to release the results of the Bar Poll and the Judicial Selection and Retention recommendations on Monday, January 26, 2009. This will be three business days following the final candidate interviews. This timeframe permits any candidate wishing to withdraw his or her name from consideration to do so.

   The Board has asked the Judicial Selection and Retention Committee to create policies relative to the timing and implementation of the Bar Poll. The Board will inform Steve Walter, the Committee Chair of the JSRC, to consider the following in creating the policies:

   a. Should the Bar Association hold the results of the Bar Poll for three days after notifying the candidates of their ratings in order to allow the applicant time to withdraw from consideration?
   b. Should the Bar Association publish the results of those applicants for whom less than 25% of the members had sufficient knowledge to rate?
   c. How can the Bar Association share with the Chief Judge our timeline for conducting the Bar Poll in order to assure that the Judicial Retention and Selection Committee, and subsequently the Circuit Court Judges, take the Bar Poll into consideration in determining an appointment for Associate Judge?
   d. Can the Bar Association conduct the Bar Polls online via "survey monkey" or some other type of online service? If so, how can the Bar 1)

guarantee confidentiality, 2) assure that the party answering the survey is a member of the Lake County Bar Association, 3) assure that each member of the bar only answers one survey.

e. Can the responses to the Bar Poll be submitted to the Bar Association in some fashion other than mail in order to expedite the process?

4. **People's Law School.** The People's Law School is scheduled to take place on four consecutive Tuesdays beginning February 10, 2009, and ending on March 3, 2009, at the College of Lake County. Each of the speakers are required to attend a meeting on January 30, 2009, at the bar office from 12:00 p.m. to 2:00 p.m. with their final written materials. The Lake County Bar Association has prepared and is in the process of disseminating posters for members to place in their offices and other places of interest in order to inform the public of this upcoming program. Tony Gordon, a reporter for the Daily Herald, has agreed to enroll in the class and write a weekly article about the class/presentation. Make sure you look for Tony's articles in the upcoming issues of the Daily Herald. The Board encourages all members to seek and facilitate members of the public to enroll and attend the People's Law School, as it has the earmarking of a wonderful presentation.

5. **Treasurer's Report**. The treasurer, Perry Smith, reported that we have $62,885.55 in the checking and money market accounts. The positive cash flow over the last month is a result of the members of the Bar Association having paid their dues, which were mailed in December 2008. The Board has always been concerned about the great expenses of the publication and mailing of *The Docket*, as in the past, *The Docket* has always cost more than the income it has received. For the first time in recent history, *The Docket* has shown only a minimal loss, wherein the income received from *The Docket* was $2,415.00 and the expense to print and mail the same was $2,558.00.

6. **Bar Foundation**. Phil Bock, a civil law attorney practicing in Lake County, was able to obtain a Cy Pres award for the Lake County Bar Foundation in the amount of $50,000.00. A Cy Pres award can be obtained in two ways: a) if a deceased individual makes a bequest to a charity, and that charity does not currently exist, the court will order that the bequest be given to another like charity; or b) in a class action lawsuit, if there is money which was paid by the defendant which is not subsequently paid to the plaintiff, a judge can order, or the attorneys may agree, to designate a charity. The Executive Officers of the Lake County Bar Foundation plan to meet with Mark Peavy, the Chair of the Lake County Bar Foundation, to determine an appropriate allocation of the funds. The Board on behalf of the bar thanks Phil Bock for his assistance, and further reminds the members of the Bar that any additional awards from the court to the Lake County Bar Foundation would be greatly appreciated.

7. **Upcoming Events.** The Board discussed upcoming events:

a. The Spring Luncheon Series - Unfortunately, the plans by the Bar to have members of our local government speak to the Bar Association at the January lunch meeting was circumvented by the impeachment of the Governor, Rod Blagojevich. As a result, none of the speakers were available to speak at the meeting. Therefore, Bryan Winter is in the process of finding a speaker for the first meeting of the calendar year. This meeting will be scheduled shortly, and the members will receive notice via the E-News.

b. President's Dinner - The dinner, scheduled for February 27, 2008, will take place at Knollwood Country Club. The Board considered the nominations submitted by members of the Bar Association, and is pleased to present awards to the following individuals:

- Richard Kopsick, for, among other things, his tireless work and commitment to the MCLE Committee;
- Michael Ori will receive the Young Lawyers Award;
- Stephen Katz will receive the President's Award.

Furthermore, all members of the Bar Association who have been practicing for fifty to fifty-one years will be honored.

The President's Dinner Committee, which consists of Margaret Georgevich, Elizabeth Rochford and Bryan Winter will meet at a later date to discuss the procedures for the presentation, and to create written criteria for the consideration of nominations in the future.

8. **Executive Director's Report:**

a. **Attorney's Lounge.** Chris Boadt discussed the attorney's lounge on the 3rd floor of the Lake County Courthouse and inquired as to the use by the

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OFFICE CONDOMINIUMS FOR RENT OR SALE—Downtown Waukegan. Walking distance to Lake County Courthouse, 2 suites completely renovated, move-in condition, each 1200+ sq. ft. with three offices, conference room, reception area, kitchen, 2 bathrooms, central heat and air, high speed internet, 1st floor handicap accessible, parking in both front and back. Call Marco or Hector at (847) 548-5723.

WAUKEGAN—Professional office space available for immediate lease. Upper level office space across from main courthouse. Individual offices at the prime location include utilities. Rent per office is $450.00 per month. Please call (847) 662-4321 for further information.

DOWNTOWN WAUKEGAN—Across from Courthouse, 275-1200 square feet. Janitorial provided. Well maintained. Space available. 33 N. County & 325 Washington. Please call Ron Pollack at (847) 482-0952.

HISTORIC BUILDING OFFICE SPACE—The law office space currently occupied by Roach, Johnston & Thut at 516 N. Milwaukee Avenue in Libertyville is available sometime around Fall 2008. The space includes four premium quality private offices, conference room, kitchen, storage, and administrative area. It includes 2,188 square feet just off Milwaukee Avenue in a restored vintage building in Libertyville's Victorian downtown. Seeking a lead lawyer or law firm as a tenant, one or more attorneys are available as sub-tenants. Contact Mary at (847) 549-0600 for appointment to view.

members of the Bar Association. Chris was informed that the membership did not use the room frequently, and therefore, the Bar Association should put no additional effort into funding or servicing the room until further notice.

b. **Out-of-State Travel.** The board discussed the Real Estate and Wills, Trusts and Probate New Orleans Seminar scheduled for April 16–19, 2009. The Board approved the seminar trip and expenses.

c. **Website.** The LCBA has solicited bids for the creation of a new website for the Lake County Bar Association. The bids received are in the range of $30,000.00. A motion was duly made, seconded and it was resolved that a Website Committee would be created, consisting of three board members and three non-board members. The three board members on the Committee are Perry Smith, Steve McCollum and Margaret Georgevich. There was discussion about the non-board members who would be asked to join the Committee, and those non-board members will be solicited by the board members.

d. **Logo Project.** The Board was presented with a proposed new Logo for the Lake County Bar Association. A motion was duly made, seconded and it was resolved that the LCBA would begin to use the new logo as soon as practical.

e. **Lawyer Referral Service Dues.** Eleven of the current 77 members of this program have failed to pay their renewal fees for the LRS.

There being no additional business, a motion was made, seconded, carried and the meeting was adjourned.

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March 2009

Date	Event	Time	Location
3/10	*Wills, Trusts & Probate Committee Meeting*	12:00 p.m.	C307
3/11	*Doctor/Lawyer Dinner*	6:00 p.m.	Lovell's of Lake Forest
3/11	*Legal Aid Committee Meeting*	12:00 p.m.	Prairie State Legal Service Office
3/18	*Criminal Law Committee Meeting*	12:00 p.m.	LCBA
3/18	*Family Law Committee Meeting*	12:00 p.m.	C105
3/19	*Board of Directors Meeting*	12:00 p.m.	LCBA
3/24	*Monthly Business Meeting*	TBD	TBD
3/25	*Young & New Lawyers Meet and Greet*	6:00 p.m.	Morgan's Libertyville
3/26	*Brown Bag Seminar*	12:00 p.m.	C201

April 2009

Date	Event	Time	Location
4/2	*Real Estate Committee Meeting*	5:00 p.m.	In-Laws Restaurant—Gurnee
4/7	*Brown Bag Seminar*	12:00 p.m.	C201
4/8	*Professionalism & Office Management Meeting*	TBD	TBD
4/10	*LCBA Office Closed*		
4/14	*Wills, Trusts and Probate Committee Meeting*	12:00 p.m.	C307
4/15	*Criminal Law Committee Meeting*	12:00 p.m.	LCBA
4/16	*Board of Directors Meeting*	12:00 p.m.	LCBA
4/22	*Family Law Committee Meeting*	12:00 p.m.	C105

LAKE COUNTY BAR ASSOCIATION
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